

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of November 14, 2014, by and between **HE'S ALIVE INCORPORATED**, a Maryland non-profit corporation ("Seller"), and **BROADCAST COMMUNICATIONS, INC.**, a Pennsylvania for profit corporation ("BCI") and **BROADCAST EDUCATIONAL COMMUNICATIONS, INC.**, a Pennsylvania non-profit corporation ("BECI") (together, the "Buyers").

### RECITALS

**WHEREAS**, Seller owns and operates FM broadcast stations WRIJ(FM), Masontown, Pennsylvania (FCC Facility ID No. 26522) and WKJL, Clarksburg, West Virginia (FCC Facility ID No. 26526) (the "Stations"), pursuant to certain authorizations issued by the Federal Communications Commission (the "FCC"); and

**WHEREAS**, Seller desires to sell Station WRIJ and BCI desires to purchase Station WRIJ and substantially all assets used and useful in the operation of Station WRIJ on the terms and subject to the conditions set forth herein; and

**WHEREAS**, Seller desires to sell Station WKJL and BECI desires to purchase Station WKJL and substantially all assets used and useful in the operation of Station WKJL on the terms and subject to the conditions set forth herein; and

**WHEREAS**, in order to induce Buyers to enter into this Agreement, Seller is willing to make certain representations and warranties to, and covenants and agreements with, Buyers; and in order to induce Seller to enter into this Agreement, Buyers are willing to make certain representations and warranties to, and covenants and agreements with, Seller, all as reflected in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

### ARTICLE 1 PURCHASE AND SALE OF ASSETS

**1.1** Assignment and Acquisition of Assets. On the terms and subject to the conditions hereof on the Closing Date (as hereinafter defined), Seller shall sell, assign, transfer, convey and deliver to Buyers, and Buyers shall purchase and assume from Seller, all of the right, title and interest of Seller in and to all of the assets, properties, interests and rights of Seller of whatsoever kind and nature, real and personal, tangible and intangible, which are used in the operation of the Stations (collectively, the "Assets"), including those assets used in the operation of Station WRIJ (the "WRIJ Assets") and those assets used in the operation of Station WKJL (the "WKJL Assets"). The Assets include, without limitation, the following:

1.1.1 all licenses, permits and other authorizations which are held by or issued to Seller by the FCC with respect to the Stations (the "FCC Licenses"), including those described on *Schedule 1.1.1* attached hereto, and including any renewals or modifications thereof between the date hereof and the Closing Date;

1.1.2 all equipment, electrical devices, antennas, cables, tools, hardware, fixtures, towers, inventory, spare parts and other tangible personal property of every kind and description which are used, useful or held for use in connection with the business or operation of the Stations, including all items specifically listed and described on *Schedule 1.1.2*, attached hereto, together with any additions, replacements or improvements thereto between the date of this Agreement and the Closing Date less any retirements made in the ordinary and usual course of business in connection with the acquisition of similar property or Assets (the "Tangible Personal Property");

1.1.3 all leasehold interests in property, buildings, structures, towers and improvements, including all easements, rights of way, permits and consents, if any, relating to or used in connection therewith, leased by Seller as of the date of this Agreement, used in the business or operation of the Stations, as set forth and described in *Schedule 1.1.3* attached hereto (the "Leased Property"). Written consents to the assignment of the Leased Property shall be provided by Seller;

1.1.4 those contracts, leases, and agreements of Seller that are used in the ordinary course of business and operation of the Stations that Buyers have reviewed and specifically agreed to assume, as set forth and described in *Schedule 1.1.4* attached hereto (the "Station Contracts"). Written consents to the assignment of the Station Contracts shall be provided by Seller if required by the terms of the instrument assumed or by law;

1.1.5 all of Seller's rights in and to the Stations' call letters and Seller's rights in and to the trademarks, goodwill attached to the Stations and all trade names, service marks, franchises, copyrights, websites, domain names, programs and programming material, jingles, slogans, logos, and other intangible property which are used exclusively in the operation of the Stations, as listed on *Schedule 1.1.5* attached hereto (the "Intangible Property");

1.1.6 all interests of Seller in all programs and programming materials and elements of whatever form or nature used or held for use in the operation of the Stations, whether recorded on tape or any other substance or intended for live performance, and whether completed or in production, and all related common-law and statutory copyrights used or held for use exclusively in the operation of the Stations;

1.1.7 Seller's rights in and to all the files, documents, records, and books of account (or copies thereof) relating to the operation of the Stations, including the Stations' local public files, programming information and studies, blueprints, technical information and engineering data, advertising studies, marketing and demographic data and logs; and

1.1.8 all claims (including warranty claims) and Seller's goodwill in, and the going concern value of, the Stations.

**1.2**            No Liens. The Assets shall be transferred to Buyers free and clear of liens, claims and encumbrances (“Liens”) except for the following (collectively, “Permitted Liens”): (i) the obligations of Seller in conjunction with the Assets arising or to be performed during the period after the Closing Date under the Station Contracts specifically listed on *Schedule 1.1.4* (collectively, the “Assumed Obligations”), (ii) liens for taxes not yet due and payable, and (iii) liens or encumbrances on the Assets that will be discharged on or before the Closing Date. Except for the Assumed Obligations, Buyers do 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 Seller of any kind, whether or not disclosed to Buyers, and all such liabilities and obligations of Seller shall be the sole responsibility of Seller before and after the Closing Date.

**1.3**            Excluded Items. Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the transaction involving the assignment of the Assets shall not include the following: any assets or licenses owned or held by the Seller relating to stations or enterprises other than the Stations, all Station Contracts which have terminated or expired prior to the Closing Date in the ordinary course of business, Seller’s cash, cash equivalents, contracts of insurance, insurance proceeds, refunds or claims, claims for tax refunds, company seal, minute books, charter documents, ownership record books and such other books and records as pertain to the organization or existence of Seller and duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports as well as any other records or materials relating to Seller generally and not involving or relating to the Assets.

## **ARTICLE 2**

### **CONSIDERATION**

**2.1**            Purchase Price. The aggregate amount to be paid to Seller for the Assets (the “Purchase Price”) shall be Three Hundred Seventy-Five Thousand Dollars (\$375,000.00). Buyers and Seller hereby agree that the Purchase Price shall be allocated so that BCI shall be deemed to purchase WRIJ for Three Hundred Fifty Thousand Dollars (\$350,000.00) and BECI shall be deemed to purchase WKJL for Twenty-Five Thousand Dollars (\$25,000.00). The Purchase Price shall be delivered to Seller as follows:

(a) Within three (3) business days of the execution of this Agreement, Buyers shall place in escrow an earnest money deposit of Nineteen Thousand Dollars (\$19,000.00) (the “Escrow Deposit”) pursuant to an Escrow Agreement of even date herewith by and among, Buyers, Seller and Fletcher, Heald & Hildreth, PLC as “Escrow Agent”. On the Closing Date, the parties shall instruct the Escrow Agent to pay the Deposit to Seller by wire transfer of immediately available funds pursuant to wire instructions that Buyers and Seller shall provide in writing at least two (2) business days prior to the Closing Date. Such payment will be credited against the Purchase Price with all interest earned on the Escrow Deposit released to Buyers.

