

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT by and between Cornerstone Calvary Chapel and Calvary Chapel Old Bridge ("Buyers") and Lazarus Elias Foundation, Inc. ("Seller")

WITNESSETH:

WHEREAS, Seller is licensee of a non-commercial educational FM radio broadcast station known as WPDQ-FM, 89.7 MHZ, located in Freehold Township, New Jersey (the "Station"); and

WHEREAS, the parties have executed a certain Letter of Intent on or about June 24, 2002, which is incorporated herein by reference; and

WHEREAS, the parties seek by means of this Agreement to provide for the sale by Seller and the purchase by Buyers of the license issued by the Federal Communications Commission (the "FCC License") and certain tangible assets of the Station; and

WHEREAS, this Agreement may not be consummated without prior consent of the FCC;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties intending to be legally bound, Buyers and Seller do hereby mutually agree as follows:

1. **Assets Purchased.** Upon the terms and subject to the conditions of this Agreement, Seller shall sell, assign and convey to Buyers on the Closing Date (as hereinafter defined) the following assets owned or leased by Seller (collectively, the "Purchased Assets"):

- (a) The FCC License, a copy of which is attached as Exhibit "A" hereto;
- (b) The transmission equipment, studio equipment, and office equipment used in the operation of the Station, including but not limited to the equipment identified in Exhibit "B" hereto (the "Equipment");
- (c) Subject to the conditions stated in Section 9(i) below, the lease for the tower site where the transmission facilities of the Station are located (the "Site Lease") as more specifically identified in Exhibit "C" hereto;
- (d) All engineering records in Seller's possession, including but not limited to maintenance logs and transmission equipment repair records, that relate to the technical operations of the Station and all documents that are to be maintained in the Station's local public inspection file pursuant to the rules of the FCC; and

- (e) the rights to the call sign "WPDQ-FM."

The Purchased Assets do not include (i) cash, bank deposits and bank accounts; (ii) monies receivable for the broadcast of programming and underwriting announcements prior to the Closing Date; (iii) Seller's corporate minutes, tax records and other records and accounts which do not relate to the technical operation of the Station; (iv) contracts, agreements or understandings between Seller and any third party other than the Site Lease identified as 1(c) above; and (v) real estate owned by Seller.

2. **Consideration.** As consideration for the sale, assignment, transfer and conveyance of the Purchased Assets, Buyers hereby agree to pay Seller, and Seller hereby agrees to accept, the sum of Eight Hundred Seventy Five Thousand Dollars (\$875,000.00), payable at Closing via wire transfer. Buyers have deposited Twenty-five Thousand Dollars (\$25,000.00) upon the execution of this Agreement, with Seller's attorney, who is acting as Escrow Agent under the Escrow Agreement executed by the parties (the "Deposit"). The Deposit shall be distributed to Seller at Closing or as liquidated damages in the event the Agreement is terminated by Seller due to a unilateral material breach of the Agreement by Buyers pursuant to Section 14(b) hereof, and will be distributed to Buyers upon termination of this Agreement by either party after one year pursuant to Section 14(a) hereof or the termination of the Agreement by Buyers for the unilateral material breach by Seller pursuant to Section 14(b) hereof. The sum held by the Escrow Agent and distributed to Seller at Closing will be deducted from the total sum to be paid to Seller by Buyers at the Closing.

3. **Assumption of Liabilities.** Buyers are not agreeing to, and shall not, assume any liability, obligation, undertaking, expense or agreement of Seller of any kind, absolute or contingent, known or unknown, and the execution and performance of this Agreement shall not render Buyers liable for any such liability, obligation, undertaking, expense or agreement.

4. **FCC Consent; Control of Station.** The parties will prepare and file with the FCC an application requesting consent to the assignment of the FCC License from Seller to Buyers. Said application shall be duly filed with the FCC not later than (5) five business days after the date of this Agreement. Buyers shall prosecute such application in good faith and with due diligence. Seller agrees to cooperate with Buyer in executing such documents or providing such information as may be reasonably required in connection with Buyer's prosecution of its application hereunder.

5. **Closing.** The Closing of the purchase of the Purchased Assets (the "Closing") shall take place at the offices of Seller ^{or his attorney} on or before the fifth (5th) business day after the date that FCC grant of the parties' application has become a Final Order. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an application which is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal for reconsideration by the FCC on its own motion has

expired. Notwithstanding the foregoing, Buyers in their exclusive discretion may choose to schedule the Closing after the application has been granted pursuant to delegated authority and before such grant becomes a Final Order.

