

W248BR ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the ____ day of April 2016, by and between **Friends of Christian Radio, Inc.** ("Seller") and **Heritage Christian Radio, Inc.** ("Buyer").

WITNESSETH:

WHEREAS, Seller is the permittee of FM broadcast translator station W248BR, Crawfordsville, IN (Facility ID No. 143959) (the "Station"); 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 Station; and

WHEREAS, the permit issued by the Federal Communications Commission ("Commission" or "FCC") for the construction of the Station 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 LICENSES

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 permit (BAPFT-20130326AAY) for the Station issued by the Commission (the "Permit"), together with all other authorizations issued by the FCC or other governmental agencies and that are associated exclusively with the Station, and all applications for modification, extension or renewal thereof pending on the Closing Date (the "Licenses").

B. **Records**: Such of Seller's files, warranties, technical data, reports and other records relating exclusively to the Station as Buyer 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 Buyer shall provide all equipment needed to construct and operate the Station; (b) the transmitter site specified in the Permit 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 Buyer hereunder (the "Purchase Price") is Twenty-Five Thousand Dollars (\$25,000), of which Five Thousand Dollars (\$5,000) shall be deposited into escrow with Fletcher, Heald & Hildreth, PLC ("Escrow Agent") within two business days following execution of this Agreement (the "Deposit"), to be held by Escrow Agent in its IOLTA trust account pursuant to an escrow agreement among Buyer, Seller and Escrow Agent. Upon consummation of this Agreement (a) the Deposit shall be paid to Seller and applied to the Purchase Price and (b) Buyer shall pay the remainder of the Purchase Price to Seller by wire transfer or such other manner as Seller may reasonably request. Should this Agreement be terminated prior to consummation, the Deposit shall be disbursed as provided in Paragraph 15 of this Agreement. The entire Purchase Price shall be allocated to the Permit. Both Buyer and Seller shall rely upon such allocation for all tax reporting purposes.

4. **PRORATIONS AND ADJUSTMENTS**

All taxes, prepayments (to the extent Buyer obtains the asset for which such prepayment was made), deposits and any income and operating expenses of the Station shall be prorated between Buyer 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 application described in Paragraph 7 hereof shall be paid by Buyer. All other recording fees, documentary stamp taxes, revenue stamps and all other similar charges on conveyances from Seller to Buyer, if any, will be paid one-half by Buyer and one-half by Seller.

6. **ASSUMPTION OF CERTAIN LIABILITIES**

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

7. **FILING OF FCC APPLICATION**

Buyer and Seller agree to proceed no later than five (5) days from execution hereof to file an application requesting FCC consent to the transactions herein set forth (the "Application"). The parties agree to prosecute the Application, defend it 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 written consent of the Commission is not obtained within six months after the date hereof, or if the Tolling Request (as defined in Paragraph 12) shall not have been granted prior to the date set for Closing, then either Buyer or Seller may terminate this entire Agreement upon written notice to the other, provided that the party seeking to terminate is not in default hereunder.

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 Buyer 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 non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Indiana, is authorized to do business 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 has been duly authorized by Seller and constitutes 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 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 Seller or any of its principals is a party or by which it or they or any of the Assets is bound or affected.

D. **Licenses**: The Permit is the only authorization issued by the Commission and other governmental agencies needed to construct the Station pursuant to the Permit. The Permit is 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 Station, the use by Buyer 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 Buyer, nor create any lien or encumbrance upon any of the Assets.

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

(i) Give to Buyer, its counsel, engineers, accountants and other authorized representatives, reasonable access during normal business hours to all of the books and records pertaining to the Station for the purposes of inspection; and

(ii) Promptly notify Buyer of any unusual or material developments with respect to the Station; 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**

Buyer makes 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:** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of South Carolina, is authorized to do business 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 has been duly authorized by Buyer, and constitutes a valid and binding agreement of Buyer, enforceable in accordance with its terms.

