

A copy of the Asset Purchase Agreement, dated April 19, 2013, between Hudson Valley Community Radio, Inc. and New York Public Radio is attached to this application. The schedules to the Asset Purchase Agreement contain proprietary information that is not germane to the FCC's review of this application, and have been omitted from this filing. Such schedules are listed below and will be provided to the FCC upon request. Consistent with the FCC's memorandum opinion and order in *LUJ, Inc.*, 17 FCC Rcd. 16166 (2002), Section II, Item 3, and Section III, Item 3, of this application have been answered "no."

Schedules

A - Transferred Assets

B - Transition Equipment

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement") is made this 19th day of April, 2013, by and between Hudson Valley Community Radio, Inc., a Delaware nonprofit corporation duly authorized to do business in New York ("HVCR"), and New York Public Radio, a New York nonprofit corporation ("NYPR" and together with HVCR, the "Parties").

WHEREAS, HVCR holds the broadcast license ("Station License") issued by the Federal Communications Commission ("FCC") authorizing the operation of the noncommercial radio station WDFH(FM), 90.3, Ossining, New York (FCC Facility ID #71711) (the "Station"); and

WHEREAS, HVCR desires to assign the Station License and to sell certain related assets to NYPR, and NYPR desires to acquire the Station License (excluding the authorization to use the call letters WDFH, it being understood that NYPR intends to change the call letters) and such related assets from Seller;

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

1. Assets and Liabilities.

- (a) Transferred Assets. At the Closing (defined in Section 3 below), HVCR will transfer, assign and convey to NYPR certain assets used or held for use in the operation of the Station as set forth on Schedule A attached hereto (the "Transferred Assets"). The Transferred Assets will be transferred to NYPR free and clear of all liens, claims and encumbrances.
- (b) Excluded Assets. All assets other than the Transferred Assets will be excluded from the sale and retained by HVCR at the Closing.
- (c) Liabilities. On the Closing Date, NYPR shall assume the obligations of HVCR arising after Closing under the Tower Lease (as defined in Section 4(k)) and the Station License (collectively, the "Assumed Obligations"). Except for the Assumed Obligations, NYPR does not assume, and will not be deemed by execution and delivery of this Agreement or any agreement, instrument or document delivered pursuant to or in connection with this Agreement or otherwise by reason of the consummation of the transactions contemplated hereby, to have assumed, any liabilities, obligations or commitments of HVCR of any kind, whether or not disclosed to NYPR, including, without limitation, any liability or obligation of HVCR under any Station contracts (the "Retained Liabilities").

2. Purchase Price and Prorations.

- (a) Purchase Price. For conveyance of the Transferred Assets in accordance with the terms and conditions set forth herein, NYPR will pay HVCR in cash at Closing a

purchase price of \$400,000.

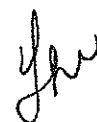
- (b) Prorations. The operation of the Station and operating expenses attributable to the Transferred Assets and the Assumed Obligations, along with revenue related to such operating expenses (other than fundraising revenue, which shall be for the account of the Party to which it is paid, regardless of the date paid) shall be for the account of HVCR until 11:59 p.m. on the date preceding the day of Closing. Thereafter, such operation, revenue and expenses (other than fundraising revenue) with respect to the Transferred Assets and Assumed Obligations shall be for the account of NYPR. Revenue and expenses with respect to the Transferred Assets and Assumed Obligations shall be prorated between HVCR and NYPR as of such time in accordance with generally accepted accounting principles, and the purchase price shall be adjusted accordingly. Such prorations shall include, where applicable to the Transferred Assets and Assumed Obligations, property taxes, license fees, FCC regulatory fees, utility expenses, rent and similar prepaid and deferred items. Prorations and adjustments shall be made at Closing to the extent practicable. As to those prorations and adjustments not capable of being ascertained at Closing, an adjustment and proration shall be made within sixty (60) calendar days after Closing.
- (c) Deposit. Within one business day after execution of this Agreement, NYPR will deposit \$40,000 in escrow, to be held in trust by Nelson Mullins Riley & Scarborough LLP as escrow agent, which amount will be applied against the purchase price at Closing or refundable to NYPR upon termination in accordance with Section 9(a), except in the case of any termination: (1) at the election of NYPR as described in Section 9(a)(ii), in which case \$20,000 of the deposit shall be transferred to HVCR in satisfaction of NYPR's payment obligations under Section 9(a)(ii); or (2) due to NYPR's breach as described in Section 9(a)(iv), in which case the entire deposit shall be paid to HVCR.