(b) At Closing, the balance of the Purchase Price, as adjusted pursuant to Section 2.2 below, shall be paid to Seller by Buyers in cash by certified check payable to Seller or by wire transfer of immediately available funds. Seller shall provide wire instructions in writing to Buyer at least two (2) business days prior to the Closing Date.

**2.2 Prorations and Adjustments.** All prepaid and deferred income and expenses relating to the Assets and arising from the conduct of the business and operations of the Stations shall be prorated between Buyers and Seller in accordance with generally accepted accounting principles as of 11:59 p.m. on the date immediately preceding the Closing Date. Such prorations shall include, without limitation, utility charges, business and license fees, music and other license fees currently paid by Seller and similar prepaid and deferred items attributable to the ownership of the Stations or the Assets. Revenues, expenses, taxes, costs and liabilities earned or incurred in connection with particular programs and announcements shall be allocated to the time of performance of such programs and announcements without regard to the date of payment therefor. Prorations and adjustments shall be made no later than sixty (60) calendar days after Closing.

**2.3 Allocation.** Within ninety (90) days after Closing Date, the parties agree to allocate the Purchase Price in accordance with the requirements of the Internal Revenue Code. In the event that the parties are unable to reach such an agreement, they will select a qualified independent, and nationally recognized appraiser of broadcast properties and that firm's decision shall be binding upon the parties and the fees and expenses shall be borne equally by Buyers and Seller. The parties also agree to use such Purchase Price allocation for income tax purposes.

### **ARTICLE 3**

#### **CLOSING**

**3.1 Closing.** Subject to satisfaction or waiver of the conditions to Closing contained herein (other than those to be satisfied at Closing), the consummation of the sale, assignment, transfer, conveyance and delivery of the Assets to Buyers (the "Closing") shall take place on a date designated by Buyers at least five (5) days before such Closing is to occur, which date shall be no later than five (5) business days after the grant of the FCC Consent (as defined below) has become Final. "Final" means an order (i) which is effective, (ii) with respect to which no appeal, request for stay, request for reconsideration or other request for review is pending, (iii) with respect to which the time for appeal, requesting a stay, requesting reconsideration or requesting other review has expired, and (iv) which cannot be set aside *sua sponte*. The date the Closing occurs shall be referred to herein as the "Closing Date." Buyers may elect an earlier Closing Date by providing Seller with five (5) business days' written notice of such date any time after the FCC Consent. However, Buyers must close concurrently on their purchase of the Stations. The Closing shall be accomplished by electronic mail, U.S. Mail, facsimile, wire, and courier or at such place and in such manner as the parties hereto may agree.

## **ARTICLE 4**

### **GOVERNMENTAL CONSENTS**

**4.1        FCC Consent.** It is specifically understood and agreed by Buyers and Seller that the assignment of the FCC Licenses is expressly conditioned on and is subject to the prior consent and approval of the FCC, including the Media Bureau pursuant to delegated authority, without the imposition of any conditions materially adverse to Seller or Buyers with respect to the assignment of the FCC Licenses from Seller to Buyers (the “FCC Consent”).

**4.2        FCC Application.** Buyers and Seller agree to file applications with the FCC for the FCC Consent (the “FCC Applications”) within five (5) business days of the date of execution of this Agreement. Buyers and Seller shall prosecute the FCC Applications with all reasonable diligence and otherwise use their commercially reasonable efforts to (a) obtain the FCC Consent as expeditiously as practicable (but neither Buyers nor Seller shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect upon Buyers or Seller) and (b) obtain any necessary extensions of the FCC Consent until the Closing Date. If the FCC Consent imposes any condition on Buyers or Seller, such party shall use its commercially reasonable efforts to comply with such condition; provided, however, that neither Buyers nor Seller shall be required hereunder to comply with any condition that would have a material adverse effect upon it. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit any party’s right to terminate this Agreement pursuant to ARTICLE 15.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF BUYERS**

Buyers hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in ARTICLE 14.

**5.1        Organization and Standing.** BCI is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. BECI is a non-profit Pennsylvania corporation, in formation, which will, at Closing, be duly organized, validly existing and in good standing under the laws of the Commonwealth of Pennsylvania, and will be qualified to do business in the State of West Virginia.

**5.2        Authorization and Binding Obligation.** Buyers either have or at Closing will have all necessary power and authority required for a corporation to enter into and perform this Agreement and the transactions contemplated hereby, to hold the Assets and to carry on the business of the Stations upon the consummation of the transactions contemplated by this Agreement. Buyers’ execution, delivery and performance of this Agreement and the transactions contemplated hereby have been or will have been duly and validly authorized by all necessary action on its part. Assuming the due authorization, execution and delivery of this Agreement by Seller, this Agreement does and will constitute the valid and binding obligation of Buyers, enforceable against them in accordance with its terms, except as limited by laws affecting creditors' rights.

**5.3            Qualification.** To the best of Buyers' knowledge, there are no facts which, under the Communications Act of 1934, as amended to date, or the existing rules and regulations of the FCC, would disqualify Buyers as assignees of the FCC Licenses.

**5.4            Absence of Conflicting Agreements or Required Consents.** Except as set forth in ARTICLE 4 with respect to governmental consents, the execution, delivery and performance of this Agreement by Buyers: (a) do and/or will not conflict with the provisions of the articles of incorporation or by-laws (or other organization documents) of Buyers; (b) do not require the consent of any third party which has not already been obtained by Buyers; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Buyers are bound; and (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement, instrument, license or permit to which Buyers are now subject.

**5.5            Litigation.** There is no claim, litigation, proceeding or investigation pending or, to the best of Buyers' knowledge, threatened against Buyers, that could have a material adverse effect on Buyers' ability to perform their obligations pursuant to this Agreement. Buyers are not in violation of any law, regulation, or ordinance or any other requirement of any governmental body or court which could have a material adverse effect on Buyers' ability to perform its obligations pursuant to this Agreement.

**5.6            Commissions or Finder's Fees.** Neither Buyers nor any person or entity acting on behalf of Buyers or either of them has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller makes the following representations and warranties to Buyers, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in ARTICLE 14:

**6.1            Organization and Standing.** Seller is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Maryland, is qualified to do business in the State of West Virginia and the Commonwealth of Pennsylvania, and has the power and authority to hold the Assets and to carry on the business of the Stations.

