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RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

Conveyance Type

- Assignment  License
  - Security Agreement  Nunc Pro Tunc Assignment
  - Merger
  - Change of Name
  - Other Asset Purchase Agreement
- Effective Date  
Month Day Year  
12 20 2000

Conveying Party

Mark if additional names of conveying parties attached

Name GBRJ music, LLC

Execution Date  
Month Day Year  
12 20 2000

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other Limited Liability Company
- Citizenship/State of Incorporation/Organization TEXAS

Receiving Party

Mark if additional names of receiving parties attached

Name Christian Book Distributors, Inc.

DBA/AKATA

Composed of

Address (line 1) P.O. BOX 7000

Address (line 2)

Address (line 3) Peabody MA 01961-7000  
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization MASSACHUSETTS

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002277 FRAME: 0335

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. #

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

**Number of Properties** Enter the total number of properties involved. #

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Name of Person Signing

Signature

Date Signed

# ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the "Agreement"), dated as of the 20<sup>th</sup> day of December, 2000, is by and among Gaylord Digital, LLC, a Delaware limited liability company ("Gaylord Digital"), GBRJ Music LLC, a Texas limited liability company ("GBRJ"), and Christian Book Distributors, Inc., a Massachusetts corporation, (the "Purchaser"). Gaylord Digital and GBRJ are sometimes hereinafter collectively referred to as the "Seller".

## RECITALS:

Gaylord Digital is the owner of and is engaged in the design, development and operation of an Internet e-commerce site known as Musicforce.com (the "Site"); and Gaylord Digital, along with its wholly-owned subsidiary, GBRJ, are the owners of the assets related thereto. Purchaser and Gaylord Digital have agreed in that certain Letter Agreement, dated December 15, 2000, by and between the parties (the "Letter Agreement"), that Purchaser shall acquire certain assets associated with the Site, each on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and agreements contained herein, the parties hereto do hereby agree as follows:

### **Section 1. Sale and Purchase of the Property.**

**1.1 Sale and Purchase of Property.** Effective as of the Closing Date, as defined in Section 1.5 below, the Seller shall sell, assign, transfer, convey, and deliver to Purchaser the following specific assets related to the Site (collectively, the "Assets"):

**1.1.1** Seller's assets listed on Schedule 1.1.1 (the "FF&E");

**1.1.2** Seller's most current list of customers, clients and/or accounts for the Site, which is attached hereto as Schedule 1.1.2, along with any and all transferable customer purchasing and contact data (the "Customer List and Accounts");

**1.1.3** subject to obtaining any necessary third-party consents required to effectively convey same, the agreements or contracts related to the Site, which are listed on Schedule 1.1.3 (the "Agreements");

**1.1.4** the inventory of compact discs and videos for the Site, which is attached as Schedule 1.1.4 (the "Inventory"), as well as any credits from vendors for the return of compact discs and videos, which are detailed on Schedule 1.1.4 (the "Inventory Credits");

**1.1.5** certain intangible rights and property owned by Seller related to the Site, including: (i) the URLs, trademarks, service marks, patents, copyrights, or other intellectual property used by the Seller from time to time in connection with the Site, as listed on Schedule 1.1.5, (ii) any and all rights (whether exclusive or non-exclusive) owned by Seller in and to the website content for the Site, (iii) any and all advertising or promotional materials, and (iv) Seller's rights in and to the software related to the "CD Flipper Technology" used on the Site, as detailed on Schedule 1.1.5 (collectively, the "Intellectual Property").

## 1.2 Purchase Price.

**1.2.1 Amount of Purchase Price; Closing Date Payment.** In consideration of the transfer of the Assets to Purchaser, Purchaser shall pay to Seller the sum of (collectively, the "Purchase Price"): (i) One Million and 00/100 Dollars (\$1,000,000.00), plus (ii) an amount equal to eighty percent (80%) of Seller's aggregate cost for the Inventory of the Site as of the Closing Date, with the aggregate cost of such Inventory to be determined within five (5) business days of the closing date and to be determined by means of Seller's standard average costing methodology used with respect to the Site (the "Closing Inventory"), plus (iii) an amount equal to eighty percent (80%) of the Inventory Credits to be transferred to Purchaser by Seller (the "Closing Inventory Credits"). At the closing of the transactions contemplated hereby (the "Closing"), Purchaser shall pay to Seller (the "Closing Date Payment") by means of wire transfer, in accordance with the instructions set forth on Schedule 1.2.1, the sum of (i) One Million and 00/100 Dollars (\$1,000,000.00) plus (ii) Five Hundred Eighty-Eight Thousand Dollars (\$588,000.00), which is equal to eighty percent (80%) of Seller's good faith estimate of Seller's aggregate cost for the inventory of the Site as of the Closing Date, (the "Estimated Inventory"), and (iii) No Dollars (\$0.00), which is equal to eighty percent (80%) of Seller's good faith estimate of the inventory credits to be transferred to Purchaser by Seller (the "Estimated Inventory Credits").

