

**ASSET PURCHASE AGREEMENT**

by and between

**RHODE ISLAND PUBLIC RADIO, INC.  
SELLER**

and

**LATINO PUBLIC RADIO  
BUYER**

for the sale and purchase of

Radio Station WRNI(AM), Providence, Rhode Island

Dated: August 11, 2017

## **LIST OF SCHEDULES**

SCHEDULE 2.1	FCC Licenses
SCHEDULE 2.2	Tangible Personal Property
SCHEDULE 2.3	Leases and other Contracts
SCHEDULE 2.5	Real Property
SCHEDULE 4.3	Asset Allocation for Tax Purposes
EXHIBIT A	Form of Assignment
EXHIBIT B	Form of Bill of Sale
EXHIBIT C	Form of Escrow Agreement

## ASSET PURCHASE AGREEMENT

This Agreement, made and entered into as of this 11 day of August 2017, by and between RHODE ISLAND PUBLIC RADIO, INC., a Rhode Island nonprofit corporation (“Seller”), and LATINO PUBLIC RADIO, a Rhode Island nonprofit corporation (“Buyer”).

### WITNESSETH THAT:

WHEREAS, Seller is the licensee of Radio Station WRNI, Facility ID 48308, Providence, Rhode Island (the “Station”), and owns the assets used in the operation of the Station; and

WHEREAS, Buyer produces and delivers a public radio broadcast service that is broadcast on the Station, pursuant to a Programming Agreement with Seller dated October 1, 2016 and amended on March 27, 2017 (“Programming Agreement”); and

WHEREAS, Buyer desires to purchase certain of the assets used or useful in and for the operation of the Station, to acquire the license issued by the Federal Communications Commission (the “FCC”) for the operation of the Station; and

WHEREAS, Seller desires to sell certain of the Station’s assets and assign the Station license to Buyer; and

WHEREAS, the license issued by the FCC may not be assigned to Buyer without the FCC’s prior consent.

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

### **1. RULES OF CONSTRUCTION**

**1.1. Defined Terms.** As used in this Agreement, the following terms shall have the following meanings:

- “Assignment Application” means the application on FCC Form 314 that Seller and Buyer shall file with the FCC to request the FCC’s consent to the assignment of the FCC Licenses from Seller to Buyer.
- “Closing” means the consummation of the Transaction.
- “Closing Date” means the date on which the Closing takes place, as determined pursuant to Section 11 hereof.
- “FCC Licenses” shall have the meaning ascribed thereto in Section 2.1.
- “Final Order” means any FCC action that, by lapse of time or otherwise, is no longer subject to administrative or judicial reconsideration, review, appeal or stay.

- “Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any agency, court or other entity that exercises executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
- “Knowledge,” when used in connection with any representation or warranty by a person or entity, means the actual knowledge of such person or entity at the time the representation is made.
- “Permitted Encumbrances” means with respect to the Real Property (a) statutory liens for real estate Taxes, assessments and other governmental levies, fees, or charges imposed with respect to such Real Property that are (i) not yet due and payable as of the Closing Date or (ii) the amount or validity of which is being contested in good faith by appropriate proceedings; (b) mechanics liens and similar liens for labor, materials, or supplies provided with respect to such Real Property incurred in the ordinary course of business for amounts that are (i) not yet due and payable and would not, in the aggregate, have a material adverse effect or (ii) the amount or validity of which is being contested in good faith by appropriate proceedings; (c) zoning, building codes, and other land use laws regulating the use or occupancy of such Real Property or the activities conducted thereon that are imposed by any governmental authority having jurisdiction over such Real Property, that do not, would not and would not reasonably be expected to materially impair the use or occupancy of such Real Property as such Real Property is currently used and occupied in the operation of the station; and (d) easements, covenants, conditions, restrictions and other similar matters affecting title to such Real Property, each that do not or would not reasonably be expected to materially impair the present use occupancy of such Real Property as such Real Property is currently used and occupied in the operation of the station.
- “Transaction” means the sale and purchase and assignments and assumptions contemplated by this Agreement and the respective obligations of Seller and Buyer set forth herein.

**1.2. Other Definitions.** Other capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

**1.3. Number and Gender.** Whenever the context so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

**1.4. Headings and Cross-References.** The headings of the Sections and Subparagraphs hereof have been included for convenience of reference only, and shall in no way limit or affect the meaning or interpretation of the specific provisions of this Agreement. All cross-references to Sections herein shall mean the Sections of this Agreement unless otherwise stated or clearly required by the context. All references to Schedules herein shall mean the Schedules to this Agreement which have been separately initialed for identification by Seller and Buyer. Words such

as "herein" and "hereof" shall be deemed to refer to this Agreement as a whole and not to any particular provision of this Agreement unless otherwise stated or clearly required by the context.

**1.5. Computation of Time.** Whenever any time period provided for in this Agreement is measured in "business days" there shall be excluded from such time period each day that is a Saturday, Sunday, recognized federal legal holiday, or other day on which the FCC's offices are closed and are not reopened prior to 5:30 pm Washington, D.C., time. In all other cases all days shall be counted.