**6.2            Authorization and Binding Obligation.** Seller has all necessary power and authority required for a corporation to enter into and perform this Agreement and the transactions contemplated hereby. Seller's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been duly and validly authorized by all necessary action on its part. Assuming the due authorization, execution and delivery of this Agreement by Buyers, this Agreement constitutes the valid and binding obligation of Seller,

enforceable against it in accordance with its terms, except as limited by laws affecting creditors' rights.

**6.3            Absence of Conflicting Agreements or Required Consents.**

Except as set forth in ARTICLE 4 with respect to governmental consents, the execution, delivery and performance of this Agreement by Seller: (a) do not conflict with the provisions of the articles of incorporation or by-laws (or other organization documents) of Seller; (b) will not require the consent of any third party which has not already been obtained or will be obtained prior to Closing by Seller and provided to Buyers at Closing; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Seller is bound; and (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under, any agreement, instrument, license or permit to which Seller is now subject.

**6.4            FCC Licenses.** Seller is the authorized legal holder of the FCC Licenses. 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 any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability), and there is not now issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture against Seller with respect to the Stations. The Stations are operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC.

**6.5            Personal Property.** *Schedule 1.1.2* contains a list of all material items of Tangible Personal Property included in the WRIJ Assets and the WKJL Assets. Seller (i) is the lawful owner of all of the Tangible Personal Property it purports to own, (ii) has valid leasehold interests in the Tangible Personal Property it purports to lease, and (iii) has valid license rights (whether as a licensor or licensee) in the Tangible Personal Property it purports to license, in all cases free and clear of any Liens except Permitted Liens. All Tangible Personal Property set forth on *Schedule 1.1.2* is of a type, kind and/or design in material accordance with standard industry practice, is in good operating condition and repair, reasonable wear and tear excepted, and has been maintained and is currently operating in material accordance with good engineering practice, industry standards and any standards or guidelines imposed by the FCC. Except as set forth in *Schedule 1.1.2*, the existing towers used in the operation of the Stations are obstruction-marked and lighted to the extent required by, and in accordance with, the rules and regulations of the FCC and the FAA.

**6.6            Leased Property.**

6.6.1 *Schedule 1.1.3* contains a description of all Leased Property and leases ("Leases") to which Seller is, with respect to the Stations, a party as a tenant (or subtenant) as of the date of this Agreement. The Leases are valid, binding and enforceable in accordance with their terms. Neither Seller nor any other party to any of the Leases is in default under any of the Leases and no condition or event exists which with the giving of notice, passage



of time, or both would give rise to any such default, except, in the case of Leases as to which Seller is the lessee, for immaterial defaults, if any, which would not permit (with the giving of notice or the passage of time, or both) the other party to terminate any such Leases or any of Seller's rights thereunder or to accelerate or increase the rents or other sums payable thereunder. There are no offsets or defenses by Seller, or to Seller's knowledge, any other party under any of the Leases. The assignment to Buyers of any Lease to which Seller is a party as tenant will not permit the landlord to accelerate the rent, cause the Lease terms to be renegotiated or constitute a default under the Lease. There are no amendments or changes to any of the Leases which would affect the full use and enjoyment of the leasehold premises, access, parking and use of common areas as provided in the Leases. All improvements, roads, parking facilities and other construction, if any, provided for in the Leases are suitable for the uses provided for in the Leases.

6.6.2 The buildings, towers, guys and other fixtures situated on the Leased Property are free of structural defects, are suitable for their intended uses, are in a good state of maintenance and repair (ordinary wear and tear excepted), are contained entirely within the bounds of the Leased Property, and do not encroach upon any other property except in cases where valid easements (that are included in the Assets) have been obtained. There is, to Seller's knowledge, no pending or threatened condemnation or similar proceeding affecting the Leased Property or any portion hereof.

6.6.3 Except as disclosed in *Schedule 1.1.3.* and *Schedule 1.1.4.*, there are no leases, rental agreements, employment contracts, concession contracts, or contracts for service or maintenance existing and relating to or connected with the occupancy or operation of the Leased Property, and the Seller covenants to hold Buyers harmless from any claim, demand or cause of action which may be asserted against Buyers arising from any lease, rental agreement, employment contract, or contract for service or maintenance to the contrary.

6.6.4 All necessary utilities (including, without limitation, electricity and telephone facilities) are available to the Leased Property and there exists no threatened limitation or reduction on the quality or quantity, to the knowledge of Seller, of utility services to be furnished to such Leased Property.

6.6.5 There are no notices of violations of law or ordinances, orders or requirements noted in or issued by any department of the State of, or any local governmental agency or authority, affecting the Leased Property.

**6.7            Contracts.** *Schedule 1.1.4* contains a list of all Station Contracts relating to the Assets which Seller is a party to or bound by, or which are used in the ordinary course of the business and operation of the Stations and which Buyers specifically have agreed to assume. Seller has delivered to Buyers true and complete copies of all Station Contracts. Each of the Station Contracts is in effect and is binding upon Seller and the other parties thereto (subject to bankruptcy, insolvency, reorganization or other similar laws relating to or affecting the enforcement of creditors' rights generally). Seller has performed its obligations under each of the Station Contracts in all material respects, is not in material default thereunder, and, to Seller's knowledge, no other party to any of the Station Contracts is in default thereunder in any material respect.



**6.8                    Environmental Matters.**

(a) For the purposes of this Agreement, the following terms shall have the following meanings:

“Environmental Claim” means any claim, action, cause of action, investigation, or notice (whether written or oral) by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or civil or criminal penalties arising out of or resulting from (i) the actual or alleged presence or release into the environment of any Substance of Concern (as the terms are hereinafter defined) at any location, whether or not owned or operated by Seller, used in connection with the operation of the Assets or (ii) circumstances forming the basis for any actual or alleged violation of the Environmental Laws.

“Environmental Laws” mean all federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, ground water, wetlands, land surface, subsurface strata and indoor and outdoor workplace), including (i) laws and regulations relating to emissions, discharges, releases or threatened releases of Substances of Concern or the importation, manufacture, processing, formulation, testing, distribution, use, treatment, storage, disposal, transport or handling of Substances of Concern and (ii) common law principles of tort liability.

“Substances of Concern” means chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, radioactive materials, genetically modified organisms, petroleum and petroleum products.

(b) With respect to the Tangible Personal Property and Leased Property, Seller has not received any communications (written or oral), whether from a governmental authority, citizens group, employee or otherwise, that alleges that Seller is not in full compliance with the Environmental Laws, and, to Seller’s knowledge, there are no circumstances that may prevent or interfere with such full compliance in the future.

(c) With respect to the Assets, there is no Environmental Claim pending or, to the best of Seller’s knowledge, threatened against Seller.

