

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made as of this 16<sup>th</sup> day of September, 2016, by and between Joule Broadcasting, LLC, a Delaware limited liability company, in its capacity as trustee of the Cadet Divestiture Trust (“**Seller**”), and Colonial Radio Group, Inc., a North Carolina corporation (“**Buyer**”).

### RECITALS

WHEREAS, pursuant to the Cadet Divestiture Trust Agreement, dated September 16, 2011, as amended by that First Amendment to Cadet Divestiture Trust Agreement, dated November 11, 2011 (collectively, the “**Trust Agreement**”), Seller holds certain assets, including licenses and other authorizations issued by the Federal Communications Commission (the “**FCC**”), used exclusively in the operation of commercial FM radio stations WJXY-FM, Conway, South Carolina (FCC Facility ID No. 17485) and WXJY, Georgetown, South Carolina (FCC Facility ID No. 69835 (each a “**Station**” and collectively the “**Stations**”); and

WHEREAS, to the fullest extent permitted by law, Seller desires to sell, assign, and transfer to Buyer, the Station Assets (defined below) held by Seller; and to the fullest extent permitted by law, Buyer desires to acquire the Station Assets, all under the terms described herein.

### AGREEMENT

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

#### ARTICLE 1: PURCHASE OF ASSETS

**1.1 Station Assets.** On the terms and subject to the conditions hereof, at Closing (defined below), except as set forth in Sections 1.2 and 1.3, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and acquire from Seller or Cumulus Broadcasting LLC, a Nevada limited liability company (“**CBL**”), a beneficiary of the Cadet Divestiture Trust, all right, title and interest of Seller or, as the case may be, CBL, in and to the following assets and properties of Seller or CBL, real and personal, tangible and intangible, that are used exclusively in the operation of the Stations (“**Station Assets**”), as follows:

(a) The licenses, permits and other authorizations issued to Seller by the FCC with respect to the Stations (the “**FCC Licenses**”) and listed on **Schedule 1.1(a)**, including any modifications thereof between the date hereof and Closing;

(b) the equipment, transmitters, tower, antenna, cable, spare parts and other tangible personal property listed on **Schedule 1.1(b)**, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business (the “**Tangible Personal Property**”);

(c) the interest held by CBL, if any, in that certain Lease Agreement, dated June 1990 by and between Ophelia Reed (lessor) and CBL (lessee) (successor-in-interest to VBX

Communications, Inc.) for the lease of the WXJY transmitter site (the “**WXJY Ground Lease**”) as listed and described on **Schedule 1.1(c)**;

(d) the interest held by CBL in that certain Tower Attachment Lease Agreement dated December 28, 1995, by and between CBL and Alltel Communications, LLC d/b/a Verizon Wireless, as amended June 28, 2011, for the lease of the WJXY-FM transmitter site (the “**WJXY Tower Lease**”) as listed and described on **Schedule 1.1(d)**;

(e) the files, documents, and records, and books of account (or copies thereof) relating exclusively to the operation of the Stations, including the Stations’ local public files, but excluding records relating to Excluded Assets (defined below); and

(f) the call letters WXJY and WJXY.

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, the Station Assets shall not include the following assets or any rights, title and interest therein (the “**Excluded Assets**”):

(a) all cash and cash equivalents of Seller or Cumulus Media Inc. and certain of its indirect subsidiaries (collectively, “**Cumulus**”), including without limitation certificates of deposit, commercial paper, treasury bills, marketable securities, money market accounts and all such similar accounts or investments;

(b) logos, taglines and any other intellectual property related to the Stations;

(c) all tangible and intangible personal property of Seller or Cumulus retired or disposed of between the date of this Agreement and Closing in accordance with Article 4;

(d) all contracts necessary for the operation of the Stations that are terminated or expire prior to Closing in accordance with Article 4;

(e) Cumulus’s corporate and trade names (including the name “Cumulus”), charter documents, and books and records relating to the organization, existence or ownership of Cumulus, duplicate copies of the records of the Stations, and all records not relating to the operation of the Stations;

(f) all contracts of insurance, all coverages and proceeds thereunder and all rights in connection therewith, including without limitation rights arising from any refunds due with respect to insurance premium payments to the extent related to such insurance policies;

(g) all pension, profit sharing plans and trusts and the assets thereof and any other employee benefit plan or arrangement and the assets thereof, if any, maintained by Seller or Cumulus;

(h) the Stations’ accounts receivable and any other rights to payment of cash consideration for goods or services sold or provided prior to the Effective Time (defined below) or otherwise arising during or attributable to any period prior to the Effective Time (the “**Accounts Receivable**”);

(i) any non-transferable shrink-wrapped computer software and any other non-transferable computer licenses that are not material to the operation of the Stations;

(j) all rights and claims of Seller or Cumulus, whether mature, contingent or otherwise, against third parties with respect to the Stations and the Station Assets, to the extent arising during or attributable to any period prior to the Effective Time;

(k) all deposits and prepaid expenses (and rights arising therefrom or related thereto), except to the extent Seller receives a credit therefor under Section 1.8;

(l) computers and other similar assets other than as may be listed on *Schedule 1.1(b)*, and any other operating systems and related assets that are used in the operation of multiple stations or other business units;

(m) the studio and office facilities of the Stations, all equipment and furniture located therein, and all contracts relating to such office or studio space or equipment located therein, except as specifically set forth on *Schedule 1.1(b)*;

(n) all contracts used in the operation of the Stations other than the WXJY Ground Lease and the WJXY Tower Lease, including all programming contracts, contracts from the sale of advertising (including any trade, barter or similar agreements); and

(o) the assets listed on *Schedule 1.2* (if any).