**1.2.2 Fluctuation in Inventory; Verification of Closing Inventory.** Each of Purchaser and Seller specifically acknowledge and agree that the Site's inventory will fluctuate between the date of the Letter Agreement and the Closing Date (i) as a result of the normal course of business for the Site prior to Closing, (ii) in accordance with Seller's right, at Seller's option, prior to the Closing Date, to return portions of the Sites inventory to the original vendor for a refund, and (iii) in accordance with Seller's right, at Seller's option, prior to the Closing Date, to retain any refunds or credits realized from such inventory returns. The parties agree that within five (5) business days of the Closing Date, Seller will verify the Closing Inventory, the Seller's aggregate cost for the Closing Inventory (as determined by means of Seller's standard average costing methodology used with respect to the Site), and the aggregate value of the Closing Inventory Credits, each of which will be attached as Schedule 1.1.4 to this Agreement.

**1.2.3 Settlement.** Upon verifying the Closing Inventory and finalizing Schedule 1.1.4, Seller shall immediately forward to Purchaser a copy of Schedule 1.1.4 and a final determination of the Purchase Price. In the event that the Closing Date Payment is greater than the Purchase Price, Seller shall promptly refund to Purchaser the difference between the Closing Date Payment and the Purchase Price. On the other hand, in the event that the Purchase Price is greater than the Closing Date Payment, then Purchaser shall promptly pay to Seller the difference between the Closing Date Payment and the Purchase Price.

**1.2.4 Acknowledgment.** Each of Seller and Purchaser acknowledge and agree that the Inventory is being purchased FOB Nashville, Tennessee, at Seller's distribution center.

**1.3 Title to Assets.** The transfer and sale of Assets will be effected by the delivery by the Seller to the Purchaser of a Bill of Sale in the form attached as Exhibit A (the "Bill of Sale") and an Assignment and Assumption Agreement in the form attached as Exhibit B (the "Assignment and Assumption"), free and clear of all liens, claims or encumbrances, except to the extent disclosed herein or otherwise waived in writing by Purchaser; provided, however, that Purchaser specifically acknowledges and agrees that certain consents of third parties are necessary to effectively assign to Purchaser certain of the Agreements. In accordance with Section 7.1 below, each of Seller and

Purchaser covenant to use their reasonable commercial efforts to obtain such third-party consents necessary for assignment of such Agreements after the Closing Date.

**1.4 No Assumed Liabilities.** Purchaser shall not assume any obligations or liabilities of Purchaser related to the Site or otherwise, except for the obligations and liabilities specifically set forth in Schedule 1.4 hereto, if any (collectively, the "Assumed Obligations").

**1.5 Closing.** The Closing shall take place at 5:00 p.m. CST at the offices of Sherrard & Roe, PLC, 424 Church Street, Suite 2000, Nashville, TN 37219, on December 20, 2000 (the "Closing Date"), or at such other location and/or date as may be mutually agreed upon by the parties. The transactions contemplated hereby shall be effective as of 11:59 PM on the Closing Date.

**Section 2. General Representations and Warranties of the Seller.** The Seller hereby represents and warrants as follows:

**2.1 Organization and Authorization.** Gaylord Digital is a Delaware limited liability company, GBRJ is a Texas limited liability company and wholly owned subsidiary of Seller, and each has the power and authority, and possesses the requisite authorizations necessary to own and operate the Site as presently conducted. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Seller, and no other proceedings on the part of Seller are necessary to authorize this Agreement or to carry out the transactions contemplated hereby. This Agreement is a valid and binding obligation of the Seller enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies.

**2.2 No Violation.** With respect to the Seller, neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby:

**2.2.1** Requires or will require the approval of any governmental authority;

**2.2.2** Violates or will violate any statute, law, rule, regulation, order, judgment, or decree of any court or governmental authority affecting Seller in any way; or

**2.2.3** Except as set forth on Schedule 2.2.3, violates or will violate, or conflicts with or will conflict with, or constitutes a default under or will constitute a default under the Articles of Organizations or Operating Agreement of Seller, or any contract, commitment, agreement, understanding, arrangement, or restriction of any kind to which such Seller is a party, by which such Seller is bound, or which otherwise in any way affects Seller in any material respect ("Conflicting Agreements").

