

## **ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of November 26, 2003, by and among OLMSTED COUNTY BROADCASTING Co., a Minnesota corporation ("Olmsted"), HOWARD G. BILL, an individual resident of the State of Minnesota ("Mr. Bill"), LUCILLE S. BILL, an individual resident of the State of Minnesota ("Mrs. Bill" and together with Mr. Bill and Olmsted sometimes hereinafter referred to as "Sellers"), CUMULUS BROADCASTING, INC., a Nevada corporation ("Buyer"), and CUMULUS LICENSING CORP., a Nevada corporation ("License Co." and together with Buyer being hereinafter sometimes referred to as "Buyers").

### **WITNESSETH:**

**WHEREAS**, Olmsted is the owner of the radio broadcast stations KOLM-AM and KWWK-FM serving the Rochester, Minnesota market.

**WHEREAS**, Mr. Bill and Mrs. Bill jointly own the radio broadcast station KLCX-FM serving the St. Charles, Minnesota market.

**WHEREAS**, Mr. Bill and Mrs. Bill are all of the shareholders of Olmsted;

**WHEREAS**, Sellers operate the radio stations KOLM-AM, KWWK-FM and KLCX-FM (collectively the "Stations") pursuant to certain authorizations held by Sellers and issued by the Federal Communications Commission (the "FCC") and Sellers own or lease certain assets used and/or useful in connection with the operation of the Stations;

**WHEREAS**, Mr. Bill, Buyers and Mr. Michael Borgen executed a letter of intent regarding the proposed purchase of the Stations and the radio stations KFIL-FM, KFIL-AM and KVGO-FM for an aggregate purchase price of Eight Million Dollars (\$8,000,000); and

**WHEREAS**, each of Sellers agrees to the sale, assignment, and transfer of the Stations, the FCC authorizations for the Stations, and the assets and business of the Stations, and Buyers desire to acquire the Stations, and such FCC authorization, assets and business, all on the terms and subject to the conditions hereinafter set forth;

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, representations, and warranties herein contained, and upon the terms and subject to the conditions hereinafter set forth, the parties hereto hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

**“Advertising Contracts”** means all orders and agreements for the sale of advertising time on or pertaining to the Stations for cash, and all trade, barter, and similar agreements for the sale of advertising time on or pertaining to the Stations other than for cash, and all such orders and agreements for advertising time entered into between the date hereof and the Closing Date, each in the ordinary course of business, and to the extent the foregoing have not been performed as of the Closing Date.

**“Agreement”** has the meaning set forth in the preamble hereto.

**“Allocation Schedule”** has the meaning set forth in Section 2.5 hereof.

**“Assignment”** has the meaning set forth in Section 3.1(a) hereof.

**“Assignment and Assumption Agreement”** has the meaning set forth in Section 2.7 hereof.

**“Assignment Application”** has the meaning set forth in Section 3.1(a) hereof.

**“Assumed Contracts”** has the meaning set forth in Section 2.1(e) hereof.

**“Authorizations”** means collectively, the Commission Authorizations and the Other Authorizations.

**“Balance Sheet Date”** has the meaning set forth in Section 4.11 hereof.

**“Buyer”** has the meaning set forth in the preamble hereto.

**“Buyer Documents”** has the meaning set forth in Section 5.2 hereof.

**“Buyers”** has the meaning set forth in the preamble hereto.

**“Closing”** has the meaning set forth in Section 8.1 hereof.

**“Closing Date”** means the date on which the Closing occurs.

**“Closing Payment”** has the meaning set forth in Section 2.4 hereof.

**“COBRA”** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“Commission Authorizations”** means all licenses, permits, approvals, construction permits, and authorizations issued or granted by the FCC for the operation of, or used and/or useful in connection with the operation of the Stations (and any and all auxiliary and/or supportive transmitting and/or receiving facilities, boosters, and repeaters associated with

the Station), including, without limitation, all of those listed in Schedule 4.6(b)(i) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**“Communications Act”** means the Communications Act of 1934, as amended.

**“Company Benefit Plans”** has the meaning set forth in Section 4.15(a) hereof.

**“Compliance Information”** has the meaning set forth in Section 6.14(iii) hereof.

**“Contracts”** means all contracts, agreements, orders, commitments, arrangements and understandings, written or oral, and all such other documents to which the Stations or Sellers or any affiliate or predecessor of Sellers, in connection with the operation of the Stations are a party, including, without limitation, all leases, program licenses, contracts to broadcast programs on the Stations, employment, confidentiality and indemnification agreements, Advertising Contracts, Real Property Leases and Personal Property Leases.

**“Cumulus Stock”** means the Class A Common Stock, par value \$.01 per share, of Cumulus Media.

**“Cumulus Media”** means Cumulus Media Inc., a Delaware corporation.

**“Cure Period”** has the meaning set forth in Section 10.1(b) hereof.

**“Documentation”** means all documentation, records, and software, whether in electronic or print form, in the possession or under the control of Sellers evidencing, representing, or containing or relating to any Program or used in or necessary to the operation of the Stations, including, without limitation, any manuals, functional and design specifications, user and programmer instructions, coding, testing notes, error reports and logs, patches and patch instructions, itemizations of development tools, and all other writings which would be necessary or helpful to a skilled programmer to understand, maintain, and enhance any Program.

**“Environmental Audit”** has the meaning set forth in Section 6.15 hereof.

**“Environmental Complaint”** means any complaint, order, citation or other communication, whether from a governmental authority, citizens group, employee or other person with regard to Environmental Liabilities or any environmental, health, or safety matter affecting or relating to any of the Real Property or the operation of the Stations.

**“Environmental Liabilities”** means any loss, liability, claim, damage, deficiency, cleanup or remediation obligation, injury, fine, penalty, cost (including cleanup or remediation costs) or expense (including reasonable attorneys’ fees) arising from or in connection with (i) the use, management, treatment, handling, disposal, transport, storage, spill, escape, leakage, emission, release, discharge or presence of any Hazardous Substance, including, without limitation, gasoline, oil or other petroleum products, asbestos, explosives, radioactive materials and related and similar material or any other material or substance defined as hazardous, toxic or polluting by any federal, state or local law, ordinance, rule or regulation on, at, from or under any of the Real Property prior to the Closing Date; (ii) the failure to obtain any license or permit required in connection with any such Hazardous Substance prior to the Closing

Date; or (iii) any noncompliance with any Environmental Requirement, and/or any Environmental Complaint prior to the Closing Date.

**“Environmental Requirement”** means any federal, state, local or foreign laws, rules, order or regulations relating to pollution or protection of human health or the environment (including, without limitation, any ambient air, surface water, ground water, wetlands, land surface, subsurface strata and indoor and outdoor workplace), including laws and regulations relating to emissions, discharges, releases, or threatened releases of any Hazardous Substance or the importation, manufacture, processing, formulation, testing, distribution, use, treatment, storage disposal, transport or handling of Hazardous Substances.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“Escrow Agreement”** has the meaning set forth in Section 2.10 hereof.

**“Escrow Amount”** means Five Hundred Thousand United States Dollars (US\$500,000).

**“Escrow Agent”** means The Bank of New York Trust Company of Florida, N.A.

**“Escrow Shares”** means the number of shares equal to the quotient of (i) the escrow Amount divided by (ii) the Per Share Closing Price.

**“Excluded Assets”** has the meaning set forth in Section 2.2 hereof.

**“Excluded Contracts”** means all Contracts other than the Assumed Contracts.

**“Excluded Liabilities”** has the meaning set forth in Section 2.7 hereof.

**“FCC”** has the meaning set forth in the recitals hereto.

**“FCC Logs”** has the meaning set forth in Section 2.1(j) hereof.

**“Final Order”** means an action of the FCC which is not reversed, stayed, enjoined, annulled, set aside or suspended, and with respect to which no timely request for stay, reconsideration, review, rehearing, or notice of appeal or determination to reconsider or review is pending, and as to which the time for filing any such request, petition, or notice of appeal or for review by the FCC, and for any reconsideration, stay, or setting aside by the FCC on its own motion or initiative, has expired.

**“Financial Statements”** has the meaning set forth in Section 4.4 hereof.

**“Hazardous Substance”** has the meaning set forth in Section 4.13(a) hereof.

**“Initial Order”** has the meaning set forth in Section 3.1(a) hereof.

**“Indemnification Cap”** means Five Hundred Thousand United State Dollars (US\$500,000).

**"Indemnification Threshold"** means Twenty-five Thousand United States Dollars (US\$25,000).

**"Indemnified Party"** has the meaning set forth in Section 11.3 hereof.

**"Indemnifying Party"** has the meaning set forth in Section 11.3 hereof.

**"Insurance Proceeds"** means all insurance proceeds and rights thereto derived from loss, damage, or destruction of or to any Purchased Assets, to the extent not utilized prior to the Closing and needed to repair or replace the lost, damaged, or destroyed items pursuant to the terms of Section 12 hereof.

**"Intangibles"** means the call letters of the Stations, and all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, applications for any of the foregoing, telephone numbers and listings, trade secrets, confidential or proprietary information, and other intangible property used or held for use and/or useful by or for the Stations and/or Sellers in connection with the business or operation of the Stations and any and all universal resource locators ("URLs"), web sites, domain names, of or maintained by or for the Stations, and any web site or home page of or maintained by or for the Stations, and all property and assets (tangible or intangible) used or necessary to create and publish any such web site or home page (collectively, the "Site") and all goodwill associated with any of the foregoing.

**"Letter of Credit"** has the meaning set forth in Section 2.12 hereof.

**"License Co."** has the meaning set forth in the preamble hereto.

**"Liens"** means any liens, pledges, claims, charges, mortgages, security interests, restrictions, easements, liabilities, claims, title defects, encumbrances or rights of others of every kind and description.

**"Liquidated Damages Amount"** has the meaning set forth in Section 10.2(c) hereof.

**"Material Contracts"** has the meaning set forth in Section 4.9(b) hereof.

**"Non-Compete Agreement"** has the meaning set forth in Section 2.11 hereof.

**"Olmsted"** has the meaning set forth in the preamble hereto.

**"Other Authorizations"** means all licenses, permits, variances, franchises, certifications, approvals, construction permits, and authorizations issued or granted by any administrative body or licensing authority or governmental or regulatory agency, other than Commission Authorizations, used or useful in connection with the operation of any of the Stations and/or the ownership and/or use of the Purchased Assets, including, without limitation, all of those listed in Schedule 4.6(b)(ii) hereto, together with any applications therefor, renewals, extensions, or modifications thereof and additions thereto.