**1.3 Liens.** The Station Assets shall be transferred to Buyer free and clear of liens, claims and encumbrances (“**Liens**”) except for Permitted Liens. “**Permitted Liens**” means the following: (i) statutory landlord’s liens and liens for current taxes not yet due and payable (or being contested in good faith); (ii) zoning laws and ordinances and similar laws; (iii) rights reserved to any governmental authority to regulate the affected property; (iv) any easements, rights-of-way, servitudes, permits, restrictions and minor imperfections or irregularities in title that are reflected in the public records and that do not individually or in the aggregate materially interfere with the right or ability to own, use, lease or operate on the premises presently used in the operation of the Stations; (v) the Assumed Obligations (defined below), (vi) the rights of the Licensor under the Tower Agreements (including any Liens held thereunder); (vii) any easements specified in the WJXY Tower Lease or WXJY Ground Lease; and (viii) any Liens set forth in *Schedule 1.3* which Liens will be released at or prior to Closing.

**1.4 Intentionally Omitted.**

**1.5 Assumption of Obligations.** On the Closing Date (defined below), Buyer shall assume and undertake to pay, discharge and perform all obligations and liabilities relating to the WJXY Tower Lease and the WXJY Ground Lease, arising during, or attributable to, any period of time on or after the Closing Date (except that Buyer shall also assume all liabilities in connection with the WXJY Ground Lease, known or unknown, arising prior to the Closing Date), all other obligations related to the holding or owning of the Station Assets arising or occurring on and after Closing, and any pre-Closing liabilities of Seller to the extent Buyer receives a credit therefor under Section 1.8 (collectively, the “**Assumed Obligations**”). Except for the Assumed Obligations, Buyer does not assume, and will not be deemed by the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby to

have assumed, any other liabilities or obligations of Seller, including (i) any obligations or liabilities related to the Station Assets for the period prior to the Closing; (ii) any obligations or liabilities of Seller which are unrelated to the Station Assets being sold hereunder, (iii) any obligations or liabilities relating to employees of Seller (including any pension obligations or pension withdrawal liabilities), (iv) any obligations or liabilities relating to the Excluded Assets, (v) any federal, state or local franchise, income or other taxes of Seller, or (vi) any other obligations or liabilities of Seller (the “**Retained Obligations**”).

**1.6 Purchase Price.** In consideration for the sale of the Station Assets to Buyer, the purchase price shall be Two Hundred Forty Thousand Dollars (\$240,000.00) (the “**Purchase Price**”) payable by wire transfer of immediately available funds, subject to adjustment pursuant to Section 1.8 (the “**Cash Payment**”).

**1.7 Deposit.** On the date of this Agreement, Buyer shall make a cash deposit in immediately available funds in an amount of Twelve Thousand Dollars (\$12,000.00) (the “**Deposit**”) with Media Services Group, Inc. (the “**Escrow Agent**”) pursuant to the Escrow Agreement (the “**Escrow Agreement**”) of even date herewith among Buyer, Seller and the Escrow Agent. At Closing, the Deposit shall be disbursed to Seller, credited to Buyer, and applied to the Cash Payment portion of the Purchase Price and any interest accrued thereon shall be disbursed to Buyer. If this Agreement is terminated by Seller pursuant to Section 10.1(c), the Deposit and any interest accrued thereon shall be disbursed to Seller. If this Agreement is terminated for any other reason, the Deposit and any interest accrued thereon shall be disbursed to Buyer. The parties shall each instruct the Escrow Agent to disburse the Deposit and all interest thereon to the party entitled thereto and shall not, by any act or omission, unreasonably delay or prevent any such disbursement. Any failure by Buyer to make the Deposit on the date hereof constitutes a material default as to which the Cure Period under Section 10.2 does not apply entitling Seller to immediately terminate this Agreement.

**1.8 Prorations and Adjustments.** All prepaid and deferred income and expenses relating to the Station Assets and arising from the operation of the Stations shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles (“**GAAP**”) as of 12:01 a.m. on the day of Closing (the “**Effective Time**”). Such prorations shall include, without limitation, all ad valorem, real estate and other property taxes (except transfer taxes as provided by Section 11.1), FCC regulatory fees, utility expenses, rent and other amounts under the Tower Agreements and similar prepaid and deferred items. Seller shall receive a credit for all of the Stations’ deposits and prepaid expenses. Sales commissions related to the sale of advertisements broadcast on the Stations prior to Closing shall be the responsibility of Seller. Prorations and adjustments shall be made no later than ninety (90) calendar days after Closing.

**1.9 Allocation.** To the extent necessary for Seller’s purposes, on or before the Closing, Seller and Buyer shall mutually agree upon an allocation of the Purchase Price for tax purposes in accordance with the respective fair market values of the Station Assets and the goodwill being purchased and sold in accordance with the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended (the “**Code**”).