6. **Section 73.1150 Statement.** Both Seller and Buyers agree that the Seller has retained no rights of reversion of the Station License, no right to the reassignment of the Station License in the future, and has not reserved the right to use the facilities of the Station in the future for any reason whatsoever.

7. **Representations and Warranties of Seller.** Seller represents and warrants to Buyers as follows:

(a) **Organization and Standing.** Seller is a not-for-profit corporation in good standing under the laws of that State of New Jersey and has full corporate power and authority to carry on the business now conducted by it.

(b) **Authorization.** Seller has full power and authority to enter into this Agreement. The consummation of the transactions contemplated hereby have been or by the Closing Date will be duly and validly authorized by Seller and no other proceedings on the part of Seller are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights on the application of principles of equity.

(c) **Licenses.**

(1) Exhibit A hereto contains a true and complete copy of the FCC License. Seller is the authorized legal holder of the FCC License, which is not subject to any restriction or condition which would limit in any respect the full operation of the Station as set forth in the FCC License. All reports and filings required to be filed with the FCC by Seller with respect to the operation of the Station have been timely filed, and all such reports and filings are accurate and complete in all material respects. Seller maintains an appropriate public inspection file for Station WPDQ-FM in accordance with FCC rules.

(2) The FCC License is in good standing, in full force and effect and has not been revoked, canceled or rescinded. Seller is operating the Station in accordance in all material respects with the FCC License, the underlying construction permit and all rules, regulations and policies of the FCC. There is not now pending or, to the knowledge of Seller, threatened any

action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew the FCC License, and no event has occurred which permits, or after notice or lapse of time or both would permit, the revocation, cancellation or rescission of the FCC License. Seller has no knowledge of any protests, applications, or proceedings of any kind, whether pending or threatened before the FCC or other authority, which might adversely affect the Station or Seller's ability to assign the FCC License to Buyers. There is not now issued or outstanding, or to the knowledge of Seller, pending or threatened, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint against Seller with respect to the Station. To the knowledge of Seller, the Station is not causing interference in violation of FCC rules to the transmission of any other broadcast station or communication facility and Seller has not received any complaints with respect thereto, and no other broadcast station or communications facility is causing interference in violation of FCC rules to the transmissions of the Station or the public's reception of such transmissions.

(d) **Absence of Conflicting Agreements or Required Consents.** The execution, delivery and consummation of this Agreement are not prohibited by, and will not conflict with, constitute grounds for termination of, or result in a breach of, the terms, conditions or provisions of, or constitute a default under, the Certification of incorporation or By-Laws of Seller or any agreement or instrument to which Seller is now a party or otherwise subject. The execution, delivery and performance of this Agreement by Seller will not: (i) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Seller is subject or to which any of the Purchased Assets may be subject or (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on any of the Purchased Assets.

(e) **Title of Assets.** Seller has, and on the Closing Date will have, good, valid, marketable and legal title to all of the Purchased Assets, none of which is or will be subject to any security interest, mortgage, pledge, lien, conditional sales agreement or other claim, encumbrance or charge of any nature whatsoever, and the instruments to be executed by Seller and delivered to Buyers at the Closing shall deliver good and marketable title to the Assets.

(f) **Site Lease; Consent to Assignment.** The Site Lease is in full force and effect, and enforceable in accordance with its terms; no party thereto is in breach, and no claim of breach has been made. Exhibit C contains a true and complete

copy of the Site Lease. The Site Lease may be assigned to Buyers pursuant to the terms thereof.

(g) **Litigation.** There are no claims, actions, suits, proceedings, disputes or investigations pending or, to the knowledge of Seller threatened, before any court or governmental or regulatory authority, or before any arbitrator of any nature, brought by or against Seller or the Station, which might result in any material adverse effect upon the assets or operations (financial or otherwise) of the Station or which questions the validity of any action taken or to be taken pursuant to or in connection with this Agreement. Seller knows of no basis for any such claim, action, suit, proceeding, dispute or investigation.

(h) **Debts, Liens and Consents.** Seller is and will be solely responsible for all debts, taxes, impositions or obligations imposed or arising by reason of Seller's ownership of the Purchased Assets and the operation of the Station prior to the Closing. Any debts or obligations which have given or may give rise to liens against the Purchased Assets shall be discharged by Seller on or before the Closing. No consent, approval, authorization or order of (or registration or filing with) any governmental authority, lending institution or other third party is required in connection with the execution, delivery or performance by Seller of this Agreement or in connection with the transactions contemplated hereby (including transfer of any or all of the Assets) except for the FCC consent.