**2.3 Tax Matters.** Seller warrants and represents that it has duly and timely filed with appropriate governmental agencies all tax returns and tax reports due and required to be filed by the Seller, and has paid or has provided for the payment of all such taxes through the Closing Date. Seller has no notice or knowledge of any pending examinations or any other actions pertaining to any claims for, taxes, or assessments asserted against Seller by any taxing authority in respect of any period prior to the Closing Date. The Assets are not subject to any tax liens.

## **2.4 Title to and Condition of Assets.**

**2.4.1** The Seller owns good and marketable title in and to the Assets free and clear of liens, claims, mortgages, pledges, encumbrances, or charges of every kind, nature, and description whatsoever, except as set forth in Schedule 2.4.1 hereof, and there have been no claims made against the Seller asserting the invalidity, abuse, misuse, or unenforceability of the Seller's rights in the Assets. Except as set forth in Schedule 2.4.1, the Seller has not received any written notice nor is Seller aware of any pending or threatened claim that the operation of the Site infringes upon any rights of any third party nor any notice that purports to restrict or calls into question the right to operate the Site or to exploit the site as heretofore conducted or exploited.

**2.4.2** The Assets are in good condition and repair, and none of the Assets requires any repair or replacement, except for repairs and replacements required in the ordinary course of business.

**2.5 Licensed Property.** With respect to the licensed software described on Schedule 1.1.5, Seller owns all right, title, and interest in and to each such license, free and clear of all liens, mortgages, pledges, encumbrances, or charges of every kind, nature, and description whatsoever and has the legal right and authority to transfer such licensed software in accordance with the terms of this Agreement.

**2.6 Litigation.** Except as set forth on Schedule 2.6, there are no actions, suits, claims, or arbitration proceedings pending, or, to the knowledge of the Seller, threatened against, or affecting the Site or the Assets. There are no governmental investigations pending, to the knowledge of the Seller, threatened against, or affecting the Site or the Assets. There are no outstanding orders, decrees, or stipulations issued by any federal, state, local, or foreign judicial or administrative authority in any proceeding to which the Seller is or was a party which affects the Site or Assets.

**2.7 Compliance with Laws.** The Seller is in compliance with all laws, regulations, and orders applicable to it, its assets, properties, or business where the failure to so comply would have a material and adverse effect on the Site or Assets. The Seller has not received notification of any asserted past or present failure by the Seller to comply with any such laws, regulations, or orders, and, to the knowledge of the Seller, no proceeding with respect to any such violation is contemplated.

**2.8 Intellectual Property.** Except as set forth in Schedule 2.8, to the knowledge of the Seller, (i) no claim has been asserted that the Intellectual Property infringes upon or violate any patent, copyright, trademark, trade secret, or other intellectual property right of any third party, and (ii) Seller is the owner of all patent, copyright, trademark, domain names, and other intellectual property rights related to the Intellectual Property.

**2.9 Bulk Sales Law.** Seller warrants and represents that no bulk sales law is applicable to the transactions contemplated hereby and Seller will indemnify the Purchaser and hold the Purchaser harmless from and against all actions, suits, damages, judgments, costs, charges, expenses and attorneys' fees in consequence of any liabilities which may be asserted against the Buyer as a result of Seller's breach, if any, of this representation. This indemnity shall survive Closing.

**2.10 Customer List and Accounts.** Seller's most current list of customers, clients and/or accounts for the Site, which is attached as Schedule 1.1.2 contains approximately 210,000 users, of which approximately 65,000 of such customers have assented to email marketing.

**2.11 Inventory.** The Closing Inventory which is attached hereto as Schedule 1.1.4 is substantially correct in all material respects and fairly reflects the Closing Inventory, Seller's aggregate cost for the Closing Inventory, and the aggregate value of the Closing Inventory Credits as of the Closing Date.

**2.12 No Undisclosed Information.** Neither this Agreement nor any other document, certificate, or written statement furnished or to be furnished in connection with the transactions provided for herein, with respect to the Seller, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they are made.

**Section 3. Representations and Warranties of Purchaser.** Purchaser hereby represents and warrants as follows:

**3.1 Organization and Authorization of Purchaser.** Purchaser is a corporation duly formed, validly existing, and in good standing under the laws of the State of Massachusetts. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by the board of directors of Purchaser, and no other proceedings on the part of Purchaser are necessary to authorize this Agreement or to carry out the transactions contemplated hereby. This Agreement is a valid and binding obligation of Purchaser enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or the availability of equitable remedies.