**1.10 Closing.** The consummation of the sale and purchase of the Station Assets provided for in this Agreement (the “**Closing**”) shall take place on or before the tenth (10th) day after the date the FCC Consent (defined below) becomes a Final Order (defined below), assuming the satisfaction or waiver of the other conditions set forth in Articles 6 and 7 below.

The date on which the Closing is to occur is referred to herein as the “**Closing Date.**” For purposes of this Agreement, a “**Final Order**” means a decision by the FCC or a court of competent jurisdiction, as modified or supplemented upon reconsideration or review by the FCC or a court of competent jurisdiction, that is no longer subject to reconsideration or review by the FCC or a court of competent jurisdiction because the time periods for seeking or initiating such reconsideration or review under applicable law and government regulation have expired without any such request for reconsideration or review having been filed.

#### **1.11 Governmental Consents.**

(a) Within five (5) business days of the date of this Agreement (or if during any part of that period, the FCC is not open and accepting applications filed electronically, then within five (5) business days after FCC reopens and FCC applications can be electronically filed, whichever is later), Buyer and Seller shall file an application with the FCC (the “**FCC Application**”) requesting FCC consent to assign the FCC Licenses to Buyer. FCC consent to the FCC Application without any material adverse conditions other than those of general applicability is referred to herein as the “**FCC Consent.**” Buyer and Seller shall diligently prosecute the FCC Application and otherwise use their commercially reasonable efforts to obtain the FCC Consent as soon as possible.

(b) Each party shall diligently take, or cooperate in the taking of, all steps necessary and appropriate to expedite the preparation of the FCC Application and prosecute it to a favorable conclusion at the earliest practicable time. Each party will promptly provide the other party with a copy of any and every pleading, order, or other material communication (including e-mails) received or sent which relates to the FCC Application (other than communications between or among a party and such party’s lawyers and advisors). The parties will use commercially reasonable efforts and otherwise cooperate with each other in responding to any information requested by the FCC related to the FCC Application, in preparing any amendment to this Agreement requested by the FCC which does not adversely affect such party in a material manner, and in defending against any petition, informal objection, application for review, complaint, or other objection which may be filed against the FCC Application or the FCC Consent. With respect to this paragraph each party shall bear its own costs and attorney’s fees without contribution from the other party.

### **ARTICLE 2: SELLER REPRESENTATIONS AND WARRANTIES**

Seller makes the following representations and warranties to Buyer:

**2.1 Organization.** Seller is duly organized, validly existing and in good standing under the laws of the State of Delaware, and is registered or qualified to do business in South Carolina and each jurisdiction in which the Station Assets are located. Seller has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be made by Seller pursuant hereto (collectively, the “**Seller Ancillary Agreements**”) and to consummate the transactions contemplated hereby.

**2.2 Authorization.** The execution, delivery and performance of this Agreement and the Seller Ancillary Agreements by Seller have been duly authorized and approved by all necessary action of Seller and do not require any further authorization or consent of Seller. This Agreement is, and each Seller Ancillary Agreement when made by Seller and the other parties

thereto will be, a legal, valid and binding agreement of Seller enforceable in accordance with its terms, except in each case as such enforceability may be limited by bankruptcy, moratorium, insolvency, reorganization or other similar laws affecting or limiting the enforcement of creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

**2.3     No Conflicts.** Except as set forth on *Schedule 2.3* and except for the FCC Consent, the execution, delivery and performance by Seller of this Agreement and the Seller Ancillary Agreements and the consummation by Seller of any of the transactions contemplated hereby does not conflict with any organizational documents of Seller, any contract or agreement to which Seller is a party or by which it is bound, or any law, judgment, order, or decree to which Seller is subject, or require the consent or approval of, or a filing by Seller with, any governmental or regulatory authority or any third party.

**2.4     FCC Licenses.** Seller is the holder of the FCC Licenses described on *Schedule 1.1(a)*, which are all of the licenses, permits and authorizations required for the present operation of the Stations. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated. The Stations are operating in compliance in all material respects with the FCC Licenses, the Communications Act of 1934, as amended (the "*Communications Act*"), and the FCC's published rules and policies (the "*FCC Rules*"). Except as may be disclosed to the FCC in the pending renewal applications for the Stations' FCC Licenses identified on *Schedule 1.1(a)* (the "*Renewal Applications*"), all material reports, fees and filings required to be filed with or paid to the FCC by Seller with respect to the Stations have been timely filed or paid. All such reports and filings are accurate and complete in all material respects. Except as set forth on *Schedule 1.1(a)*, no investigation, notice of investigation, notice of apparent liability, notice of violation, forfeiture, order, complaint, action or other proceeding is pending or, to the knowledge of Seller, threatened before the FCC or any other Governmental Authority to vacate, revoke, suspend, refuse to renew or modify the FCC Licenses or which could in any manner threaten or adversely affect the FCC Licenses. The Renewal Applications were timely filed and remain pending. Except as set forth on *Schedule 1.1(a)*, to the knowledge of Seller no facts exist and no event has occurred which may result in the revocation, modification, non-renewal or suspension of any of the FCC Licenses; the denial of any pending applications; the issuance of any cease and desist order; the imposition of any administrative actions by the FCC with respect to the FCC Licenses, or which may adversely affect Buyer's ability to operate the Stations upon consummation of the Closing in accordance with the FCC Licenses and the FCC's Rules.