(i) **Normal Operation of the Station.** Seller is now operating and on the Closing Date will be operating the transmission facilities of the Station in material compliance with the applicable technical rules of the FCC. Between the date of this Agreement and the Closing Date, Seller shall conduct the technical operations of the Station in its normal manner, and in compliance with FCC rules and policies, and shall file with the FCC all applications and other documents required to be filed in connection with the operations of the Station.

(j) **Equipment.** The Equipment is in good condition and enables the Station to operate in full compliance with the Station License. Buyer has conducted a complete due diligence inspection of the Station and the Station and equipment were found to be in acceptable condition at that time.

(k) **Tangible Property.** Between the date hereto and the Closing Date none of the Purchased Assets will be sold or otherwise disposed of unless any such property is replaced by other property of equal or better quality and usefulness.

(l) **Complete Disclosure.** Seller's representations and warranties in this Agreement do not contain any untrue statement of any material fact and do not

omit to state any material fact required to make such representations and warranties not misleading.

8. **Covenants of Seller.** Between the date hereto and the Closing Date, Seller will:

- (a) Maintain all of the Equipment in the condition it was in at the time of Buyer's due diligence inspection, ordinary wear and tear excepted.
- (b) Maintain in effect insurance coverage of the same type and coverage as that in effect on the date hereto with respect to the Purchased Assets.
- (c) Notify Buyers of any material litigation pending or threatened against Seller or any material damage to or destruction of any assets included or to be included in the Purchased Assets;
- (d) Obtain a release of the Site Lease;
- (e) Notify Buyers of facts known to Seller which would materially and adversely affect the future operations of the Station by Buyers in the event of the approval of the assignment of the FCC License by the FCC;
- (f) Permit employees, agents, contractors and other representatives of Buyers to inspect the Equipment during normal working hours; *provided, however*, there shall be no more than eight (8) such additional inspections prior to the Closing Date, and all such inspections shall require prior coordination with Seller;
- (g) Seller shall use its best efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and to cause the transactions contemplated by this Agreement to be fully carried out.

9. **Conditions Precedent to Closing by Buyers.** The duty of the Buyers to close this Agreement is, at the option of Buyers, subject to compliance, at or prior to the Closing Date, with each of the following conditions:

- (a) **FCC Consent.** The FCC's consent to the assignment of the FCC License to Buyers shall have been obtained without any conditions materially adverse to Buyers and such consent having become a Final Order. Any current conditions which exist as of this date shall not be deemed materially adverse and the Buyer shall be obligated to accept transfer of the license subject to any such existing conditions.

- (b) Representations and Warranties. On the Closing Date all representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects.
- (c) Covenants. As of the Closing Date, 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 duly complied with or performed in all material respects.
- (d) Adverse Proceedings. As of the Closing Date, no suit, action, claim or governmental proceeding shall have been instituted, taken or presented against Seller which results or reasonably may result in a substantial adverse effect upon, or substantial disruption of, the operations of the Station.
- (e) Material Adverse Change. As of the Closing Date, there shall not have been any material adverse change in the Purchased Assets.
- (f) Closing Documentation. On the Closing Date, Seller shall have delivered bills of sale and assignments transferring and assigning to Buyers the Purchased Assets; and Seller shall have taken all steps necessary to put Buyers in possession and operating control of such property.
- (g) License. On the Closing Date, Seller shall be the holder of the FCC License presently held by it and there shall not have been any material adverse modification of the FCC License and no proceeding shall be pending, the effect of which would be to revoke, cancel, fail to renew, suspend or modify materially and adversely the FCC License. Following Closing, the FCC License shall be held by Buyers.
- (h) Damage to the Assets. The Purchased Assets shall not have suffered damage on account of fire, explosion or other cause of any nature which shall not have been repaired as of the Closing Date; provided that if Buyers elect to waive the condition set forth in this Section 8(h) and consummate the Closing, then Buyers shall be entitled to collect and receive the proceeds of any insurance payable to Seller on account of such damages which have not been applied to the repair thereof.
- (i) Site Lease Assignment. Provided Buyers agree to make the required security deposit and meet the other terms for such an assignment, and provided the landlord under the Site Lease releases Seller from any further obligation under the Site Lease, Seller will assign its rights under the Site Lease to Buyers. Notwithstanding the foregoing, the Buyer shall advise the Seller within thirty (30) days of the date hereof if it has been unable to secure acceptable terms and conditions with the landlord as to a new site Lease for the premises at which the

radio station is presently operated. Failure of the Buyer to provide such notice within said thirty (30) days shall be deemed a waiver of this provision and, this Contract shall have no contingency thereafter with respect to a site Lease being secured by the Buyer.