**"Permitted Liens"** means liens for Taxes not yet due and payable.

**“Per Share Closing Price”** means the closing price per share of Cumulus Stock as reported by the Nasdaq Stock Market, Inc. on the Closing Date.

**“Personal Property Leases”** has the meaning set forth in Section 4.8(b) hereof.

**“Person”** means any individual, corporation, partnership, limited liability company, joint venture, association, trust, estate or unincorporated organization.

**“Pre-Closing Escrow Agreement”** has the meaning set forth in Section 2.12 hereof.

**“Programs”** means all computer systems (including without limitation, management information and order systems, hardware, software, servers, computers, printers, scanners, monitors, peripheral and accessory devices, and the related media, manuals, documentation, and user guides) of or used by or in the operation of the Stations, all related claims, credits, and rights of recovery and set-off with respect thereto, and all of the right, title, and interest (including by reason of license or lease) of Sellers or the Stations in or to any software, computer program, or software product owned, used, developed, or being developed by or for any of the Stations, whether for internal use or for sale or license to others, and any software, computer program, or software product licensed by Sellers for use by the Stations, and all proprietary rights of Sellers or the Stations, whether or not patented or copyrighted, associated therewith.

**“Prospectus”** means the prospectus dated July 3, 2002, that is a part of the Registration Statement, together with any amendments or supplements thereto.

**“Purchase Price”** has the meaning set forth in Section 2.3 hereof.

**“Purchased Assets”** has the meaning set forth in Section 2.1 hereof.

**“Real Property”** means all land, buildings, improvements, fixtures, and transmitting towers (to the extent they constitute fixtures or other interests in real property and not Tangible Personal Property) and other real property, and all leaseholds and other interests in real property and the buildings and improvements thereon and appurtenances thereto, including, without limitation, easements, variances, air rights, and the like, and all security deposits with respect to any of the foregoing, used, or held for use, and/or useful, by or for the Stations and/or Sellers in connection with the operation of the Stations.

**“Real Property Leases”** has the meaning set forth in Section 4.8(a) hereof.

**“Receivables”** means all accounts receivable of Sellers in respect of the Stations and/or of the Stations generated in respect of air time broadcast prior to 12:00 a.m. on the Closing Date.

**“Registration Statement”** means the Registration Statement on Form S-4 (File No. 333-90990), as amended, of Cumulus Media filed with the SEC and relating to shares of Cumulus Stock.

**“SEC”** means the United States Securities and Exchange Commission.

**“Securities Act”** means the federal Securities Act of 1933, as amended.

**“Sellers”** has the meaning set forth in the preamble hereto.

**“Seller Documents”** has the meaning set forth in Section 4.2 hereof.

**“Stations”** has the meaning set forth in the preamble hereto.

**“Stock Consideration”** has the meaning set forth in Section 2.4 hereof.

**“Tangible Personal Property”** means all tangible personal property owned, leased, used or held for use and/or useful by or for the Stations and/or Sellers in connection with the business or operation of the Stations, including, but not limited to, all physical assets and equipment, leasehold improvements, machinery, vehicles, furniture, fixtures, transmitters, antennae, transmitting towers (to the extent they do not constitute Real Property) office materials and supplies, spare parts, and music libraries, including, without limitation, those listed in Schedule 4.8(b) hereto, together with all replacements thereof, additions and alterations thereto, and substitutions therefor, made between the date hereof and the Closing Date.

**“Taxes”** or **“Tax”** has the meaning set forth in Section 4.18 hereof.

**“Title Company”** has the meaning set forth in Section 6.14 hereof.

**“Title Policy”** has the meaning set forth in Section 6.14(i) hereof.

**“Transferred Employees”** means any employee of the Stations who, at Buyer's sole discretion, is offered employment by Buyer and accepts such employment.

**“Warranty Deeds”** has the meaning set forth in Section 6.14 hereof.

## **ARTICLE 2**

### **PURCHASE AND SALE OF BUSINESS AND ASSETS; PURCHASE PRICE PAYMENT; ASSUMPTION OF OBLIGATIONS**

2.1 Purchased Assets. Subject to and upon the terms and conditions of this Agreement, Sellers hereby covenant and agree to sell, transfer, convey, assign, grant and deliver to Buyers, and Buyers hereby covenant and agree to purchase, free and clear of any Liens, except for the Permitted Liens, all right, title and interest in and to all business, properties, assets, machinery, equipment, furniture, fixtures, franchises, goodwill and rights of Sellers, of every nature, kind and description, tangible and intangible, owned or leased, wheresoever located and whether or not carried or reflected on the books or records of Sellers, to the extent used, held for use and/or useful in connection with the operation of the Stations and any replacements of or additions to such assets made between the date of this Agreement and Closing, and excluding only the Excluded Assets. All of the foregoing are herein collectively referred to as the “Purchased Assets” and include, without limitation, all of Sellers’ rights, title and interest in and to the following (it being understood that License Co. shall acquire all right, title and interest in and to the Commission Authorizations and Buyer shall acquire all of the other Purchased Assets):

- (a) all Commission Authorizations;
- (b) all Other Authorizations;
- (c) all Tangible Personal Property;
- (d) all Real Property;
- (e) all Contracts set forth on Schedule 2.1(e) hereto (the "Assumed Contracts");
- (f) all Intangibles;
- (g) all Insurance Proceeds;
- (h) all Programs;
- (i) all Documentation;
- (j) all FCC logs and similar records that relate to the operation of the Stations ("FCC Logs"); and
- (k) all goodwill in and going concern value of the Stations.

2.2 Excluded Assets. The Purchased Assets shall not include the following (the "Excluded Assets"):

- (a) All cash, certificates of deposit, or similar investments of Sellers, Treasury bills, and other marketable securities on hand and/or in banks, and unearned insurance premiums and security deposits;
- (b) Olmsted's corporate seal, minute books, organizational documents, and such books and records as pertain solely to the organization, existence, and capitalization of Olmsted;
- (c) All Receivables;
- (d) All Company Benefit Plans;
- (e) The Excluded Contracts;
- (f) Insurance policies relating to the Stations and the rights to proceeds thereunder, except for any Insurance Proceeds; and
- (g) A Canon typewriter currently in the Sales Department of the Stations.



2.3 Purchase Price. Subject to and upon the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of Sellers contained herein, and in full payment for the sale, conveyance, assignment, transfer and delivery of the Purchased Assets as described herein by Sellers, Buyer shall pay to Sellers the aggregate sum Five Million United States Dollars (US \$5,000,000) (the "Purchase Price"), payable as provided in Section 2.4 below.

2.4 Closing Payment. At Closing, the Purchase Price, minus the Escrow Amount, plus or minus any adjustments pursuant to Section 2.6 hereof (the "Closing Payment"), shall be paid in cash, in immediately available funds by Buyer by wire transfer pursuant to written wire transfer instructions of Sellers to Buyer delivered by Sellers to Buyer no later than three (3) days prior to Closing or such other means as Sellers and Buyer shall agree; provided, however, that in lieu of cash Buyer may elect, by written notice to Sellers at least five (5) days prior to Closing, to instruct the transfer agent of Cumulus Media to issue to Sellers, at Buyer's sole discretion, certificates representing a number of shares of Cumulus Stock (or, to the extent eligible and subject to Buyer's receipt of applicable representations from Sellers, evidence that such shares have been credited through an electronic transfer system to the brokerage account designated by Sellers) pursuant to the Registration Statement or such other registration statement as Cumulus may then have in effect and pursuant to which it may issue shares in connection with acquisitions, with an aggregate value of up to the amount of the Closing Payment (the "Stock Consideration"), such number of shares to be determined based upon the Per Share Closing Price, in which event the cash portion of the Closing Payment shall be reduced accordingly; provided such election to deliver Cumulus Stock shall not be binding upon Buyer and Buyer may elect at any time up to Closing to deliver cash. In the event that the Stock Consideration should result in any fractional shares of Cumulus Stock, Sellers shall not be entitled to receive any such fractional shares, and in lieu of such fractional shares, shall be entitled to receive cash (without interest) equal to (i) such fraction multiplied by (ii) the Per Share Closing Price.

2.5 Allocation. Sellers and Buyer agree to allocate the Purchase Price between Sellers and among the Purchased Assets in accordance with the allocation schedule to be attached hereto as Schedule 2.5, which allocation schedule will be determined prior to the Closing (the "Allocation Schedule"). If the parties are unable to agree on the final Allocation Schedule prior to Closing, a third-party appraiser mutually acceptable to Buyer and Sellers, the fees of which shall be borne equally by Buyer and Sellers, shall resolve the allocation of the consideration to any items with respect to which there is a dispute between the parties. Sellers and Buyer will each file an IRS Form 8594 consistent with the Allocation Schedule.

2.6 Certain Closing Prorations and Adjustments/Accounts Receivable.

(a) All utilities charges, personal property taxes and real property taxes shall be prorated between Sellers and Buyer as of 11:59 p.m. on the Closing Date, and the net amount resulting from the foregoing in favor of Buyer or Sellers, as the case may be, shall be credited against or added to the Closing Payment. Additionally, Buyer shall receive a credit at such Closing against the Closing Payment for a pro-rata portion of all accrued but unused vacation or sick time for any Transferred Employees.

(b) All amounts paid prior to the Closing under all Assumed Contracts for the sale of air time to be performed or aired after the Closing Date shall be paid by Sellers to Buyer at Closing or, at Buyer's option, be credited against the Closing Payment.