**2.5     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.

**2.6     Personal Property.** *Schedule 1.1(b)* contains a list of Tangible Personal Property included in the Station Assets. Except as set forth on *Schedule 1.1(b)*, Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Except as set forth on *Schedule 1.1(b)*, the Tangible Personal Property is in good operating condition and repair, ordinary wear and tear excepted.

**2.7 WXJY Ground Lease.** Seller has disclosed to Buyer certain matters related to the current ground lease for the operation of Station WXJY at the WXJY tower site which are set forth on *Schedule 1.1(c)* hereto.

**2.8 Employees.** Seller has complied in all material respects with all labor and employment laws, rules and regulations applicable to the Stations' business, including without limitation those which relate to prices, wages, hours, discrimination in employment and collective bargaining; there is no unfair labor practice charge or complaint against Seller in respect of the Stations' business pending or, to Seller's knowledge, threatened before the National Labor Relations Board, any state labor relations board or any court or tribunal, and there is no strike, dispute, request for representation, slowdown or stoppage pending or threatened in respect of the Stations' business; and Seller is not party to any collective bargaining, union or similar agreement with respect to the employees of Seller at the Stations, and to Seller's knowledge, no union represents or claims to represent or is attempting to organize such employees.

**2.9 Insurance.** Seller maintains insurance policies or other insurance arrangements with respect to the Stations and the Station Assets consistent with its practices for other Seller owned stations, and will maintain such policies or arrangements until the Effective Time.

**2.10 Compliance with Law.** Seller has complied in all material respects with all laws, rules and regulations, including without limitation all FCC Rules and Federal Aviation Administration rules and regulations applicable to the operation of the Stations, and all decrees and orders of any court or governmental authority which are applicable to the operation of the Stations. Except as set forth on *Schedule 1.1(a)*, to Seller's knowledge there are no governmental claims, investigations or actions pending or threatened against Seller in respect of the Stations except those affecting the industry generally.

**2.11 Litigation.** Other than any administrative action that could arise in connection with the pending Renewal Applications, for which Seller shall be solely responsible, there is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Stations that will subject Buyer to liability or which might adversely affect any of the Station Assets, or which will affect Seller's ability to perform its obligations under this Agreement. Seller is not operating under or subject to any order, writ, injunction or decree relating to the Stations or the Station Assets of any court or governmental authority which would have a material adverse effect on the condition of the Stations or any of the Station Assets or on the ability of Seller to enter into this Agreement or consummate the transactions contemplated hereby, other than those of general applicability.

**2.12 No Undisclosed Liabilities.** There are no liabilities or obligations of Seller with respect to the Stations that will be binding upon Buyer after the Effective Time other than the Assumed Obligations and other than pursuant to the pro-rations under Section 1.8.

**2.13 Station Assets.** The Station Assets include all assets owned, held or controlled by Seller and used or held for use exclusively in the operation of the Stations in all material respects as currently operated, except for the Excluded Assets.

### **ARTICLE 3: BUYER REPRESENTATIONS AND WARRANTIES**

Buyer hereby makes the following representations and warranties to Seller:

**3.1 Organization.** Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and is qualified to do business in each jurisdiction in which the Station Assets are located. Buyer has the requisite power and authority to execute, deliver and perform this Agreement and all of the other agreements and instruments to be executed and delivered by Buyer pursuant hereto (collectively, the “*Buyer Ancillary Agreements*”) and to consummate the transactions contemplated hereby.

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

**3.3 No Conflicts.** Except for the FCC Consent, the execution, delivery and performance by Buyer of this Agreement and the Buyer Ancillary Agreements and the consummation by Buyer of any of the transactions contemplated hereby does not conflict with any organizational documents of Buyer, any contract or agreement to which Buyer is a party or is by which it is bound, or any law, judgment, order or decree to which Buyer is subject, or require the consent or approval of, or a filing by Buyer with, any governmental or regulatory authority or any third party.

**3.4 Litigation.** There is no action, suit or proceeding pending or, to Buyer’s knowledge, threatened against Buyer which questions the legality or propriety of the transactions contemplated by this Agreement or could materially adversely affect the ability of Buyer to perform its obligations hereunder.

**3.5 Qualification.** Buyer is legally, financially and otherwise qualified to be the licensee of, acquire, own and operate the Stations under the Communications Act and FCC Rules. There are no facts known to Buyer that would, under existing law and FCC Rules, disqualify Buyer as an assignee of the FCC Licenses or as the owner and operator of the Stations. No waiver of or exemption from any FCC Rule is necessary for the FCC Consent to be obtained. There are no matters which might reasonably be expected to result in the FCC’s denial or delay of approval of the FCC Application.

**3.6 Financial.** Buyer has sufficient cash, available lines of credit, loan arrangements or other sources of immediately available funds to enable it to make payment on the Closing Date of the Purchase Price and any other amounts to be paid by it in accordance with the terms of this Agreement.