**2. ASSETS TO BE CONVEYED.** On the Closing Date, Seller will sell, assign, transfer, convey and deliver to Buyer, the following assets of Seller that are used exclusively for the operation of the Station (the "Purchased Assets"), free and clear of all liens and encumbrances whatsoever except for statutory liens for taxes not yet due and Permitted Encumbrances:

**2.1. Licenses.** The licenses, permits and other authorizations issued by the FCC for the operation of the Station listed in Schedule 2.1 hereof (the "FCC Licenses"), and all other transferable licenses, permits and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station as presently operated by Seller.

**2.2. Tangible Property.** The specific items of tangible personal property listed in Schedule 2.2 hereof, together with replacements thereof and improvements thereto made between the date hereof and the Closing Date (the "Tangible Property").

**2.3. Contracts.** The leases and other agreements listed and described in Schedule 2.3, all of which shall be effective on, and assigned to Buyer, as of the Closing Date unless otherwise noted in Schedule 2.3.

**2.4. Station Records.** The Station's public file materials, logs and engineering records.

**2.5. Real Property.** The real property owned by Seller and identified on Schedule 2.5 hereof (the "*Real Property*"), provided, however, that for a period of up to one year after Closing, terminable by Seller upon thirty (30) days' notice, Buyer will permit Seller to continue to maintain the satellite dish that is located on the Real Property until Seller is able to relocate it, for a monthly rental fee of Five Hundred Dollars (\$500), due and payable in advance on the first day of the month. In the event Seller does not remove the satellite dish within one year after Closing, Buyer may at any time thereafter, upon not less than ten (10) days' notice to Seller, remove and dispose of the satellite dish in any manner, and Seller shall be responsible for the cost of the removal. So long as Seller maintains the satellite dish on the Real Property, Buyer will provide Seller with unrestricted, 24/7/365 access to the site for purposes of inspection, maintenance and repairs, and will facilitate access by providing all necessary keys and codes. Seller shall provide reasonable notice to Buyer, by telephone, email, text message, or similar electronic means, whenever it accesses the site. "Reasonable notice" for purposes of this paragraph shall mean 24-hours advance notice when feasible, or less advance notice in case of exigent circumstances such as the need for emergency repairs. This Section 2.5 shall survive the Closing.

**3. EXCLUDED ASSETS.** The following assets are expressly excluded from the Purchased Assets being conveyed hereunder and shall be retained by Seller:

- (a) Seller's cash and cash equivalents;
- (b) Seller's accounts receivable;
- (c) any expenses prepaid by Seller;
- (d) all property of any kind, including files, books and records, which is not specifically identified in Schedule 2 hereof as being included in the Purchased Assets;
- (e) any employment contracts, employee benefit plans or programs; and
- (f) the call letters and service mark "WRNI" and related intellectual property.

**4. PURCHASE PRICE AND METHOD OF PAYMENT.** The purchase price for the Purchased Assets ("Purchase Price") shall be the sum of Four Hundred Thousand Dollars (\$400,000). The Purchase Price shall be payable as follows:

**4.1.** Upon execution of this Agreement, Buyer shall deposit in escrow, pursuant to an Escrow Agreement substantially in the form attached hereto as Exhibit C, with Law Office of John Wells King, PLLC (the "Escrow Agent"), the sum of Forty Thousand Dollars (\$40,000), as a good faith cash deposit (the "Earnest Money Deposit"), to be paid to Seller at Closing pursuant to Section 11 hereof. At Closing, the Earnest Money Deposit shall be applied to the Purchase Price and any interest accrued thereon shall be disbursed to Buyer.

**4.2.** Upon the Closing of the Transaction, the Purchase Price, less the Earnest Money Deposit, by wire transfer in immediately available funds, and subject adjustments pursuant to Section 5 below; and

**4.3. Allocation of Purchase Price.** Prior to Closing, Buyer and Seller shall agree on the allocation for tax purposes of the Purchase Price between Tangible Personal Property and the FCC Licenses. Such allocation shall be set forth in Schedule 4.3. Seller and Buyer shall use such allocation for all purposes related to the valuation of the Purchased Assets, including, without limitation, in connection with any federal, state, county or local tax returns and, unless required to do so in accordance with a "determination" as defined in Section 1313(a)(1) of the Internal Revenue Code, neither Seller nor Buyer shall take any position in any tax return, tax proceeding, tax audit or otherwise that is inconsistent with such allocation.

**5. PRORATIONS.** In light of the operation of the Station pursuant to the Programming Agreement, Seller and Buyer do not anticipate the need for proration of income and expenses having to be made on the Closing Date. In the event that the exact amount of any personal or real property taxes, which are to be prorated, is not known on the Closing Date, such taxes or fee shall be prorated on the basis of the most recent tax or fee assessment. To the extent practical, the prorations shall be made on the Closing Date and any net amount due as a result of the prorations shall be added to, or subtracted from, the Purchase Price. Within 60 days after the Closing Date, Buyer and Seller shall agree to any final Prorations that are necessary to carry out the parties' intentions as reflected in this Section and any final amount due Seller, or Buyer, shall

be paid promptly by check from the party owing the final amount made payable to the party to whom the payment is due.