(d) With respect to the Assets, to the best of Seller’s knowledge, there are no past or present actions or activities, circumstances, conditions, events or incidents (including, without limitation, the release, emission, discharge, presence or disposal of any Substance of Concern) that could form the basis of any Environmental Claim against Seller or the Assets.

**6.9            Intangible Property.** *Schedule 1.1.5* contains a description of the Intangible Property included in the Assets. Seller has received no notice of any claim that its use of the Intangible Property infringes upon any third party rights. Seller (i) is the lawful owner of all of the Intangible Personal Property it purports to own, (ii) has valid license rights (whether as a licensor or licensee) in the Intangible Personal Property it purports to license, in all cases free and clear of any Liens except Permitted Liens.

**6.10            Litigation.** There is no claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller, that could have a material adverse effect on Seller's ability to perform its obligations pursuant to this Agreement. Seller is not in violation of any law, regulation, or ordinance or any other requirement of any governmental body or court which could have a material adverse effect on Seller's ability to perform its obligations pursuant to this Agreement.

**6.11            Compliance With Laws.** Seller has complied in all material respects 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 operation of the Stations. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Stations that will subject Buyers to liability or which questions the legality or propriety of the transactions contemplated by this Agreement. To Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Stations (except those affecting the industry generally).

**6.12            Taxes.** Seller has, in respect of the Stations' business, filed all foreign, federal, state, county and local income, excise, property, sales, use, franchise and other tax returns and reports which are required to have been filed by it under applicable law and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments which have become payable, except for instances that are not material to Seller or the Stations.

**6.13            Commissions or Finder's Fees.** Neither Seller nor any person or entity acting on behalf of Seller has agreed to pay a commission, brokerage fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity other than Calvary Technical Management ("CTM") and Robert H. Branch, Jr. Seller shall be solely responsible for all fees to CTM and Robert H. Branch, Jr. arising from this transaction, which shall be paid by Seller at Closing pursuant to a separate agreement, which shall not be binding on Buyers.

**6.14            Instruments of Conveyance; Good Title.** The instruments to be executed by Seller and delivered to Buyers at the Closing, conveying the Assets to Buyers, will transfer all of Seller's right, title and interest in and to the WRIJ Assets and the WKJL Assets to Buyers.

**6.15            Undisclosed Liabilities.** To Seller's knowledge no liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, relating to Seller or the Stations exists which could, after the Closing, result in any form of transferee liability against

Buyers or subject the Assets to any Liens or otherwise affect the full, free and unencumbered use of the Assets by Buyers.

## **ARTICLE 7**

### **COVENANTS OF BUYER**

**7.1            Closing.** Subject to ARTICLE 10, on the Closing Date, Buyers shall purchase the Assets from Seller as provided in ARTICLE 1.

**7.2            Notification.** Buyers shall provide Seller prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in ARTICLE 5 of which either of them becomes aware; and (b) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Buyers which challenges the transactions contemplated hereby.

**7.3            No Inconsistent Action.** Buyers shall not take any action which: (a) is materially inconsistent with or which breaches their obligations under this Agreement; or (b) would cause any representation or warranty of Buyers contained herein to be or become false or invalid.

## **ARTICLE 8**

### **COVENANTS OF SELLER**

**8.1            Closing.** Subject to ARTICLE 11, on the Closing Date, Seller shall sell to Buyers the Assets as provided in ARTICLE 1.

**8.2            Notification.** Seller shall provide Buyers prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in ARTICLE 6 of which it becomes aware; and (b) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Seller which challenges the transactions contemplated hereby.

**8.3            No Inconsistent Action.** Seller shall not take any action which: (a) is materially inconsistent with or which breaches its obligations under this Agreement; or (b) would cause any representation or warranty of Seller contained herein to be or become false or invalid.

**8.4            Exclusivity.** Seller agrees that, commencing on the date hereof through the Closing or earlier termination of this Agreement, Buyers shall have the exclusive right to consummate the transactions contemplated herein, and during such exclusive period, Seller agrees that neither Seller nor any officer, director, employee, broker or other representative or agent of Seller will: (a) initiate, solicit or encourage, directly or indirectly, any inquiries, or the making or implementation of any proposal or offer with respect to an acquisition or any purchase of the Assets (any such inquiry, proposal or offer being hereinafter referred to as an "Acquisition Proposal" and any such transaction being hereinafter referred to as an "Acquisition"); (b) engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any person relating to an Acquisition Proposal, or otherwise facilitate any effort or attempt to make or implement an Acquisition Proposal; or (c) continue any existing activities, discussions or negotiations with any parties

conducted heretofore with respect to any Acquisition Proposal or Acquisition and will take the necessary steps to inform the individuals or entities referred to above of the obligations undertaken by it in this Section 8.4.

**8.5            Third-Party Consents to Assignment.** All Station Leasees which are assigned from Seller to Buyers shall be consented to prior to Closing by the lessors to the Leases on a commercially reasonable basis. Seller will use its reasonable best efforts to obtain such consents prior to Closing. To the extent that any Station Contract may or may not be assigned without the consent of any third party, and such consent is not obtained prior to Closing, this Agreement and any assignment executed pursuant to this Agreement shall not constitute an assignment thereof; provided, however, with respect to each such contract, the parties shall cooperate to the extent feasible in effecting a lawful and commercially reasonable arrangement under which acquiring party shall receive the benefits thereunder from and after Closing, and, to the extent of the benefits received, the acquiring party shall pay and perform the conveying party's obligations arising thereunder from and after Closing in accordance with its terms. Seller shall, at least ten (10) days prior to Closing, furnish to Buyers estoppel letters from lessors specifying, rental rates, advanced rent and security deposits paid by Seller, the current status of rental payments by Seller, and certifying a true and correct copy of the lease and all amendments thereto ("Estoppel Letters"). If Seller is unable to obtain such Estoppel Letters, the same information shall be furnished by Seller to Buyers within that time period in the form of Seller's affidavits and Buyers may thereafter contact lessors to confirm such information.

**8.6            Seller's Consent to File Application.** Seller agrees that this Section 8.6 constitutes written consent of Seller pursuant to Section 73.3517(a) of the FCC's rules for BCI, at its sole cost and expense, to file, on FCC Form 302-FM, an application for modification of station license to convert WRIJ from a non-commercial station to a commercial station (the "Modification Application"). Commission grant of the Modification Application shall be a condition for BCI to close under this Agreement.

**8.7            Secured Interest Reports.** Seller will obtain and deliver to Buyers all UCC, judgment, and state and federal tax lien search reports, showing searches in the name of Seller and the call letters of the Stations necessary to assure that no security interests are filed or recorded against the Assets in the public records of States of Pennsylvania and West Virginia or any other jurisdiction where the Assets are located (the "Secured Interest Reports"). The Secured Interest Reports shall be delivered within ten (10) days prior to the Closing Date. The cost of obtaining the Secured Interest Reports shall be split equally by Seller and Buyers.