#### **ARTICLE 4: SELLER AND BUYER COVENANTS**



**4.1 Seller Covenants.** Between the date hereof and Closing, except as permitted by this Agreement or with the prior written consent of Buyer, which shall not be unreasonably withheld, delayed or conditioned, Seller shall:

(a) operate the Stations in the ordinary course of business and in all material respects in accordance with FCC Rules and with all other applicable laws, regulations, rules and orders;

(b) not materially adversely modify, and in all material respects maintain in full force and effect, the FCC Licenses;

(c) not, other than in the ordinary course of business, sell, lease or dispose of or agree to sell, lease or dispose of any of the Station Assets or unless replaced with similar items of substantially equal or greater value and utility, or create, assume or permit to exist any Liens upon the Station Assets, except for Permitted Liens, and not dissolve, liquidate, merge or consolidate with any other entity;

(d) maintain the Tangible Personal Property in good working order and repair or replace any of such property which shall be worn out, lost, stolen, or destroyed with like property of substantially equivalent kind and value;

(e) upon reasonable notice, give Buyer and its representatives reasonable access during normal business hours to the Station Assets, and furnish Buyer with information relating to the Station Assets that Buyer may reasonably request, provided that such access rights shall not be exercised in a manner that interferes with the operation of the Stations; and

(f) not enter into new station contracts that will be binding upon Buyer after Closing without Buyer's written approval.

**4.2 Buyer Covenants.**

(a) neither Buyer, nor any person or entity affiliated with, authorized by or acting on Buyer's behalf, will contact or communicate with, or make any effort to contact or communicate with, by any means whatsoever, the WXJY transmitter site land owner, its representatives, agents or related individuals or entities with respect to the transactions contemplated hereunder, the WXJY Ground Lease, or the lease, license, purchase or use of the WXJY transmitter site, until after the Closing of the transactions contemplated by this Agreement.

**ARTICLE 5: JOINT COVENANTS**

Buyer and Seller hereby covenant and agree as follows:

**5.1 Confidentiality.** Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation or performance of this Agreement (including without limitation all financial information provided by Seller to Buyer) shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transaction contemplated by this Agreement.

**5.2 Announcements.** 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 that the parties shall cooperate to make a mutually agreeable announcement.

**5.3 Control.** Buyer shall not, directly or indirectly, control, supervise or direct the operation of the Stations prior to Closing. Consistent with the Communications Act and FCC Rules, control, supervision and direction of the operation of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

**5.4 Risk of Loss.**

(a) Seller shall bear the risk of any loss of or damage to any of the Station Assets at all times until the Effective Time, and Buyer shall bear the risk of any such loss or damage thereafter.

(b) If prior to the Effective Time a material item of Tangible Personal Property is damaged or destroyed, Seller shall use commercially reasonable efforts to repair or replace such item in all material respects in the ordinary course of business; provided, that, if the cost of such repair or replacement is reasonably expected to be greater than Fifty Thousand Dollars (\$50,000), Seller shall have the right to elect not to complete the repair or replacement and to terminate this Agreement upon notice to Buyer without any liability therefor; and provided further, that if such repair or replacement is not completed by the Closing Date, (i) Buyer can elect to proceed to Closing without waiting for such completion, or (ii) if Seller has commenced such repair or replacement as of the Closing Date, the Closing Date shall be extended for thirty (30) days to allow Seller to complete such repair or replacement, and, if such repair or replacement is not completed by that latter date, Buyer can elect to terminate this Agreement upon notice to Seller without any liability therefor.

**5.5 Accounts Receivable.** Buyer shall have no obligation to collect the Accounts Receivable on behalf of Seller, and Seller shall retain full authority after Closing to collect the Accounts Receivable via any reasonable means, including, as necessary, the institution of collection efforts or legal proceedings.

**5.6 Actions.** After Closing, Buyer shall cooperate with Seller in the investigation, defense or prosecution of any action which is pending or threatened against Seller or its affiliates with respect to the Stations, whether or not any party has notified the other of a claim for indemnification with respect to such matter. Without limiting the generality of the foregoing, Buyer shall make available its employees to give depositions or testimony and shall furnish all documentary or other evidence that Seller may reasonably request.

**ARTICLE 6: SELLER CLOSING CONDITIONS**

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

**6.1 Representations and Covenants.**

(a) The representations and warranties of Buyer made in this Agreement, shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Buyer at or prior to Closing shall have been complied with or performed in all material respects.

(c) Seller shall have received a certificate dated as of the Closing Date from Buyer executed by an authorized officer of Buyer to the effect that the conditions set forth in Sections 6.1(a) and (b) have been satisfied.

**6.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**6.3 FCC Authorization.** The FCC Consent shall have been obtained and shall have become a Final Order.

**6.4 Deliveries.** Buyer shall have complied with its obligations set forth in Section 8.2.

## **ARTICLE 7: BUYER CLOSING CONDITIONS**

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

### **7.1 Representations and Covenants.**

(a) The representations and warranties of Seller made in this Agreement shall be true and correct in all material respects as of the Closing Date except for changes permitted or contemplated by the terms of this Agreement.

(b) The covenants and agreements to be complied with and performed by Seller at or prior to Closing shall have been complied with or performed in all material respects.

(c) Buyer shall have received a certificate dated as of the Closing Date from Seller executed by an authorized officer of Seller to the effect that the conditions set forth in Sections 7.1(a) and (b) have been satisfied.

**7.2 Proceedings.** Neither Seller nor Buyer shall be subject to any court or governmental order or injunction restraining or prohibiting the consummation of the transactions contemplated hereby.

**7.3 FCC Authorization.** The FCC Consent shall have been obtained and shall have become a Final Order and the Renewal Applications shall have been granted.