**6. SELLER'S LIABILITIES.** Except as provided in this Agreement, Buyer does not and shall not assume or be deemed to assume any liabilities, obligations, or commitments of Seller of any nature whatsoever.

**7. SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.** Seller hereby make the following representations, warranties, and covenants as of the date hereof and as of the Closing Date:

**7.1. Existence and Power.** Seller is a nonprofit corporation validly existing and in good standing under the laws of the State of Rhode Island with the full power to enter into, deliver and perform its obligations under this Agreement.

**7.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Seller has been duly authorized. This Agreement has been duly executed and delivered to Buyer by Seller and constitutes a legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms.

**7.3. No Violation.** The execution and performance of this Agreement by Seller will not violate Seller's Articles of Incorporation or Bylaws or any order, rule, judgment or decree to which Seller is subject, or breach any contract, agreement or other commitment to which Seller is a party or is bound.

**7.4. Conveyance of Assets.** At Closing, Seller shall convey to Buyer good and marketable title to all the Purchased Assets, free and clear of all liens, pledges, collateral assignments, security interests, leases, easements, covenants, restrictions and encumbrances or other defects of title except for the lien of any personal property, real estate or related taxes that will not become due until after the Closing Date and the Permitted Encumbrances.

**7.5. Seller Qualifications.** There is no fact or condition known to Seller that would, under the Communications Act and the existing rules, regulations and policies of the FCC, constitute grounds for the filing of a petition to deny or objection related to the qualifications of Seller or that would reasonably be expected to result in a delay of the FCC Order. To Seller's Knowledge, no waiver of any FCC rule, regulation or policy existing as of the date of this Agreement will be required, with respect to Seller, to obtain the FCC Order.

**7.6. Litigation.** There is no action, suit, investigation or other proceeding pending, or to Seller's Knowledge threatened, that may adversely affect Seller's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Seller is not aware of any facts that could reasonably result in any such proceeding.

## **8. BUYER'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**

Buyer hereby makes the following representations, warranties and covenants as of the date hereof and as of the Closing Date:

**8.1. Existence and Power.** Buyer is a nonprofit corporation, validly existing and in good standing under the laws of the State of Rhode Island, with the full power to enter into, deliver and perform this Agreement.

**8.2. Binding Agreement.** The execution, delivery, and performance of this Agreement by Buyer has been duly authorized by its Board of Directors. This Agreement has been duly executed and delivered to Seller by Buyer and constitutes a legal, valid, and binding obligation of Buyer enforceable against Buyer in accordance with its terms, without the need of approval from any third parties (other than the FCC and any consents required to assign the leases and other agreements set forth in Schedule 2.3; such consents, the "Required Consents").

**8.3. No Violation.** The execution and performance of this Agreement by Buyer will not violate Buyer's Articles of Incorporation, or Bylaws, or any material order, rule, judgment or decree to which Buyer or its principals or employees is subject, or breach any contract, agreement or other commitment to which Buyer or its principals or employees is a party or is bound.

**8.4. Programming Agreement.** Buyer is and shall continue to be current on its obligations to Seller under the Programming Agreement, including its monthly financial obligations and its delivery to Seller of records and information for the WRNI local public inspection file, specifically the quarterly issues-programs list.

**8.5. Licensee Qualifications.** Under the Communications Act of 1934, as amended, and the rules and regulations of the FCC, Buyer, to the best of his Knowledge, is legally, financially, and otherwise qualified to be the licensee of the Station. There is no fact or condition known to Buyer that would, under the Communications Act and the existing rules, regulations and policies of the FCC, disqualify Buyer as owner and operator of the Station or constitute grounds for the filing of a petition to deny or objection related to the qualifications of Buyer or that would reasonably be expected to result in a delay of the FCC Order. To Buyer's Knowledge, no waiver of any FCC rule, regulation or policy existing as of the date of this Agreement will be required, with respect to Buyer, to obtain the FCC Order.

**8.6. Litigation.** There is no action, suit, investigation or other proceeding pending, or to Buyer's Knowledge threatened, that may adversely affect Buyer's ability to perform its obligations under this Agreement in accordance with the terms hereof, and Buyer is not aware of any facts that could reasonably result in any such proceeding.

**8.7. Inspection.** Buyer has inspected the Station's transmitter site facilities and accepted the condition of those facilities at the time of signing this Agreement. Furthermore, Buyer acknowledges that Seller is selling the Real Property and Buyer is accepting the Real Property "as-is" without representation or warranty other than as set forth in this Agreement and acknowledges that Seller has made no warranties or representations on which Buyer has relied (other than those specifically set forth in this Agreement), it being the understanding of the parties



hereto that the entire agreement of the parties with respect to this transaction is fully set forth herein.