## **ARTICLE 9**

### **JOINT COVENANTS**

Buyers and Seller hereby covenant and agree that between the date hereof and the Closing Date it shall act in accordance with the following:

**9.1            Cooperation.** Subject to express limitations contained elsewhere herein, Buyers and Seller agree to cooperate fully with one another in taking any reasonable actions (including without limitation, reasonable actions to obtain the required consent of any governmental instrumentality or any third party) necessary or helpful to accomplish the

transactions contemplated by this Agreement, including but not limited to the satisfaction of any condition to closing set forth herein; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to ARTICLE 15.

**9.2                    Control of FCC Licenses.** Buyers shall not, directly or indirectly, control, supervise or direct the operations of the Seller or assume any control of the FCC Licenses or the Stations prior to the Closing. Such operations, including complete control and supervision of the FCC Licenses and the Stations shall be the sole responsibility of Seller.

**9.3                    Announcements.** No party shall, without the prior written consent of the others, issue any press release or make any other public announcement or public filing 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 the other parties advance notice and a reasonable opportunity to review any press release, other announcement or public filing to be made, except as necessary to enforce rights under or in connection with this Agreement.

## **ARTICLE 10**

### **CONDITIONS OF CLOSING BY BUYERS**

The obligations of Buyers hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### **10.1                    Representations, Warranties and Covenants.**

10.1.1 All representations and warranties of Seller made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

10.1.2 All the terms, covenants and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

10.1.3 Buyers shall have received a certificate, dated as of the Closing Date, executed by an officer of Seller, to the effect that: (a) the representations and warranties of Seller contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that Seller has complied with and performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

**10.2                    Governmental Consents.** The FCC Consent shall have been obtained and shall have become Final, provided that the requirement that the FCC Consent shall have become Final may be waived by Buyers or by either Buyer as to that Station which it is purchasing.

**10.3            Third Party Consents.** For any Leases which are to be assigned to Buyers at Closing, Seller shall have obtained consents from the lessors to the Leases to assign the Leases to Buyers and shall have delivered the third-party consents to Buyers.

**10.4            Governmental Authorizations.** Seller shall be the holder of the FCC Licenses and there shall not have been any modification of the FCC Licenses which has a material adverse effect on the FCC Licenses. No proceeding shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, suspend or adversely modify the FCC Licenses.

**10.5            WRIJ Modification.** The FCC shall have granted the Modification Application to convert WRIJ from a non-commercial to a commercial station conditioned only on consummation of the sale of WRIJ from Seller to BCI.

**10.6            Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no other decree or judgment of any court, agency or other governmental authority shall have been rendered (and remain in effect) against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**10.7            Liens Released.** Seller shall have delivered or caused to have been delivered to Buyers the Secured Interest Reports, which shall show no judgements or Liens, other than Permitted Liens.

**10.8            Revised Schedules.** Seller shall have delivered to Buyers such revised forms of each of the Schedules or updated information for addition to or inclusion in the Schedules as are necessary to reflect changes in such Schedules as of the Closing Date; *provided, however*, that, except for changes that are permitted by the terms of this Agreement, no change in any Schedule will be binding on Buyers without its prior written consent, which consent may not be unreasonably withheld by Buyers.

**10.9            Closing Documents.** Seller shall have delivered or caused to be delivered to Buyers, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 13.1.

## **ARTICLE 11**

### **CONDITIONS OF CLOSING BY SELLER**

The obligations of Seller hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

#### **11.1            Representations, Warranties and Covenants.**

11.1.1 All representations and warranties of Buyers made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

11.1.2 All the terms, covenants and conditions to be complied with and performed by Buyers on or prior to the Closing Date shall have been complied with or performed in all material respects.

11.1.3 Seller shall have received certificates, dated as of the Closing Date, executed by an officer of BCI and an officer of BECI, to the effect that: (a) the representations and warranties of BCI and BECI contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that BCI and BECI have complied with and performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

**11.2      Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending against, and no other decree or judgment of any court, agency or other governmental authority shall have been rendered (and remain in effect) against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

**11.3      Closing Documents and Payment.** Buyers shall have delivered or caused to be delivered to Seller, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 13.2, and Buyers shall have paid Seller the Purchase Price, as contemplated by ARTICLE 2.

## **ARTICLE 12**

### **TRANSFER TAXES; FEES AND EXPENSES**

**12.1      Expenses.** Except as set forth in Section 12.2 and 12.3 or otherwise expressly set forth in this Agreement, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of and compliance with the terms of this Agreement including, but not limited to the costs and expenses incurred pursuant to ARTICLE 4 and the fees and disbursements of counsel and other advisors.

**12.2      Transfer Taxes and Similar Charges.** All costs of transferring the Assets in accordance with this Agreement, including transfer taxes and fees and any excise, sales or use taxes, shall be paid one-half by Buyers and one-half by Seller.

**12.3      Governmental Filing or Grant Fees.** Any filing or grant fees imposed by any governmental authority the consent of which or the filing with which is required for the consummation of the transactions contemplated hereby shall be paid one half by Seller and one half by Buyers; however, Buyers shall be solely responsible for payment of any FCC filing fee for any FCC application.

## **ARTICLE 13**

### **DOCUMENTS TO BE DELIVERED AT CLOSING**

**13.1      Seller's Documents.** At the Closing, Seller shall deliver or cause to be delivered to Buyers the following:



13.1.1 Certified resolutions of Seller approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby;

13.1.2 A certificate of the Seller dated the Closing Date, in the form described in Section 10.1.3;

13.1.3 Such bills of sale, assignments (including third-party consents) and other good and sufficient instruments of sale, conveyance, transfer and assignment, in form and substance satisfactory to Buyers and Buyers' counsel, as shall be effective to vest in Buyers all of Seller's right, title and interest in the Assets, free, clear and unencumbered.

13.1.4 Such third-party consents to assign any Lease and Station Contract.

13.1.5 Such additional information, materials, agreements, documents and instruments as Buyers and their counsel may reasonably request in order to consummate the Closing.

**13.2            Buyers' Documents.** At the Closing, Buyers shall deliver or cause to be delivered to Seller the following:

13.2.1 Certified resolutions of each of the Buyers approving the execution and delivery of this Agreement and authorizing the consummation of the transactions contemplated hereby;

13.2.2 A certificate of BCI and a certificate of BECI, dated the Closing Date, in the form described in Section 11.1.3.

13.2.3 The Purchase Price as described in Section 2.1.

13.2.4 Such additional information, materials, agreement, documents and instruments as Seller and its counsel may reasonably request in order to consummate the Closing.

