

Ave Maria Radio

7-24-23

Final Version

13 Pages

PROPERTY TRANSFER AND DONATION AGREEMENT

THIS PROPERTY TRANSFER AND DONATION AGREEMENT (this “**Agreement**”) is made as of July 21, 2023 (the “**Effective Date**”), between Our Lady of Guadalupe Radio, Inc. d/b/a Annunciation Radio, an Ohio nonprofit corporation (“**Donor**”), and Ave Maria Communications d/b/a Ave Maria Radio, a Michigan nonprofit corporation (“**Donee**”). Donor and Donee are sometimes together referred to herein as “**Parties**” and each individually as a “**Party**.”

BACKGROUND

- A. Donor is a nonprofit corporation that has been recognized as an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “**Code**”) that is engaged in religious broadcasting activities in support of the mission of the Roman Catholic Church.
- B. Donor is the owner of real and tangible and intangible personal property relating to operation of religious broadcasting stations, such assets being more specifically described in attached **Exhibit “A”**(the “**Property**”).
- C. Donee is also a nonprofit corporation that has been recognized as an exempt organization within the meaning of Section 501(c)(3) of the Code and is also engaged in religious broadcasting activities in support of the mission of the Roman Catholic Church.
- D. Donor has agreed to donate the Property to Donee, and Donee has agreed to accept the Property to further its exempt purposes under the terms and conditions described below.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by and between the Parties hereto as follows:

1. **Donation and Conveyance of Property.** Subject to the terms and conditions of this Agreement, Donor agrees to donate and convey the Property to Donee as a charitable gift, and Donee agrees to accept the Property from Donor.

2. **Conveyance of Title.** At the Closing (as described in Section 7 below), Donor shall convey good and marketable title to the Property to Donee free and clear of any and all liens, claims, encumbrances and rights of third parties. The Donee acknowledges that the physical assets associated with the operation of the stations are leased as detailed on Exhibit B. The FCC assets associated with the donation are detailed on Exhibit C. The Parties shall execute such other commercially reasonable documentation as may be customary or necessary to effectuate the Closing.

3. **Condition of the Property.** Donor makes no warranties or representations whatsoever to Donee with regard to the operating or physical condition of the Property. Donor has provided to Donee copies of or given Donee or its Agents (defined below) access to the

information relating to the FCC licenses and the leased equipment and real property associated with the operation of the radio stations and all other information in Donor's possession or control. Donee is acquiring the Property in an "As Is," "Where Is," "With All Faults" condition without any warranties and representations by Donor as to merchantability, suitability, habitability or fitness for any particular use. Donor makes no representations or warranties of any kind whatsoever with respect to the physical and operating condition of the Property. Donee acknowledges and agrees that it is relying solely on its own inspections, examinations, tests, assessments, reports and studies of the Property in its determination of the physical and operating condition of the Property. Donee hereby releases Donor and Donor's members, managers, officers, employees and agents from any and all claims, damages, causes of action, obligations and liabilities arising out of the physical and operating condition of the Property, which release shall survive the term or cancellation or termination of this Agreement.

4. **Access; Inspections of Property.** At any time prior to Closing, Donee may inspect the Property to make any tests, inspections or examinations that Donee deems necessary (including, without limitation, any physical inspections, assessments and/or investigations of the Property that it deems appropriate), and Donee shall be solely responsible for all costs and expenses incurred in doing so. If Donee is not satisfied with its tests, inspections, examinations or assessments of the Property, it shall have the right to terminate this Agreement with written notice to Donor given any time prior to the Outside Closing Date (as such term is defined in Section 7 below).

5. **Donor Conditions Precedent.** The obligation of Donor to consummate the donation and transfer of the Property to Donee (the "Donation") shall be conditioned upon satisfaction (or written waiver by Donor) of each of the following conditions precedent on or prior to the dates provided below:

(a) the approval by Donor's Board of Directors of this Agreement and the Closing on the transfers in accordance with this Agreement prior to August 1, 2023;

(b) Donee is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Act of 1934, as amended, and the rules, regulations, and policies of the FCC.