**3.2 No Violation.** With respect to Purchaser, neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated hereby:

**3.2.1** Requires or will require the approval of any governmental authority;

**3.2.2** Violates or will violate any statute, law, rule, regulation, order, judgment, or decree of any court or governmental authority affecting Purchaser in any way and which would thereby have a materially adverse effect upon the consummation or performance of the transactions contemplated by this Agreement; or

**3.2.3** Violates or will violate, or conflicts with or will conflict with, or constitutes a default under or will constitute a default under, the Articles of Organization or Operating Agreement of Purchaser, as amended, or any contract, commitment, agreement, understanding, arrangement, or restriction of any kind to which Purchaser is a party, by which Purchaser is bound or which otherwise in any way affects Purchaser and which would thereby have a materially adverse effect upon the consummation or performance of the transactions contemplated by this Agreement.

**3.3 No Undisclosed Information.** Neither this Agreement nor any other document, certificate, or written statement furnished or to be furnished in connection with the transactions provided for herein, with respect to Purchaser, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they are made.

**Section 4. Confidentiality.** The parties hereto covenant and agree that, without the prior written consent of the other parties, no party will, prior to or after the Closing, disclose the existence of any term or condition of this Agreement to any person or entity, except (i) such disclosure may be made to accountants, attorneys, employees, or affiliates of the parties who have reason to know of the contemplated transactions and who agree to treat such information as confidential, and (ii) such disclosure may be made to the extent that such disclosure is required by law; provided, however, the party which believes it is required by law to make such disclosure shall afford to the other party the opportunity, to the extent permitted by applicable law, to obtain a protective order or other appropriate relief prior to making such disclosure. The parties mutually agree to use their best efforts to create a joint press release announcing the transfer of the Assets (Purchase Price not to be disclosed), the continued operation of the Site by Purchaser, and the continued use of the trademark "Musicforce".

**Section 5. Conditions to the Obligations of Purchaser.** The obligations of Purchaser hereunder shall be subject to delivery of the following:

5.1 The Bill of Sale, duly executed by the Seller;

5.2 The Assignment and Assumption, duly executed by the Seller;

5.3 A Cross Receipt in the form attached as Exhibit C (the "Receipt"), duly executed by the Seller;

5.4 Copies of resolutions adopted by the Board of Directors and member of Seller authorizing the execution and delivery of this Agreement and consummation of the transactions contemplated hereby.

5.5 Such further instruments of assignment, conveyance or transfer or other documents of further assurance as Purchaser may reasonably request covering the Assets.

**Section 6. Conditions to the Obligations of the Seller.** The obligations of the Seller hereunder shall be subject to delivery of the following:

6.1 Receipt of the Purchase Price;

6.2 The Assignment and Assumption, duly executed by Purchaser;

6.3 The Cross Receipt, duly executed by Purchaser;

6.4 Copies of resolutions adopted by the Board of Directors of Purchaser authorizing the execution and delivery of this Agreement and consummation of the transactions contemplated hereby, certified by the Secretary of Purchaser;

**Section 7. Post-Closing Covenants.**

7.1 **Third Party Consent.** After the Closing Date, each of Seller and Purchaser shall use reasonable commercial efforts to obtain any assignments, assurances, or any other actions or things necessary or desirable to assign the Agreements to Purchaser or to vest, perfect, or confirm of record Purchaser's right, title, or interest in the Agreements.



**7.2 Inventory.** Seller agrees to finalize the Closing Inventory, determine Seller's aggregate cost in the Closing Inventory, and determine the amount of the Closing Inventory Credits within five (5) business days of the Closing Date. Furthermore, the parties agree to attach the Inventory and Inventory Credits to this Agreement as Schedule 1.1.4, and to make any applicable payments required pursuant to Section 1.2 above.

**7.3 Customer List.** Purchaser hereby specifically acknowledges that Seller has retained a copy of the Customer List and Accounts and agrees that Seller and its affiliates shall be entitled to continue to use the Customer List and Accounts for internal, non-marketing purposes. Seller hereby agrees that it will only use the Customer List and Accounts for its and its affiliates' internal, non-marketing purposes.

**7.4 Continued Use of Musicforce.** Purchaser hereby specifically acknowledges and agrees that it will continue to use the trademark "Musicforce" with respect to the branded music section of Christianbook.com for a minimum of two (2) years after the Closing Date.

**7.5 Promotion of Seller's Affiliates.** Purchaser specifically acknowledges and agrees that for a period of three (3) years after the Closing Date, Purchaser will include, at least once per calendar year, in its standard email blasts and promotional mailings various promotions regarding Word Entertainment's artists, properties, and products, such promotions to be agreed upon in good faith by the parties; provided, however, that Seller or its affiliates will be responsible for any incremental costs incurred by Purchaser as a result of the inclusion of such promotional materials.

**7.6 Employees.** Seller acknowledges that Purchaser shall be entitled to interview the existing employees of the Site for continued employment with Purchaser. Seller agrees that if any such employees are subject to restrictive agreements with Seller, Seller will terminate such employees (if they have not been previously terminated) and release them from such restrictive agreements so as to enable Purchaser to employ these persons.

