

## ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of 22<sup>nd</sup> day of November, 2019 (the "Effective Date"), by Rowan College at Burlington County, a New Jersey County College formed and operated pursuant to N.J.S.A. 18A:64A-1 et seq. ("Seller" or College") and Radio Sharon Foundation, a Rhode Island non-profit corporation and IRS 501(c)(3) entity ("Buyer").

### RECITALS

- A. Seller Licensee is the owner and operator of the following FM translator (the "Translator") pursuant to license issued by Federal Communications Commission ("FCC"):
  - a. W236AF, Burlington County, New Jersey (Channel 236D FCC Facility ID Number 85965)
- B. Subject to the terms and conditions set forth herein, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller certain assets used in the operation of the Translator.

### AGREEMENT

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenant and agreements set forth herein, the parties, intend to be legally bound, hereby agree as follows:

#### ARTICLE 1: PURCHASE OF TRANSLATOR

- 1.1 **Translator Assets.** Seller agree assign, transfer, convey and deliver to Buyer, and Buyer shall acquire from Seller, all of the right, title, and interest of Seller in and to certain assets, properties, interests and rights of Seller, tangible and intangible, which are used in the operation of the Translator (the "Translator Assets"), as follows:
  - 1.1.1 All licenses, permits, and other authorizations or other governmental authority with respect to the Translator held by Seller
  - 1.1.2 The Transmitter, antenna, transmission line, and certain other tangible personal property of Seller (the "Tangible Personal Property"), specifically listed on the attached **Schedule 1.1.2[to be provided]**.
- 1.2 **Purchase Price.** In consideration for the sale of the Translator to Buyer, Buyer shall pay Seller the total sum of Sixty-Six Thousand Dollars (\$66,000.00) (the "Purchase Price"). The Purchase Price shall be paid as follows:
  - 1.2.1 Within five (5) days after filing execution of this Agreement, Buyer will transmit the sum of Five Thousand Dollars (\$5,000.00) (the "Deposit") to Seller by wire transfer of immediately available funds. The Deposit shall be refundable, and should Seller terminate this agreement the Deposit shall be returned to Buyer. At Closing, Buyer shall receive a credit against the Purchase Price for the amount of the Deposit so delivered to Seller.

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- 1.2.2 On the Closing Date, Buyer shall pay Seller the sum of Twenty Five Thousand Dollars (\$25,000.00) by wire transfer of immediately available funds.
- 1.2.3 Following the Closing Date Buyer shall pay to Seller on the first day of every month beginning on the first day of the month following the Closing Date for a period of sixty (60) months the sum of Six Hundred Dollars (\$600.00) by wire transfer of immediately available funds. At the conclusion of the sixty (60) month term Seller will have paid buyer Thirty-Six Thousand Dollars (\$36,000.00). Buyer may pay the Seller annually the sum of Seven Thousand Two Hundred Dollars (\$7,200.00) due on the second day of January beginning January 2, 2020 for a period of five (5) years. At the conclusion of the five (5) year term Seller will have paid the buyer Thirty-Six Thousand Dollars (\$36,000.00).
- 1.3 **Closing.** The Consummation of the sale and purchase of the Assets (the "Closing") shall take place on the fifth (5<sup>th</sup>) business day after issuance of the FCC Consent has become Final (as defined in section 1.4.3 below). The date on which the Closing is to occur is referred to herein as the "Closing Date".
- 1.4 **Assignment and Modification of Applications**
- 1.4.1 As soon as practicable, but in any event no later than five (5) business days following the execution of this Agreement, Buyer and Seller shall file an application with the FCC requesting FCC consent to the assignment of the FCC Licenses from Seller to Buyer (the "Assignment Application"). The FCC's consent to the assignment of the FCC Licenses contemplated hereby without any material adverse conditions other than those of general applicability is referred to herein as the "FCC Consent." Seller and Buyer shall make commercially reasonable efforts to obtain the FCC Consent. Each party shall promptly provide the other with a copy of any pleading, order or other document served on it relating to such application and shall furnish all information required by the FCC. Seller shall pay the FCC filing fee, if any, required for the Assignment Application.
- 1.4.2 Seller hereby gives its consent to Buyer filing a contingent application with the FCC to make such modifications to the Translator after the Closing as Buyer chooses, at Buyer's sole cost and expense (the "Contingent Modification Application"). For the avoidance of doubt, the grant of the Contingent Modification Application shall not be a condition to Closing hereunder. Notwithstanding the forgoing, Buyer shall not be required to close if grant of the Consent Modification Application is necessary for Buyer's financing. However, if the afore- mentioned modification has not been granted within forty-five days of the date of finality, Buyer's failure to close within five (5) days thereafter shall be considered an event of default.
- 1.4.3 For purposes of this Agreement, the term "Final" means that action shall have been taken by the FCC (including action duly taken by the FCC's staff, pursuant to delegated authority) which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended; with respect to which no timely request for stay, petition for rehearing, appeal or certiorari or sua sponte action of the FCC with comparable effect shall be pending; and as to which the time for filing any such request, petition, appeal, certiorari or for the taking of any such sua sponte action by the FCC shall have expired or otherwise terminated.