(c) FCC Consent shall have been obtained, shall be in full force and effect and shall have become a Final Order, and no court, administrative or governmental order prohibiting the Closing shall be in effect.

(d) Donee's representations and warranties described in Sections 8(b) and 9 below shall continue to be accurate through the Closing.

6. **Donee Conditions Precedent.** The obligation of Donee to consummate the Donation shall be conditioned upon satisfaction (or written waiver by Donee) of each of the following conditions precedent on or prior to the dates provided below:

(a) the approval by Donee's Board of Directors of this Agreement and of Donee's acceptance of the Donation in accordance with this Agreement prior to August 1, 2023.

(b) Donee has determined, in the exercise of its sole and absolute discretion, that the Property donated is not encumbered other than as described in this Agreement, and that acceptance of the Property will not result in legal liability to Donee beyond those liabilities specifically assumed by Donee as a result of this Agreement.

(c) FCC Consent shall have been obtained, shall be in full force and effect and shall have become a Final Order, and no court, administrative or governmental order prohibiting the Closing shall be in effect.

(d) All conditions described in Section 10 relating to FCC approval and necessary for the transfer of the FCC licenses have been met in full.

(e) Donor's representations and warranties set forth in Sections 8(a) and 9 below shall continue to be accurate through the Closing.

7. Closing.

(a) The closing of the Donation (the "**Closing**") will take place as soon as possible following the satisfaction of the Parties respective Closing conditions set forth in Sections 5 and 6 above to the satisfaction of Donee in its sole and absolute discretion, and in no event later than December 31, 2023 (the "**Outside Closing Date**"). The Closing will occur at Donor's office at a time during regular business hours mutually agreed upon by Donor and Donee, or at another location as mutually agreed upon by the Parties.

(b) All prepaid and deferred expenses arising from the operations of the Stations and other Property shall be prorated as of 11:59 p.m. of the Closing Date, as defined below. The prorrations and adjustments contemplated by this Section shall be made to the extent practicable at the Closing, and to the extent not made at the Closing shall be made within thirty (30) calendar days after the Closing Date.

8. Representations and Warranties.

(a) Donor represents and warrants the following to Donee as of the date of this Agreement:

(1) Donor has and shall transfer to Donee good and marketable title to the Property free and clear of any and all liens, claims, encumbrances and/or rights of third parties;

(2) There is no litigation or governmental proceedings or investigations pending or to Donor's actual knowledge, threatened to prevent Donor from entering into this Agreement and donating the Property;

(3) Donor has duly and validly authorized and executed this Agreement with full power to enter into and perform its obligation under this Agreement, and the person executing and delivering this Agreement on behalf of Donor has all necessary authority to do so;

(4) The FCC Licenses are held by Donor, and have been issued for the full terms customarily issued to radio stations in the State of Ohio applicable to the operation of

the Stations. The FCC Licenses are in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and have not expired.

(5) The FCC Licenses are free of all liens and encumbrances.

(6) No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Donor or any of the Assets, are pending or, to Donor's knowledge, threatened, and Donor has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

(7) Donor has delivered to Donee true, correct and complete copies of all information and documents needed to transfer the FCC licenses under which the Donor operates the radio stations, deeds, leases, plans, specifications, descriptions, manuals or other drawings and documents in Donor's possession relating to the Property.

(b) Donee represents and warrants the following to Donor as of the date of this Agreement.

(1) Donee has duly and validly authorized and executed this Agreement with full power to enter into and perform its obligations under this Agreement, and the person executing and delivering this Agreement on behalf of Donee has all necessary authority to do so.

(2) Donee is an organization described in Section 501(c)(3) of the Code.

(3) No insolvency proceedings of any character, including without limitation, bankruptcy, receivership, reorganization, composition or arrangement with creditors, voluntary or involuntary, affecting Donee, are pending or, to Donee's knowledge, threatened, and Donee has not made any assignment for the benefit of creditors or taken any action which would constitute the basis for the institution of such insolvency proceedings.