**9. PRE-CLOSING RIGHTS AND OBLIGATIONS.** The parties covenant and agree as follows with respect to the period prior to Closing:

**9.1. Application for FCC Consent.** After the execution of this Agreement, Seller and Buyer shall join in and file the Assignment Application within five (5) business days thereafter, and shall each diligently take all commercially reasonable steps reasonably necessary or desirable to prosecute the Assignment Application and to obtain the FCC's grant of the Assignment Application.

**9.2. Request for Conversion Determination.** Within thirty (30) days after the date of this Agreement, Seller shall file a request for a determination by the Rhode Island Attorney General that no conversion fee is due under R.I. Gen. Laws Section 18-4.1-1 et seq. for the Station. Buyer will cooperate with Seller in connection with the preparation, filing, and advocacy of such request.

**9.3. Administrative Violations.** If Seller receive any finding, order, complaint, citation or notice, which states that any aspect of the Station's operation prior to Closing violates any rule, regulation or order of the FCC or of any other Governmental Authority which affects the Purchased Assets (an "Administrative Violation"), including without limitation any rule, regulation or order concerning environmental protection, the employment of labor, or equal employment opportunity, Seller shall use its commercially reasonable efforts to remove or correct the Administrative Violation before Closing and shall be solely responsible for the payment of all costs associated therewith, including any fines or back pay that may be assessed after Closing.

**9.4. Risk of Loss.** The sale and delivery of the Purchased Assets is on an "AS IS, WHERE IS" basis, subject only to the express representations and warranties and other provisions set forth in this Agreement. Seller shall be under no obligation to make any repairs to the Purchased Assets, but shall be obligated only to maintain the operation of the Station in the ordinary course of business subject to reasonable wear and tear. In the event that any loss, damage to or destruction of the Purchased Assets has not been repaired, restored and/or replaced prior to the Closing Date, the Closing shall nevertheless take place and Seller shall assign its rights to receive any insurance proceeds with respect to the damaged, lost, or destroyed assets to Buyer.

**9.5. Operations Prior to Closing.** Between the date of this Agreement and the Closing Date:

(a) Seller shall not: (i) sell or otherwise dispose of any of the Purchased Assets except in the ordinary course of business and only if any material property disposed of is replaced by property of like or better kind, quality, and utility prior to Closing; (ii) enter into any contract, lease, or agreement that will impose any material obligation on Buyer after Closing; (iii) change the Station's current call sign without Buyer's consent; or (iv) cause or permit any of the FCC Licenses to be revoked, suspended or materially modified.

(b) Unless terminated earlier pursuant to its terms, the Programming

Agreement shall remain in full force and effect until the Closing. Buyer shall continue to provide services and to meet its monthly financial and other obligations to Seller under the parties' Programming Agreement, including delivery to Seller of records and information for the WRNI local public inspection file, specifically the quarterly issues-programs list.

**9.6. Control of Station.** This Agreement shall not be consummated until after the FCC has given its written consent to the Assignment Application. Between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct, the operations of the Station. Such operations shall be the sole responsibility of Seller.

## **10. CONDITIONS PRECEDENT.**

**10.1. Mutual Conditions.** The obligation of both Buyer and Seller to consummate the Transaction is subject to the satisfaction of each of the following conditions:

(a) **Approval of Assignment Application.** Any petition to deny, informal objection, or other opposition (collectively, "Objection") to the Assignment Application or any of the parties shall have been dismissed or denied; the FCC shall have granted the Assignment Application and such grant shall be in full force and effect on the Closing Date. In the event any Objection is filed during the thirty day period following the FCC's acceptance for filing of the Assignment Application, Closing shall not occur until ten (10) days after the FCC's order granting the Assignment Application becomes a Final Order.

(b) **Conversion Fee Determination.** The Rhode Island Attorney General shall have determined that no conversion fee is due under R.I. Gen. Laws Section 18-4.1-1 et seq.

(c) **Absence of Litigation.** As of the Closing, no action, suit, petition for reconsideration, application for review, or proceeding seeking to enjoin, restrain, or prohibit the consummation of the Transaction shall be pending before any court, the FCC, or any other Governmental Authority; provided, however, that this Paragraph may not be invoked by a party if any such action, suit, or proceeding was solicited or encouraged by, or instituted as a result of any act or omission of, such party.

(d) The parties shall have agreed on an allocation of the Purchase Price for tax purposes, as set forth in Schedule 4.3.

**10.2. Conditions to Buyer's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Buyer to consummate the Transaction is subject, at Buyer's option, to the satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Seller to Buyer shall be true, complete, and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Seller on or before the Closing Date shall have been duly complied with and performed in all material respects.

(c) **Closing Documents.** Seller shall have delivered or caused to be delivered to Buyer all of the closing documents specified in Paragraph 11.2.1, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably acceptable to Buyer.

(d) **Administrative Violations.** The violation of any rule, regulation or order of the FCC or any other Governmental Authority underlying any Administrative Violation shall have been corrected or cured and on the Closing Date the Station shall be operating in compliance with such rule, regulation or order.