**7.7 Seller's Further Assurances.** If, at any time after the Closing, Purchaser shall consider or be advised that any assignments, assurances, or any other actions or things are necessary or desirable to vest, perfect, or confirm of record Purchaser's right, title, or interest in the Assets acquired by Purchaser hereunder, or otherwise to carry out this Agreement, the Seller shall execute and deliver, upon request, all such assignments or assurances, and shall take and do all such other actions and things as may be necessary or desirable to vest, perfect, or confirm Purchaser's right, title, and interest in the Assets. Seller and Seller's parent company, Gaylord Entertainment Company ("GEC"), agree that their council (at Purchaser's cost), subject to review by Purchaser's council, will prepare the necessary documents to transfer the URLs referenced on Schedule 1.1.5 and the necessary assignment notices to be filed with the U.S. Patent and Trademark Office with respect to the trademark and service mark registrations referenced on Schedule 1.1.5 and that Seller's and GEC's council will take all actions reasonably necessary and proper to transfer the URLs and title to such registrations to Purchaser.

**7.8 Purchaser's Further Assurance.** If, at any time after the Closing, the Seller shall consider or be advised that any assurances, or any other actions or things are necessary or desirable to carry out this Agreement, Purchaser shall execute and deliver, upon request, all such assurances and shall take and do all such other actions and things as may be necessary or desirable to carry out this Agreement.

## **Section 8. Indemnification.**

**8.1 Obligation of the Seller to Indemnify.** Subject to the opportunity to contest in Section 8.5 hereof, the Seller and/or GEC hereby agree to indemnify, defend, and hold harmless Purchaser, its affiliates, and their controlling persons, directors, officers, employees, representatives, agents, partners, joint venturers, and assigns from and against any Losses (as defined in Section 8.3) relating to, based upon, or arising out of, any falsity or breach of any representation or warranty or breach of any covenant or agreement made or to be performed by the Seller pursuant to this Agreement or with respect to any wrongful and/or negligent act or omission of the Seller (including any wrongful and/or negligent act or omission with respect to the Intouch clam referenced on Schedule 2.4.1) occurring, or any breach by the Seller of any contract for services performed, prior to the Closing, in each case by or with respect to the Seller or the business, operations or properties of the Seller.

**8.2 Obligation of Purchaser to Indemnify.** Subject to the opportunity to contest in Section 8.5 hereof, Purchaser hereby agrees to indemnify, defend, and hold the Seller, its affiliates, and their controlling persons, directors, officers, employees, representatives, agents, partners, joint venturers, and assigns harmless from and against any Losses relating to, based upon, or arising out of, any falsity or breach of any representation or warranty or breach of any covenant or agreement made or to be performed by Purchaser pursuant to this Agreement or (except to the extent such Loss results from the breach or falsity of a representation or warranty or a breach of any covenant or agreement made or to be performed by Seller pursuant to this Agreement) the conduct of business or the utilization or ownership of the Assets from and after the date of the Closing.

**8.3 Definition of "Losses."** As used in this Agreement, the term "Loss" or "Losses" means any and all claims, actions, suits, proceedings, demands, assessments, judgments, losses, remedial action requirements, costs, deficiencies, damages, fines, penalties, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees), after giving effect to offsetting recoveries or related proceeds actually received from insurance policies or similar arrangements or from third parties. The fact that indemnification is being sought shall not, in and of itself, preclude any party from contesting the liability pursuant to Section 8.5 hereof.

**8.4 Notice of Loss or Asserted Liability.** Promptly, but not more than ninety (90) days (or such lesser time as is reasonably necessary to allow the indemnifying party to answer any asserted claim), after (a) becoming aware of circumstances that have resulted in a Loss for which the party seeking indemnification (the "Indemnitee") intends to seek indemnification under this Section 8, or (b) receipt by the Indemnitee of written notice from any third party of any demand, claim, or circumstance which gives rise or, with the lapse of time, the giving of notice or both, would give rise to a claim or the commencement of (or threatened commencement) of any action, proceeding, or investigation (an "Asserted Liability") that may result in a Loss, the Indemnitee shall give written notice thereof (the "Claims Notice") to the party (or parties) obligated to provide indemnification pursuant to this Section 8 (the "Indemnifying Party"). The Claims Notice shall describe the Loss or the Asserted Liability in reasonable detail, and shall indicate the amount (or an estimate, if necessary) of the Loss that has been or may be suffered by the Indemnitee. The Claims Notice may be amended by written notice on one or more occasions with respect to the amount of the Asserted Liability or the Loss at any time prior to final resolution of the obligation to indemnify relating to the Asserted Liability or the Loss.