10. **Buyer's Representations and Warranties.** Buyers jointly and severally represent and warrant to Seller as follows:

(a) **Organization and Standing.** Buyers are not-for-profit corporations in good standing under the laws of the State of New Jersey and are authorized to do business in the State of New Jersey.

(b) **Authorization.** Buyers have full power and authority to enter into this Agreement.

(c) **Absence of Conflicting Agreements or Required Consents.** The execution, delivery and consummation of this Agreement is not prohibited by, and will not conflict with, constitute grounds for termination of, or result in a breach of, the terms, conditions or provisions of, or constitute a default under the Certification of Incorporation or By-Laws of Buyers or any agreement or instrument to which either or both Buyers are now a party or otherwise subject.

(d) **Buyers' Qualifications.** Buyers are aware of no facts which would cause the FCC to conclude that Buyers do not possess the legal, technical, and financial qualifications to acquire the Station License. Buyer has the present financial wherewithal to consummate this Agreement and, as is required by the rules and policies of the FCC, shall represent the same in the license assignment application seeking FCC approval of this transaction.

11. **Conditions Precedent to Closing by Seller.** The duty of Seller to close this Agreement is, at the option of Seller, subject to compliance, at or prior to the Closing Date, with each of the following conditions:

(a) **FCC Consent.** The FCC's consent to the assignment of the FCC License to Buyers shall have been obtained without any conditions materially adverse to Seller.

(b) **Performance by Buyers.** Buyers shall have performed in all material respects the undertakings and agreements of Buyers to be performed hereunder on or before the Closing Date.

12. **Indemnification.** **Seller will defend, indemnify and hold Buyers** harmless from and against any and all losses, liability, damages, costs, or expenses incurred by Buyers (including reasonable attorneys' fees) payable from, arising out of, or incurred as a result of (i) any breach of a representation or warranty made by Seller in this Agreement; (ii) any failure by Seller to perform or fulfill any of its covenants or agreements as set forth in this Agreement; and (iii) any obligation or liability that has not been assumed herein by Buyers. Buyers will defend, indemnify and hold Seller harmless from and against any and all losses, liability, damages, costs, or expenses incurred by Seller (including reasonable attorneys' fees) payable from, arising out of, or incurred as a result of (iv) Buyers' failure to discharge their obligations under the Site Lease; and (v) any obligation or liability arising out of Buyers' operation of the Station after the Closing.

13. **Survival of Representations and Warranties.** The representations, warranties and agreements made by each party hereto shall survive the Closing and shall be fully enforceable at law or in equity against such party and its successors and assigns by the other party and its successors and assigns for a period of three (3) months after the Closing. Any investigation at any time made by or on behalf of (or any disclosure to) either party **hereto shall not diminish in** any respect whatsoever its right to rely on the representations and warranties of the other party hereto.

14. **Termination.**

(a) This Agreement may be terminated by either party upon written notice to other party if (1) the consent of the FCC to the assignment of the FCC License has not been obtained within twelve (12) months after the filing of the parties' application requesting such consent, (2) if the FCC application is designated for hearing or denied by Final Order, (3) if a Petition to Deny filed with the FCC creates a substantial likelihood that there will be extended litigation before the FCC or a court of competent jurisdiction concerning the transaction contemplated by the parties or (4) if there shall be in effect any judgment decree or order that would prevent or make unlawful the Closing of this Agreement; provided, however, that the party desiring to terminate is not in breach of this Agreement at the time of such notice.

(b) In the event that either party fails to comply with any material term or obligation or breaches any representation or warranty contained in this Agreement in any material respect and does not cure such failure within twenty (20) days of receiving written notice from the other party, then the non-breaching party may at its option, by written notice to the breaching party, terminate this Agreement without further obligation or liability; provided, however, that the terminating party is not in material breach of this Agreement at the time of such notice.

15. Remedies.

(a) Specific Performance. Buyers and Seller agree that the FCC License is a unique property and that there is no adequate remedy at law for damage which Buyers might sustain upon a failure by the Seller to consummate this Agreement in accordance with its terms. Accordingly, Buyers are entitled to the remedy of specific performance to enforce such consummation upon and subject to the terms and conditions provided in this Agreement, in addition to whatever other remedies may be available to it at law or equity as a consequence of such failure, without posting bond or other surety for such equitable relief.

(b) Liquidated Damages. In the event the Buyer shall fail to consummate this agreement in accordance with its terms, Seller shall be entitled to retain the Buyer's deposit as liquidated damages without the necessity to prove any actual or consequential damages, the parties acknowledging that the establishment of the measure of damages is too uncertain and thereby agree to provide for the deposit of \$25,000.00 to serve as a liquidated damage sum.

