

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is dated as of the 4th day of April 2018 (the "Effective Date"), by and between **THE LAY WITNESS OUTREACH MINISTRY, INC.**, a Kentucky non-profit, religious corporation, **LAY WITNESS BROADCASTING, INC.** a Kentucky corporation, **JOHN E. SMITH and PATRICIA ANN SMITH** (collectively "Seller") and **SOMERSET EDUCATIONAL BROADCASTING FOUNDATION**, a Kentucky non-profit trust ("Buyer").

### **WITNESSETH:**

**WHEREAS**, The Lay Witness Outreach Ministry, Inc., is the current Federal Communications Commission (the "FCC") licensee of radio station WPTJ(FM), Paris, Kentucky (Channel 214C3; 90.7 MHz; FCC Facility ID# 93789) (the "Station") pursuant to certain FCC licenses and authorizations (the "FCC Authorizations");

**WHEREAS**, Lay Witness Broadcasting, Inc. is commonly owned with Lay Witness Outreach Ministry, Inc.;

**WHEREAS**, John E. Smith and Patricia Ann Smith own in fee simple the Tower Site (as defined below) used by Station; and

**WHEREAS**, on the terms and conditions described herein, Seller desires to sell and Buyer desires to acquire certain assets owned or leased by Seller and used or useful in connection with the operation of the Station.

**NOW, THEREFORE**, in consideration of the foregoing and of the mutual promises herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

### **1. Assets and Liabilities.**

(a) On the Closing Date (as defined below), Seller shall sell, assign and transfer, or cause to be delivered, to Buyer, and Buyer shall purchase, assume and accept from Seller, certain assets, properties, interests and rights of Seller of whatsoever kind and nature, used in connection with the operation of the Station and which are specifically described below, but excluding the Excluded Assets described in subparagraph (c) below, (collectively, the "Assets");

(i) Seller's equipment, machinery, furniture, transmission tower and all other tangible personal property used in the conduct of the business or operations of the Station, as identified on Schedule 1(a)(i) hereto (collectively, the "Equipment"), together with such modifications, improvements and additions thereto and replacements thereof occurring between the date hereof and the Closing Date;

(ii) all of the licenses, permits and other authorizations issued by the FCC (including, but not limited to, the FCC Authorizations), the Federal Aviation Administration (the "FAA"), and any other federal, state or local governmental authorities to

Seller in connection with the conduct of the business and the operation of the Station, identified on Schedule 1(a)(ii) hereto (collectively, the "Licenses");

(iii) all of Seller's right, title and interest in and to the Seller's real property associated with the Station (the "Tower Site"), as further identified and described on Schedule 1(a)(iii) hereto and referred to herein; and

(iv) all of Seller's logs, books, files, data, software, FCC and other governmental applications, equipment manuals and assignable warranties, and other records relating to operation of the Station, including without limitation all electronic data processing files and systems related thereto, FCC filings and all records required by the FCC to be kept by the Station, including, but not limited to, the Station's public inspection file.

(b) The Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements and other liens, liabilities and encumbrances of every kind and nature (collectively, "Liens"), except (i) liens for taxes not due and payable or, that are being contested in good faith by appropriate proceedings, but in any event, will remain the liability of Seller; and (ii) liens or mortgages, in each case that will be released on or before the Closing or otherwise satisfied by Seller with Buyer's consent (collectively, the "Permitted Liens").

(c) Buyer is 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 Buyer liable for any such liability, obligation, undertaking, expense or agreement, except for any liabilities of Seller for which Buyer receives a credit under Section 2(c) (collectively, the "Assumed Liabilities"). All liabilities, except for the Assumed Liabilities, shall be retained by Seller. Without limiting the generality of the foregoing, it is understood and agreed that Buyer is not agreeing to, and shall not, assume (i) any liability or obligation of Seller to Seller's employees under any existing written or oral agreements with Seller, including any such liability or obligation in respect of wages, salaries, bonuses, accrued vacation or sick pay or any other matter, (ii) any liability arising out of any termination by Seller of the employment of any employee of the Station or any liability for any employee benefit plan or arrangement of Seller for Station employees, (iii) any liability or obligation of Seller arising due to the Tower Site at or prior to Closing, or (iv) any liability or obligation of Seller arising under any contracts related to the Station.