## **ARTICLE 14**

### **SURVIVAL; INDEMNIFICATION; RISK OF LOSS**

**14.1            Survival of Representations, Etc.** All representations and warranties contained in this Agreement, or in any Exhibit, Schedule, certificate, agreement or statement delivered pursuant hereto, shall survive for twelve (12) months after the Closing Date, *provided, however*, that representations and warranties contained herein, or in any Exhibit, Schedule, certificate, agreement or statement delivered pursuant hereto, with respect income tax, or employee matters shall survive until the later of (a) three (3) months after the expiration of the statutes of limitations applicable to such matters; or (b) for any action or claim filed prior to such expiration date, upon the finality of the disposition of such action or claim, whereupon all such representations, warranties, and indemnities with respect thereto, shall expire and terminate and shall be of no further force or effect. One party's knowledge of a false representation or a breach of warranty on the part of the other at the time of Closing shall not be deemed to constitute a waiver of such representation or warranty. If a Deficiency is asserted by either party, before the expiration of

the survival or limitations period, such asserted Deficiency shall survive until the existence of such Deficiency has been finally established and the Deficiency is resolved as provided below.

## **14.2           Basic Provision.**

14.2.1 Buyers Indemnitees. Seller (an “Indemnifying Party”) hereby agrees to indemnify and hold harmless Buyers, their officers, directors and shareholders (collectively, the “Buyers Indemnitees”) from, against and in respect of, and to reimburse the Buyers Indemnitees for the amount of any and all Deficiencies.

14.2.2 Seller Indemnitees. Buyers (an “Indemnifying Party”), hereby agrees to indemnify and hold harmless Seller and its officers, directors, and shareholders (collectively, the “Seller Indemnitees”) from, against and in respect of, and to reimburse Seller Indemnitees for the amount of any and all Deficiencies.

## **14.3           Definition of “Deficiencies”.**

14.3.1 Deficiencies for Buyers. As used in this Article 14, the term “Deficiencies” when asserted by the Buyers Indemnitees or arising out of a third party claim against the Buyers Indemnitees shall mean any and all losses, fines, damages, liabilities and claims sustained by the Buyers Indemnitees and arising out of, related to, in the nature of, caused by, based on or resulting from:

- (i) Any misrepresentation, breach of warranty or any non-fulfillment of any representation, warranty, covenant, obligation or agreement on the part of Seller contained in or made in this Agreement or in an Exhibit, Schedule, certificate, agreement or statement delivered pursuant to this Agreement;
- (ii) Any failure by Seller to pay or discharge any liability of Seller and the Seller Indemnitees, direct or contingent, that is not expressly assumed by Buyer pursuant to the provisions of this Agreement;
- (iii) Any litigation, proceeding or claim by any third party to the extent relating to the businesses or operations of Seller, the Assets or the Stations before the Closing Date;
- (iv) Any payment required to be paid by Seller with respect to any consultant of Seller;
- (v) Except for obligations or liabilities expressly assumed by Buyers herein, Seller’s operation of the Stations or the ownership of the Assets before the Closing Date (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement or under this Agreement before the Closing Date);
- (vi) Except for obligations or liabilities expressly assumed by Buyers herein, any transaction entered into by Seller or arising in connection with the Station or the operation of its business or any of the Assets before the Closing Date; or
- (vii) Any and all acts, suits, proceedings, demands, assessments and judgments and all reasonable fees, costs and expenses of any kind, related or

incident to any of the foregoing (including, without limitation, any and all reasonable fees, whether of attorneys, accountants or other professionals, costs and expenses of any kind reasonably incurred by any party identified herein and its counsel in investigating, preparing for, defending against, or providing evidence, producing documents or taking other action with respect to any threatened or asserted claim (“Legal Expenses”)).

14.3.2 Deficiencies for Seller. As used in this Article 14, the term “Deficiencies” when asserted by the Seller Indemnitees or arising out of a third party claim against the Seller Indemnitees shall mean any and all losses, damages, liabilities and claims sustained by the Seller Indemnitees and arising out of, related to, in the nature of, caused by, based on or resulting from:

- (i) Any misrepresentation, breach of warranty or any non-fulfillment of any representation, warranty, covenant, obligation or agreement on the part of Buyers contained in or made in this Agreement or in an Exhibit, Schedule, certificate, statement or agreement delivered pursuant to this Agreement;
- (ii) Any failure by Buyers to pay or discharge any liability arising after the Closing Date for any of the Assumed Obligations;
- (iii) Any litigation, proceeding or claim by any third party to the extent relating to the business or operations of Buyers, the Assets or the Stations after the Closing Date;
- (iv) Buyers’ operation of the Stations or the ownership of the Assets after the Closing Date (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Buyers under any lease, contract, or agreement or under this Agreement after the Closing Date);
- (v) Any transaction entered into by Buyers or arising in connection with the Stations or the operation of its business or any of the Assets after the Closing Date; or
- (vi) Any and all acts, suits, proceedings, demands, assessments and judgments and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all reasonable Legal Expenses).

#### 14.4 Procedures for Establishment of Deficiencies.

14.4.1 Claim Asserted. In the event that any claim shall be asserted by any third party against the Buyers Indemnitees or the Seller Indemnitees (the Buyers Indemnitees or the Seller Indemnitees, as the case may be, hereinafter, the “Indemnitees”), which, if sustained, would result in a Deficiency, then the Indemnitees, promptly and in all events within fifteen (15) business days after learning of such claim, shall notify the Indemnifying Party of such claim and Indemnitees shall permit the Indemnifying Party to defend against such claim, at the Indemnifying Party's sole expense and through legal counsel reasonably acceptable to the Indemnitees, provided that the Indemnifying Party proceeds in good faith, expeditiously and diligently. The Indemnitees shall, at their option and expense, have the right to participate in any defense undertaken by the Indemnifying Party with legal counsel of their own selection and at

their expense. The parties will cooperate fully in any such action and shall make available to each other any books or records useful for the defense of such claim. No settlement or compromise of any claim which may result in a Deficiency may be made by the Indemnifying Party without the prior written consent of the Indemnitees unless: (a) before such settlement or compromise, the Indemnifying Party acknowledges in writing its obligation to pay in full the amount of the settlement or compromise and all associated expenses and (b) the Indemnitees are furnished with security reasonably satisfactory to the Indemnitees that the Indemnifying Party will in fact pay such amount and expenses or the Indemnifying Party obtains a release of the Indemnitees from all liability in respect of such claim.