(e) **Required Consents.** The Required Consents with respect to each of the leases and other agreements set forth in Schedule 2.3 shall have been obtained.

**10.3. Conditions to Seller's Obligation.** In addition to satisfaction of the mutual conditions contained in Section 10.1, the obligation of Seller to consummate the Transaction is subject, at Seller's option, to satisfaction of each of the following conditions:

(a) **Representations and Warranties.** The representations and warranties of Buyer to Seller shall be true, complete and correct in all material respects as of the Closing Date with the same force and effect as if then made.

(b) **Compliance with Conditions.** All of the terms, conditions and covenants to be complied with or performed by Buyer on or before the Closing Date shall have been duly complied with and performed in all material respects.

(c) **Payment.** Buyer shall have delivered the Purchase Price to Seller.

(d) **Closing Documents.** Buyer shall have delivered to Seller all the closing documents specified in Paragraph 11.2.2, all of which documents shall be dated as of the Closing Date, duly executed, and in a form reasonably satisfactory to Seller.

## **11. CLOSING.**

**11.1. Closing Date and Method.** Unless Seller and Buyer agree otherwise, the Closing Date shall be the tenth (10<sup>th</sup>) day after the date on which all of the Conditions Precedent (except for the deliveries that Buyer or Seller is required to make on the Closing Date) set forth in Section 10 above, shall have been satisfied or waived, or upon such other date thereafter to be mutually agreed upon. The Closing shall be accomplished on the Closing Date by exchanging the closing documents required by this Agreement and such other closing documents as the parties may reasonably require, and by Buyer's delivery of the Purchase Price to Seller.

**11.2. Performance at Closing.** The following documents shall be delivered at Closing:

**11.2.1. By Seller.** Seller shall deliver or cause to be delivered to Buyer:

(a) Assignments substantially in the form attached hereto as Exhibit A transferring to Buyer all of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station.

(b) Bills of sale substantially in the form attached hereto as Exhibit B conveying to Buyer all of the Tangible and Intangible Property of the Station.

(c) An assignment of any lease or other contract which shall be assigned to Buyer pursuant to Schedule 2.3.

(d) Documents pertaining to the Real Property, including without limitation a quitclaim deed conveying the Real Property to Buyer and all keys and combinations to all locks for the Real Property.

(e) The premises shall be delivered free of the assets listed in Schedule 2.2 under "Equipment NOT Included in Asset Purchase Agreement."

**11.2.2. By Buyer.** Buyer shall deliver to Seller:

(a) Assumptions in form and substance reasonably satisfactory to Seller of the interests of Seller in and to the FCC Licenses and all other transferable licenses, permits, and authorizations issued by any other Governmental Authorities that are used in or necessary for the lawful operation of the Station, and of the Leases and other contracts in Schedule 2.3.

(b) The Purchase Price.

**12. INDEMNIFICATION.** The parties agree as follows with respect to the period subsequent to Closing:

**12.1. Buyer's Right to Indemnification.** For a period of eighteen (18) months following the Closing, Seller undertakes and agrees to indemnify and hold Buyer harmless against (i) any breach, misrepresentation, or violation of any of Seller's representations, warranties, covenants, or other obligations contained in this Agreement; (ii) all liabilities of Seller not assumed by Buyer; and (iii) any claims by third parties against Buyer attributable to Seller's ownership or operation of the Purchased Assets prior to Closing and not otherwise assumed by Buyer under this Agreement. This indemnity is intended by Seller to cover all acts, suits, proceedings, claims, demands, assessments, adjustments, interest, penalties, costs, and expenses (including, without limitation, reasonable fees and disbursements of counsel) (collectively, "Losses"), arising within said eighteen (18) month period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.2. Seller's Right to Indemnification.** For a period of eighteen (18) months following the Closing, Buyer undertakes and agrees to indemnify and hold Seller harmless against (i) any breach, misrepresentation, or violation of any of Buyer's representations, warranties,

covenants, or other obligations contained in this Agreement; (ii) all liabilities of Buyer; and (iii) any claims by third parties against Seller attributable to Buyer's operation of the Station after Closing. This indemnity is intended by Buyer to cover all Losses, arising during said eighteen (18) month period whether suit is instituted or not and, if instituted, whether at the trial or appellate level, with respect to any and all of the specific matters set forth in this indemnity.

**12.3. Procedure for Indemnification.** The procedure for indemnification shall be as follows:

(a) The party claiming indemnification (the "Claimant") shall give written notice to the party from which indemnification is sought (the "Indemnitor") promptly after the Claimant learns of any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless; provided, however, that the Claimant's failure to give the Indemnitor prompt notice shall not bar the Claimant's right to indemnification except such failure has prejudiced the Indemnitor's ability to investigate or defend against the claim or proceeding.

(b) With respect to claims between the parties, following receipt of notice from the Claimant of a claim, the Indemnitor shall have thirty (30) days to make any investigation of the claim that the Indemnitor deems necessary or desirable. For the purpose of this investigation, the Claimant agrees to make available to the Indemnitor and its authorized representatives the information relied upon by the Claimant to substantiate the claim. If the Claimant and the Indemnitor cannot agree as to the validity and amount of the claim within the 30-day period (or any mutually agreed upon extension hereof), the Claimant may seek appropriate legal remedies.