(d) The following assets and obligations relating to the business of the Station shall be retained by Seller and shall not be sold, assigned or transferred to or assumed by Buyer (the "Excluded Assets");

(i) any and all claims of Seller with respect to transactions prior to the Closing;



(ii) all contracts that are terminated in accordance with the terms and provisions of this Agreement or have expired prior to Closing in the ordinary course of business, and all loans and loan agreements;

(iii) all tangible personal property owned by Seller not listed on Schedule I(a)(i) (property not located at the Tower Site) and tangible personal property disposed of or consumed between the date hereof and Closing in the ordinary course of business;

(iv) Seller's corporate records;

(v) all commitments, contracts, leases and agreements except to the extent that they are specifically assumed in this Agreement; and

(vi) all intellectual property or other intangible property, including, but not limited to programming, except that all right, title and interest in and to the call sign WPTJ shall be acquired by Buyer at the Closing.

## **2. Purchase Price.**

(a) Upon the terms and subject to the conditions contained in this Agreement, and in consideration of the sale of the Assets, on the Closing Date, Buyer shall pay to Seller the aggregate sum of Two Hundred Seventy Thousand and 00/100 Dollars (\$270,000.00) (which includes the Earnest Money Deposit of \$20,000.00 (as described below) (together, the "Purchase Price"), which shall be paid by Buyer to an accounts designated by Seller on or before the Closing Date. Two Hundred Forty Five Thousand and 00/100 Dollars (\$245,000.00) of the Purchase Price shall be paid to Lay Witness Broadcasting, Inc. Twenty Five Thousand and 00/100 Dollars (\$25,000.00) shall be paid to John E. Smith and Patricia Ann Smith in consideration for the sale of the Tower Site, which is owned separately from the other assets of Lay Witness Broadcasting, Inc.

(b) Within one (1) business day of the execution of this Agreement, Buyer shall deliver to Seller, based upon written instructions from Seller, Twenty Thousand and 00/100 Dollars (\$20,000.00) to be held as the Earnest Money Deposit. The Earnest Money Deposit shall be credited to Seller as part of the Purchase Price due at Closing, in accordance with the provisions of this Agreement.

(c) The parties agree to prorate all expenses arising out of the operation of the Station which are incurred, accrued or payable, as of 11:59 p.m. local time of the day preceding the Closing. The items to be prorated shall include, but not be limited to, power and utilities charges, FCC annual regulatory fees, real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within sixty (60) days after the Closing Date.

**3. FCC Consent; FCC Applications.** At a date not later than five (5) business days after the Effective Date, (i) Seller shall execute, file and vigorously prosecute an assignment of license application (on FCC Form 316) to assign the FCC Authorizations from The Lay Witness

Outreach Ministry, Inc. to Lay Witness Broadcasting, Inc., (the "Pro Forma Application") at Seller's sole expense, and (ii) Buyer and Seller shall execute, file and vigorously prosecute an application with the FCC for assignment of the FCC Authorizations (on FCC Form 314) (the "Assignment Application") requesting FCC consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station (the "FCC Consent"). Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay, and to promptly consummate this Agreement in full.

**4. Closing Date; Closing Place.** The closing of the transactions contemplated by this Agreement (the "Closing") shall occur on a date fixed by Buyer (the "Closing Date"), which such date shall be no later than ten (10) days following the date on which the FCC Consent shall have become a Final Order (defined below) and the other conditions to closing set forth in Section 8 have either been waived or satisfied. Buyer shall deliver to Seller at least five (5) days' prior written notice of the Closing Date. For purposes of this Agreement, "Final Order" means an FCC Consent (a) that is no longer subject to review, reconsideration, set aside, or rehearing by the FCC or any court, (b), is not subject to any material conditions other than those customary to FCC consents for FM radio stations similar to the Station; and (c) that has received no timely requests for stay, petition for rehearing or appeal. The Closing shall take place remotely by email, or in such other manner and at such other place as the parties may agree in writing.