(c) Sellers hereby assign to Buyer, for collection only, the Receivables. For a period of one hundred twenty (120) days after the Closing Date (the "Collection Period"), Buyer agrees to use reasonable efforts to collect the Receivables, as agent for Sellers and on Sellers' behalf, but in accordance with Buyer's normal collection procedures as in effect from time to time (and without being required to incur any out-of-pocket cost or expense or resort to litigation or collection proceedings), and Sellers agree that during the Collection Period they shall refrain from taking action (whether in connection with collection or otherwise) in respect of the Receivables. Buyer shall have the right and authority to endorse, without recourse, with the name of Sellers, any checks received in respect of any Receivables. As soon as practicable, but in no event later than the 10<sup>th</sup> day of each calendar month following the end of the first full month after the Closing Date or the next business day thereafter if the 10<sup>th</sup> is not a business day, Buyer will furnish Sellers with an accounting of the Receivables collected by Buyer on Sellers' behalf during the preceding calendar month, and, on such day or as soon as practicable thereafter, but in no event later than 15 business days thereafter, Buyer shall remit to Sellers the net amount of all such Receivables collected during such calendar month after deducting therefrom any applicable agency, sales and other commissions and any reasonable out-of-pocket expenses incurred by Buyer paid or payable by Buyer in connection with the collection of the Receivables. Sellers acknowledge and agree that all accounts receivable generated in respect of the operation or airtime broadcast of the Stations from and after the Closing Date are the sole and exclusive property of Buyer. On the last day of the Collection Period, Buyer will turn back to Sellers all of the Receivables which have not yet been collected (including all records and documents of the Stations relating to such uncollected accounts), and Buyer will thereafter have no further responsibility with respect to the collection of such Receivables. Within twenty (20) business days after Buyer turns back the Receivables to Sellers pursuant to this Section, Buyer will furnish Sellers with a final and up-to-date accounting of the Receivables. Sellers acknowledge and agree that Buyer is acting as collection agent hereunder for the benefit of Sellers and that Buyer has accepted such responsibility for the accommodation of Sellers only. Sellers shall remain responsible for all agencies, sales and other commissions and related payroll and other taxes and withholdings associated with or arising out of any of the Receivables. Unless otherwise designated by the Person owing the Receivable, any amounts received for payment of any receivables generated in respect of the operation or airtime broadcast of the Stations shall be applied first to the oldest receivable.

2.7 Assumed Obligations. Buyer shall, at the Closing, execute and deliver to Sellers an Assignment and Assumption Agreement (the “Assignment and Assumption Agreement”), substantially in the form of Exhibit 2.7 hereto pursuant to which Sellers shall assign to Buyer its rights in the Assumed Contracts, together with any Contracts entered into by Sellers in accordance with this Agreement between the date hereof and the Closing Date which Buyer elects to assume. Except as expressly provided in the Assignment and Assumption Agreement, Buyer shall not and does not assume any liability or obligation of any nature, known or unknown, fixed or contingent, legal, statutory, contractual or otherwise, disclosed or undisclosed, of Sellers or otherwise relating to or arising from the Purchased Assets or the Stations, or the ownership or operation thereof (collectively the “Excluded Liabilities”), all of which shall be retained and discharged by Sellers. Excluded Liabilities will include, without limitation, (i) all Environmental Liabilities; (ii) any and all violations of Contracts, laws, rules, regulations, codes or orders by Sellers which exist at or as of the Closing Date or which arise after the Closing Date but which are based upon or arise from any act, transaction, circumstance, sale or providing of air time, goods or services, state of facts or other condition which occurred or existed, or the content of any program, advertisement or transmission broadcast or aired, on or before the Closing Date, whether or not then known; (iii) any debt, trade payable or accounts payable of Sellers; (iv) any obligations or liabilities of Sellers to any of its employees or to any other Person under any collective bargaining agreement, employment contract or Company Benefit Plan, or for wages, salaries, other compensation or employee benefits, or with respect to compliance with applicable federal, state or local laws, rules or regulations relating to minimum wages, overtime rates, labor or employment; (v) any litigation arising from or relating to facts or circumstances existing as of the Closing Date or any conduct of Sellers on or prior to the Closing Date; (vi) all liabilities in respect of or arising out of any and all Taxes of Sellers; (vii) all liabilities arising in connection with Excluded Contracts; and (viii) any other liabilities of Sellers related to the Stations or the Purchased Assets. Except as expressly provided by the Assignment and Assumption Agreement, Buyer shall not be required to defend any suit or claim arising out of any act, event, or transaction occurring on or prior to the Closing Date in connection with the ownership or operations of or otherwise relating to the Purchased Assets, the Stations or Sellers.

2.8 Assignments of Assumed Contracts. Buyer and Sellers acknowledge that certain of the Assumed Contracts to be included in the Purchased Assets, and the rights and benefits thereunder necessary or appropriate or relating to the conduct of the business and activities of Sellers and/or any of the Stations, may not, by their terms, be assignable. Anything in this Agreement or in the Assignment and Assumption Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any such Assumed Contract, and Buyer shall not be deemed to have assumed the same or to be required to perform any obligations thereunder, if an attempted assignment thereof, without the consent of a third party thereto, would constitute a breach thereof or in any way affect the rights under any such Assumed Contract of Buyer or Sellers thereunder. In such event, Sellers will cooperate with Buyer to provide for Buyer all benefits to which Sellers is entitled under such Assumed Contracts, and any transfer or assignment to Buyer by Sellers of any such Assumed Contract or any right or benefit arising thereunder or resulting therefrom which shall require the consent or approval of any third party shall be made subject to such consent or approval being obtained. Sellers will use its commercially reasonable efforts prior to, and if requested by Buyer after, the Closing Date to obtain all necessary consents to the transfer and assignment of Assumed Contracts.

2.9 Certain Payables and Expenses. On or prior to the Closing, Sellers shall pay and discharge all liabilities and obligations of Sellers owing or pertaining to all vendors and other persons and entities with which Buyer reasonably expects to maintain business relations at any time after such Closing.

2.10 Escrow Agreement. Sellers and Buyers covenant and agree to enter into at the Closing an escrow agreement substantially in the form of Exhibit 2.10 hereto (the "Escrow Agreement"). At Closing, Buyer, at its election, shall pay or deliver to the Escrow Agent the Escrow Amount or the Escrow Shares (as described on Schedule 2.10 hereto) or any combination thereof not exceeding in value the total amount of the Escrow Amount.

2.11 Non-Compete. Each of the Sellers covenants and agrees to execute and to deliver, and to cause each person listed on Schedule 7.1(i) hereto to execute and deliver, at the Closing an executed Agreement Ancillary to Sale of Business substantially in the form attached hereto as Exhibit 2.11 (each a "Non-Compete Agreement").

2.12 Pre-Closing Escrow Agreement. Contemporaneously with the execution hereof, Buyer shall deposit into escrow pursuant to and escrow agreement in the form heretofore agreed upon by Buyer and Sellers and executed contemporaneously herewith (the "Pre-Closing Escrow Agreement") at Buyer's option (i) a letter of credit in the form heretofore agreed upon by Buyer and Seller in the Liquidated Damages Amount (the "Letter of Credit") or (ii) the Liquidated Damages Amount, in cash, replaceable by Buyer with a Letter of Credit as provided in the Pre-Closing Escrow Agreement.

### **ARTICLE 3**

#### **APPLICATION TO AND CONSENT BY FCC**

##### **3.1 Application for FCC Consent.**

(a) Sellers and Buyers agree to use their commercially reasonable efforts and to cooperate with each other in preparing, filing and prosecuting an assignment (the "Assignment") of the Commission Authorizations to License Co. and in causing the grant by the FCC of its approval, without any condition which the Buyers reasonably determine is adverse to Buyers, of such assignment (the "Initial Order") and in causing the Initial Order to become a Final Order. The parties hereto shall cooperate with each other to file the appropriate FCC application form (the "Assignment Application") along with all information, data, exhibits, resolutions, statements, and other materials necessary and proper in connection with such Assignment Application within ten (10) business days after the execution of this Agreement. Each party further agrees to expeditiously prepare and file with the FCC any amendments or any other filings required by the FCC in connection with the Assignment Application whenever such amendments or filings are required by the FCC or its rules. For purposes of this Agreement, each party shall be deemed to be using its reasonable efforts with respect to obtaining the Final Order, and to be otherwise complying with the foregoing provisions of this Section 3.1, so long as it truthfully and promptly provides information necessary in completing the application process, provides its comments on any filing materials, and uses its reasonable efforts to oppose attempts by third parties to petition to deny, to resist, modify, or overturn the grant of the Assignment Application without prejudice to the parties' termination rights under this

Agreement, it being further understood that neither Sellers nor Buyers shall be required to expend any funds or efforts contemplated under this Article 3 unless the other of them is concurrently and likewise complying with its obligations under this Article 3.

(b) Except as otherwise provided herein, each party will be solely responsible for the expenses incurred by it in the preparation, filing, and prosecution of its respective portion of the Assignment Application. All filing fees and grant fees imposed shall be paid one-half (½) by Sellers and one-half (½) by Buyer.

(c) Buyer and Sellers, each at their own respective expense, shall use their respective commercially reasonable efforts to oppose any efforts or any requests by third parties for reconsideration or review of the Initial Order (or as the case may be, the Final Order) by the FCC or a court of competent jurisdiction.

3.2 Notice of Application. Sellers shall, at their expense, give due notice of the filing of the Assignment Application by such means as may be required by the rules and regulations of the FCC.

## **ARTICLE 4**

### **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby jointly and severally represent and warrant to Buyer that:

#### **4.1 Organization, Standing, and Qualification; No Subsidiaries.**

(a) Olmsted is a corporation validly existing and in good standing under the laws of the State of Minnesota and is qualified to conduct business and relative to the operation of the Stations is in good standing in each jurisdiction where the character of its respective properties owned or held under lease or the nature of its respective activities make such qualifications necessary. Olmsted is not required to be qualified to do business in any other jurisdiction in connection with the operation of the Stations. Olmsted has all requisite power and authority and is entitled to own, lease, and operate its properties and to carry on its business as and in the places such properties are now owned, leased, or operated and where such business is presently conducted. The copies of the Articles of Incorporation and Bylaws of Olmsted, heretofore delivered by Sellers to Buyer, are true, complete and correct.

(b) The operations of the Stations is not conducted through any direct or indirect subsidiary, shareholder, or affiliate of Olmsted, and none of the business, assets, properties, or rights of or related to the Stations is held, owned, used, or conducted by any shareholder or affiliate of Olmsted or any third party.

4.2 Authority. Each of Sellers has all requisite capacity, power and authority, as applicable, to execute, deliver, and perform this Agreement and each other agreement, document, and instrument to be executed, delivered, or performed by each of Sellers in connection with this Agreement (the “Seller Documents”) and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when executed and delivered at the Closing, each other Seller Document will constitute, the legal, valid, and binding obligation of each of Sellers enforceable in accordance with its terms. All corporate proceedings and any action required to be taken by each of Sellers relating to the execution, delivery, and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly taken.