**8.5 Opportunity to Contest.** Subject to the provisions of this Agreement, the Indemnifying Party may elect to compromise or contest, at its own expense and by its own counsel, any Asserted Liability. If the Indemnifying Party elects to compromise or contest such Asserted Liability, it shall within thirty (30) days (or sooner, if the nature of the Asserted Liability so requires) (the "Notice Period") notify the Indemnitee of its intent to do so by sending a written Contest Notice to the Indemnitee (the "Contest Notice"), and the Indemnitee or Indemnitees shall cooperate, at the expense of the Indemnifying Party, in the compromise or contest of such Asserted Liability; provided, however, that the Indemnitee shall have the right to approve, to its reasonable satisfaction, any counsel retained in connection with such Asserted Liability. If, within the Notice Period, the Indemnifying Party elects not to compromise or contest the Asserted Liability, fails to notify the Indemnitee of its election as herein provided, or contests its obligation to indemnify under this Agreement, the Indemnitee (upon further written notice to the Indemnifying Party) shall have the right to pay, compromise, or contest such Asserted Liability on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall have no further right to assume the compromise or contest of such Asserted Liability but shall retain the right to contest its obligation, or the extent of its obligation, to indemnify or its responsibility for any alleged or claimed Loss. Anything in this Section 8.5 to the contrary notwithstanding, (i) the Indemnitee shall have the right, at its own cost and expense and for its own account without claim for reimbursement, to compromise or contest any Asserted Liability, and (ii) the Indemnifying Party shall not, without the Indemnitee's written consent, which consent will not be unreasonably withheld or delayed, settle or compromise any Asserted Liability or consent to the entry of any judgment which does not include an unconditional release of Indemnitee from all liability in respect of such Asserted Liability. In any event, any Indemnitee may participate, at its own expense, in the contest of such Asserted Liability.

**8.6 Attorneys' Fees.** In the event of a dispute, the prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses, and costs. Nothing contained herein shall be construed to alter the inclusion of attorneys' fees, expenses, and costs in otherwise indemnifiable Losses, as provided herein.

**8.7 Exclusive Remedy and Limit of Liability.** Except for equitable remedies, the rights and remedies of the parties set forth in this Section 8 shall be the exclusive rights or remedies available with respect to matters for which indemnification is provided or authorized pursuant to this Agreement. Neither Seller (which for the purposes of this Section 8 shall include GEC) or Purchaser will have any liability for Losses pursuant to this Section 8 until the aggregate of all Losses exceeds \$25,000, in which event the Indemnitee shall be entitled to recover the full amount of the Losses (including the first \$25,000); provide, however, that the maximum amount recoverable by either Seller or Purchaser for indemnification claims pursuant to this Section 8 shall in the aggregate be equal to One Million Dollars (\$1,000,000).

**8.8 Survival of Representations and Warranties.** The representations, warranties, covenants and agreements of the parties contained in this Agreement shall survive the Closing. The representations and warranties of the parties contained in Sections 2 and 3 of this Agreement shall expire and no longer be of any force or effect upon the expiration of ninety (90) days after the Closing. No action may be brought for or based on a breach, inaccuracy or falseness in any such representations or warranties after such ninety (90) day period after the Closing has elapsed.

## **Section 9. Miscellaneous.**

**9.1 Commissions.** Each of the parties hereto represents and warrants that there are no claims for finder's fees or brokerage commissions owed in connection with the transactions contemplated by this Agreement, and each party shall hold the other party harmless from any such claims arising by, through, or under such party, as provided in Section 8 hereof.

**9.2 Assignability.** No party to this Agreement shall assign, transfer, or otherwise dispose of any of its rights, duties, or obligations hereunder without the prior written consent of the other party hereto, and any attempted assignment without such prior written consent shall be void ab initio; provided, however, that either party may assign, transfer, or otherwise dispose of any of its rights, duties, or obligations hereunder to an affiliate or subsidiary of such party without the prior written consent of the other party. As used in this Agreement, the term "affiliate" shall mean any person controlling, controlled by, or under common control with the subject person. Any permitted assignment shall not relieve the assigning party from liability for a breach of this Agreement by its assignee.

**9.3 Entire Agreement; Amendments.** This Agreement, including any schedules, lists, and other documents and writings referred to herein or delivered pursuant hereto, all of which form a part hereof, contains the entire understanding of the parties with respect to its subject matter. It merges and supersedes all prior and/or contemporaneous agreements and understandings between the parties, written or oral, including, without limitation, the Letter Agreement, with respect to its subject matter and there are no restrictions, agreements, promises, warranties, covenants, or undertakings between the parties with respect to the subject matter hereof other than those expressly set forth herein. This Agreement may be amended only by a written instrument duly executed by all parties or their respective heirs, successors, permitted assigns, or legal or personal representatives.