**5. Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer:

(a) Seller is a non-profit, religious corporation duly organized, validly existing and in good standing under the laws of the state of Seller's formation, and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted;

(b) The execution, delivery, and performance of this Agreement by Seller will not (i) constitute a violation of or conflict with Seller's organizational documents, (ii) 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 relating to the business of the Station and to which Seller or any of the Assets may be subject, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Buyer, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Seller or any of the Assets, (iv) result in the creation or imposition of any Lien of any nature whatsoever on any of the Assets, or (v) require the consent or approval of any governmental authority or other third party, other than the FCC Consent;

(c) Schedule 1(a)(i) hereto contains a complete and accurate list of the Equipment that is necessary to conduct the operation of the Station in the manner in which it is currently operated (other than those assets which are Excluded Assets) and will be acquired by Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Equipment. Each item of Equipment (i) is in good condition and repair, ordinary wear and tear



excepted, (ii) has been maintained in a manner consistent with generally accepted standards of good engineering practice, and (iii) is operating in substantial compliance with all Licenses, including, but not limited to, the FCC Authorizations and rules and regulations of all relevant federal and state governments, agencies, or departments, including, but not limited to, the FCC and FAA;

(d) To Seller's best knowledge, since the date Seller acquired the Tower Site, no item of Equipment or the Tower Site contains any Hazardous Materials. As used in this Agreement, "Hazardous Materials" means any wastes, substances, or materials (whether solids, liquids or gases) that are deemed hazardous, toxic, pollutants, or contaminants, including substances defined as "hazardous wastes," "hazardous substances," "toxic substances," "radioactive materials," or other similar designations in, or otherwise subject to regulation under, any applicable regulations of any federal, state, or local department of natural resources or federal, state, or local environmental protection agency now or at any time hereafter in effect ("Environmental Laws"). Without limiting the generality of the foregoing, Hazardous Materials includes, but is not limited to, polychlorinated biphenyls (PCBs), asbestos, lead-based paints, infectious wastes, radioactive materials and wastes and petroleum and petroleum products (including crude oil or any fraction thereof);

(e) To Seller's best knowledge, Seller states that: (i) there are no underground storage tanks located at the Tower Site, on any of the necessary means of ingress and egress to and from the Tower Site or any Tower Site facility or building used in connection with the Tower Site (collectively, the "Tower Site Property") and (ii) there are not now, nor have there been, any Hazardous Materials stored upon the Tower Site Property that, if known to be present in soils or ground water, would require cleanup, removal or some other remedial action under any Environmental Laws;

(f) Schedule 1(a)(ii) contains a true and complete list of the FCC Authorizations and all other Licenses that are required for the lawful conduct of the business and operations of the Station in the manner and to the full extent it is presently operated. Seller lawfully holds each of the FCC Authorizations and Licenses listed on Schedule 1(a)(ii). Except as set forth in Schedule 1(a)(ii), Seller is operating the Station in all material respects in accordance with the FCC Authorizations, and all applicable rules, regulations and policies of the FCC (collectively, the "Communications Laws"), including, without limitation, that the Station is now and on the Closing Date will be transmitting at no less than ninety percent (90%) of its authorized power. The Station is not transmitting or receiving any objectionable interference to or from any other station, and the Station is not short-spaced to any other station. There is not now pending or, to Seller's knowledge, threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations or Licenses, and Seller has not received any notice of and has no knowledge of any pending, issued or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against either the Station or Seller. Except as set forth in Schedule 1(a)(ii), all material 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 currently are in material compliance. Seller maintains a

complete public inspection file for the Station online at the website of the FCC and, such file complies with the Communications Laws;