4.3 No Conflict; Consents. Except for the filing of the Assignment Application and the granting of the Initial Order and the Final Order, the execution, delivery and performance of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or violate any provision of the Articles of Incorporation or the Bylaws of Olmsted, (ii) with or without the giving of notice or the passage of time, or both, result in a breach of, or violate, or be in conflict with, or constitute a default under, or permit the termination of, or cause or permit acceleration under, any agreement or instrument of any debt or obligation to which any of the Sellers is a party or to or by which any of them or any of the Purchased Assets is subject or bound, or result in the loss or adverse modification of any of the Authorizations or Intangibles, (iii) require the consent of any party to any agreement or commitment to which any of the Sellers is a party, or to or by which any of them or the Purchased Assets is subject or bound, (iv) result in the creation or imposition of any Lien upon any of the Purchased Assets, or (v) violate any law, rule or regulation or any order, judgment, decree or award of any court, governmental authority or arbitrator to or by which any of the Sellers or any of the Purchased Assets is subject or bound; no consent, approval or authorization of, or declaration, filing or registration with, or notice to, any governmental or regulatory authority or any other third party is required to be obtained or made by any of Sellers in connection with the execution, delivery and performance of this Agreement or the Seller Documents or the consummation of the transactions contemplated hereby and thereby.

4.4 Financial Statements. Attached hereto as Schedule 4.4(a) are true and correct copies of the balance sheets and related statements of income and cash flows of the Stations as at and for the fiscal years ended December 31, 2001 and 2002 and as at and for the eight (8) month period ended August 31, 2003 (the "Financial Statements"). All of the Financial Statements have been prepared in accordance with generally accepted accounting principles (except in the case of the Financial Statements for the eight (8) month period ended August 31, 2003 for the absence of footnotes and normal and customary year-end adjustments, none of which individually or in the aggregate are material) consistently applied and maintained throughout the periods indicated, and fairly present the financial condition of the Stations as at their respective dates and the results of operations of the Stations for the periods covered thereby. Such Financial Statements do not contain any items of special or nonrecurring income or any other income not earned in the ordinary course of business, and reflect no operations or business other than those of the Stations, except as expressly specified therein, and include all adjustments, which consist only of normal recurring accruals, necessary for such fair presentation. The revenue pacing reports for the Stations heretofore delivered to Buyer and attached hereto as Schedule 4.4(b) or hereafter delivered to Buyer are and shall be true and accurate in all material respects. All accounts receivable reflected in the balance sheets of the Stations contained in the Financial Statements represent valid obligations arising in the ordinary course of business and are recorded at their fair market value on such balance sheets.

4.5 Litigation. There is no action, suit, proceeding, arbitration, claim or investigation pending, or to the knowledge of Sellers threatened, against or affecting Sellers or their operation of the Stations or the Stations or any assets, properties, business or employees of the Stations or the transactions contemplated by this Agreement, nor to Sellers' knowledge is there any basis therefor. There is not outstanding any order, writ, injunction, award or decree of any court or arbitrator or any federal, state, municipal or other governmental department, commission, board, agency or instrumentality to which the Stations or Sellers in connection with its operation of the Stations is subject or otherwise applicable to the Stations or the Purchased Assets or any employee of the Stations, nor is any of them in default with respect to any such order, writ, injunction, award or decree.

4.6 Compliance; Properties; Authorizations.

(a) Except as set forth in Schedule 4.6(a) hereto, each of Sellers and the Stations have complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to Sellers in respect of the Stations, any of the employees thereof, and/or any aspect of the Stations' operations. Except as set forth in Schedule 4.6(a) hereto, neither the ownership nor use of the Purchased Assets nor the conduct of the business or the operation of the Stations, conflicts with the rights of any other person or entity or violates, or with or without the giving of notice or the passage of time, or both, will violate, conflict with or result in a default, right to accelerate or loss of rights under, any terms or provisions of any lease, license, agreement, commitment, law, ordinance, rule or regulation, or any order, judgment or decree to which Sellers or any of the Stations is a party or by which it or any of the Purchased Assets may be bound or affected.

(b) Sellers hold all Commission Authorizations (all of which are identified in Schedule 4.6(b)(i) hereto) and all Other Authorizations (all of which are identified in Schedule 4.6(b)(ii) hereto). Such Commission Authorizations are validly existing

authorizations for the operation of the facilities described therein under the Communications Act. The Commission Authorizations identified in Schedule 4.6(b)(i) hereto constitute all of the licenses and authorizations required under the Communications Act or the current rules, regulations, and policies of the FCC in connection with the operation of the Stations as currently operated. The Commission Authorizations are in full force and effect, have not been revoked, suspended, canceled, rescinded, or terminated, have not expired, and are unimpaired by any act or omission of Sellers or any members, stockholders, officers, directors, employees, or agents of Sellers. There are no conditions imposed by the FCC as part of any Commission Authorization that are neither set forth on the face thereof as issued by the FCC nor contained in the rules and regulations of the FCC applicable generally to Stations of the type, nature, class or location of the Stations. All FCC regulatory fees for the Stations have been paid, and all broadcast towers from which the Stations operates have been duly registered with the FCC. There is no action pending nor, to the knowledge of Sellers, threatened by or before the FCC or other body to revoke, refuse to renew, suspend, or modify any of the Commission Authorizations, or any action which may result in the denial of any pending application, the issuance of any cease and desist order, or the imposition of any administrative sanction with respect to the Stations or its operation, except for the Assignment Application before the FCC to assign the Commission Authorizations pursuant hereto. There is not pending to the knowledge of Sellers, any investigation, by or before the FCC, or any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture or complaint by, before or with the FCC against Sellers or officers, members, directors, stockholders or affiliates of Sellers nor, to the knowledge of Sellers, are any of the foregoing threatened. The Stations are, and for the last three (3) years have been, operating in compliance in all material respects with the Commission Authorizations, the Communications Act, and the current rules, regulations, and policies of the FCC. Sellers have timely filed all reports, forms and statements required to be filed with the FCC. All applications for the Authorizations submitted by Sellers were true and correct in all material respects when made. Sellers have not received any notice with respect to any of the Commission Authorizations or the Stations' compliance with the Communications Act that might cause the FCC not to consent to the assignment by Sellers of the Commission Authorizations as contemplated by this Agreement.

4.7 Title to Assets. Except for the assets and properties leased to Sellers pursuant to the leases identified in Schedule 4.8(b) hereto, Sellers have good and marketable title to all of the Purchased Assets. Sellers have good leasehold title to all Purchased Assets which are leased. None of the Purchased Assets is subject to any Lien except for the Permitted Liens. The Purchased Assets are in good operating condition and repair, reasonable wear and tear excepted, are suitable for the purposes used, and are adequate and sufficient for the operations of the Stations. The Purchased Assets comprise all of the assets required to operate the business of the Stations as conducted by Sellers as of the date hereof.

4.8 Properties.

(a) Schedule 4.8(a) contains a list and brief description of all owned Real Property related to any of the Stations, and all leases and subleases of Real Property related to any of the Stations under which each of Sellers holds any leasehold or other interest or right to the use thereof (the "Real Property Leases") or pursuant to which Sellers has leased, assigned, sublet or granted any rights therein or with respect thereto. All improvements on the Real Property comply in all material respects with applicable laws, ordinances, regulations and orders,



including those applicable to zoning and land use. All improvements located on owned Real Property comply in all material respect with the building codes and leased improvements were in compliance at the time first occupied by Sellers and Sellers are not currently aware of any non-compliance issues with regard thereto. No law, ordinance, regulation, order, restriction or agreement, including any zoning law, prohibits the use of any Real Property in the manner currently used by the Company, or to the knowledge of any of the Sellers, any planned expansion or alteration of or addition to the structures located on the Real Property. All antenna structures located on the Real Property that are required to be registered with the FCC have been so registered and such structures comply with the painting and lighting requirements promulgated by the Federal Aviation Administration. The consummation of the transactions contemplated hereunder will not adversely affect the Buyer's right to use the Real Property for the same purpose and to the same extent as used by the Company prior to the date of this Agreement. Each parcel of Real Property has unencumbered and unrestricted vehicular and pedestrian access to a publicly dedicated road either directly or indirectly by virtue of an easement not terminable by the grantor thereof, or by his heirs, personal representatives, successors or assigns. Each parcel of Real Property has all utility service, including without limitation gas, water, electricity, telephone and sanitary sewer service, required for the operation of the Real Property for its current use, and all such utilities enter such parcel of Real Property from a publicly dedicated right-of-way either directly or indirectly by virtue of an easement not terminable by the grantor thereof, or by his heirs, personal representatives, successors or assigns. With respect to each parcel of Real Property, the improvements, buildings and other structures, including all towers, transmitter buildings and guy wires, located on such parcel are located and contained completely within the boundaries of such parcel of Property and none of such improvements, buildings or other structures, including towers, transmitter buildings and guy wires, creates an encroachment over, across or upon the boundary lines of such parcel or any rights of way or easements. The design and as-built conditions of each parcel of Property are such that surface and storm water do not accumulate on such parcel and such water does not drain from such parcel of Property across land of adjacent property owners. No portion of any parcel of Property is located within a flood plain.

(b) Schedule 4.8(b) contains a true, complete and accurate list of all items of machinery, equipment, vehicles, furniture, fixtures, transmitting towers, transmitters, antennae, office materials and supplies, spare parts, music libraries and other Tangible Personal Property owned, leased or used by each of Sellers in connection with the operation of the Stations and included in the Purchased Assets, except for items having a value of less than \$1,000 which do not, in the aggregate, have a total value of more than \$10,000, setting forth with respect to all such listed property all leases relating thereto (the "Personal Property Leases").

#### 4.9 Contracts.

(a) Schedule 4.9 lists all Contracts excluding (A) purchase orders for necessary supplies or services and air time sales orders for cash made in the ordinary course of business (on customary terms and conditions and consistent with past practice) involving payments or receipts by Sellers of less than \$1,000 in any single case or series of related orders, and (B) contracts entered into in the ordinary course of business on customary terms and conditions which are terminable by Sellers on less than 30 days' notice without any penalty or consideration and involving payments or receipts during the entire life of such contracts of less than \$2,500 in the case of any single contract but not more than \$5,000 in the aggregate.

Schedule 4.9 hereto also sets forth as of the date set forth therein, all Advertising Contracts for which the Stations will receive other than cash consideration, and for which an obligation to broadcast advertising time is outstanding. Schedule 4.9 also indicates the value of goods yet to be received and services yet to be used.

(b) True and complete copies of all Contracts required to be listed pursuant to this Section 4.9 (the “Material Contracts”) (to the extent in writing or if not in writing, an accurate summary thereof), together with any and all amendments thereto, have been delivered to Buyer. All of the Contracts (other than those which have been fully performed) are in full force and effect. There is not under any Contract any existing default by Sellers, or to Sellers’ knowledge, any other party thereto, or any existing event which, after notice or lapse of time, or both, would constitute a default or result in a right to accelerate or loss of rights. None of the Sellers is a party to any agreement, contract, or commitment outside the ordinary course of business which obligates it or could obligate it to provide advertising time on the Stations on or after the Closing Date as a result of the failure of such Stations to satisfy specified ratings or any other performance criteria, guarantee, or similar representation or warranty.