3. Closing and FCC Matters.

- (a) Closing. The consummation of the purchase and sale of the Transferred Assets (the "Closing") shall occur within ten (10) business days after the date the FCC consent to the assignment of the Station License to NYPR is granted by initial FCC order, or at NYPR's option, the date the grant becomes Final (defined below), but in no case earlier than June 15, 2013, and subject in any case to the satisfaction or waiver of the conditions to Closing set forth in Section 7 of this Agreement (other than those conditions that by their nature are to be satisfied at the Closing), or at such other time and date as the Parties hereto may mutually agree (such time and date of the Closing, the "Closing Date").
- (b) Upgrade. Within ten (10) business days after the assignment application described in Section 3(c) has been filed, NYPR shall file with the FCC, in NYPR's name and at NYPR's expense, pursuant to Section 73.3517(a) of the

FCC's rules, an application to modify the facilities of the Station, in a manner that will provide for transmission parameters with a maximum effective radiated power of 250 watts, with no change in class, channel or transmitter site location, utilizing a directional antenna system (the "Upgrade"). HVCR shall upon NYPR's request provide its written consent to such application which consent may be filed with the FCC. Grant of NYPR's FCC application for a construction permit for the Upgrade (in a final order) is a condition to NYPR's obligation to close under this Agreement. NYPR shall diligently prosecute the Upgrade application before the FCC, taking all reasonable steps to facilitate prompt grant of the application, and shall keep HVCR fully informed with respect to the status of the Upgrade application.

- (c) FCC Assignment Application. Within ten (10) business days of the execution of this Agreement, HVCR and NYPR shall file an application requesting FCC consent to the assignment of the Station License from HVCR to NYPR. HVCR and NYPR shall diligently prosecute such application.
- (d) Efforts. Each Party promptly shall provide the other with a copy of any pleading, order or other document served on it relating to any such FCC applications and shall furnish all information required by the FCC. Each Party promptly shall notify and provide a copy to the other of all documents filed with or received from any governmental agency with respect to this Agreement or the transactions contemplated hereby. Each Party promptly shall notify the other of all communications to or from any governmental agency with respect to this Agreement or the transactions contemplated hereby and, upon request, shall provide a summary of such communication. HVCR and NYPR shall furnish each other with such information and assistance as the other may reasonably request in connection with their preparation of any governmental filing hereunder.
- (e) Main Studio. HVCR acknowledges that as part of the FCC Assignment application (or through a separate filing simultaneous with the filing of the Assignment application) NYPR will request a waiver of the FCC's "main studio" rule with respect to the Station, to be effective at Closing (the "Main Studio Waiver"). Such request will be made at NYPR's expense, and NYPR shall diligently prosecute the waiver request, taking all reasonable steps to facilitate its prompt grant by the FCC. HVCR hereby consents to the filing and prosecution of such main studio waiver request.
- (f) Call Sign. The Parties acknowledge that prior to Closing, NYPR shall request new call letters for the Station, to become effective upon Closing. The Parties shall make and prosecute any such request for a change in call letters at the FCC, and NYPR shall implement such call letter change upon Closing unless HVCR agrees to implement the call letter change at an earlier time.