(g) John E. Smith and Patricia Ann Smith have a valid fee simple 100% ownership interest in the Tower Site as described on Schedule 1(a)(iii), free and clear of all Liens. There is full legal and practical access to the Tower Site property and all utilities necessary for Buyer's use of the Tower Site property as a radio tower facility are installed and are in good working order, and are subject to valid easements, where necessary. The buildings, towers, guys and other fixtures situated on the Tower Site are free of structural defects and are suitable for their intended uses, are in good state of maintenance and repair, ordinary wear and tear excepted and comply in all material respects with applicable zoning, health and safety laws and codes. A complete and correct copy of the current and valid warranty deed to the Tower Site, together with all amendments thereto or other material parts of it and a copy of Seller's attorney's opinion of title for the Tower Site, are parts of Schedule 1.1(a)(iii);

(h) The instruments to be executed by Seller and delivered to Buyer at the Closing, conveying the Assets to Buyer, will transfer good and marketable title to the Assets free and clear of all Liens, other than the Assumed Liabilities and Permitted Liens;

(i) Buyer shall have no obligation to offer employment to any employee of Seller or the Station, and shall have no liability with respect to any such employee or for benefits of any kind or nature;

(j) There is no broker, dealer or other sales agent retained (a "Broker") by Seller to sell the Station, and in the event that any person or entity claims to be a Broker, then Seller will be solely responsible for the payment of any fees or other satisfaction of any Broker;

(k) Seller is not subject to any order, writ, injunction, judgment, arbitration decision or decree having binding effect and affecting the business of the Station or the Assets or which restrains or enjoins the transactions contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or to the best of Seller's knowledge, threatened against Seller. Seller represents that, (i) with respect to the Station, Seller has complied in all material respects with all applicable laws, regulations, orders or decrees; and (ii) the present uses by Seller of the Assets do not violate any such laws, regulations, orders or decrees in any material respect, and Seller has no knowledge of any basis for any claim for compensation or damage or other relief from any violation of the foregoing;

(l) Seller has complied and currently is in material compliance with all applicable laws, statutes, rules, regulations, codes and ordinances of all Environmental Laws relating to the discharge of air pollutants, water pollutants or process waste water, Hazardous Materials, or toxic substances, or otherwise relating to the environment, including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, regulations of the Environmental Protection Agency, regulations of the Nuclear Regulatory Commission, and Environmental Laws;



(m) There is now, and through the Closing there shall be, in full force and effect with reputable insurance companies fire and property insurance with respect to all Equipment in commercially reasonable amounts sufficient to repair or replace the applicable Assets;

(n) Seller has duly, timely, and in the required manner filed all federal, state, and local income, franchise, sales, use, property, excise, payroll and other tax returns and forms required to be filed, and has paid in full or discharged all taxes, assessments, excises, interest, penalties, deficiencies and losses required to be paid prior to the Closing Date. No event has occurred which imposes on Buyer any liability for any taxes, penalties or interest due or to become due from Seller from any taxing authority; and

(o) No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Buyer. The term "knowledge," when applied to Seller herein, means actual knowledge of the officers of Seller having responsibility for or holding a position that reasonably could be expected to involve substantial knowledge about the subject matter to which such knowledge relates.

**6. Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller:

(a) Buyer is duly formed, validly existing and in good standing under the laws of Buyer's State of formation. Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity;

(b) Buyer has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by Buyer and no other proceedings on the part of Buyer are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity;

(c) The execution, delivery and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of formation or governance documents, or any other instruments of Buyer, or (ii) 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, relating to its own business, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained and delivered to Seller, (iii) violate any law, statute, rule, regulation, order, writ, injunction or decree of any federal, state or local governmental authority or agency and which is applicable to Buyer, or (iv) require the consent or approval of any governmental authority, lending institute or other third party other than the FCC Consent;

(d) Buyer is legally, financially and technically qualified to acquire and become the FCC licensee of the Station and to operate the Station in the manner contemplated hereby;

(e) There is no litigation, proceeding or governmental investigation pending or to the knowledge of Buyer, threatened, in any court, arbitration board, administrative agency, or tribunal against or relating to Buyer including without limitation, any voluntary or involuntary petition under Federal bankruptcy law or any state receivership or similar proceedings, that would prevent or materially impede the consummation by Buyer of the transactions contemplated by this Agreement.