4.10 Insurance. The properties and assets of Sellers, which are of an insurable character and are used or useful in the operation of the Stations, are insured at full replacement cost against loss or damage by fire or other risks, and each of Sellers maintains liability insurance, to the extent and in the manner and covering such risks as is customary for companies engaged in a business similar to the business of Sellers or owning assets similar to the Purchased Assets. The coverage under each such policy of insurance is in full force and effect, all premiums due and payable thereon have been paid, and no notice of cancellation or nonrenewal with respect to, or disallowance of any claim under, any such policy has been given to Sellers. There are no pending claims against such insurance policies as to which the insurers have denied liability and there exist no claims that have not been properly or timely submitted by Sellers to the related insurer.

4.11 Absence of Changes or Events since Balance Sheet Date. Except as set forth in Schedule 4.11 hereto, since December 31, 2002 (the “Balance Sheet Date”) each of Sellers has conducted the business of the Stations only in the ordinary course in a manner consistent with past practices. Without limiting the foregoing, since such date, each of Sellers in respect of the Stations or otherwise has not, except as set forth on said Schedule 4.11:

(i) incurred any obligation or liability, absolute, accrued, contingent or otherwise, whether due or to become due, except current liabilities for trade or business obligations incurred in the ordinary course of business and consistent with its prior practice, none of which liabilities, in any case or in the aggregate adversely affect the Purchased Assets;

(ii) mortgaged, pledged or subjected to lien, charge, security interest or any other encumbrance or restriction any of the Purchased Assets;

(iii) sold, transferred, leased to others or otherwise disposed of any of the Purchased Assets other than inoperable or obsolete items;

(iv) received any notice of actual or threatened termination of any contract, lease or other agreement, or suffered any damage, destruction, or loss, which adversely affects the Purchased Assets;

(v) had any material change in its relations with its employees, agents, landlords, advertisers, customers or suppliers or any governmental regulatory authority or self-regulatory authorities;

(vi) encountered any labor union organizing activity, had any actual or threatened employee strikes, disputes, work stoppages, slow downs or lockouts, or had any material change in its relations with its landlords or any governmental regulatory authority or self-regulatory authorities;

(vii) made any change or changes in the rate of compensation, commission, bonus or other direct or indirect remuneration payable, conditionally or otherwise, and whether as bonus, extra compensation, pension or severance or vacation pay or otherwise, to any director, officer, employee, salesman, distributor or agent relative to the Station;

(viii) made any capital expenditures or capital additions or betterment in respect of any individual Stations in excess of an aggregated \$10,000.00.

(ix) instituted, settled, or agreed to settle any litigation, action, or proceeding before any court or governmental body;

(x) entered into any transaction, contract, or commitment other than in the ordinary course of business on customary terms and conditions, or paid or agreed to pay any brokerage, finder's fee, or other compensation in connection with, or incurred any severance pay obligations by reason of, this Agreement or the transactions contemplated hereby, other than the broker fee generated by Frank Higney of Kalil & Co., Inc.; or

(xi) changed its accounting practices, methods or principles used other than as required by generally accepted accounting principles; or

(xii) entered into any agreement or made any commitment to take any of the types of actions described in any of subsections (i) through (xi) above.

4.12 Intangibles. Olmsted owns or possesses all rights necessary to use the call letters "KOLM-AM" and "KWWK-FM" and Mr. Bill and Mrs. Bill own or possess all rights necessary to use the call letters "KLCX-FM", in each case together with all copyrights, trademarks, trade names, logos, slogans, jingles, service marks, and other proprietary rights and Intangibles of or used by each of Sellers currently used in connection with or necessary to the operation of the Stations as presently operated, free and clear of any Liens. All such foregoing rights and Intangibles are fully transferable to Buyer without any consent. None of the Sellers has any knowledge of any infringement or unlawful, unauthorized or conflicting use of any of the foregoing, or of the use of any call letters, slogan, logo or other intangible property rights by any broadcast stations in the areas served by the Stations which may be confusingly similar to any of the call letters, domain names, slogans, logos or other intangible property rights currently used by the Stations. Sellers are not infringing upon or otherwise acting adversely, nor have Sellers received notice that any of them is infringing upon or otherwise acting adversely, to any copyrights, trademarks, trademark rights, service marks, service mark rights, trade names, service names, slogans, call letters, logos, jingles, licenses, or any other proprietary rights owned by any other person or entity. Schedule 4.12 lists all trademarks, trademark registrations, and applications therefor, service marks, service mark registrations, and applications therefor, service names, trade names, patents and patent applications, copyright registrations, and applications therefor, domain names, and names of sites, wholly or partially owned, held or used by Sellers and related to the Stations.

4.13 Environmental Matters.

(a) Sellers have not, and to the knowledge of Sellers no previous owner of the Real Property or other third party has (i) stored (in a manner which may require correction or remediation action under or pursuant to an Environmental Requirement), treated, released, disposed of or discharged any Hazardous Substance (as defined below) on, onto, about, from, under or affecting any of the Real Property, (ii) placed or had placed an underground storage tank on any of the Real Property, or (iii) caused any liability which is based upon or related to the environmental conditions under or about any of the Real Property. Each of Sellers has all material permits required by any Environmental Requirement necessary for the operation and have complied with all Environmental Requirements applicable to the Real Property in all material respects and, to the knowledge of Sellers, there are no PCBs located on any of the Real Properties. The term "Hazardous Substance" as used in this Agreement shall include, without limitation, oil and other petroleum products, explosives, radioactive materials, chemicals, pollutants, contaminants, wastes, toxic substances, genetically modified organisms, and related and similar materials, and any other substance or material defined as a hazardous, toxic or polluting substance or material by any federal, state or local law, ordinance, rule or regulation, including polychlorinated biphenyls, asbestos and asbestos-containing materials.

(b) None of the Sellers has (i) given any report or notice to any governmental agency or authority involving the use, management, handling, transport, treatment, generation, storage, disposal, spill, escape, seepage, leakage, spillage, emission, release, discharge, remediation or clean-up of any Hazardous Substance on or about any of the Real Property or caused by Sellers or any affiliate thereof; (ii) received any, or to the knowledge of Sellers is threatened to receive any Environmental Complaint.

4.14 Employees. Schedule 4.14 lists the names and current annual salary rates and commission schedules of all persons (including independent commission agents) employed or engaged by Sellers at or relative to the Stations, and showing separately for each such person the amounts paid or payable as salary, bonus payments and direct and indirect compensation for the nine (9) months ended September 30, 2003. Schedule 4.14 also lists all employment agreements Sellers has with any employees listed thereon.

4.15 Employee Benefits.

(a) Sellers have provided Buyer with a true and accurate list of any pension, retirement, profit-sharing, deferred compensation, stock option, employee stock ownership, severance pay, vacation, bonus or other incentive plan; any medical, vision, dental or other health plan; any life insurance plan or any other employee benefit plan or fringe benefit plan; maintained, sponsored in whole or in part, or contributed to by Sellers, for the benefit of, providing any remuneration or benefits to, or covering any current or former employee or retiree, any dependent, spouse or other family member or beneficiary of such employee or retiree, or any director, independent contractor, member, officer or consultant of Sellers ("Company Benefit Plans"). To the extent that any of the Company Benefit Plans have been reduced to writing, copies thereof have been made available to the Buyer.

(b) No assets of the Sellers are subject to any lien under Section 412(n) of the Code or Section 4068 of ERISA.

(c) The consummation of the transaction contemplated by this Agreement will not entitle any employee to severance pay, accelerate the time of payment of compensation due to any employee, result in an excess parachute payment within the meaning of Section 280G(b) of the Code or constitute a prohibited transaction under ERISA.

4.16 Labor Matters. Within the last three (3) years, Sellers have not been the subject of any union activity or labor dispute, nor has there been any strike of any kind called or threatened to be called against it in respect of the Stations. Sellers have not violated any applicable federal or state law or regulation relating to labor or labor practices.

4.17 Absence of Undisclosed Liabilities. Except as and to the extent reflected or reserved against on the Balance Sheet as at December 31, 2002 and August 31, 2003 included in the Financial Statements (excluding the notes thereto), neither Sellers in connection with the Stations, nor the Stations have any material debts, liabilities or obligations (whether absolute, accrued, contingent or otherwise) relating to or arising out of any act, transaction, circumstance or state of facts which has heretofore occurred or existed, other than current liabilities permitted under clause (i) of Section 4.11 hereof arising since the date of such Balance Sheet.

4.18 Taxes. All taxes, fees, assessments and charges, including, without limitation, income, property, sales, use, franchise, added value, employees' income withholding and social security taxes, imposed by the United States or by any foreign country or by any state, municipality, subdivision or instrumentality of the United States or of any foreign country, or by any other taxing authority, which are due and payable by Sellers, or for which Sellers may be liable, and all interest and penalties thereon (collectively, "Taxes" or "Tax"), have been paid in full, all Tax returns required to be filed in connection therewith have been accurately prepared and filed, and all deposits required by law to be made by Sellers with respect to employees' and other withholding Taxes have been duly made. No deficiency for any Tax or claim for additional Taxes has been proposed, asserted, or assessed against Sellers, and none of Sellers has granted any waiver of any statute of limitations in respect of Taxes or agreed to any extension of time with respect to Tax assessment or deficiency. None of Sellers has been a United States real property holding corporation within the meaning of Code §897(c)(2).

4.19 Records. The FCC Logs of the Stations are complete and correct in all material respects, and there have been no transactions involving the Stations which properly should have been set forth therein and which have not been accurately so set forth.

4.20 Accounts Receivable. All accounts receivable of the Company arising prior to the date hereof have arisen, and all accounts receivable of the Company arising after the date hereof and prior to Closing will have arisen, only from bona fide transactions with unrelated third parties in the ordinary course of business, and represent and will represent valid obligations arising from sales actually made in the ordinary course of business.

4.21 Antitrust Matters. Sellers have conducted and is conducting the operation of the Stations in compliance in all material respects with all federal and state antitrust and trade regulation laws, statutes, rules, and regulations, including without limitation, the Sherman Act, the Clayton Act, the Robinson Patman Act, the Federal Trade Commission Act, state law patterned after any of the above, all laws forbidding price-fixing, collusion, or bid-rigging, and rules and regulations issued pursuant to authority set forth in any of the above.