- (g) Finality. As used herein, the term "Final" shall mean 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.
4. Representations and Warranties of HVCR. HVCR represents and warrants as of the date of execution of this Agreement and as of the Closing Date:
- (a) Organization and Authorization. HVCR is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. HVCR has all requisite power and authority required to conduct its business as presently conducted, to own and operate the Station and to execute, deliver and perform this Agreement.
- (b) Non-Contravention; Approvals. This Agreement is a legal, valid and binding agreement of HVCR enforceable in accordance with its terms and has been duly authorized and approved by all necessary action of HVCR. The execution and delivery by HVCR of this Agreement, and the consummation and performance by HVCR of the transactions contemplated hereby (i) do not violate any applicable laws of any governmental authority having jurisdiction over the Transferred Assets, (ii) do not result in the creation or imposition of any lien on any part of the Transferred Assets, and (iii) do not otherwise require any governmental approvals or any third party consents (other than such approvals and consents as are described herein).
- (c) Liens. HVCR holds the Station License and owns the other Transferred Assets free and clear of liens, claims and encumbrances, and at Closing will assign the Station License and transfer title to the other Transferred Assets to NYPR free and clear of liens, claims and encumbrances.
- (d) Accuracy of Diligence Materials. To the best of HVCR's knowledge, all materials presented to NYPR with respect to the Transferred Assets are true, correct, and complete in all material respects, and fairly present the information they purport to present.
- (e) Absence of Certain Changes or Events. Except as has been disclosed to NYPR in writing, or with respect to any actions contemplated to be taken hereunder or in connection herewith, since May 1, 2012 there has not been: (i) any change, occurrence, development, event or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (defined in Section 7 below); (ii) any creation or assumption by

HVCR of any lien on any Transferred Asset; (iii) any damage, destruction or other casualty loss (whether or not covered by insurance) materially affecting the Transferred Assets; or (iv) any disposition of any of the Transferred Assets.

- (f) No Actions. There is no action, suit or proceeding pending nor, to the knowledge of HVCR, threatened against HVCR or the Station by any governmental authority.
- (g) Contracts. NYPR has been furnished true and complete copies of all existing contracts of HVCR with respect to the Transferred Assets, including without limitation the Tower Lease. All such contracts are valid, binding upon HVCR and to HVCR's knowledge the other parties thereto, in full force and effect, HVCR is not in default under any such contracts, and to HVCR's knowledge no other party to any of such contracts is in default thereunder.
- (h) Broker. Except for Patrick Communications, whose fees and expenses shall be paid by HVCR, no broker, finder or other person is entitled to a commission, brokerage fee or other similar payment in connection with the transactions contemplated by this Agreement as a result of any agreement or action of HVCR or any party acting on HVCR's behalf. Payment of any broker engaged by HVCR shall be at HVCR's sole cost and expense.
- (i) FCC. HVCR holds the Station License, which, to the best of HVCR's knowledge, is the only FCC authorization required under the Communications Act of 1934, as amended (the "Communications Act"), or the rules, regulations and policies of the FCC for the present operation of the Station. The Station License is in full force and effect and has not been revoked, suspended, canceled, rescinded or terminated and has not expired. There is not pending or, to HVCR's knowledge, threatened any action by or before the FCC to revoke, suspend, cancel, rescind or modify the Station License (other than proceedings relating to FCC rules of general applicability), and there is no order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint pending or, to HVCR's knowledge, threatened against HVCR or the Station by or before the FCC. To the best of HVCR's knowledge: (i) HVCR and the Station are in compliance with the Station License, the Communications Act and the rules, regulations and policies of the FCC; (ii) the Station is operating at full power in accordance with its FCC-licensed parameters; (iii) HVCR is in compliance in all material respects with all rules and regulations of the Federal Aviation Administration applicable to the Station; (iv) all reports and filings required to be filed with, and all regulatory fees required to be paid to, the FCC by HVCR with respect to the Station (including without limitation all required equal employment opportunity reports) have been timely filed and paid, and all such reports and filings are accurate and complete; (v) HVCR maintains public files for the Station as required by FCC rules; and (vi) the operation of the Station does not expose workers or others to levels of radio frequency radiation in excess of the "Radio Frequency Protection Guides" recommended in "American National Standard Safety Levels with Respect to

Human Exposure to Radio Frequency Electromagnetic Fields 3 kHz to 300 GHz" (ANSI/IEEE C95.1-1992), issued by the American National Standards Institute, and renewal of the Station License would not constitute a "major action" within the meaning of Section 1.1301, *et seq.*, of the FCC's rules.