(c) With respect to any third-party claim as to which the Claimant is entitled to indemnification, the Indemnitor shall have the right to employ counsel reasonably acceptable to the Claimant to defend against any such claim or proceeding, or to compromise, settle or otherwise dispose of the same, if the Indemnitor deems it advisable to do so, all at the expense of the Indemnitor. The parties will fully cooperate in any such action, and shall make available to each other any books or records useful for the defense of any such claim or proceeding. If the Indemnitor fails to acknowledge in writing its obligation to defend against or settle such claim or proceeding within twenty (20) days after receiving notice thereof from the Claimant (or such shorter time specified in the notice as the circumstances of the matter may dictate) the Claimant shall be free to engage counsel of its choice and defend against or settle the matter, all at the expense of the Indemnitor.

**12.4. No Consequential Damages.** Notwithstanding anything to the contrary contained herein, no Indemnitor shall be liable to or otherwise responsible to any Claimant for indirect, special, consequential, incidental, unforeseen or punitive damages that arise out of or relate to this Agreement or the performance or breach thereof or any liability retained or assumed hereunder other than to the extent that such type of Losses are actually awarded to a third party in a legal proceeding brought against such indemnitee.

**12.5. Limitation of Warranties.** The sale and delivery of the Purchased Assets is on an "AS IS, WHERE IS" basis. There are no representations or warranties, express or implied,

other than as expressly set forth or referred to herein and, in particular, neither Party makes any warranty to the other or to any other person or entity, either express, implied or statutory, as to the description, quality, merchantability, completeness or fitness for any purpose of any of the Purchased Assets to be transferred hereunder, or as to any other matter, all of which warranties are hereby excluded and specifically disclaimed.

### **13. DEFAULT AND REMEDIES.**

**13.1.** If either party believes the other to be in default hereunder, the party not in default shall provide the other with written notice specifying in reasonable detail the nature of such default. If the default has not been cured within ten (10) business days after delivery of that notice, then the party giving such notice may exercise the remedies available to such party pursuant to this Section, subject to the right of the other party to contest such action through appropriate proceedings. If a notice of default is given ten (10) days or less prior to the Closing Date, the Closing Date shall be automatically extended to the first business day following the last day of the "cure" period.

**13.2.** Upon a termination of this Agreement in accordance with its terms by Seller due to a breach by Buyer of any of its obligations under this Agreement in any material respect, Seller's sole and exclusive remedy shall be receipt of the Earnest Money Deposit. Seller and Buyer each acknowledge and agree that these liquidated damages are reasonable in light of the anticipated harm which would be caused by Buyer's material breach of any of its obligations under this Agreement and the difficulty of ascertaining damages and proof of loss and that these damages are not a penalty.

**13.3.** Seller agrees and acknowledges that in the event of Seller's failure or threatened failure to perform any of its obligations under this Agreement, Buyer shall be entitled to any remedies available under the law or equity, including but not limited to specific performance of the terms of this Agreement requiring Seller to fulfill its obligations under this Agreement, without the necessity of showing economic loss or other actual damage and without any bond or other security being required.

### **14. TERMINATION.**

**14.1. Failure to Obtain FCC Consent.** This Agreement may be terminated at the option of either party upon written notice to the other if the Assignment Application has not been granted within nine (9) months after the date on which the FCC releases a public notice that the Assignment Application has been accepted for filing; provided, however, that a party may not terminate this Agreement if such party is in default hereunder, or if a delay in any decision or determination by the FCC respecting the Assignment Application has been caused or materially contributed to (i) by any failure of such party to furnish, file or make available to the FCC information within its control; (ii) by the furnishing by such party of incorrect, inaccurate or incomplete information to the FCC; or (iii) by any other action taken by such party for the purpose of delaying the FCC's decision or determination respecting the Assignment Application.

**14.2. Failure to Obtain Attorney General Waiver.** This Agreement shall terminate automatically if the Rhode Island Attorney General issues a final determination under

the Rhode Island Public Radio Conversions Act, R.I. Gen. Laws Section 18-4.1-1 et seq., that consummation of the Transaction would require payment of a "Conversion Fee" as defined in such Act.

**14.3. Termination Due to Breach.** Subject to Section 13.1, this Agreement may be terminated by either party due to a material breach of this Agreement by the nonbreaching party giving written notice of such termination. In such event, the nonbreaching party shall be entitled to the remedies specified in Sections 13.2 and 13.3 hereof.

**15. ENFORCEMENT OF REMEDIES; DISPUTES.** Any dispute arising out of or in connection with this Agreement may be resolved by resort to a court of competent jurisdiction in the State of Rhode Island.