4.22 Disclosure. No representation or warranty by Sellers contained in this Agreement nor any written statement or certificate furnished or to be furnished by or on behalf of Sellers to Buyers or any of their representatives in connection with this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make the statements herein or therein contained, under the circumstances under which made, not misleading or necessary in order to provide a prospective purchaser of the Purchased Assets and the Stations with adequate information as to the Stations and the Purchased Assets, and Sellers have disclosed to Buyer in writing all material adverse facts known to them relating to any of the foregoing. The representations and warranties contained in this Agreement or any document delivered in connection with this Agreement shall not be affected or deemed waived by reason of the fact that Buyers and/or any of their representatives knew or should have known that any such representation or warranty is or might be inaccurate in any respect.

4.23 Brokerage or Finder's Fee. Except for the broker fee payable to Frank Higney of Kalil& Co., Inc., which fee shall be the sole responsibility of Sellers, no person or entity is entitled to any brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement as a result of any action taken by Sellers or any of Sellers' affiliates, officers, directors, or employees.

## **ARTICLE 5**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Sellers that:

5.1 Organization and Standing. Each of Buyer and License Co. is a corporation validly existing and in good standing under the laws of the State of Nevada.

5.2 Authority of Buyers. Buyers have all requisite capacity, corporate power and authority, as applicable, to execute, deliver and perform this Agreement and each other agreement, document, and instrument to be executed, delivered or performed by Buyers in connection with this Agreement (the "Buyer Documents") and to carry out the transactions contemplated hereby and thereby. This Agreement constitutes, and, when executed and delivered at the Closing, each other Buyer Document will constitute, the legal, valid, and binding obligation of Buyers enforceable in accordance with its terms. All corporate proceedings and action required to be taken by Buyers relating to the execution, delivery, and performance of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby shall have been duly taken by the time of Closing.

5.3 Litigation. As of the date hereof, there is no action, suit or proceeding pending, or to the knowledge of Buyers, threatened against Buyers, which adversely affects the ability of Buyers to consummate the transactions contemplated hereby.

5.4 Capitalization of Cumulus Media. As of October 31, 2003, there were 62,271,659 shares of Cumulus Media common stock outstanding, consisting of (i) 52,996,029 shares of Class A Common Stock, par value \$.01 per share, (ii) 11,630,759 shares of Class B Common Stock, par value \$.01 per share, and (iii) 644,871 shares of Class C Common Stock, par value \$.01 per share. All of the issued and outstanding shares of Class A Common Stock have been duly authorized, validly issued and are fully paid, nonassessable and have not been issued in violation of any preemptive rights.

5.5 Cumulus Media SEC Documents. Cumulus Media's (i) annual report on Form 10-K for its fiscal year ended December 31, 2002, (ii) quarterly reports on Form 10-Q for its fiscal quarters ended March 31, 2003, June 30, 2003 and September 30, 2003, (iii) proxy statement relating to the 2003 meeting of shareholders, and (iv) other reports, statements and schedules filed with the SEC since December 31, 2002 and prior to the date hereof are referred to collectively herein as the "Cumulus Media SEC Documents." As of their respective dates (or, if amended or superseded by a filing prior to the date of this Agreement, then on the date of such amendment), the Cumulus Media SEC Documents (i) complied as to form in all material respects with the applicable requirements of the Securities and Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder and (ii) did not as of their respective dates contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, provided that the foregoing clause (ii) shall not apply to the financial statements included in the Cumulus Media SEC Documents (which are covered by the following sentence). The audited consolidated financial statements and unaudited consolidated interim financial statements included in the Cumulus Media SEC Documents have been prepared in accordance with generally accepted accounting principles (except for the absence of notes and normal and customary year-end adjustments for the unaudited balance sheet and related statements of income and cash flow), consistently applied throughout the periods indicated, and fairly present the financial condition of Cumulus Media and its consolidated subsidiaries as of their respective dates and the results of operations for the periods covered thereby in all material respects.

5.6 FCC Qualifications. To Buyers' knowledge, License Co. is qualified to be the assignee of the Commission Authorizations under the Communications Act and the published rules and policies of the FCC in effect as of the date of this Agreement.

5.7 No Conflict; Consents. Except for the filing of the Assignment Application and the granting of the Initial Order and the Final Order, the execution, delivery and performance of this Agreement and the Buyer Documents and the consummation of the transactions contemplated hereby and thereby, will not (i) conflict with or violate any provision of the Articles of Incorporation or the Bylaws of either of Buyers, (ii) with or without the giving of notice or the passage of time, or both, result in a breach of, or violate, or be in conflict with, or constitute a default under, or permit the termination of, or cause or permit acceleration under, any agreement or instrument of any debt or obligation to which any of the Buyers is a party, (iii) require the consent of any party to any material agreement or commitment to which either of the Buyers is a party or by which either of Buyers is subject or bound, (iv) violate any law, rule or regulation or any order, judgment, decree or award of any court, governmental authority or arbitrator to or by which either of the Buyers is subject or bound; no consent, approval or authorization of, or declaration, filing or registration with, or notice to, any governmental or regulatory authority or any other third party is required to be obtained or made by either of Buyers in connection with the execution, delivery and performance of this Agreement or the Buyer Documents or the consummation of the transactions contemplated hereby and thereby.



## ARTICLE 6

### CERTAIN COVENANTS

6.1 Conduct of Business. During the period from the date of this Agreement to and including the Closing Date, Sellers shall cause the Stations to be operated and conducted in the ordinary and usual course of business and consistent with past practices. Without limiting the foregoing, prior to the Closing, Sellers, without the prior written consent of Buyer, shall not and shall not permit the Stations to:

(a) by any act or omission surrender, modify adversely, forfeit, or fail to renew under regular terms any of the Authorizations, or give the FCC grounds to institute any proceeding for the revocation, suspension, or modification of any of the Authorizations, or fail to prosecute with due diligence any pending application with respect to any of the Authorizations;

(b) dissolve, liquidate, merge, or consolidate or sell, transfer, lease, or otherwise dispose of any of the Purchased Assets, other than supplies consumed in the ordinary and customary course of business, or obligate itself to do so;

(c) amend, modify, change, alter, terminate, rescind, or waive any rights or benefits under any contract, agreement, or commitment required to be listed, or enter into any contract, agreement, or commitment which, if in existence as of the date of this Agreement would have been required to be listed under Schedule 4.9(a)-(d) hereto;

(d) fail to maintain the Purchased Assets in good repair and condition, reasonable and ordinary wear and tear excepted; or cancel or fail to renew any of the current insurance policies or any of the coverage thereunder maintained for the protection of any of the Real Property, the Stations, or Purchased Assets; and

(e) perform, take any action, or incur or permit to exist any of the acts, transactions, events, or occurrences of the type described in Section 4.11 hereof which would have been inconsistent with the representations and warranties set forth in Section 4.11 hereof, had the same occurred after the Balance Sheet Date and prior to the date hereof.

6.2 Operations. During the period from the date of this Agreement to the Closing Date, Sellers shall have sole responsibility for the Stations and its operations, and during such period, Sellers shall:

(a) operate the Stations in compliance in all materials respects with the rules and regulations of the FCC and Authorizations and file all ownership reports, employment reports, applications, responses, and other documents required to be filed during such period and maintain and promptly deliver to Buyer true and complete copies of the Station's required filings;

(b) deliver to Buyer within five (5) days after filing thereof with the FCC copies of any and all reports, applications, and/or responses relating to the Stations which are filed with the FCC on or prior to the Closing Date, including a copy of any FCC inquiries to which the filing is responsive (and in the event of an oral FCC inquiry, Sellers will furnish a written summary thereof); and

(c) maintain in full force and effect all material permits which are presently held and are required for the operation of the Stations as presently conducted.

6.3 Changes in Information. During the period from the date of this Agreement to the Closing Date, Sellers shall give Buyer prompt written notice of any material change in, or any of the information contained in, the representations and warranties made in or pursuant to this Agreement or of any event or circumstance which, if it had occurred on or prior to the date hereof, would cause any of such representations or warranties not to be true and correct in all material respects.

6.4 Restrictions on Buyers. Nothing contained in this Agreement shall give Buyers any right to control the programming or operations of the Stations prior to the Closing Date and Sellers shall have complete control of the programming and operation of the Stations between the date hereof and the Closing Date and shall operate the Stations in conformity with the public interest, convenience and necessity and with all other applicable requirements of law.

6.5 Going Off the Air. If any of the Stations goes off the air for any engineering reason, act of God, or any other reason not caused by Buyer, Sellers shall immediately notify Buyer and shall take all reasonable steps to begin broadcasting as soon as possible. If such Station is unable to begin and to continue broadcasting on a normal and customary basis within one hundred twenty (120) hours, Buyer may, at its option, terminate this Agreement without incurring any liability to Sellers, provided that to be effective such notice from Buyer to terminate this Agreement must be delivered to Sellers within five (5) business days after Buyer shall receive written notice from Sellers that normal operations of such Station shall have resumed.

6.6 Access to Information. During the period from the date of this Agreement to the Closing Date, Buyer and its accountants, counsel, and other representatives, shall upon reasonable prior written or telephone notice be given reasonable and continuing access during normal business hours to all of the facilities, properties, books, and records of Sellers relating to the Stations, and they shall be furnished with such documents and information with respect to the affairs of the Stations as from time to time may reasonably be requested, and in furtherance thereof, Buyer may retain, at its expense, an engineering firm of its own choosing to conduct engineering studies regarding the Stations; any written reports (or a written summary of any oral reports) pertaining to such studies shall be delivered to sellers within five (5) business days of their being received by Buyer.

6.7 Sales and Other Taxes. Sellers shall pay all sales taxes, transfer taxes, and intangibles taxes and similar government charges, filing fees, and recording and registration fees applicable to the transactions contemplated by this Agreement, including, without limitation, all taxes and similar charges, if any, payable upon the transfer of title to any Purchased Assets. The foregoing shall not apply to taxes, governmental charges, or fees incurred upon the granting or recording of mortgages or deeds of trust by Buyer to Buyer's lenders, which shall be the responsibility of Buyer. Buyer and Sellers will cooperate to prepare and file with the proper public officials, as and to the extent necessary, all appropriate sales tax exemption certificates or similar instruments as may be necessary to avoid the imposition of sales, transfer, and similar taxes on the transfer of Purchased Assets pursuant hereto. The provisions of this Section 6.7 shall not apply to filing and grant fees associated with the Assignment Application. The payment of such fees shall be governed by Section 3.1(b) hereof.