- (j) Equipment. To the best of HVCR's knowledge, each item of Station equipment included in the Transferred Assets is in good operating condition and repair (ordinary wear and tear excepted), is free from material defect or damage, is functioning in the manner and purposes for which it was intended and has been maintained in accordance with industry standards. HVCR maintains reasonable and customary insurance policies with respect to the Station.
- (k) Tower Lease. HVCR has provided a true, complete and correct copy of the agreement between HVCR and American Tower pursuant to which HVCR leases space for the Station on the tower operated by American Tower ("Tower Lease"). To the best of HVCR's knowledge: (i) no part of the real property subject to the Tower Lease is subject to any pending or threatened suit for condemnation or other taking by any public authority; and (ii) no rights or permission must be obtained in order to fully access the Station's ground-based transmission facilities and related interconnection systems in conformity with past practice, other than the rights and permissions set forth in the Tower Lease. HVCR has performed its obligations that have come due under the Tower Lease.
- (l) Environmental. To the best of HVCR's knowledge, HVCR has complied and is in compliance with all environmental, health and safety laws applicable to the Transferred Assets or the Station. HVCR has not received in respect of such Transferred Assets or the Station any notice or claim to the effect that it is or may be liable under any environmental, health or safety law. To HVCR's knowledge, neither such Transferred Assets nor the Station is the subject of any investigation by any governmental authority with respect to a violation of any environmental, health or safety law.
- (m) Compliance with Law. To the best of HVCR's knowledge, it has complied and is in compliance with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court regarding operation of the Transferred Assets.

5. Representations and Warranties of NYPR. NYPR represents and warrants as of the date of execution of this Agreement and as of the Closing Date:

- (a) Organization and Authorization. NYPR is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. NYPR has all requisite power and authority required to conduct its business as presently conducted and to execute, deliver and perform this Agreement.

- (b) Non-Contravention; Approvals. This Agreement is a legal, valid and binding agreement of NYPR enforceable in accordance with its terms and has been duly authorized and approved by all necessary action of NYPR. The execution and delivery by NYPR of this Agreement, and the consummation and performance by NYPR of the transactions contemplated hereby (i) do not violate any applicable laws of any governmental authority having jurisdiction over NYPR, and (ii) do not otherwise require any governmental approvals or any third party consents (other than such approvals and consents as are described herein).
- (c) Qualification. Subject to receipt of the Main Studio Waiver, NYPR is qualified to hold the Station License under the Communications Act and the rules, regulations and policies of the FCC as they exist on the date of this Agreement.

6. Covenants.

- (a) Efforts. Each of the Parties shall use commercially reasonable efforts to take all action and promptly to do all things necessary, proper or advisable to cause the conditions set forth in Section 7 to be satisfied and to consummate and make effective the purchase and sale under the terms described herein. Without limiting the foregoing, NYPR's failure to agree to commercially reasonable amendments to the Tower Lease (including but not limited to a reasonable increase in the monthly rental fees) required by the lessor in return for granting the consents described in Section 7(a)(vii) or (viii) as conditions to closing shall not be deemed to be a failure of such closing conditions.
- (b) Station Operations. From the date hereof until the Closing, except as expressly contemplated by this Agreement, HVCR shall: preserve the Transferred Assets; operate the Transferred Assets in accordance with past practice and the terms of the Station License and in compliance with the Communications Act, FCC rules, regulations and policies and all other applicable laws, rules and regulations; maintain the Station License in full force and effect; keep all Transferred Assets in good operating condition (ordinary wear and tear excepted) and repair and maintain adequate and usual supplies, spare parts and other materials as have been customarily maintained in the past; and maintain in effect its current insurance policies with respect to the Station and its assets. In addition, from the date hereof until the Closing, except as expressly contemplated by this Agreement, HVCR shall not, without the prior written consent of NYPR: sell, lease or dispose of any Transferred Assets, except for non-material dispositions in the ordinary course of business which are replaced by assets of comparable or superior kind, condition and value; create, assume or permit to exist any liens on the Transferred Assets; dissolve, liquidate, merge or consolidate with any other entity; enter into any employment, labor or union agreement or plan (or amendments of any such existing agreements or plan) that will be binding upon NYPR after Closing; modify the Station License; amend or terminate the Tower Lease; or enter into any contract, lease or agreement with respect to the Station that will be binding on NYPR after Closing.