**9.4 Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**9.5 Severability.** In the event that any provision of this Agreement, or the application thereof to any person or circumstance, is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, or the application of the invalid, illegal, or unenforceable provision to any other person or circumstance, and this Agreement shall then be construed as if such invalid, illegal, or unenforceable provision had not been contained in this Agreement, but only to the extent of such invalidity, illegality, or unenforceability.

**9.6 Notices.** All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed (registered or certified mail, postage prepaid, return receipt requested) as follows:

If to the Seller: Gaylord Digital, LLC  
One Gaylord Place  
Nashville, Tennessee 37214  
Attn: Carl Kornmeyer

With a copy to: Sherrard & Roe, PLC  
424 Church Street, Suite 2000  
Nashville, Tennessee 37219  
Attn: Christopher C. Whitson, Esq.

If to Purchaser: Christian Book Distributors, Inc.  
P. O. Box 7000  
Peabody, Massachusetts 01961-7000  
Attn: Stephen J. Hendrickson

With a copy to: Ware & Ware  
530 Great Road  
Acton, Massachusetts 01720  
Attn: T. Kirkland Ware, III

or to such other address as any party may have furnished to the others in writing in accordance herewith, except that notices of change of address shall only be effective upon receipt.

**9.7 Governing Law; Forum; Service of Process; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. This Agreement and its subject matter have substantial contacts with Tennessee, and all actions, suits, or other proceedings with respect to this Agreement shall be brought only in a court of competent jurisdiction sitting in Davidson County, Tennessee, or in the Federal District Court having jurisdiction over that County. In any such action, suit, or proceeding, such court shall have personal jurisdiction of all of the parties hereto, and service of process upon them under any applicable statutes, laws, and rules shall be deemed valid and good.

**9.8 Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, with the same effect as if the signatories executing the several counterparts had executed one counterpart. All such executed counterparts shall together constitute one and the same instrument.

**9.9 Waivers.** The terms, covenants, representations, warranties, and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any provision hereof shall, in no manner, affect the right at a later date to enforce the same. No waiver by any party of any condition, or breach of any provision, term, covenant, representation, or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

**9.10 No Third Party Beneficiary.** No provision of this Agreement shall create, or be deemed to create, any legal or equitable right in any person not a party to this Agreement or give any

such person any claim against any party to this Agreement that such party would not have but for this Agreement.

**9.11 Public Announcement.** Except to the extent required by law, and as contemplated by Section 4 hereof, no public announcement of the transactions contemplated by this Agreement will be made by any party without the prior consent of the other parties, which consent will not be unreasonably withheld or delayed.

**9.12 Taxes.** Seller shall be liable for and shall pay all sales, use, motor vehicle transfer, or other taxes (other than income or capital gains taxes imposed on the Seller), resulting from or imposed upon the transactions contemplated hereby.

**9.13 Expenses.** Each party will be responsible for and bear all its own costs and expenses (including, without limitation, the fees of its counsel, financial advisors and consultants) incurred at any time in connection with the negotiation or consummation of this Agreement and the transactions contemplated hereby.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by themselves or their duly authorized representative as of the day and year first written above.

**SELLER:**

Gaylord Digital, LLC

By: Brian Payne ck  
Name: BRIAN PAYNE  
Title: PRESIDENT

GBRJ Music, LLC

By: Mark A. Floyd ck  
Name: Mark A. Floyd  
Title: V.P.

**PURCHASER:**

Christian Book Distributors, Inc.

By: Stephen J. Hendrickson  
Name: STEPHEN J. HENDRICKSON  
Title: PRESIDENT

**CONSENT TO BE BOUND**

For good and valuable consideration, Gaylord Entertainment Company, a Delaware corporation, acknowledges, accepts, and agrees to be bound by and to fulfill its obligations under Sections 7.7 and 8 of this Asset Purchase Agreement, dated December 20, 2000. Any remedies at law or in equity shall be available to enforce the terms of Sections 7.7 and 8 against the undersigned.