**16. SUBSEQUENT SALE.** In the event Buyer, within two years after the Closing Date, enters into an agreement to sell the Station ("Subsequent Sale") for more than Four Hundred Thousand Dollars (\$400,000) (the "Threshold"), Buyer shall pay to Seller at closing upon the Subsequent Sale one-half of the excess above the Threshold (the "Excess"). The Excess shall be payable by wire transfer to Buyer in immediately available funds. This Section 16 shall survive the Closing.

**17. GENERAL PROVISIONS.**

**17.1. Brokerage.** Each party represents to the other that it has not employed any broker or finder in connection with the Transaction and agrees to indemnify the other party and hold it harmless against any claim from any broker or finder based upon any agreement, arrangement, or understanding alleged to have been made by Seller or Buyer, as the case may be.

**17.2. Expenses.** The FCC filing fee, if any, for the Assignment Application shall be paid equally by Buyer and Seller. Any sales, use or transfer taxes applicable to this Transaction shall be paid by Seller. Except as otherwise provided herein, all other expenses incurred in connection with this Agreement or the Transaction shall be paid by the party incurring those expenses whether or not the Transaction is consummated and any expenses relating to the Real Property shall be allocated as is customary for such transactions in the State of Rhode Island.

**17.3. Notices.** Any notice, demand, or request required or permitted to be given under the provisions of the Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or on the date of delivery by email with a "read receipt" or other confirmation of delivery, or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as a party may request:

To Seller: Rhode Island Public Radio  
c/o Torey Malatia, President  
One Union Station  
Providence RI 02903

To Buyer: Latino Public Radio  
1246 Cranston Street  
Cranston, RI 02920

Either party may change its address for notices by written notice to the other given pursuant to this Section. Any notice purportedly given by a means other than as set forth in this Section shall be deemed ineffective.

**17.4. Assignment.** Neither party may assign its rights and obligations hereunder without the written consent of the other party which consent will not unreasonably be delayed or denied. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective successors and assignees.

**17.5. Exclusive Dealings.** For so long as this Agreement remains in effect, neither Seller nor any person acting on Seller's behalf shall solicit, initiate, or accept any offer from, or conduct any negotiations with, any person concerning the acquisition of the Station or the Purchased Assets, directly or indirectly, by any party other than Buyer or Buyer's permitted assignees.

**17.6. Third Parties.** Nothing in this Agreement, whether express or implied, is intended to: (i) confer any rights or remedies on any person other than Seller, Buyer, and their respective successors and permitted assignees; (ii) to relieve or discharge the obligations or liability of any third party; or (iii) to give any third party any right of subrogation or action against either Seller or Buyer.

**17.7. Waivers.** Unless otherwise specifically agreed in writing to the contrary: (i) the failure of a party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (ii) no waiver by any party of any default by the another party shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (iii) no extension of time granted by a party for the performance of any obligation or act by another party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

**17.8. Survival of Representations and Warranties.** The several representations, warranties, and covenants of the parties contained herein shall survive the Closing for a period of eighteen (18) months; provided, however, that those specific matters as to which claims for indemnification have been duly made before the expiration of such eighteen-month period shall survive until those claims have been resolved.

**17.9. Prior Negotiations.** This Agreement supersedes in all respects all prior and contemporaneous oral and written negotiations, understandings and agreements between the parties with respect to the subject matter hereof. All of said prior and contemporaneous negotiations, understandings and agreements are merged herein and superseded hereby.

**17.10. Schedules and Exhibits.** The Schedules and Exhibits attached hereto or referred to herein are a material part of this Agreement, as if set forth in full herein.



**17.11. Entire Agreement; Amendment.** This Agreement, and the Exhibits and Schedules to this Agreement set forth the entire understanding between the parties in connection with the Transaction, and there are no terms, conditions, warranties or representations other than those contained, referred to or provided for herein and therein. Neither this Agreement nor any term or provision hereof may be waived, altered or amended in any manner except by an instrument in writing signed by the party against whom the enforcement of any such change is sought.

**17.12. Counsel.** Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provisions of this Agreement shall be interpreted or construed against the party whose counsel drafted the provision.

**17.13. Governing Law.** This Agreement shall be governed by, and construed and enforced in accordance with the laws of the State of Rhode Island without regard to the choice of law rules utilized in that jurisdiction.

**17.14. Severability.** If any term of this Agreement is illegal or unenforceable at law or in equity, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

**17.15. Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument. Each fully executed set of counterparts shall be deemed to be an original, and all of the signed counterparts together shall be deemed to be one and the same instrument. Use of a facsimile, email or other electronic medium shall have the same force and effect as an original signature.