- (c) Access. While this Agreement is in effect, HVCR will give NYPR and its authorized representatives reasonable physical access at reasonable times to the Transferred Assets and the Station's transmission facilities and related interconnection systems, and will provide NYPR with such non-financial, technical operating information regarding the Station as may be reasonably requested.
- (d) Notice. During the period from the date of this Agreement to the Closing, each Party shall give prompt written notice to the other Party of (i) any fact, event or circumstance that, to the knowledge of the notifying Party would cause, or reasonably be expected to cause, the failure of any of the conditions described in Section 7 to be satisfied or (ii) any fact, event or circumstance that to the knowledge of the notifying Party would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect (as defined in Section 7).
- (e) Confidentiality. The terms of this Agreement, the Parties' discussions regarding the transactions contemplated hereby, and the contents of any due diligence materials provided by HVCR are confidential. Except as required by law, no Party shall publicly announce or otherwise disclose to any other person or entity such confidential information without the prior written consent of the other party. Prior to Closing, no Party shall, without the prior written consent of the other, issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except as necessary to enforce rights under or in connection with this Agreement.
- (f) Exclusivity. While this Agreement is in effect, HVCR shall not (and will ensure that its principals shall not) directly or indirectly, through any representative or otherwise, solicit, discuss, negotiate or accept any offer from any third party relating to the sale of the Transferred Assets, whether through direct purchase, merger, consolidation or other business combination.
- (g) Control. Consistent with FCC rules, control, supervision and direction of the operation of the Station prior to Closing shall remain the responsibility of HVCR as the holder of the Station License.
- (h) Risk of Loss. The risk of loss of or damage to any of the Transferred Assets shall remain with HVCR at all times until 12:00 a.m. local time on the day of Closing, and prior to Closing HVCR shall repair and replace any such lost or damaged Transferred Assets.
- (i) Broadcast Interruption. If prior to Closing the Station is off the air or operating at a power level that results in a material reduction in coverage (a "Broadcast Interruption"), then HVCR shall return the Station to the air and restore prior

coverage as promptly as possible. Notwithstanding anything herein to the contrary, if there is a Broadcast Interruption in excess of 24 hours during the seven day period immediately prior to Closing, then NYPR may postpone Closing until the date five (5) business days after the Station returns to the air and prior coverage is restored in all material respects, subject to Section 9(a).

- (j) Transition Equipment. As of the Closing Date, HVCR will provide NYPR access to and use of certain equipment currently being used by HVCR to operate the Station, as specifically set forth in Schedule B (the "Transition Equipment,") for up to one year after the Closing Date (the "Transition Period"), subject to the following provisions: (i) HVCR shall provide the Transition Equipment in "as-is" condition on the Closing Date; (ii) during the Transition Period, NYPR shall bear the cost of any repairs or maintenance needed to keep the Transition Equipment in at least as good condition (taking into account reasonable wear and tear) as it was on the Closing Date and shall maintain reasonable and customary insurance sufficient to cover the Transition Equipment; (iii) in the event that any application by HVCR for another broadcast authorization is granted, and HVCR reasonably determines that any of the Transition Equipment is needed for the newly authorized facility, NYPR shall cease using the identified Transition Equipment upon forty-five (45) days written notice from HVCR and HVCR shall remove the Transition Equipment that is the subject of the notice; and (iv) in the event that HVCR receives a bona fide offer to purchase all or any part of the Transition Equipment, HVCR shall promptly provide written notice, containing the material terms of such offer, to NYPR and NYPR shall have forty-five (45) days from its receipt of such notice to purchase the equipment that is the subject of the existing offer at the price set forth in the offer, and if NYPR declines to do so, HVCR shall have the right to remove the equipment and sell it to the offering party. If, at any point during the Transition Period, NYPR determines that it no longer needs to use the Transition Equipment, it shall provide prompt written notice to HVCR and HVCR shall remove the Transition Equipment within thirty (30) days of receiving such notice. To the extent any repair or maintenance is required to enable NYPR's use of the Transition Equipment as of the Closing Date, and/or to restore the Transition Equipment to at least the same condition (taking into account reasonable wear and tear) at the conclusion of the Transition Period that it was in at Closing, NYPR shall be solely responsible for such repair and maintenance.