## **7. Covenants.**

(a) Seller covenants with Buyer that, between the Effective Date and the Closing Date, Seller shall act in accordance with the following:

(i) Seller shall maintain the Equipment in accordance with standards of good engineering practice and replace any of such property, which shall be worn out, lost, stolen or destroyed with like property of substantially equivalent kind and value;

(ii) Seller shall continue to operate and maintain the Station in accordance with the terms of the Licenses and in material compliance with all applicable laws, rules, and regulations. Seller shall deliver to Buyer, promptly after filing, copies of any reports, applications or responses to the FCC or any communications from the FCC or any other party directed to the FCC related to the Station which are filed between the Effective Date and the Closing Date. Except as otherwise required or permitted herein, Seller shall not file any application to modify the Station's facilities except such modifications as are required by the public interest as determined in the sole discretion of Seller, exercised in good faith after consultation with Buyer, and Seller shall take all actions necessary to keep the Licenses valid and in full force and effect;

(iii) Seller shall maintain insurance on all of the Equipment in such amounts as necessary to repair or rebuild the applicable Equipment;

(iv) Seller shall not, without the prior written consent of Buyer, sell, lease, transfer, borrow against, mortgage, encumber or agree to sell, lease or transfer any of the Assets;



(v) On or before the Closing Date, Seller shall furnish to Buyer revised Schedules to this Agreement as may be necessary to render such Schedules accurate and complete as of the Closing Date, which shall be binding on Buyer should Buyer complete the Closing hereunder. Seller shall give detailed written notice to Buyer promptly upon the occurrence of or becoming aware of the impending or threatened occurrence of, any event which would cause or constitute a breach or would have caused a breach had such event occurred or been known to Seller prior to the date hereof, of any of Seller's representations or warranties contained in this Agreement or in any Schedule. Seller shall promptly disclose to Buyer any material problems or developments with respect to the Assets. Upon review of any additional information provided by Seller to Buyer hereunder, Buyer may terminate this Agreement, if the additional information changes the nature of the transaction contemplated by the parties on the Effective Date or otherwise would reduce the value of the Assets materially; provided, however, that if Buyer continues with the Closing after Seller's disclosure of additional problems or developments, then all matters disclosed pursuant to any such supplement or amendment, at or prior to the Closing, shall be waived and no party shall be entitled to make a claim thereon pursuant to the terms of this Agreement;

(vi) Seller shall be in material compliance with all federal, state and local laws, rules and regulations; and

(vii) Seller shall not borrow against, mortgage, encumber or in any way diminish the value of the Tower Site.

(b) Subject to the terms and conditions of this Agreement, each of the parties hereto will use commercially reasonable efforts to take all action and to do all things necessary, proper or advisable to satisfy any condition to the parties' obligations hereunder in its power to satisfy and to consummate and make effective as soon as practicable the transactions contemplated by this Agreement.

#### **8. Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC shall have consented to both of the Pro Forma Application and the Assignment Application, with both consents in full force and effect, and the FCC Order shall be in full force and effect and a Final Order, unless closing with finality has been waived by both parties in writing;

(iv) Buyer shall have delivered to Seller the documents required to be delivered pursuant to Section 9(b); and

(v) Buyer shall not be subject to any voluntary or involuntary petition under federal bankruptcy law, or any state receivership or similarly proceeding.

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) None of the events or conditions referenced in Section 19 below shall have occurred and not been remedied as set forth in Section 19;

(iv) The FCC shall have consented to both of the Pro Forma Application and the Assignment Application, with both consents in full force and effect, and the FCC Order shall be in full force and effect and a Final Order, unless closing with finality has been waived by both parties in writing;

(v) Seller shall have delivered to Buyer the documents required to be delivered pursuant to Section 9(a);

(vi) Seller shall not be subject to any voluntary or involuntary petition under Federal bankruptcy law, or any state receivership or similarly proceeding;

(vii) Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby; and

(viii) There shall not be any Liens on the Assets, other than the Assumed Liabilities, Permitted Liens, or any financing statements of record.