14.4.2 Notice. In the event that the Indemnitees assert the existence of any Deficiency against the Indemnifying Party, such Indemnitees shall give written notice to the Indemnifying Party of the nature and amount of the Deficiency asserted. If the Indemnifying Party within a period of thirty (30) days after the giving of the Indemnitees' notice, shall not give written notice to the Indemnitees announcing its intent to contest such assertion of the Indemnitees (such notice by the Indemnifying Party being hereinafter referred to as the "Contest Notice"), such assertion of the Indemnitees shall be deemed accepted and the amount of the Deficiency shall be deemed established. In the event, however, that a Contest Notice is given to the Indemnitees within such 30-day period, then the contested assertion of a Deficiency shall be resolved through binding arbitration.

14.4.3 Agreement. The Indemnitees and the Indemnifying Party may agree in writing, at any time, as to the existence and amount of a Deficiency, and, on the execution of such agreement such Deficiency shall be deemed established.

**14.5 Payment of Deficiencies.** The Indemnifying Party hereby agrees to pay the amount of established Deficiencies within thirty (30) days after the establishment thereof ("Due Date"). The amount of established Deficiencies shall be paid in cash. Any amounts not paid by the Indemnifying Party when due under this Section shall bear interest from and after the Due Date thereof until the date paid at a rate equal to the lesser of: (a) ten (10) percent per annum and (b) the highest legal rate permitted by applicable law. At the option of the Indemnitees, the Indemnitees may offset any Deficiency or any portion thereof that has not been paid by the Indemnifying Party to the Indemnitees against any obligation any of the Indemnitees may have to the Indemnifying Party arising out of a Deficiency established pursuant to Article 14.

**14.6 Continuing Corporate Existence of Seller.** For a period of three (3) years following the Closing Date, Seller (or its successor entity or entities) shall use its best efforts to maintain its corporate existence and financial viability to satisfy Deficiencies in order to further support Seller's indemnification obligations hereunder.

**14.7 Limitations.** Notwithstanding the foregoing, no claim or claims that in the aggregate do not equal or exceed Ten Thousand Dollars (\$10,000) (the "Threshold") shall be considered a Deficiency or Deficiencies under this Article; provided, that once any claim or claims exceed the Threshold, the indemnified party shall be entitled to first dollar coverage.

**14.8 Risk of Loss.** Seller shall bear all risk of loss in connection with the Stations prior to the Closing Date. Should the Stations, or any of the Assets which are material to the operation of the Stations, be substantially damaged or destroyed and such Assets are not repaired or replaced prior to the Closing Date, Buyers, at their sole option, or a Buyer, at its sole option, may either (a) terminate this Agreement or (b) close the transactions provided for in this Agreement upon an agreement between Buyers or Buyer and Seller with respect to a set-off or credit against the Purchase Price for such damaged or destroyed Assets, to include an assignment of any insurance proceeds due to Seller as a result of such damage or destruction.

## **ARTICLE 15**

### **TERMINATION RIGHTS**

**15.1 Termination.** This Agreement may be terminated at any time prior to Closing as follows:

15.1.1 Upon the mutual written agreement of Buyers and Seller, this Agreement may be terminated on such terms and conditions as so agreed; or

15.1.2 By written notice by BCI and/or BECI to Seller if Seller breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within ten (10) business days of the date of notice of breach or default served by BCI and/or BECI; or

15.1.3 By written notice of Seller to BCI and/or BECI if BCI and/or BECI breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within ten (10) business days of the date of notice of breach or default served by Seller; provided, however, the notice and cure provisions provided in this paragraph do not apply to a default by Buyers in payment of the Purchase Price.

15.1.4 By written notice of Seller to Buyers, or by written notice of Buyers to Seller, if the FCC by staff action or action by the full FCC dismisses or denies the FCC Application and such dismissal or denial becomes final or if the FCC by staff action or action by the full FCC designates for hearing the FCC Application and the party providing notice is not materially responsible for the denial, dismissal or designation of the Application.

15.1.5 By written notice of Seller to Buyers, or by written notice of Buyers to Seller, if any court of competent jurisdiction shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; or

15.1.6 By fifteen (15) days prior written notice of Seller to Buyers, or by Buyers to Seller, if the Closing shall not have been consummated on or by the date that corresponds to the first anniversary of the execution date of this Agreement, and the party providing notice is not materially responsible for the delay in Closing.

15.1.7 By written notice of Buyers or BCI or BECI to Seller pursuant to Section 14.8.

Notwithstanding the foregoing, no party hereto may effect a termination hereof if such party is in material default or breach of this Agreement. The Escrow Deposit and all accrued interest will be returned to Buyer in the event of termination of this Agreement by Buyers under Sections 15.1.1, 15.1.4, 15.1.5, 15.1.6 or 15.1.7, or under Section 15.1.2 if Buyer does not seek specific performance under Section 15.2.

**15.2 Monetary Damages, Specific Performance and Other Remedies.**

The parties recognize that if Seller refuses to perform under the provisions of this Agreement or Seller otherwise breaches such that the Closing has not occurred, monetary damages alone will not be adequate to compensate Buyers for their injury. BCI and/or BECI (provided it or they are not at such time in material breach hereof), at it and their election, shall be entitled to obtain specific performance of the terms of this Agreement in lieu of Buyers' right to recover damages or to pursue any other remedies available for breach. If any action is brought by Buyers to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law. In the event Buyers fail or refuse to perform under the provisions of this Agreement or otherwise breach this Agreement such that Closing does not occur, Seller's sole and exclusive remedy shall be the right to claim and keep the entire amount of the Escrow Deposit as liquidated damages. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm that would be caused by such a breach and failure to close under the terms of this Agreement. The parties further acknowledge and agree that, in such case, the amount of actual loss caused by breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. Seller and Buyers hereby expressly acknowledge that this Section shall survive the termination of this Agreement

**ARTICLE 16**  
**MISCELLANEOUS PROVISIONS**

**16.1 Certain Interpretive Matters and Definitions.** Unless the context otherwise requires: (a) all references to Sections, Articles, Schedules or Exhibits are to Sections, Articles, Schedules or Exhibits of or to this Agreement; (b) each term defined in this Agreement has the meaning assigned to it; (c) each accounting term not otherwise defined in this Agreement has the meaning assigned to it in accordance with generally accepted accounting principles as in effect on the date hereof; (d) "or" is disjunctive but not necessarily exclusive; (e) words in the singular include the plural and vice versa; and (f) all references to "\$" or dollar amounts will be to lawful currency of the United States of America.

**16.2 Further Assurances.** After the Closing, Seller shall from time to time, at the request of and without further cost or expense to Buyers, execute and deliver such other instruments of conveyance and transfer and take such other actions as may reasonably be requested in order more effectively to consummate the transactions contemplated hereby to vest in Buyers good and marketable title to the Assets being transferred hereunder, free, clear and unencumbered, and Buyers shall from time to time, at the request of and without further cost or expense to Seller, execute and deliver such other instruments and take such other actions as may

reasonably be requested in order more effectively to relieve Seller of any obligations being assumed by Buyers hereunder.