7. Conditions to Closing and Closing Deliveries.

- (a) NYPR Conditions. The obligation of NYPR to consummate the Closing shall be subject to the satisfaction, at or prior to the Closing, of all of the following conditions, unless waived by NYPR: (i) all representations and warranties of HVCR set forth herein are true and correct at the time of Closing; (ii) HVCR has performed and complied in all material respects with all covenants required to be performed prior to Closing and all other agreements required to be performed by HVCR at or prior to Closing under this Agreement; (iii) since the date of this

Agreement, there has not been any change, occurrence or event with respect to the Transferred Assets that has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect (defined below); (iv) NYPR has obtained grant of the Upgrade application (in an order which has become Final); (v) the FCC consent to the assignment of the Station License to NYPR has been granted and shall have become Final; (vi) the Main Studio Waiver shall have been granted; (vii) the Tower Lease shall have been assigned to NYPR and the consent of the lessor, if required, shall have been obtained; (viii) consent of the lessor under the Tower Lease shall have been granted to NYPR permitting the installation of a generator and a locked gate or similar barrier effective for separating and securing the leased area in the transmitter site, provided, however, that NYPR's failure to agree to commercially reasonable amendments to the Tower Lease (including but not limited to a reasonable increase in the monthly rental fees) required by the lessor in return for granting this consent or the consent required in (vii) above shall not be deemed to be a failure of such closing conditions; (ix) neither HVCR nor NYPR is subject to any court or governmental order or injunction restraining or prohibiting consummation of the transactions contemplated hereby; and (x) HVCR has made the deliveries to be made by it at Closing as described in Section 7(c).

For purposes of this Agreement, "Material Adverse Effect" means any change, effect, circumstance, state of facts, or occurrences that have had or may reasonably be expected to have a material and adverse effect on the Transferred Assets, taken as a whole, other than any such change, effect, circumstance, state of facts, or occurrences resulting from: (i) the announcement of the purchase and sale, and performance of the obligations in this Agreement, (ii) any change in United States or global financial market conditions (including changes in interest rates), except to the extent the Transferred Assets are disproportionately affected by such condition compared to similar assets of other radio stations in the same market, or (iii) earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof.

- (b) HVCR Conditions. The obligation of HVCR to consummate the Closing shall be subject to the satisfaction, at or prior to the Closing, of all the following conditions, unless waived by HVCR: (i) all representations and warranties of NYPR set forth herein are true and correct at the time of Closing; (ii) NYPR has performed and complied in all material respects with all covenants required to be performed at or prior to Closing and all other agreements required to be performed by NYPR prior to closing under this Agreement; (iii) the FCC consent to the assignment of the Station License to NYPR has been granted; (iv) neither HVCR nor NYPR is subject to any court or governmental order or injunction restraining or prohibiting consummation of the transactions contemplated hereby; and (v)



NYPR has made the deliveries to be made by it at Closing as described in Section 7(d).

- (c) HVCR Closing Deliveries. At Closing, HVCR shall deliver or cause to be delivered to NYPR the following: a good standing certificate issued by HVCR's jurisdiction of formation; resolutions of HVCR duly authorizing the transactions contemplated by this Agreement; a certificate executed by HVCR that the conditions set forth in Section 7(a)(i) and (ii) have been satisfied; an assignment assigning the Station License to NYPR; an assignment and assumption assigning the Tower Lease to NYPR; a bill of sale conveying all Transferred Assets to NYPR; a customary estoppel certificate signed by the lessor under the Tower Lease; and any other documents and instruments of conveyance, assignment and transfer that may be reasonably necessary to convey, transfer and assign the Transferred Assets to NYPR, free and clear of liens, claims and encumbrances.
- (d) NYPR Closing Deliveries. At Closing, NYPR shall deliver or cause to be delivered to HVCR the following: a good standing certificate issued by NYPR's jurisdiction of formation; resolutions of NYPR duly authorizing the transactions contemplated by this Agreement; a certificate executed by NYPR that the conditions set forth in Section 7(b)(i) and (ii) have been satisfied; the purchase price in accordance with the terms of this Agreement; an assignment and assumption assuming the obligations arising after Closing under the Tower Lease; and any other documents and instruments of assumption that may be reasonably necessary to assume the Assumed Obligations.