**7.4 Absence of Any Material Adverse Change.** There shall have been no material adverse change in the Station Assets.

7.5 **Deliveries.** Seller shall have complied with its obligations set forth in Section 8.1.

## **ARTICLE 8: CLOSING DELIVERIES**

8.1 **Seller Documents.** At Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) good standing certificates issued by the Secretary of State of Seller's jurisdiction of formation;

(ii) a certificate executed by Seller's sole member authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;

(iii) the certificate described in Section 7.1(c);

(iv) an assignment and assumption of the FCC Licenses from Seller to Buyer;

(v) an assignment and assumption of the WJXY Tower Lease assigning the lease from CBL to Buyer;

(vi) a bill of sale conveying the Station Assets (except for the WXJY tower) from Seller to Buyer;

(vii) a bill of sale conveying the WXJY tower from CBL to Buyer (or Buyer's designee);

(viii) an assignment and assumption agreement substantially in the form of *Exhibit A* annexed hereto pursuant to which CBL assigns its rights and obligations, if any, under the WXJY Ground Lease to Buyer (or Buyer's designee);

(ix) a letter to the Escrow Agent requesting that the Deposit be delivered to Seller at Closing; and

(x) any other instruments of conveyance, assignment and transfer that are reasonably requested by Buyer to convey, transfer and assign the Station Assets from Seller to Buyer, free and clear of Liens, except for Permitted Liens.

8.2 **Buyer Documents.** At Closing, Buyer shall deliver or cause to be delivered to Seller:

(i) the Purchase Price in accordance with Section 1.5 hereof;

(ii) good standing certificates issued by the Secretary of State of Buyer's jurisdiction of formation;

- (iii) certified copies of resolutions authorizing the execution, delivery and performance of this Agreement, including the consummation of the transactions contemplated hereby;
- (iv) the certificate described in Section 6.1(c);
- (v) an assignment and assumption of the FCC Licenses from Seller to Buyer;
- (vi) the counter-signed assignment and assumption agreement described in Section 8.1 (viii);
- (vii) a letter to the Escrow Agent requesting that the Deposit be delivered to Seller at Closing; and
- (viii) such other documents and instruments of assumption that are reasonably requested by Seller to assume the Assumed Obligations.

## **ARTICLE 9: SURVIVAL; INDEMNIFICATION**

**9.1 Survival.** The representations and warranties in this Agreement shall survive the Closing for a period of twelve (12) months from the Closing Date whereupon they shall expire and be of no further force or effect, except that if within such twelve (12) month 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, such claim shall survive until the earlier of resolution of such claim or expiration of the applicable statute of limitations. The covenants and agreements in this Agreement shall survive Closing until performed.

### **9.2 Indemnification.**

(a) Subject to Section 9.2(c), from and after Closing, Seller shall defend, indemnify and hold harmless Buyer from and against any and all losses, costs, damages, liabilities and expenses, including reasonable attorneys' fees and expenses ("**Damages**") incurred by Buyer arising out of or resulting from:

- (i) any breach by Seller of its representations and warranties made under this Agreement; or
- (ii) any default by Seller of any covenant or agreement made under this Agreement; or
- (iii) the Retained Obligations; or
- (iv) the business or operation of the Stations before the Effective Time, except for the Assumed Obligations.

(b) Subject to Section 9.2(c), from and after Closing, Buyer shall defend, indemnify and hold harmless Seller from and against any and all Damages incurred by Seller arising out of or resulting from:

- (i) any breach by Buyer of its representations and warranties made under this Agreement; or
- (ii) any default by Buyer of any covenant or agreement made under this Agreement; or
- (iii) the Assumed Obligations; or
- (iv) the business or operation of the Stations after the Effective Time.

(c) Notwithstanding the foregoing or anything else herein to the contrary, after Closing, (i) Seller will not have any liability to Buyer under Section 9.2(a)(i) or Section 9.2(a)(ii) and Buyer will not have any liability to Seller under Section 9.2(b)(i) or Section 9.2(b)(ii) until the indemnified party's aggregate Damages exceed Fifteen Thousand Dollars (\$15,000), after which such threshold amount shall be included, not excluded, from any calculation of Damages, and (ii) the maximum aggregate liability of the indemnifying party under Section 9.2(a)(i), 9.2(a)(ii), 9.2(b)(i) and 9.2(b)(ii) shall be an amount equal to twenty percent (20%) of the Purchase Price.

### **9.3 Procedures.**

(a) The indemnified party shall give prompt written notice to the indemnifying party of any demand, suit, claim or assertion of liability by third parties 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 and provided that such notice is given within the time period described in Section 9.1.

(b) The indemnifying party shall have the right to undertake the defense or opposition to such Claim with counsel selected by it. 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 (subject to the right of the indemnifying party to assume defense of or opposition to such Claim at any time prior to settlement, compromise or final determination thereof).

(c) Anything herein to the contrary notwithstanding:

(i) the indemnified party shall have the right, at its own cost and expense, to participate in the defense, opposition, compromise or settlement of the Claim;

(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 the giving by the claimant to the indemnified party of a release from all liability in respect of such Claim;

(iii) in the event that the indemnifying party undertakes defense of or opposition to any Claim, the indemnified party, by counsel or other representative of its own

choosing and at its sole cost and expense, shall have the right to consult with the indemnifying party and its counsel concerning such Claim and the indemnifying party and the indemnified party and their respective counsel shall cooperate in good faith with respect to such Claim, and the indemnified party shall not, without the indemnifying party's consent, settle or compromise any Claim or consent to the entry of any judgment with respect to the Claim; and

(iv) neither party shall have any liability to the other under any circumstances for special, indirect, consequential, punitive or exemplary damages or lost profits or similar damages of any kind, whether or not foreseeable.