6.8 No Shop. Each of Sellers agrees that from after the date hereof and until the termination of this Agreement, Sellers will not sell, transfer, or otherwise dispose of any direct or indirect interest in Olmsted or any assets (except for dispositions of assets in the ordinary course of business as expressly permitted elsewhere in this Agreement) of Sellers to be included in the Purchased Assets (or any rights in any such stock or assets), and Sellers will not respond to inquiries or proposals, or enter into or pursue any discussions, or enter into any agreements (oral or written), with respect to, the sale or purchase of any direct or indirect interest in Sellers, or any option or warrant with respect to such interest, or the merger, consolidation, sale, lease or other disposition of all or any portion of the assets, business, rights or Authorizations of Sellers or the Stations. The provisions of this Section 6.8 shall not be deemed to limit or negate any other obligations of Sellers under this Agreement.

6.9 Bulk Transfer Laws. The parties do not believe that any bulk transfer or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyers therefore waive compliance by Sellers with the requirements of any such statutes, and each of Sellers agrees to indemnify and hold Buyers harmless against any claim by any creditor of Sellers or claimant against either or both of Buyers as a result of a failure to comply with any such statute.

6.10 Preservation of Business. During the period from the date of this Agreement to the Closing Date, each of Sellers shall use its best efforts to preserve intact the goodwill and staff of Sellers relative to the Stations, and the relationships of Sellers with advertisers, customers, suppliers, employees, contracting parties, governmental authorities and others having business relations with Sellers relative to the Stations.

6.11 Satisfaction of Liens. At the Closing, Sellers shall cause all Liens other than Permitted Liens on or relating to any of the Purchased Assets, to be released, extinguished, and discharged in full and shall deliver to Buyer instruments releasing, extinguishing, and discharging all such Liens, and all rights and claims of any holder(s) of any of such Liens with respect to any of the Purchased Assets, all in such form and substance as Buyer shall reasonably require.

6.12 Nonsolicitation. For a period of one (1) year from the Closing Date, Sellers shall not and shall not permit any Person directly or indirectly (alone or together with others) controlling or controlled by, or affiliated with or employed or engaged by Sellers, without the express prior written consent of Buyer, to employ or attempt to employ or knowingly arrange or solicit to have any other Person employ any Transferred Employee in a position involving services for a radio broadcast station.

6.13 COBRA. The Sellers shall comply with all applicable requirements (including requirements concerning the furnishing of notices) of health care coverage continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (contained in Sections 601 through 608 of ERISA and section 4980B of the Code), with regard to the termination of employment prior to, or in connection with, the transaction contemplated by this Agreement.

6.14 Real Property. No later than five (5) days prior to the Closing, Sellers shall at Sellers' sole cost and expense deliver the following items to Buyer for each parcel of Real Property described in Schedule 4.8 hereof:

(i) a current commitment issued by Chicago Title Insurance Company or another nationally recognized title company reasonably acceptable to Buyer (the "Title Company") for a 1992 ALTA fee owner's title insurance policy, insuring marketable fee simple title to the Property (individually, the "Title Policy" and collectively, the "Title Policies"), together with legible and complete copies of all exceptions and matters referred to therein;

(ii) an up-to-date ALTA Land Title Survey certified within ninety (90) days of the Closing, prepared by a surveyor licensed in the jurisdiction where the Real Property is located, completed in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA, ACSM and NSPS in 1999, and including items 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15 and 16 of Table A thereof, and certified to the Title Company, Buyer and any other parties designated by Buyer;

(iii) a copy of a current certificate or other written confirmation issued from the applicable local jurisdiction indicating the zoning classification of the relevant property and a copy of all special use permits and certificates of occupancy and/or completion (collectively the "Compliance Information"); and

(iv) an estoppel certificate by landlord for each Real Property Lease.

At the Closing, Sellers shall deliver to Buyer a general warranty deed for each parcel of the owned Real Property in form reasonably acceptable to Buyer and its counsel conveying good and marketable fee simple title, free and clear of all Liens, except for the Permitted Liens and those acceptable to Buyer in its sole but reasonable discretion (the "Warranty Deed(s)"). Sellers shall also cause the Title Company to deliver the Title Policy for each parcel of owned Real Property insuring good and marketable title, free and clear of all Liens (including without limitation any and all of the Title Company's standard printed exceptions), except the Permitted Liens and those otherwise acceptable to Buyer in its sole but reasonable discretion, in amounts consistent with the value of the Real Property as set forth in

the Allocation Schedule, together with such affirmative coverages as Buyer shall reasonably require and the following endorsements:

- (v) ALTA 3.1 Zoning Endorsement;
- (vi) ALTA 9.2 Comprehensive Endorsement;
- (vii) Land "Same As" Survey;
- (viii) Subdivision Compliance;
- (ix) Separate Tax Parcel;
- (x) Environmental Lien 8.2;
- (xi) Waiver of Arbitration;
- (xii) Deletion of Creditor's Rights;
- (xiii) Utilities Availability; and
- (xiv) Access.

6.15 Environmental Audits. Prior to the Closing, Buyer may, at Buyer's expense, perform a Phase I and/or Phase II environmental audit (the "Environmental Audit") of each of the Real Property sites.

6.16 Public Announcements. Sellers shall not announce or issue a press release in connection with the transactions contemplated hereunder, without the express prior written consent from Buyer.

## **ARTICLE 7**

### **CLOSING CONDITIONS**

7.1 Conditions Precedent to the Obligations of the Buyers. The obligations of the Buyers under this Agreement to consummate the transactions contemplated hereby are subject to the satisfaction at or prior to Closing of each of the following conditions all of which may be waived, in whole or in part, by Buyer for purposes of consummating such transactions, but without prejudice to any other right or remedy which Buyers may have hereunder as a result of any misrepresentation by or breach of any covenant or warranty of Sellers contained herein or any other certificate or instrument furnished by or on behalf of the Sellers hereunder:

(a) no action, suit, or proceeding shall have been instituted against Sellers or against any of Buyers by, in or before any court, tribunal, or governmental body or agency, and be unresolved, and no order shall have been issued, to restrain, prevent, enjoin, or prohibit, or to obtain substantial damages by reason of, any of the transactions contemplated hereby;

(b) the representations and warranties of Sellers contained in this Agreement, and any exhibits hereto, or any certificates or documents delivered in connection with this Agreement shall be true and correct when made, and shall also be true and correct in all material respects at the time of Closing with the same force and effect as though such representations and warranties were made at that time;

(c) each covenant, agreement, and obligation required by the terms of this Agreement to be complied with and performed by Sellers, at or prior to the Closing shall have been duly and properly complied with and performed, and an officer of Olmsted shall deliver a certificate dated as of the Closing Date certifying to the fulfillment of this condition and the condition set forth under Section 7.1(b) above;

(d) the Initial Order shall have been granted and the Initial Order shall not include any condition which Buyers reasonably determine to be adverse to Buyer, and it shall have become a Final Order and License Co. shall be entitled to be the holder of the Commission Authorizations and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been approved by all regulatory authorities whose approvals are required by law;

(e) all consents necessary to the assignment to Buyer of the Assumed Contracts shall have been obtained, and there shall have been delivered to Buyer executed counterparts reasonably satisfactory in form and substance to Buyer of such consents;

(f) there shall have been no material adverse change in the assets, liabilities, business, results of operations, financial condition or prospects of the Stations since December 31, 2002, other than changes in the general economy affecting similar radio companies in a like manner;

(g) Buyer shall have received an opinion of Sellers' FCC counsel dated the Closing Date and addressed to Buyer (and Buyer's lenders if so requested by Buyer), in substantially the form of and opining favorably to the matters included in Exhibit 7.1(g) hereto;

(h) Buyer shall have received the Non-Compete Agreement for Sellers and each Person identified on Schedule 7.1(h) hereto;

(i) the results of the Environmental Audits shall be satisfactory to Buyer in its sole discretion;

(j) Buyer shall have been issued the Title Policy for each parcel of the Real Property insuring good and marketable title, free and clear of any Liens, except Permitted Liens, with such affirmative coverage and endorsements as Buyer may reasonably require;

(k) Sellers shall have corrected the matters described on Schedule 7.1(k) hereto;

(l) in the event the Stock Consideration is utilized, Buyer shall have received the duly executed representation letter from Sellers in the form attached hereto as Exhibit 7.1(l); and

(m) Sellers shall have delivered to Buyer all other transfer documents and all other documents reasonably necessary to consummate the transactions contemplated in this Agreement as requested by Buyer or otherwise provided for herein.

7.2 Sellers' Conditions Precedent. The obligations of Sellers under this Agreement to proceed with the transactions contemplated hereby are subject to the satisfaction at or prior to Closing of each of the following conditions, all of which may be waived in whole or in part by Sellers for purposes of consummating such transactions, but without prejudice to any other right or remedy which Sellers may have hereunder as a result of any misrepresentation by or breach of any covenant or warranty of Buyer contained herein or any other certificate or instrument furnished by or on behalf of Buyer hereunder:

(a) no action, suit, or proceeding shall have been instituted against any of Sellers or against any of Buyers by, in or before any court, tribunal, or governmental body or agency, and be unresolved, and no order shall have been issued, to restrain, prevent, enjoin, or prohibit, or to obtain substantial damages by reason of, any of the transactions contemplated hereby;

(b) the representations and warranties of Buyers contained in this Agreement or any exhibits hereto or any certificates or documents delivered by it to Sellers in connection with this Agreement shall be true and correct when made and shall also be true and correct in all material respects at the time of the Closing with the same force and effect as though such representations and warranties were made at that time;

(c) each covenant, agreement, and obligation required by the terms of this Agreement to be complied with and performed by Buyers at or prior to the Closing shall have been duly and properly complied with and performed, and an officer of Buyer shall deliver a certificate dated as of the Closing Date certifying to the fulfillment of this condition and the condition set forth under Section 7.2(b) above;

(d) the Initial Order shall have been granted and the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, shall have been approved by all regulatory authorities whose approvals are required by law; and

(e) Buyer shall have delivered to Sellers all other transfer documents and all other documents necessary to consummate the transactions contemplated in this Agreement as reasonably requested by Sellers or otherwise provided for herein.