ARTICLE 2: **SELLER REPRESENTATIONS AND WARRANTIES** Seller hereby represents and warrants to Buyer as follows:

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2.1 **Organization.** Seller is a New Jersey County College formed pursuant to N.J.S.A.18A:64A-1 et seq. Seller has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

2.2 **Authorization.** The execution, delivery and performance of this Agreement have been duly authorized by Seller and approved by the Seller and does not require any further authorization or consent of Seller. This Agreement is, and will be a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

2.3 **No Conflicts.** The execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby do not conflict with any organizational documents of Seller or any law, judgment, order, or decree to which Seller is subject or require the approval, consent, authorization or act of, or the making by Seller of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.

2.4 **FCC Licenses.** Seller is the holder of the FCC Licenses for the Translator. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. There is not pending any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify the FCC Licenses other than proceedings to amend FCC rules of general applicability. There is no order to show cause, notice of violation, notice of apparent liability or notice of forfeiture or complaint pending or, to Seller's knowledge, threatened against Seller or the Translator by or before the FCC.

2.5 **Other Translator Assets.** Seller has good and marketable title to the Translator Assets, free and clear of Liens. Seller has good and valid title to all Tangible Personal Property listed in **Schedule 1.1.2**, free and clear of all liens and encumbrances. All of the items of Tangible Personal Property are in operating condition, but are being sold to Buyer without any other representation or warranty of condition any kind, and as is including, without limitation, suitability for any intended use by Buyer.

2.6 **Compliance with Law.** Seller has materially complied with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court or of any foreign, federal, state, municipal or other governmental authority which are applicable to the Translator. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Translator.

ARTICLE 3: **BUYER REPRESENTATIONS AND WARRANTIES** Buyer hereby represents and warrants to Seller as follows:

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- 3.1 **Organization.** Buyer is duly organized, validly existing and in good standing under the laws of Rhode Island. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.
- 3.2 **Authorization.** The execution, delivery and performance of this Agreement by Buyer have been duly authorized and approved by all necessary action of Buyer and do not require any further authorization or consent of Buyer. This Agreement is a valid and binding agreement of Buyer enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- 3.3 **No Conflicts.** The execution and delivery by Buyer of this Agreement and the consummation by Buyer of the transactions contemplated hereby does not conflict with any organizational documents of Buyer or any law, judgment, order or decree to which Buyer is subject, or require the approval, consent, authorization or act of, or the making by Buyer of any declaration, filing or registration with, any third party or any governmental authority, except the FCC Consent.
- 3.4 **Qualification.** Buyer is legally, financially and otherwise qualified to acquire, own and operate the subject translator under the Communications Act and the rules, regulations and policies of the FCC.

**ARTICLE 4: COVENANTS** Buyer and Seller hereby further covenant and agree as follows:

- 4.1 **Confidentiality.** Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transactions contemplated by this Agreement.
- 4.2 **Control.** Buyer shall not, directly or indirectly, control the Translator prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, control, supervision and direction of the Translator prior to Closing shall remain the responsibility of Seller as the holder of the Translator.
- 4.3 **Seller Covenants.** Between the date hereof and the Closing Date, Seller shall: (i) maintain in effect the FCC Licenses, and (ii) promptly deliver to Buyer copies of any material reports, applications or written responses to the FCC related to the Translator which are filed during such period.

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**ARTICLE 5: SELLER CLOSING CONDITIONS** The obligation of Seller to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Seller):

- 5.1 **Closing Deliveries.** Buyer shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.2.
- 5.2 **FCC Consent.** The FCC Consent shall have been obtained, and no court or governmental order prohibiting Closing shall be in effect.

**ARTICLE 6: BUYER CLOSING CONDITIONS** The obligation of Buyer to consummate the Closing hereunder is subject to satisfaction, at or prior to Closing, of each of the following conditions (unless waived in writing by Buyer):

- 6.1 **Closing Deliveries.** Seller shall have made, or be ready, willing and able to concurrently make, the Closing deliveries described in Section 7.1.
- 6.2 **FCC Consent.** The FCC Consent shall have been obtained and shall have become Final.
- 6.3 **Lease Agreement.** The sale is expressly conditioned on the Buyer being able to enter into and execute a lease agreement with the Burlington County Bridge Commission for an initial term of sixty (60) months for the operation of the Translator.