**17.16. Confidentiality.** Subject to the requirements of applicable law, Buyer and Seller shall each keep confidential all information obtained by it with respect to the other parties hereto in connection with this Agreement and the negotiations preceding this Agreement, and will use such information solely in connection with the transactions contemplated by this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall return to each other party hereto, without retaining a copy thereof, any schedules, documents or other written information obtained from such other party in connection with this Agreement and the transactions contemplated hereby. Notwithstanding the foregoing, no party will be required to keep confidential or return any information which: (a) is known or available through other lawful sources, not known to the disclosing party to be bound by a confidentiality agreement with the disclosing party; (b) is or becomes publicly known through no fault of the receiving party or its agents; (c) is required to be disclosed in connection with the Assignment Application or pursuant to an order or request of a judicial or governmental authority (provided the disclosing party is given reasonable prior notice of the order or request and the purpose of disclosure); or (d) is

developed by the receiving party independently of the disclosure by the disclosing party. Notwithstanding the foregoing, Buyer shall be permitted to issue press releases and other communications as necessary to assist Buyer in its fundraising efforts and following the Closing hereunder, provided that Seller has an opportunity to review any press release referring to this Transaction.

**17.17. Buyer's Acknowledgment.** BUYER ACKNOWLEDGES THAT AS OF THE CLOSING DATE IT SHALL HAVE HAD AN OPPORTUNITY TO CONDUCT DILIGENCE ON THE REAL PROPERTY AND IS ACQUIRING THE REAL PROPERTY IN ITS CURRENT CONDITION AS OF THE DATE HEREOF (SUBJECT TO ANY REPRESENTATIONS AND WARRANTIES MADE HEREIN) BASED ON ITS DILIGENCE. BUYER FURTHER ACKNOWLEDGES THAT NEITHER SELLER NOR ITS EMPLOYEES, AGENTS OR REPRESENTATIVES HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE CONDITION OF THE REAL PROPERTY OR THE PRESENCE OR ABSENCE OF ANY HAZARDOUS MATERIALS ON, IN, UNDER OR WITHIN THE REAL PROPERTY OR A PORTION THEREOF WHICH SURVIVE CLOSING HEREUNDER, EXCEPT SELLER REPRESENTS THAT NO HAZARDOUS MATERIALS WERE BROUGHT UPON THE PREMISES BY SELLER OR THIRD PARTIES DURING THE TIME SELLER OWNED THE PROPERTY. BUYER ACKNOWLEDGES AND AGREES THAT THE REAL PROPERTY IS TO BE CONVEYED, BY SELLER TO BUYER "AS IS," "WITH ALL FAULTS," AND IN ITS CURRENT CONDITION REASONABLE WEAR AND TEAR EXCEPTED. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY CONTAINED HEREIN, NEITHER SELLER NOR ANY AGENT, EMPLOYEE OR OTHER REPRESENTATIVE OF SELLER (OR PURPORTED AGENT, EMPLOYEE OR OTHER REPRESENTATIVE OF SELLER) HAS MADE ANY GUARANTEE, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED (AND SELLER SHALL NOT HAVE ANY LIABILITY WHATSOEVER) AS TO THE VALUE, USES, HABITABILITY, CONDITION, DESIGN, OPERATION, FINANCIAL CONDITION OR PROSPECTS, OR FITNESS FOR PURPOSE OR USE OF THE REAL PROPERTY (OR ANY PART THEREOF) OR ANY OTHER GUARANTEE, REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE REAL PROPERTY (OR ANY PART THEREOF) OR INFORMATION SUPPLIED TO BUYER WITH RESPECT THERETO. FURTHER, EXCEPT AS EXPRESSLY PROVIDED HEREIN, SELLER SHALL HAVE NO LIABILITY FOR ANY LATENT, HIDDEN, OR PATENT DEFECT AS TO THE REAL PROPERTY OR THE FAILURE OF THE REAL PROPERTY, OR ANY PART THEREOF, TO COMPLY WITH ANY APPLICABLE LAWS AND REGULATIONS. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE CLOSING.

**17.18. Buyer's Release of Seller.** Effective as of the Closing, Seller and its members, directors, officers, agents, attorneys and employees are hereby released from all responsibility and liability regarding the condition (including the presence in the soil, air, structures and surface and subsurface waters, of materials or substances that have been or may be in the future determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the property under current or future federal, state and local laws, regulations or guidelines), valuation, salability or utility of the property, or its suitability for any purpose whatsoever. Excluded from this release is the presentation by Seller set forth in paragraph 17.17 above. Buyer acknowledges that information of any type which Buyer

has received or may receive from Seller, its officers, directors, members or their respective agents, including, without limitation, any environmental reports and surveys, is furnished on the express condition that Buyer shall make an independent verification of the accuracy of such information, all such information being furnished without any warranty whatsoever. This Section 17.18 shall survive closing.

SIGNATURE PAGE FOLLOWS

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

Seller:

RHODE ISLAND PUBLIC RADIO, INC.

By: 

Torey Malatia  
President

Buyer:

LATINO PUBLIC RADIO

By: \_\_\_\_\_

Name:

Title:


SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

IN WITNESS WHEREOF, and to evidence their assent to the foregoing, Seller and Buyer have executed this Asset Purchase Agreement as of the date first written above.

Seller:  
RHODE ISLAND PUBLIC RADIO, INC.

By: \_\_\_\_\_  
Torey Malatia  
President

Buyer:  
LATINO PUBLIC RADIO

By:  \_\_\_\_\_  
Pablo Rodriguez, MD  
Chairman