## **9. Closing Deliveries.**

(a) At the Closing, Seller shall deliver, or cause to be delivered, to Buyer the following:

(i) a Bill of Sale vesting in Buyer good and marketable title in and to the Assets, executed by Seller (a "Bill of Sale");



(ii) an Assignment and Assumption Agreement transferring to Buyer all of the rights and obligations of Seller pursuant to the FCC Authorizations (an "FCC Assignment"), executed by Seller;

(iii) John E. Smith and Patricia Ann Smith shall deliver to Buyer a warranty deed to convey title to the Tower Site to Buyer, in customary form, with Seller's Affidavit reasonably acceptable to Buyer's Title Insurer, in customary form to delete the standard exceptions and any "gap" exception contained in Buyer's owner's title insurance policy, if any, and any other documents reasonably necessary to convey title to the Tower Site, free and clear of any lien, mortgage or other encumbrance (collectively the "Conveyance Documents");

(iv) a certificate, dated as of the Closing Date, executed by an officer of Seller, certifying Seller's fulfillment of Seller's conditions precedent under this Agreement;

(v) [Intentionally Left Blank]

(vi) a closing statement, executed by Seller;

(vii) an IRS Form W-9, completed and executed by Seller; and

(viii) such other documents, instruments, and agreements as Buyer reasonably may deem necessary to consummate the transactions contemplated by this Agreement.

(b) At the Closing, Buyer shall deliver, or cause to be delivered, to Seller the following:

(i) the Purchase Price;

(ii) an FCC Assignment, executed by Buyer;

(iii) the Conveyance Documents, for the Tower Site, executed by Buyer;

(iv) a closing statement, executed by Buyer;

(v) certified copies of the resolutions of Trustees of Buyer authorizing and approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby and thereby;

(vi) a certificate, dated the Closing Date, executed by a Trustee of Buyer, certifying the fulfillment of Buyer's conditions precedent under this Agreement; and

(vii) such other documents, instruments, and agreements as Seller reasonably may deem necessary to consummate the transactions contemplated by this Agreement.

#### **10. Indemnification and Survival.**

(a) Seller shall indemnify, defend and hold harmless Buyer with respect to any and all demands, claims, actions, suits, proceedings, assessments, judgments, costs, losses, damages, liabilities and expenses (including, without limitation, interest, penalties, court costs and reasonable attorneys' fees) ("Damages") asserted against, resulting from, imposed upon or incurred by Buyer directly or indirectly relating to or arising out of: (i) either the breach by Seller of any of its representations or warranties or the failure by Seller to perform any of its covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station, as conducted by Seller, prior to the Closing.

(b) Buyer shall indemnify, defend and hold Seller harmless with respect to any and all Damages asserted against, resulting from, imposed upon or incurred by Seller directly or indirectly relating to or arising out of: (i) either the breach by Buyer of any of its material representations or warranties or the failure by Buyer to perform any of its material covenants, conditions or agreements set forth in this Agreement; and (ii) any and all claims, liabilities and obligations of any nature, absolute or contingent, relating to the ownership and operation of the Station, subsequent to the Closing.