16. Instruments of Conveyance.

(a) At the Closing, Seller shall deliver to Buyer:

- (1) An assignment of the FCC Licenses;
- (2) Bills of Sale sufficient to place Buyers in actual possession of the Equipment;
- (3) A certificate dated the Closing Date executed by a duly authorized officer of Seller certifying that the conditions set forth in Section 8 hereof have been satisfied in all material respects.

(b) At the Closing, Buyers shall deliver to Seller:

- (1) Eight Hundred Fifty Thousand Dollars (\$850,000.00);
- (2) Written instructions to the Escrow Agent to distribute the Deposit to Seller;
- (3) A certificate dated the Closing Date executed by a duly authorized representative of Buyers certifying that the conditions set forth in Section 10 hereof have been satisfied in all material respects.

17. **Broker's Commissions.** Each party hereto represents and warrants to the other that there are no commissions due to any person growing out of this Agreement, and that neither it nor any party acting on its behalf has agreed to pay any other person or entity a commission, finder's fee or similar payment in regard to this Agreement or any matter related hereto or has taken any action on which a claim for any such payment could be based.

18. **Notice.** All necessary notices, demands and requests shall be deemed duly given upon receipt, if mailed by certified mail, return receipt requested, postage prepaid, or sent by overnight courier service and addresses to the following (or to a substituted address as to which the other party has been notified consistent with the provisions of this Section.

If to Buyers:

Cornerstone Calvary Chapel
c/o Pastor Chris McCarrick
6550 Route 9
Howell, NJ 07731

and

Calvary Chapel Old Bridge
c/o Pastor Lloyd Pulley
123 White Oak Lane #216
Old Bridge, NJ 08857

If to Seller:

Lazarus Elias Foundation, Inc.
c/o Ms. Bonnie Stamat
242 South 6th Avenue
Highland Park, NJ 08904

Copy to:

Mark Goldstein, Esq.
Goldstein and Bachman
One South Woodland Avenue
East Brunswick, NJ 08816

19. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the transactions contemplated and supersedes all prior negotiations and agreements between the parties concerning the subject matter contained herein. No change, modification or waiver of any provision hereof will be valid unless in writing and signed by the party to be bound.

20. **No Waiver.** No delay or failure on the part of either party in exercising any rights hereunder, and no partial or single exercise thereof, will constitute a waiver of such rights or of any other rights hereunder.

21. **Assignment.** This Agreement may not be assigned by a party absent the prior written consent of the other party; provided, however, that Buyers may assign this Agreement to a single entity that they jointly control.

22. **Binding Upon Successors.** This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns.

23. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of New Jersey.

24. **Attorneys' Fees.** In the event either party institutes litigation to enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to the award of such reasonable attorneys' fees and court costs as may be fixed and determined by a court of competent jurisdiction.


25. **Maintenance of Confidences.** Until after the Closing, Buyer agrees to keep confidential all information it receives or has received during the course of the negotiations in connection with the transaction contemplated hereto or relating to the business operations of Seller, provided that Buyer may disclose such information to its professional advisors, agents and any financial institution that it may be dealing with in connection with the proposed financing of the transactions contemplated herein, or as required by law. In the event that the transaction contemplated hereby is not consummated for any reason, Buyer shall promptly return to Seller all materials acquired by Buyer from Seller with respect to the Station and the associated assets and intangibles, and provide to Seller the names and addresses of any and all person, firms or other entities who have viewed or received information with respect to the proposed sale of the Station (together with a meaningful description of the materials viewed or received by each of them).

26. **Counterparts: Effective Date.** This Agreement may be executed in counterpart, each of which shall be deemed an original. This Agreement will become effective on the later of the dates on which it has been signed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below:

BUYERS:

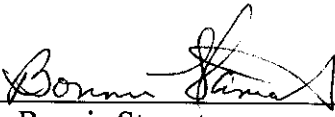
**CORNERSTONE CALVARY
CHAPEL**

By: 
Pastor Chris McCarrick
President

Date: 11/19/02

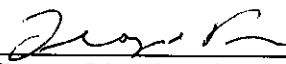
SELLER:

LAZARUS ELIAS FOUNDATION, INC.

By: 
Bonnie Stamat
President

Date: 11/26/02

**CALVARY CHAPEL OLD
BRIDGE**

By: 
Pastor Lloyd Pulley
President

Date: 11/19/02

SCHEDULE OF EXHIBITS

Exhibit 1(a): Copy of FCC License

Exhibit 1(b): List of Equipment

Exhibit 1(c): Copy of Site Lease