Gaylord Entertainment Company

By: Carl Kornbreyer  
Name: CARL KORNBREYER  
Title: EVP

## INDEX OF ATTACHMENTS

### Schedules

Schedule 1.1.1	FF&E
Schedule 1.1.2	Customer List and Accounts
Schedule 1.1.3	Agreements
Schedule 1.1.4	Inventory; Inventory Credits
Schedule 1.1.5	Intellectual Property
Schedule 1.2.1	Wiring Instructions
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Schedule 2.2.3	Conflicting Agreements
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Schedule 2.6	Litigation
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### Exhibits

Exhibit A	Bill of Sale
Exhibit B	Assignment and Assumption Agreement
Exhibit C	Cross Receipt



## Schedule 1.1.5

### Intellectual Property

(i) URLs: [www.musicforce.com](http://www.musicforce.com); [christianmusicstore.com](http://christianmusicstore.com); [musicforcetv.com](http://musicforcetv.com); [musicforse.com](http://musicforse.com); [jinglebellradio.com](http://jinglebellradio.com); [silverbellradio.com](http://silverbellradio.com); [indieforce.com](http://indieforce.com); [moderadio.com](http://moderadio.com); [musicforest.com](http://musicforest.com); [mymusicforce.com](http://mymusicforce.com); [concertforce.com](http://concertforce.com); [movieforce.com](http://movieforce.com); [musicforceevents.com](http://musicforceevents.com); [worshipforce.com](http://worshipforce.com); [livemusicforce.com](http://livemusicforce.com); [fishtv.com](http://fishtv.com).

Trademark and service mark Registration Nos. 2,395,036, 2,392,905, 2,326,609, 2,326,314, and 2,316724.

(iv) Seller's rights in and to that certain (i) Client Services Agreement: Work Order 003, dated March 1, 1999, by and between InfoImage, Inc. and GBRJ, a copy of which is attached hereto, and (ii) Musicforce.com License Letter, dated July 22, 1999, between Robert Kay, Brock Brandenburg, and GBRJ, a copy of which is attached hereto.

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement, dated as of December 20, 2000, is by and among GAYLORD DIGITAL, LLC, a Delaware limited liability company ("Gaylord Digital"), GBRJ Music, LLC, a Texas limited liability company ("GBRJ"), and CHRISTIAN BOOK DISTRIBUTORS, INC., a Massachusetts corporation ("Purchaser"). Gaylord Digital and GBRJ are sometimes hereinafter collectively referred to as "Seller".

### RECITALS:

Pursuant to an Asset Purchase Agreement of even date herewith (the "Purchase Agreement"), by and between the Purchaser and the Seller, Seller agreed to sell, transfer and deliver to Purchaser at the Closing certain assets of Seller.

NOW, THEREFORE, in consideration of the premises and to complete the actions required of Seller and Purchaser by the Purchase Agreement to effect the Closing, Purchaser and Seller hereby undertake and agree as follows:

1. Definitions. The terms defined in the Purchase Agreement, unless otherwise defined herein or unless the context otherwise requires, shall have the same defined meanings herein.

2. Assignment. Seller and GBRJ hereby assign to Purchaser all of their right, title and interest in, to and under the Customer List and Agreements, and Intellectual Property (collectively, the "Assigned Assets"), in all cases, subject to, and as provided in, the Purchase Agreement.

3. Assumption. Purchaser hereby assumes and agrees to pay, perform and discharge the liabilities and obligations of the Seller under the Assigned Assets which arise after the Closing Date (excluding any liability or obligation arising from any wrongful and/or negligent act or omission of Seller which occurred prior to the Closing Date).

4. Indemnification. In accordance with Section 8 the Purchase Agreement, Seller agrees to indemnify, defend, and hold harmless Purchaser with respect to any wrongful and or negligent act or omission of the Seller occurring, or any breach by the Seller of any contract for services performed, prior to the Closing Date, in each case by or with respect to the Seller or the business, operations, or properties of the Seller. Likewise, pursuant to Section 8 of the Purchase Agreement, Purchaser agrees to indemnify, defend, and hold harmless the Seller from the conduct of its business or the utilization or ownership of the Assets from and after the Closing Date.

5. No Third Party Beneficiaries. This Assignment and Assumption Agreement shall be binding upon and shall inure to the benefit of Purchaser and Seller and their respective successors and assigns. The sole purpose hereof is to relieve Seller of certain liabilities and obligations and not to create third party beneficiary rights. Therefore, this Assignment and Assumption Agreement may be modified by a writing signed by Seller and Purchaser without the consent of any third party.

6. Counterparts. This Assignment and Assumption Agreement may be executed in one or more counterparts all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Assignment and Assumption Agreement to be signed by their respective duly authorized officers as of the date first above written.

**SELLER:**

Gaylord Digital, LLC

By: Brian Payne  
Name: BRIAN PAYNE  
Title: PRESIDENT

GBRJ Music, LLC

By: Mark A. Floyd  
Name: Mark A. Floyd  
Title: V.P.

**PURCHASER:**

Christian Book Distributors, Inc.

By: Stephen J. Hendrickson  
Name: STEPHEN J. HENDRICKSON  
Title: PRESIDENT