(c) If either party hereto (the "Indemnatee") receives notice or otherwise obtains knowledge of any matter with respect to which another party hereto (the "Indemnifying Party") may be obligated to indemnify the Indemnatee under this Section 10(c), then the Indemnatee shall promptly deliver to the Indemnifying Party written notice describing such matter in reasonable detail and specifying the estimated amount of the Damages or liability that may be incurred by the Indemnatee in connection therewith. The Indemnifying Party shall have the right, at its option, to assume the complete defense of such matter at its own expense and with its own counsel, provided such counsel is reasonably satisfactory to the Indemnatee. If the Indemnifying Party elects to assume the defense of such matter, then (i) notwithstanding anything to the contrary contained herein, the Indemnifying Party shall not be required to pay or otherwise indemnify the Indemnatee against the cost otherwise associated with Indemnatee's defense of such matter for the period following the Indemnifying Party's election to assume the defense of such matter, but shall be responsible for payment of any Damages or liability that may be assessed against the Indemnatee, (ii) the Indemnatee shall fully cooperate as reasonably requested by the Indemnifying Party in the defense or settlement of such matter, (iii) the Indemnifying Party shall keep the Indemnatee informed of all material developments and events relating to such matter, and (iv) the Indemnatee shall have the right to participate, at its own expense, in the defense of such matter. In no event shall the Indemnifying Party be liable for any settlement or admission of liability with respect to such matter without its prior written consent.

(d) The representations and warranties in this Agreement shall survive Closing for a period of eighteen (18) months from the Closing Date, whereupon they shall expire and be of no further force or effect. The covenants and agreements in this Agreement shall survive Closing until performed.

## **11. Termination.**

(a) This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in default or breach of any of its material obligations under this



Agreement, upon written notice to the other upon the occurrence of any of the following: (i) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or thirty (30) days after receipt of the notice of breach from the non-breaching party, provided however that such opportunity to cure shall not apply to the failure of a party to perform its obligations set forth in Section 4 or Section 9, hereof; (ii) if the Assignment Application is denied by Final Order; (iii) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement; or (iv) if the Closing has not occurred within eighteen (18) months after the Effective Date.

(b) Upon a termination of this Agreement by Seller due to a breach by Buyer of any of its material obligations under this Agreement, Seller shall be entitled to, as liquidated damages and not as a penalty, the Earnest Money Deposit ("Liquidated Damages").

(c) THE RELEASE OF THE LIQUIDATED DAMAGES AMOUNT TO SELLER SHALL BE CONSIDERED LIQUIDATED DAMAGES AND NOT A PENALTY, IF CLOSING DOES NOT OCCUR DUE TO AN UNCURED DEFAULT BY BUYER, AND SHALL BE SELLER'S SOLE AND EXCLUSIVE RIGHT TO DAMAGES. SELLER AND BUYER EACH ACKNOWLEDGE AND AGREE THAT THIS LIQUIDATED DAMAGE AMOUNT IS REASONABLE IN LIGHT OF THE ANTICIPATED HARM WHICH WILL BE CAUSED BY A BREACH OF THIS AGREEMENT, THE DIFFICULTY OF PROOF OF LOSS, THE INCONVENIENCE AND NON-FEASIBILITY OF OTHERWISE OBTAINING AN ADEQUATE REMEDY, AND THE VALUE OF THE TRANSACTION TO BE CONSUMMATED HEREUNDER.

(d) Upon the termination of this Agreement for any reason other than as a result of a breach by Buyer of any of Buyer's material obligations under this Agreement, Buyer shall be entitled to the immediate release of the Earnest Money Deposit, and thereafter neither party will have any further liability or obligation to the other with respect to this Agreement, except with respect to the confidentiality provisions herein and any other provisions that survive termination.

## **12. Specific Performance**

Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligation to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled, (in lieu of any other rights and remedies on account of such failure if such relief is granted), to specific performance of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision and Seller shall not be subject to payment of Liquidated Damages to Buyer.