**ARTICLE 7: CLOSING DELIVERIES**

- 7.1 **Seller Documents.** At Closing, Seller shall deliver to Buyer an Assignment of Licenses, Bill of Sale, and other instruments of conveyance, assignment and transfer as may be necessary to convey, transfer and assign the Translator Assets to Buyer, free and clear of Liens.
- 7.2 **Buyer Documents.** At Closing, Buyer shall pay the Purchase Price in accordance with Section 1.2 hereof. Buyer shall be solely responsible for any and all expenses in removing the Tangible Personal Property from the current tower location, and the lease at the current tower site is expressly excluded from the sale of the Translator Assets to be conveyed to Seller herein.

**ARTICLE 8: SURVIVAL**

- 8.1 The representations and warranties in this Agreement shall survive Closing for a period of six (6) months from the Closing Date, whereupon they shall expire and be of no further force or effect.

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**ARTICLE 9: MISCELLANEOUS PROVISIONS**

**9.1 Termination.** This Agreement may be terminated prior to Closing as follows:

9.1.1 by mutual written consent of Buyer and Seller;

9.1.2 by written notice of Buyer to Seller if Seller breaches in any material respect its representations or warranties or defaults in any material respect in the performance of its covenants or agreements herein contained and such breach or default is not cured within the Cure Period (defined below);

9.1.3 by written notice of Seller to Buyer if Buyer breaches in any material respect its representations or warranties or defaults in any material respect in the performance of its covenants or agreements herein contained and such breach or default is not cured within the Cure Period; provided, however, that the Cure Period shall not apply to Buyer's obligation to pay the Purchase Price at Closing; and

9.1.4 by either Buyer or Seller, by written notice to the other, if the Closing has not been consummated on or before March 1, 2020.

9.2 The term "Cure Period" as used herein means a period commencing on the date that a party receives from the other party written notice of breach or default hereunder and continuing for twenty (20) days thereafter.

9.3 **Remedies.** The termination of this Agreement shall not relieve any party of any liability for breach or default under this Agreement prior to the date of termination. Upon termination under Section 9.1(c), due to default of the Buyer, this Agreement shall be deemed null and void and Seller shall be entitled to retain the Deposit and to pursue all legal and equitable remedies. If this Agreement could be terminated by Buyer, pursuant to Section 9.1(b) due to the default of Seller, Seller shall return the Deposit to the Buyer, which shall be Buyer's exclusive remedy, this Agreement shall be deemed null and void, and neither party will have any further liability or obligation to the other. Upon termination under Sections 9.1.(a) or 9.1.(d), the Seller shall be entitled to retain the Deposit.

9.4 **Further Assurances.** After Closing, each party shall from time to time, at the request of and without further cost or expense to the other, execute and deliver such other instruments of conveyance and assumption and take such other actions as may reasonably be requested in order to more effectively consummate the transactions contemplated hereby.

9.5 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other party hereto. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

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9.6 **Amendments.** No amendment or waiver of compliance with any provision hereof or consent pursuant to this Agreement shall be effective unless evidenced by an instrument in writing signed by the party against whom enforcement of such amendment, waiver, or consent is sought.

9.7 **Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of New Jersey, without giving effect to the choice of law provisions thereof that might direct the application of the laws of another jurisdiction. Venue for any dispute regarding this Agreement shall be in the Superior Court of New Jersey, Burlington Vicinage, Burlington County.

9.8 **Notices.** Any notice pursuant to this Agreement shall be in writing and shall be deemed delivered on the date of personal delivery or confirmed delivery by a nationally recognized overnight courier service, and shall be addressed as set forth in Schedule 9.7 (or to such other address as any party may request by written notice).

9.9 **Broker's Fees.** Seller is responsible for any brokerage fee due to Clifton Gardiner of Clifton Gardiner & Company.

9.10 **Entire Agreement.** This Agreement, including the schedules hereto, constitutes the entire agreement and understanding among the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof. No party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

9.11 **Counterparts.** This Agreement may be executed in separate counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Seller:

ROWAN COLLEGE AT BURLINGTON COUNTY

BY: 

Dr. Michael A. Cioce  
President

Buyer:

RADIO SHARON FOUNDATION

BY: 

Quilvio N. Perdomo Rodriguez  
President