**16.3      Assignability; No Third Party Rights.** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld, except either Buyer may, without such consent, assign its rights and obligations under this Agreement to an entity under common control with that Buyer, *i.e.*, an entity to which the Buyer could assign or transfer an FCC radio station authorization using FCC Form 316, provided, however, such assignment, whether before or after the Closing, shall not release that Buyer from its liabilities hereunder. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their permitted assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

**16.4      Modification and Waiver; Remedies Cumulative.** No modification of any provision of this Agreement shall be effective unless in writing and signed by all parties. No failure or delay on the part of Seller or Buyers in exercising any right or power under this Agreement shall operate as a waiver of such right or power, nor shall any single or partial exercise of any such right or power or the exercise of any other right or power. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a party may otherwise have.

**16.5      Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

**16.6      Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania without giving effect to the choice of law provisions thereof. Any action, suit or proceeding brought by any party to this Agreement relating to or arising out of this Agreement or any other agreement, instrument, certificate or other document delivered pursuant hereto (or the enforcement hereof or thereof) must be brought and prosecuted as to all parties in, and each of the parties hereby consents to service of process, personal jurisdiction and venue in, the state and Federal courts of general jurisdiction located in Pennsylvania.

**16.7      Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, including by facsimile, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested, on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery or when dispatched by facsimile transmission (with the facsimile transmission confirmation being deemed conclusive evidence of such dispatch) and shall be addressed to the following addresses,



or to such other address as any party may request, in the case of Seller, by notifying Buyers, and in the case of Buyers, by notifying Seller:

To Buyers:

Broadcast Communications, Inc.  
P.O. Box 990  
Greensburg, PA 15601  
Attention: Robert M. Stevens  
Facsimile No.: (724) 853-7159

Broadcast Educational Communications, Inc.  
P.O. Box 990  
Greensburg, PA 15601  
Attention: Robert M. Stevens  
Facsimile No.: (724) 853-7159

With copies (which shall not constitute notice) to:

Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Suite 240  
Washington, D.C. 20036  
Attention: Lee J. Peltzman, Esquire  
Facsimile No.: (202) 293-0810

To Seller:

He's Alive Incorporated  
P.O. Box 540  
34 Springs Road  
Grantsville, MD 21536  
Attn: S. Melissa Flores  
Facsimile No.: (301) 895-3293  
With copies (which shall not constitute notice) to:

Fletcher, Heald & Hildreth, PLC  
1300 North 17th Street, 11th Floor  
Arlington, Virginia 22209  
Attention: Harry C. Martin, Esquire  
Facsimile No.: (703) 812-0486

**16.8            Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. This Agreement may be executed and exchanged by facsimile transmission or electronic mail, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. No party hereto to any such agreement or instrument shall raise the use of a facsimile machine or electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic mail as a defense to the formation of a contract and each such party forever waives any such defense.

**16.9            Severability.** The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

**16.10          Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

**16.11          Legal Fees.** In the event of a default by either party which results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses.

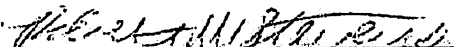
**16.12          Neutral Construction.** This Agreement was negotiated fairly between the parties at arms' length and the terms hereof are the product of the parties' negotiations. This Agreement shall be deemed to have been jointly and equally drafted by the parties, and the provisions of this Agreement shall not be construed against a party on the grounds that such party drafted or was more responsible for drafting such provisions.

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

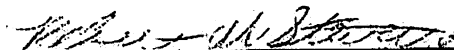
**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**BUYERS:**

**BROADCAST COMMUNICATIONS, INC.**

By:   
Name: Robert M. Stevens  
Title: President

**BROADCAST EDUCATIONAL  
COMMUNICATIONS, INC.**

By:   
Name: Robert M. Stevens  
Title: President

**SELLER:**

**HE'S ALIVE INCORPORATED**

By: \_\_\_\_\_  
Name: S. Melissa Flores  
Title: Vice President

**SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

**BUYERS:**

**BROADCAST COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name: Robert M. Stevens  
Title: President

**BROADCAST EDUCATIONAL  
COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Name: Robert M. Stevens  
Title: President

**SELLER:**

**HE'S ALIVE INCORPORATED**

By: S. Melissa Flores  
Name: S. Melissa Flores  
Title: Vice President

## **SCHEDULE 1.1.1**

### **FCC Licenses**

WRIJ, Masontown, Pennsylvania, Fac. ID 26522

BLED-20021001ACE, granted 2/20/2003

BRED-20140328AFA, granted 7/25/2014

WKJL, Clarksburg, West Virginia, Fac. ID 26526

BLED-20090910AAV, granted 9/21/2009

BRED-20110531AIZ, granted 9/27/2011

## **SCHEDULE 1.1.2**

### **Tangible Personal Property**

#### **WRJ**

HARRIS ZX1000 Transmitter  
Harris MICROMAX Exciter  
ORBAN 8000 Optimod  
Broadcast Tools WVRC-4 Remote Control  
Henry Micromixer  
LEA International Model DS21S-120/240-225-SP Surge Protector  
Radyne Comstream ABR202 Satellite Receiver  
Prodelin Model 1184 1.8 Meter Satellite dish with KU LNB  
60 Foot Rohn Self Supporting Tower  
Shively 6813-2R Antenna  
85 feet of 7/8 inch transmission line  
10 foot by 12 foot building

#### **WKJL**

HARRIS Z10CD Transmitter  
HARRIS DIGIT CD Exciter  
Orban 8000 Optimod  
Henry Micromixer  
Broadcast Tools WVRC-8 Remote Control  
Radyne Comstream ABR202 Satellite Receiver  
Prodelin Model 1184 1.8 Meter Satellite dish with KU LNB  
PSI Model PSIFMR-4C-DA Antenna  
325 feet of 3 inch Transmission Line  
3 Ton Air Conditioner  
12 foot by 16 foot concrete block building

### **SCHEDULE 1.1.3**

#### **Leased Property**

WRIJ Transmitter Site: Lease Agreement date as of June 6, 2000 by and between Karen Hosey, lessor, and He's Alive, Inc. Lease renewals available through 20<sup>th</sup> anniversary of equipment installation.

WKJL Transmitter Site: Lease Agreement by and between He's Alive Radio Network and Withers Broadcasting Company, dated as of April 1, 2009, expiring March 30, 2019, with automatic renewal right to March 30, 2029.

True and correct copies of both Lease Agreements have been provided to Buyers.



**SCHEDULE 1.1.4**

**Station Contracts**

NONE

**SCHEDULE 1.1.5**

**Intangible Property**

Call signs WRIJ and WKJL

Going concern value and good will related to Stations WRIJ and WKJL