### **13. Confidentiality.**

(a) Neither party (the "Receiving Party") shall disclose the Confidential Information (as defined below) of the other (the "Disclosing Party") to any third party. The Receiving Party shall also limit access to the Confidential Information of the Disclosing Party within its own organization only to those employees and third-party advisors who need to know such Confidential Information in order to implement this Agreement and who are expressly obligated to maintain such Confidential Information in confidence and in accordance with the restrictions set forth herein. These obligations shall not apply to any Confidential Information received by the Receiving Party which the Receiving Party can reasonably demonstrate (i) was in the public domain at the time of receipt by the Receiving Party; (ii) entered the public domain after receipt by the Receiving Party, but through no fault of the Receiving Party; (iii) was known by the Receiving Party prior to its receipt; (iv) is lawfully disclosed to the Receiving Party by a third party that was not under an obligation of confidence to the Disclosing Party; or (v) which the Receiving Party is compelled to disclose by law or legal process, provided the Disclosing Party is given prompt written notice of any such requirement and an opportunity to contest such disclosure. This confidentiality provision shall survive the expiration or earlier termination of this Agreement, until all Confidential Information disclosed hereunder becomes publically known or made generally available through no action or inaction of the Receiving Party. The parties acknowledge that a copy of this Agreement, redacted where appropriate, will be included in the Assignment Application, which the FCC may make available to the public.

(b) "Confidential Information" means the confidential information of the Disclosing Party, which has not been released to the public by the Disclosing Party, including, but not limited to, this Agreement technical information, designs, procedures, processes, configurations, formulas, discoveries, inventions, improvements, concepts, ideas, techniques, know-how, financial information, pricing and sales information, or any other non-public information, whether disclosed through written, oral or visual means.

(c) In the event that either party determines in good faith that a press release or other public announcement is desirable under any circumstances, the parties shall consult with each other to determine the appropriate timing, form and content of such release or announcement. Notwithstanding anything contained herein to the contrary, prior to either party distributing any press release or announcement regarding this Agreement or any of the transactions contemplated hereby, such party shall obtain the other party's written consent to distribute such press release or announcement.

**14. Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):



If to Seller, to:

The Lay Witness Outreach Ministry, Inc. and  
Lay Witness Broadcasting, Inc.  
1811 Millersburg-Cynthiana Road  
Paris, KY 40361  
Attn: John E. Smith

with a copy (which shall not  
constitute notice) to:

Gary S. Smithwick, Esq.  
Smithwick & Belendiuk, P.C.  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, DC 20016

If to Buyer, to:

Somerset Educational Broadcasting Foundation  
P. O. Box 1423  
Somerset, KY 42502  
Attn: Reverend S. David Carr

with a copy (which shall not  
constitute notice) to:

Charles R. Naftalin, Esq.  
Holland & Knight LLP  
800 17th Street, NW Suite 1100  
Washington, DC 20006

**15. Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Kentucky, without giving effect to the State's choice or conflicts of law provisions.

**16. Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein shall, for any reason, be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions hereof, unless such a construction would be unreasonable.

**17. Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same

instrument. This Agreement may be executed and exchanged by facsimile or other electronic transmission, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation of a contract and each such party forever waives any such defense.

**18. Expenses.** Except as otherwise set forth in this Section, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement. The FCC filing fees relating to the Assignment Application shall be shared equally between Buyer and Seller. All federal, state, local and other transfer and sales taxes applicable to, imposed upon, or arising out of the transfer to Buyer of the Assets as contemplated hereby shall be paid by the party responsible for such amounts under applicable law.

**19. Risk of Loss.** The risk of loss to any of the Assets on or prior to the Closing Date shall be upon Seller.

**20. Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily or involuntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**21. Entire Agreement; Amendment.** This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, replacing and superseding all prior agreements between the parties. There are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter. This Agreement may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding, unless in writing and signed by both parties.

**22. Schedules and Exhibits.** Unless otherwise specified herein, each Schedule or Exhibit referred to in this Agreement is attached hereto, and each such Schedule and Exhibit (if any) is hereby incorporated herein by this reference.

[SIGNATURE PAGE FOLLOWS.]



IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the Effective Date.

**SELLER:**


**THE LAY WITNESS OUTREACH  
MINISTRY, INC.  
LAY WITNESS BROADCASTING, INC.**

By: 

Name: John E. Smith

Title: President and Manager

With regard only to the conveyance of the  
Tower Site

  
JOHN E. SMITH

  
PATRICIA ANN SMITH

**BUYER:**

**SOMERSET EDUCATIONAL  
BROADCASTING FOUNDATION**

By: 

Name: S. David Carr

Title: Trustee