## **ARTICLE 10: TERMINATION AND REMEDIES**

**10.1 Termination.** Subject to Section 10.3, this Agreement may be terminated prior to Closing as follows:

- (a) by mutual written consent of Buyer and Seller;
- (b) by written notice of Buyer to Seller if Seller breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period (defined below); provided, that Buyer may not terminate pursuant to this Section 10.1(b) if it is then in material breach of or default under this Agreement;
- (c) by written notice of Seller to Buyer if Buyer breaches its representations or warranties or defaults in the performance of its covenants contained in this Agreement and such breach or default is material in the context of the transactions contemplated hereby and is not cured within the Cure Period; provided, that the Cure Period shall not apply to Buyer's obligations to make the Deposit on the date hereof and to pay the Purchase Price at Closing; provided further, that Seller may not terminate pursuant to this Section 10.1(c) if it is then in material breach of or default under this Agreement;
- (d) by written notice of Seller to Buyer or Buyer to Seller if Closing does not occur by the date two-hundred and seventy (270) days after the date of this Agreement;
- (e) by written notice of Seller to Buyer or Buyer to Seller if the FCC denies or dismisses the FCC Application or designates it for an oral evidentiary hearing; or
- (f) as provided by Section 5.4.

**10.2 Cure Period.** Each party shall give the other party prompt written notice upon learning of any breach or default by the other party under this Agreement. The term "Cure Period" as used herein means a period commencing on the date Buyer or Seller receives from the other written notice of breach or default hereunder and shall continue until the earlier of (i) twenty (20) calendar days thereafter or (ii) the Closing Date determined under Section 1.10; provided, that if the breach or default is non-monetary and cannot reasonably be cured within such 20-day period but can be cured before the Closing Date determined under Section 1.10, and if diligent efforts to cure promptly commence, the Cure Period shall continue as long as such diligent efforts to cure continue, but not beyond the Closing Date as determined under Section 1.10.

**10.3 Survival.** Except as provided by Section 10.5, the termination of this Agreement shall not relieve either party of any liability for breach or default under this Agreement prior to the date of termination. Notwithstanding anything contained herein to the contrary, Sections 1.7 (Deposit) (and Section 10.5 with respect to the Deposit), 5.1 (Confidentiality) and 11.1 (Expenses) shall survive any termination of this Agreement.

**10.4 Specific Performance.** In the event that, prior to Closing the condition described in Section 10.1(b) exists, Buyer shall be entitled to an injunction restraining such failure or threatened failure and, subject to obtaining any necessary FCC consent, to enforcement of this Agreement by a decree of specific performance and other equitable relief requiring compliance with this Agreement without posting bond or other security.

**10.5 Liquidated Damages.** If prior to Closing the condition described in Section 10.1(c) exists, Seller's sole remedy shall be termination of this Agreement and receipt of the Deposit as liquidated damages, except for any failure by Buyer to comply with its obligations related to the Deposit or Sections 5.1, 5.2 or 5.3, as to which Seller shall also be entitled to all available rights and remedies, including without limitation specific performance (with or without terminating the Agreement). Buyer acknowledges that Seller's recovery of the Deposit is not a penalty and that Seller's liquidated damages amount is reasonable in light of the substantial but indeterminate harm anticipated to be caused by Buyer's material breach or default under this Agreement, the difficulty of proof of loss and damages, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy, and the value of the transactions to be consummated hereunder.

## **ARTICLE 11: MISCELLANEOUS**

**11.1 Expenses.** Each party 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. The filing fee for the FCC Application shall be divided equally between Buyer and Seller. All other governmental fees and charges applicable to any requests for governmental consents shall be paid by the party upon whom the applicable governmental authority imposes the fee or charge (or shall be shared equally if not imposed upon either party). Buyer shall be solely responsible for all governmental taxes, fees and charges applicable to the transfer of the Station Assets under this Agreement. Seller shall be responsible for any fees, fines, forfeitures or expenses associated with obtaining grant of the FCC Renewal Applications. Each party is responsible for any commission, brokerage fee, advisory fee or other similar payment that arises as a result of any agreement or action of it or any party acting on its behalf in connection with this Agreement or the transactions contemplated hereby.

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

**11.3 Assignment.** Neither party may assign this Agreement without the prior written consent of the other party hereto, provided, that Buyer may assign its rights hereunder to an affiliate of Buyer upon written notice to, but without consent of, Seller, provided further that (i) any such assignment does not delay processing of the FCC Application, grant of the FCC Consent or Closing, (ii) any such assignee delivers to Seller a written assumption of this



Agreement, and (iii) Buyer shall remain liable for all of its obligations hereunder, and Seller may assign its rights hereunder to an affiliate of Seller. The terms of this Agreement shall bind and inure to the benefit of the parties' respective successors and any permitted assigns, and no assignment shall relieve any party of any obligation or liability under this Agreement.