8. Survival and Indemnification.

- (a) Survival of Representations and Covenants. The representations and warranties in this Agreement shall expire and be of no further force or effect upon Closing or termination of this Agreement in accordance with Section 9, except: (i) those under Section 4(l) relating to environmental matters, which shall survive until the expiration of any applicable statute of limitations; (ii) those set forth in Section 6(j), which shall survive for up to 12 months, and those set forth in Sections 4(a), (b), and (c), 5(a) and (b), and those with respect to title to the Transferred Assets, which shall survive Closing for a period of twenty-four (24) months; and (iii) that if within such applicable period the indemnified party gives the indemnifying party written notice of a claim for breach thereof describing in reasonable detail the nature and basis of such claim, then such claim shall survive until the resolution of such claim.
- (b) Indemnification.
 - (i) From and after Closing, HVCR shall defend, indemnify and hold harmless NYPR from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("Damages").

incurred by NYPR arising out of or resulting from: (A) any breach by HVCR of its representations and warranties to the extent they survive Closing under this Agreement; (B) any default by HVCR of its covenants and agreements to the extent they survive Closing under this Agreement; (C) the Retained Liabilities; or (D) the business or operation of the Station prior to Closing (including any third party claim arising from such operations).

(ii) From and after Closing, NYPR shall defend, indemnify and hold harmless HVCR from and against any and all Damages incurred by HVCR arising out of or resulting from: (A) any breach by NYPR of its representations and warranties to the extent they survive Closing under this Agreement; (B) any default by NYPR of its covenants and agreements to the extent they survive Closing under this Agreement; (C) the Assumed Obligations; or (D) the business or operation of the Station after Closing (including any third party claim arising from such operations).

- (c) Indemnification Procedures. The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by a third party that is subject to indemnification hereunder (a "Claim"), but a failure to give such notice or delaying such notice shall not affect the indemnified party's rights or the indemnifying party's obligations, except to the extent the indemnifying party's ability to remedy, contest, defend or settle with respect to such Claim is thereby prejudiced. The indemnifying party shall have the right to undertake the defense or opposition to such Claim. In the event that the indemnifying party does not undertake such defense or opposition in a timely manner, the indemnified party may undertake the defense, opposition, compromise or settlement of such Claim with counsel selected by it at the indemnifying party's cost. Notwithstanding anything herein to the contrary: (i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of any Claim, and shall have the right to consult with the indemnifying party and its counsel concerning any Claim, and the indemnifying party and the indemnified party shall cooperate in good faith with respect to any Claim; and (ii) the indemnifying party shall not, without the indemnified party's written consent, settle or compromise any Claim or consent to entry of any judgment which does not include a release of the indemnified party from all liability in respect of such Claim.

9. Termination, Survival.

- (a) Termination. This Agreement may be terminated prior to the Closing as follows: (i) at the election of either Party by written notice to the other Party if the Closing shall not have occurred on or before the date that is one year from the date of this Agreement; (ii) at the election of NYPR by written notice and payment of \$20,000 to HVCR if the FCC denies NYPR's application for the Upgrade or grants the Upgrade application with specifications not reasonably satisfactory to NYPR; (iii)

by written notice of a Party to the other Party if the FCC denies the FCC assignment application for the Station License; or (iv) by written notice of a Party (the "Notifying Party") to the other Party (the "Notified Party") if the Notified Party does not perform the obligations to be performed by it under this Agreement at Closing, or if such Party otherwise breaches in any material respect any of its representations or warranties or defaults in any material respect in the performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within thirty (30) days after the date of written notice of breach or default to the breaching Party.

- (b) Survival on Termination. If this Agreement is terminated in accordance with Section 9(a) and the Closing not consummated, this Agreement shall become void and of no further force and effect and each party shall pay all of its costs and expenses in accordance with this Agreement, except that Section 2(c), Section 6(e), this Section 9(b), and Section 10 shall survive termination. Termination of this Agreement shall not relieve a Party of any liability for breach or default under this Agreement prior to the date of termination.
- (c) Specific Performance. In the event of a breach or threatened breach by HVCR of any representation, warranty, covenant or agreement under this Agreement, at NYPR's election, in addition to any other remedy available to it, NYPR shall be entitled to an injunction restraining any such breach or threatened breach and to enforcement of this Agreement by a decree of specific performance requiring HVCR to fulfill its obligations under this Agreement, in each case without the necessity of showing economic loss or other actual damage and without any bond or other security being required.