C. **No Contravention:** The execution, delivery and performance of this Agreement by Buyer 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 Buyer or any of its principals is a party or by which it or they is bound or affected.

D. **Qualification:** Buyer is fully qualified, legally and financially, to become the permittee of the Station and to timely consummate all of the transactions contemplated by this Agreement.

12. **PERMIT MODIFICATION**

Seller acknowledges that Buyer intends to utilize the Station as a translator for its AM station WBRI, Indianapolis, Indiana. At any time after filing the Application, Buyer may file a minor change application to substitute a new site and/or channel for the Station 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 "Permit Modification"). Seller expressly consents to Buyer filing the Permit Modification. Within one business day after the filing of the Application, Seller shall file a request with FCC staff to toll the date by which the Permit is currently required to be fully constructed and operational (the "Tolling Request"). Buyer shall be responsible for the entire cost of preparing, filing and prosecuting the Permit Modification and Seller shall be responsible for the entire cost of preparing, filing and prosecuting the Tolling Request. As provided in Paragraph 8.A, grant of the Tolling Request shall be a condition of consummation of this Agreement. However, the parties' obligation to consummate this Agreement shall not be conditioned upon the grant or status of the Permit Modification.

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 Buyer.

14. **CLOSING DATE AND PLACE**

The Closing Date and time shall be fixed by Buyer by giving at least five (5) days' written notice thereof to Seller. Unless extended by mutual written consent of Buyer and Seller, the date of Closing shall be five (5) days after the latter of public notice of FCC grant of (a) the Application or (b) the Tolling Request, unless a petition to deny or informal objection shall have been filed against the Application or the Tolling Request, in which case Buyer may elect to defer the Closing until the FCC's grant thereof 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 Buyer such bills of sale, assignments and other instruments of conveyance transferring title of the Assets as Buyer may reasonably request, and Buyer shall instruct the Escrow Agent to deliver to Seller the Deposit and shall pay the remainder of the Purchase Price as provided in Paragraph 3.

15. **REMEDIES UPON TERMINATION OR DEFAULT**

If this Agreement is terminated due to no fault of either Buyer or Seller, then Seller shall refund the Deposit to Buyer and neither party shall have any further liability to the other. If the Agreement is terminated due to a material default of Seller then, in addition to any other remedies to which it may be entitled, including return of the Deposit, Buyer may seek a decree of specific performance, it being agreed by both Buyer and Seller that the Assets to be conveyed hereunder are unique and irreplaceable, and that monetary damages alone may not suffice to compensate Buyer for the loss of an opportunity to acquire the Station on the terms set forth herein. If this Agreement is terminated by Seller due to a material default of Buyer, then the parties shall instruct the Escrow Agent to pay the Deposit to Seller as liquidated damages, it being agreed that actual damages would be difficult to calculate and that the amount of the Deposit is a reasonable estimate of the damages that Seller would incur as the result of the loss of the opportunity to sell the Assets as provided herein due to Buyer's material default.

16. **INDEMNIFICATION**

Seller shall indemnify, defend, and hold Buyer harmless against all claims, demands and legal actions and will reimburse Buyer 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. Buyer 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 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**

Buyer and Seller hereby mutually represent that there are no finders, consultants or brokers involved in this transaction other than Jon Yinger, whose fee shall be the exclusive responsibility of Buyer, and that neither Seller nor 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:

Buyer: Heritage Christian Radio Corporation
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: Friends of Christian Radio, Inc.
P O Box 2581
Elkhart, Indiana 4651
Attn: Patrick Mangan

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

Matthew H. McCormick, Esq.
Fletcher, Heald & Hildreth, PLC
21300 North 17th Street, 11th Floor
Arlington, VA 22209

16. **CONSTRUCTION**

This Agreement shall be construed and enforced in accordance with the laws of the State of Indiana. 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 Buyer 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:




HERITAGE CHRISTIAN RADIO, INC.

By 
Robert L. Wilkins, President

ATTEST:

FRIENDS OF CHRISTIAN RADIO, INC.

By 
Patrick Mangan, President