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

If to Buyer:	Colonial Radio Group, Inc. 2086 Old State Road Mainesburg, PA 16932 Attn : Jeffrey Andrulonis <a href="mailto:jeff@colonialme.com">jeff@colonialme.com</a>
with a copy (which shall not constitute notice) to:	Radiotvlaw Associates, LLC 4101 Albemarle Street, NW, Suite 324 Washington DC 20016-2151 Attn: Anthony T. Lepore, Esq. (202) 681-2201 <a href="mailto:anthony@radiotvlaw.net">anthony@radiotvlaw.net</a>
If to Seller:	Joule Broadcasting, LLC, as Trustee 205 Marina Drive St. Simons Island, Georgia 31522 Attn: Edward N. Esserman Tele: (912) 634-6575 Email: <a href="mailto:eddie@eddieesserman.com">eddie@eddieesserman.com</a>
with a copy (which shall not constitute notice) to:	Hardy, Carey, Chautin & Balkin, LLP 1080 West Causeway Approach Mandeville, LA 70471 Attn: Joseph C. Chautin, III, Esq. Tele: (985) 629-0777 Email: <a href="mailto:jchautin@hardycarey.com">jchautin@hardycarey.com</a>

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

**11.6 Waiver of Provisions.** The terms, covenants, representations, warranties, and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of either party at any time or times to require performance of any provision of this Agreement shall not affect the exercise of a party's rights at a later date. No waiver granted in any one circumstance shall be deemed a waiver in any other instance, no matter how similar. No practice of the parties shall, by itself, be deemed a waiver of any right hereunder.

**11.7 Entire Agreement.** This Agreement (including the Schedules and Exhibit hereto) constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings with respect to the subject matter hereof, except any confidentiality agreement between the parties with respect to the Stations, which shall remain in full force and effect. Neither party makes any representation or warranty with respect to the transactions contemplated by this Agreement except as expressly set forth in this Agreement.

**11.8 Severability.** If any court or governmental authority of competent jurisdiction holds any provision in this Agreement invalid, illegal or unenforceable under any applicable law, so long as neither party is deprived of the benefits of this Agreement in any material respect, 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.

**11.9 No Beneficiaries.** Nothing in this Agreement expressed or implied is intended or shall be construed to give any rights to any person or entity other than the parties hereto and their successors and permitted assigns.

**11.10 Governing Law.** The construction and performance of this Agreement shall be governed by the laws of the State of South Carolina without giving effect to the choice of law provisions thereof.

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

**11.12 Brokerage.** Seller has retained Edward N. Esserman with Media Services Group, Inc. as its broker in connection with this Agreement, and is solely responsible for the payment of any brokerage fees required thereby. Seller agrees to indemnify and hold Buyer harmless against any claim from Esserman, Media Services Group, Inc. or any other broker based upon any brokerage agreement, arrangement or understanding alleged to have been made by Seller. Buyer has not retained a broker in connection with this Agreement, and agrees to indemnify and hold Seller harmless against any claim from a broker or third party based upon a brokerage agreement, arrangement or understanding alleged to have been made by Buyer.

**11.13 Like Kind Exchange.** If either party requests, the other shall cooperate to effect a tax-deferred exchange under §1031 of the Code for the exchanging party; provided, however, (i) the exchange shall be at no expense to the non-exchanging party; (ii) the exchange shall not delay the Closing; and (iii) the non-exchanging party shall not be required to acquire title to any proposed exchange properties or to incur any liability to accommodate the exchange. The exchanging party shall indemnify, defend and hold the non-exchanging party harmless from and against any and all claims, demands, costs and expenses which the non-exchanging party may sustain or incur resulting from the consummation of the transaction as a §1031 exchange rather than a sale.

## **ARTICLE 12: DEFINITIONS**

The following is a list of terms used in this Agreement and a reference to the section hereof in which such term is defined:

<b><u>Term</u></b>	<b><u>Section Reference</u></b>
Accounts Receivable	1.2(h)
Assumed Obligations	1.5
Buyer	Preamble
Buyer Ancillary Agreements	3.1
Cash Payment	1.6
Claim	9.3(a)
Closing	1.10
Closing Date	1.10
Code	1.9
Communications Act	2.4
Cumulus	1.2(a)
Cumulus Broadcasting LLC	1.1
Damages	9.2(a)
Deposit	1.7
Effective Time	1.8
Escrow Agent	1.7
Escrow Agreement	1.7
Excluded Assets	1.2
FCC	Recitals
FCC Application	1.11
FCC Consent	1.11
FCC Licenses	1.1(a)
FCC Rules	2.4
Final Order	1.10
GAAP	1.8
Liens	1.3
Permitted Liens	1.3
Purchase Price	1.6
Retained Obligations	1.5
Renewal Applications	2.4
Seller	Preamble
Seller Ancillary Agreements	2.1
Stations	Recitals
Station Assets	Recitals
Tangible Personal Property	1.1(b)
Cadet Divestiture Trust Agreement	Preamble
Trustee	Preamble
WJXY Tower Lease	1.1(d)
WXJY Ground Lease	1.1(c)

[Signatures on following page]



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

JOULE BROADCASTING, LLC, AS TRUSTEE

By: 

Name: Edward N. Esserman

Title: Sole Member

COLONIAL RADIO GROUP, INC.

By: 

Name: Jeffrey M. Andrulonis

Title: President