9. Donee Promise to Donor

(1) Donee shall continue local programming over the FM stations that currently exist in Donor's broadcast area and shall place local programming on existing Donee platforms other than owned and operated terrestrial radio stations, e.g., Website; App; Social Media platforms, etc. This provision shall remain in place as long as funds from Doner markets are sufficient to cover the expenses associated with carrying this out.

(2) Donee shall continue to employ Donor staff for no less than 12 months. After the completion of 12 months Donee shall determine, without encumbrance, staffing needs to accomplish the support of local programming (described in point 9-1).

(3) Donee's board of directors agrees to the appointment of two (2) directors designated by Donor on Donee's board of directors.

10. **Brokers.** Each Party represents and warrants to the other Party that there are no brokers', finders' or similar fees due or payable by either party in connection with this transaction.

11. **FCC Provisions.**

(a) **FCC Consent.** The Closing is subject to and conditioned upon prior FCC consent (the "FCC Consent") to the assignment of the FCC Licenses to Donee and, unless waived by Donee, the FCC Consent having become a Final Order. "Final Order" means an action by the FCC as to which: (a) no request for stay by the FCC is pending, no such stay is in effect, and any deadline for filing a request for any such stay has passed; (b) no appeal, petition for rehearing or reconsideration, or application for review is pending before the FCC and the deadline for filing any such appeal, petition or application has passed; (c) the FCC has not initiated reconsideration or review on its own motion and the time in which such reconsideration or review is permitted has passed; and (d) no appeal to a court, or request for stay by a court, of the FCC's action is pending or in effect, and the deadline for filing any such appeal or request has passed.

(b) **FCC Application.** Within ten (10) business days after the date of this Agreement, Donor and Donee shall file an application with the FCC (the "FCC Application") requesting the FCC Consent. Donor and Donee shall diligently prosecute the FCC Application and otherwise use their best efforts to obtain the FCC Consent as soon as practicable.

(c) Donor shall maintain the FCC licenses in full force and effect and shall comply in all material respects with all applicable rules and regulations of the FCC and with all material rules and regulations of any other governmental authority having jurisdiction over Donor in connection with its operation of the Stations. If Donor receives notice of or becomes aware of any material violation with respect to or affecting the FCC licenses, Donor shall notify Donee and use commercially reasonable efforts to correct all such violations prior to the Closing. Donor shall also notify Donee of any complaints, investigations, hearing or any material litigation pending or threatened against the Stations or any material damage to or destruction of any assets included or to be included in the Property.

12. **Closing Costs.** Donor shall be responsible for its own attorney's fees and the fees, costs and expenses of the Appraiser, if required. Donee shall be responsible for its own attorney's fees and for any payment of applicable transfer taxes, if any.

13. **Assignment.** Neither Party may assign any of that Party's rights, duties or obligations under this Agreement without the prior written consent of the other Party.

14. **Breach and Remedies.** Upon breach of this Agreement by either Party, the non-breaching Party may, at its option, seek specific performance of this Agreement or seek any other remedy available under this Agreement or at law or in equity. The Parties agree that legal remedies are inadequate, that they will suffer irreparable harm upon the breach of this Agreement and that specific performance is appropriate and necessary under such circumstances. The Parties agree that for any action brought pursuant to or to enforce any provision of this Agreement, to the extent not otherwise prohibited by law, the prevailing Party shall, in addition to any other remedies, be entitled to recover its actual costs, including, without limitation, actual reasonable attorneys' fees

and other legal expenses incurred to bring, maintain or defend any such action from its first accrual or notice through any appellate proceedings and collection proceedings.

15. **Termination.** This Agreement may be terminated at any time prior to the Closing as follows:

- (a) by mutual written consent of Donor and Donee;
- (b) by written notice of Donor to Donee if Donee breaches in any material respect any of its representations or warranties or other terms of this Agreement, or defaults in any material respect in the performance of any of its covenants or agreements herein contained, and such breach or default is not cured within the Cure Period (as defined below);
- (c) by written notice of Donee to Donor if Donor breaches in any material respect any of its representations or warranties or other terms of this Agreement, or defaults in any material respect in the performance of any of its covenants or agreements herein contained, and such breach or default is not cured within the Cure Period; or
- (d) by written notice of Donor to Donee, or Donee to Donor, if the FCC Consent shall not have been received on or before the date which is 270 days after the FCC Application is filed, if the party giving notice is not then in default hereunder. The term "Cure Period" as used herein means a period commencing on the date that a party receives from the other party written notice of breach or default hereunder and continuing for twenty (20) days thereafter.