10. Miscellaneous.

- (a) Expenses. Each of the Parties will bear its own expenses in connection herewith, including without limitation in connection with the preparation, negotiation, execution and performance of this Agreement, except that NYPR will pay any fee imposed by American Tower in connection its assignment of the Tower Lease to NYPR. In addition, on the 91st day after the filing of the Assignment application, NYPR will pay HVCR \$10,000, and for each 30 day period that elapses thereafter, NYPR will pay HVCR, on the next business day following the end of the 30 day period, an additional \$10,000 until the earliest of: (i) the Closing; (ii) the date that a denial of the Upgrade application has been received from the FCC and this Agreement is terminated; or (iii) the date that this Agreement is otherwise terminated in accordance with the provisions of Section 9. In the event that grant of the Upgrade becomes final prior to grant of the Assignment application, NYPR's obligation to make such monthly payments shall: (a) cease on the date that the grant of the Upgrade application becomes final, unless NYPR's request for a main studio waiver is the reason that the FCC has not yet granted the Assignment application as of the date the grant of the Upgrade application

becomes final; and (b) resume in accordance with the terms of this Agreement upon the 31st day following grant of the Assignment application in the event that Closing has not occurred due to NYPR's failure to (i) agree to commercially reasonable amendments to the Tower Lease (including but not limited to a reasonable increase in the monthly rental fees) required by the lessor in return for the consents described in Section 7(a)(vii) or (viii), or (ii) obtain the main studio waiver referenced in Section 7(a)(vi).

- (b) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of laws.
- (c) Binding Effect; Persons Benefiting; Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement is intended or shall be construed to confer upon any third party any right, remedy or claim under or by reason of this Agreement or any part hereof, other than the Parties hereto and their respective successors and permitted assigns. Without the prior written consent of the other Party, this Agreement may not be assigned by either Party and any purported assignment made without such consent shall be null and void. No assignment shall relieve a Party of any obligations under this Agreement.
- (d) Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall comprise a single Agreement.
- (e) Entire Agreement. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings, written or oral, between the Parties with respect to such subject matter.
- (f) Severability. If any provision of this Agreement is held by any court or governmental authority to be invalid or unenforceable under applicable law, then so long as no Party is deprived of the benefits of this Agreement in any material respect, (a) a substitute and equitable provision shall be substituted therefor in order to carry out the intent and purpose of the invalid or unenforceable provision and (b) the remainder of this Agreement shall not be affected by such invalidity or unenforceability.
- (g) Amendments and Waivers. This Agreement may not be amended, altered or modified except by written instrument executed by each of the Parties. The failure by either Party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision nor in any way to affect the validity of this Agreement or any part hereof or the right of such Party thereafter to enforce each and every such provision. No waiver of any breach of or



non-compliance with this Agreement shall be held to be a waiver of any other or subsequent breach or non-compliance. Any waiver made by any Party in connection with this Agreement shall not be valid unless agreed to in writing by such Party.

- (h) Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand, or by a nationally recognized overnight courier service, addressed as follows (or to such other address as a Party may designate by written notice to the other), with an email copy to the addresses provided below:

If to NYPR:

New York Public Radio
160 Varick Street
New York, NY 10013
Attention: Ivan Zimmerman, General Counsel
(Email: legal@nypublicradio.org)

If to HVCR:

Hudson Valley Community Radio, Inc.
21 Brookside Lane,
Dobbs Ferry, NY 10522
Attention: Marc Sophos, Chair, Board of Directors
(Email: marc.sophos@wdfh.org)

EXECUTION VERSION

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

NEW YORK PUBLIC RADIO

By: 

Laura Walker
President & CEO

HUDSON VALLEY COMMUNITY RADIO, INC.

By: _____

Marc Sophos
Chair

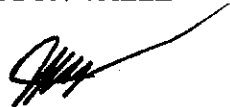
EXECUTION VERSION

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

NEW YORK PUBLIC RADIO

By: _____
Laura Walker
President & CEO

HUDSON VALLEY COMMUNITY RADIO, INC.

By:  _____
Marc Sophos
Chair