16. **Miscellaneous.**

(a) This Agreement is the entire agreement between the Parties regarding its subject matter. It may not be modified or amended except in writing executed by both Parties. The captions are for reference only and shall not affect the interpretation of this Agreement. More than one copy of this Agreement may be signed, but all such copies constitute but one agreement.

(b) Any notices shall be made in writing to the address for each Party set forth below or to such other addresses for a Party as indicated by written notice to the other Party and shall be made by personal delivery or by United States certified mail, with return receipt requested and postage prepaid.

(c) This Agreement shall be binding upon each of the Parties and their respective successors and assigns.

(d) This Agreement shall be deemed for all purposes to have been prepared by and through the joint efforts of both Parties hereto and their respective attorneys, and no provision of this Agreement shall be construed for or against a Party as a result of: (i) the identity of the author thereof; or (ii) the preparation, submittal, drafting, execution or other event of negotiation of this Agreement.

(e) This Agreement shall be governed in all respects by the laws of the United States of America and by the laws of the State of Michigan. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in Ann Arbor, Michigan, as applicable, for any matter or dispute arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of such federal or state courts located in Michigan, such personal jurisdiction shall be nonexclusive.

[Signatures follow.]

The Parties have signed this Agreement as of the date first above written.

"DONOR"

**OUR LADY OF GUADALUPE RADIO,
INC.**

By: 

Name: David M. Vacheresse

Title: President

Address: 7409 International Drive, Suite B
Holland, Ohio 43528

"DONEE"

AVE MARIA COMMUNICATIONS

By: 

Name: Albert Kresta

Title: President

Address: P.O. Box 504
Ann Arbor, MI 48106

EXHIBIT A

Personal property assets:

Checking & Savings less cash needed to satisfy liabilities and a reserve to pay costs related to winding down of the entity

Endowment

2018 Ram ProMaster City Cargo Van:

Studio Equipment and other Broadcast Equipment

Office Furniture and Office Equipment

Receivables from the filings for Employee Retention Credits on Form 941-Xs

Exhibit B

Leases and other contracts assumed by Donee

Leases for tower locations of:

WNOC-89.7fm Bowling Green/Toledo

WHRQ-88.1fm Sandusky/Port Clinton

WFOT-89.5fm Mansfield/Lexington

WRRO-89.9fm Bryan

WSHB-90.9fm Willard

Other than the foregoing leases and contracts, Donee assumes no obligations and reserves the right to refuse any donation that would result in Donee assuming any other lease or contract.

Exhibit C

FCC licenses and other license assets

(a) All licenses, permits and other authorizations or other governmental authority with respect to the Stations held by Donor (the “Licenses”), as follows:

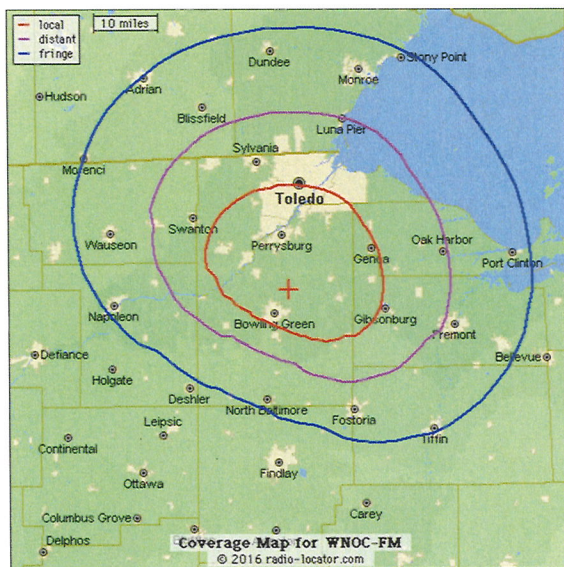
and

(b) the call signs of the Stations and certain other intellectual property used in the operation of the Stations (the “Intangible Property”) as listed below:

[Description of all radio station assets to be refined]

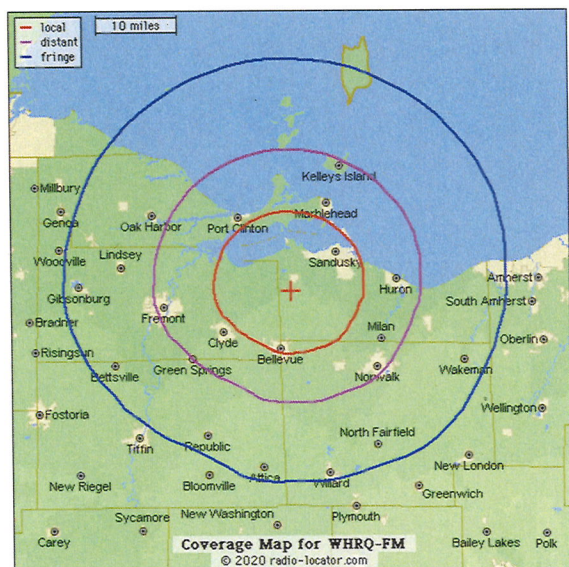
WNOC-89.7fm Bowling Green/Toledo

Estimated Market Value including Equipment:
\$600,000



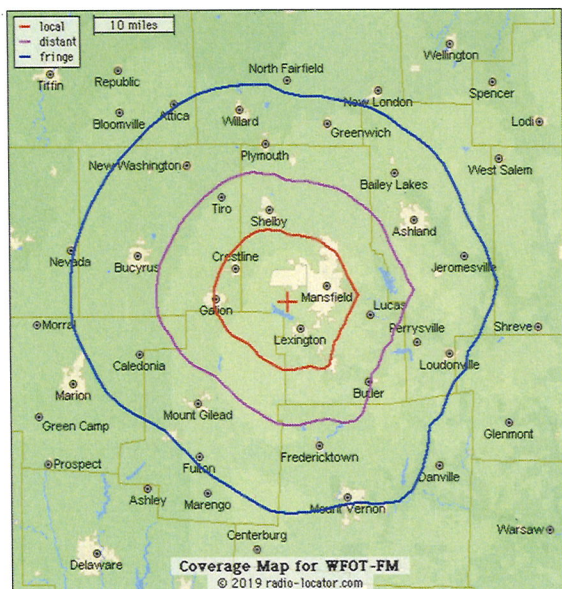
WHRQ-88.1fm Sandusky/Port Clinton

Estimated Market Value including Equipment:
\$400,000



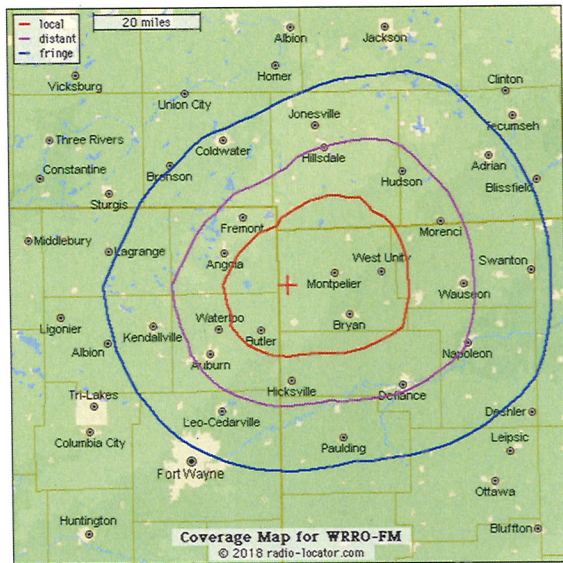
WFOT-89.5fm Mansfield/Lexington

Estimated Market Value including Equipment:
\$400,000



WRRO-89.9fm Bryan

Estimated Market Value including Equipment:
\$300,000



WSHB-90.9fm Willard

Market Value including Equipment:
\$200,000