## ARTICLE 8

### CLOSING

8.1 Closing. The closing under this agreement (the “Closing”) shall take place by facsimile or via Federal Express, overnight delivery, on the fifth (5<sup>th</sup>) business day after the Initial Order has become a Final Order, or such other date, place, or time as the parties hereto shall mutually agree upon; provided, however, that, at Buyer's option, exercisable upon written notice to Sellers and deliverable any time after the Initial Order is granted but prior to a grant of the Final Order, the Closing shall take place on the tenth (10<sup>th</sup>) day after delivery of such notice to Sellers. The Closing shall be effective as of 12:01 a.m. on the Closing Date. All proceedings to be taken and all documents to be executed and delivered by the parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

8.2 Further Assurances. At any time and from time to time after the Closing, at Buyer's request, and without further consideration, Sellers will execute and deliver such other instruments of sale, transfer, conveyance, assignment, and confirmation, and take such actions, as Buyer may reasonably deem necessary or desirable in order more effectively to transfer, convey, and assign to Buyers, and to confirm Buyers' title to, all of the Purchased Assets, to put Buyers in actual possession and operating control thereof, and to assist Buyers in exercising all rights with respect thereto.

## ARTICLE 9

### SPECIFIC PERFORMANCE

Each of the Sellers agrees that the Purchased Assets include unique property that cannot be readily obtained on the open market and that Buyers will be irreparably injured if this Agreement is not specifically enforced. Therefore, Buyers shall have the right specifically to enforce the performance of Sellers under this Agreement without the necessity of posting any bond or other security, and each of Sellers hereby waives the defense in any such suit that Buyers have an adequate remedy at law and agree not to interpose any opposition, legal, or otherwise, as to the propriety of specific performance as a remedy. The remedy of specifically enforcing this Agreement in accordance with this Article 9 shall not be exclusive of any other rights and remedies which Buyers may otherwise have under this Agreement or otherwise, all of which rights and remedies shall be cumulative.

## ARTICLE 10

### TERMINATION

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

- (a) by mutual written consent of Buyer and Sellers;
- (b) by written notice from Buyer or Sellers if they are not then in material breach of this Agreement if the other party has continued in material breach of this



Agreement for thirty (30) days after written notice of such breach from the terminating party is received by the other party, and such breach is not cured (but only of such breach is capable of cure) by the earlier of (i) the last day of such 30-day period if such breach is capable of cure, or (ii) the fifth (5<sup>th</sup>) business day after the Initial Order has become a Final Order (the "Cure Period");

(c) by Buyer, in the event that (i) the FCC denies the Assignment Application, (ii) FCC counsel to Sellers or FCC counsel to Buyer reasonably determine that the FCC will not grant the Assignment Application, (iii) the FCC designates the Assignment Application for a hearing, or (iv) if a Final Order, which shall not include any condition which Buyer's reasonably determine to be adverse to Buyer, has not been granted within eighteen (18) months of the date hereof;

(d) as provided in Section 6.5; or

(e) as provided in Article 12.

## 10.2 Effect of Termination.

(a) If this Agreement is terminated prior to Closing by either Sellers or Buyer for any other reason than pursuant to Section 10.1(b), no party to this Agreement shall have any liability to any other party to this Agreement except as otherwise expressly provided herein, and this Agreement shall be deemed null and void and of no further force and effect (except for the provisions of Section 14.5, which shall survive termination).

(b) If Buyer terminates this Agreement pursuant to and in accordance with Section 10.1(b) hereof prior to Closing, Buyer shall retain all rights and remedies available to it in respect of such termination.

(c) If Sellers terminate this Agreement prior to Closing pursuant to and in accordance with Section 10.1(b) hereof, or in the event of a wrongful termination of this Agreement by Buyer pursuant to Section 10.1(b) hereof, then Sellers shall be entitled to receive the amount of Two Hundred Fifty Thousand United States Dollars (US\$250,000) as the sole and exclusive remedy and as liquidated damages (the "Liquidated Damages Amount"). It is understood and agreed that such Liquidated Damages Amount represents Buyer's and Sellers' reasonable estimate of actual damages and does not constitute a penalty.

## **ARTICLE 11**

### 11.1 Obligation to Indemnify.

(a) From and after the Closing, Buyer hereby agrees to save, indemnify and hold harmless the Sellers from and against, and shall reimburse the Sellers for all loss, liability, claim, damage, deficiency, injury and all costs and expenses (including all attorney fees and other defense costs actually and reasonably incurred) (collectively "Losses") suffered by the Sellers or incurred in respect of (i) any misrepresentation or breach of representation or warranty by the Buyers; or (ii) any nonfulfillment of any covenant or agreement to be performed

or complied with by the Buyers under this Agreement or in any agreement, certificate or instrument executed by either of the Buyers and delivered to the Sellers pursuant to or in connection with this Agreement.

(b) From and after the Closing, the Sellers hereby agree, jointly and severally, to save, indemnify, and hold harmless the Buyers from, against and in respect of, and shall reimburse the Buyers for all Losses suffered or incurred by the Buyers in respect of (i) any misrepresentation or breach of representation or warranty by the Sellers; (ii) any nonfulfillment of any covenant or agreement to be performed or complied with by the Sellers under this Agreement or any agreement, certificate or instrument executed by the Sellers and delivered to either of the Buyers pursuant to or in connection with this Agreement; or (iii) Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Sellers shall have no liability for indemnification of the Buyers for misrepresentation or breach of representation or warranty until the aggregate of all Losses for which indemnification is sought therefor exceeds the Indemnification Threshold, after which Buyers shall be entitled to be indemnified for all Losses and in no event shall Sellers liability for indemnification of the Buyers for misrepresentation or breach of representation or warranty exceed the Indemnification Cap; provided, however, that the limitations provided above shall not apply to a breach of a representation contained in Section 4.2, 4.7 (except the fourth sentence thereof), and 4.18 hereof.

#### 11.2 Survival and Other Matters.

(a) The representations, warranties, covenants and agreements of each of the parties hereto shall survive the Closing until the first (1<sup>st</sup>) anniversary of the Closing Date, except: (i) the representations and warranties set forth in Sections 4.2, 4.8 and 5.2 shall survive until the second (2<sup>nd</sup>) anniversary of the Closing Date, (ii) the representations and warranties set forth in Section 4.18 shall survive until thirty (30) days following the expiration of the applicable statute of limitations with respect to claims asserted by third parties in respect of matters covered by such Section, including without limitation any Governmental Authority and (iii) the representations and warranties contained in Section 4.7 (except the fourth sentence thereof) shall survive indefinitely. Any claim for indemnification made prior to the expiration of the survival period therefore shall survive such expiration. Any claim for indemnification against the Sellers shall be first satisfied from the Escrow Amount or Escrow Shares in accordance with and pursuant to the Escrow Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, Buyer shall be solely and exclusively responsible and liable for all obligations of either of the Buyers, and License Co. shall not have or incur any liability whatsoever, arising out of this Agreement or any of the transactions contemplated hereby.

11.3 Provisions Regarding Indemnification. If, within the applicable survival period, any third party shall notify any party (the "Indemnified Party") with respect to any third party claim which may give rise to a claim for indemnification against any other party (the "Indemnifying Party") under this Article 12, then the Indemnified Party shall notify the Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying the Indemnified Party shall relieve the Indemnifying Party from any liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is prejudiced. In the event any Indemnifying Party notifies the Indemnified Party within 20 days after the Indemnified Party has given notice of the matter that the Indemnifying Party is assuming the defense thereof, (i) the Indemnifying Party will defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party, (ii) the Indemnified Party may retain separate co-counsel at its sole cost and expense (except that the Indemnifying Party will be responsible for the fees and expenses of the separate co-counsel to the extent the Indemnified Party concludes reasonably that the counsel the Indemnifying Party has selected has a conflict of interest), and (iii) without the written consent of the Indemnified Party, the Indemnifying Party will not consent to the entry of any judgment with respect to the matter, or enter into any settlement unless the judgment or settlement can be satisfied solely by the payment of money and no equitable or other relief is sought, the Indemnifying Party pays such judgment or settlement in full, and such judgment or settlement includes a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all liability with respect thereto.

## **ARTICLE 12**

### **SECURITIES LAW MATTERS**

#### **12.1 Receipt of Information.**

(a) Each of Sellers represents, warrants and covenants that it received, at least twenty business days prior to the date hereof, a copy of the Prospectus.

(b) Each of Sellers represents, warrants and covenants that it has had such opportunity as it has deemed adequate to obtain from representatives of Buyers such information as is necessary to permit Sellers to evaluate the merits and risks of receiving the Stock Consideration.

12.2 Investment Representations. Each of Sellers represents, warrants and covenants to and with Buyer that:

(a) The Stock Consideration to be issued and delivered to Sellers pursuant to the provisions of this Agreement will be, when issued and delivered, acquired by Sellers for investment for the account of Sellers and not with a view to the subsequent resale or other distribution thereof, except within the limitations prescribed under the rules and regulations under the Securities Act, or in some other manner which will not violate the registration requirements of the Securities Act or any applicable "Blue Sky" laws.

(b) Each of Sellers is an “accredited investor” as defined in Rule 501 promulgated under the Securities Act.

12.3 Resale of Shares. Each of Sellers represents, warrants and covenants that it will not offer, sell, transfer or otherwise dispose of any shares comprising the Stock Consideration except pursuant to (i) the provisions of Rule 145 under the Securities Act, (ii) an effective registration statement under the Securities Act or (iii) in a transaction that, in the opinion of legal counsel reasonably satisfactory to Buyer, is exempt from registration under the Securities Act. In the event of a sale or other disposition pursuant to Rule 145, Sellers will, upon request of Buyer, supply evidence reasonably satisfactory to Buyer of compliance with such Rule 145. Sellers understands that stop transfer instructions may be given to the transfer agent for the Cumulus Stock with respect to the shares of Cumulus Stock to be acquired by Sellers pursuant to this Agreement and that there may be placed on the certificates for such shares a legend describing applicable restrictions on transfer.

#### 12.4 Cumulus' Representations and Covenants.

(a) Cumulus represents and warrants that: (i) Cumulus Media has filed the Registration Statement with the SEC covering the shares of Cumulus Stock to be issued pursuant to this Agreement; (ii) the Registration Statement has been declared effective by the SEC and no stop orders have been issued as of the date of this Agreement; (iv) all shares of Cumulus Stock to be issued pursuant to this Agreement have been, or will by the Closing Date have been, approved for listing on the Nasdaq Stock Market.

(b) Cumulus covenants that in the event it elects to deliver the Stock Consideration: (i) the requirements of Rule 144(c) under the Securities Act will be satisfied as of the Closing Date and (ii) no stop orders regarding the Registration Statement will have been issued as of the Closing Date.

## ARTICLE 13

### RISK OF LOSS

The risk of loss, damage or destruction to the Purchased Assets and/or the Real Property from fire or other casualty or cause, shall be borne by Sellers at all times up to the Closing. It shall be the responsibility of Sellers to repair or cause to be repaired and to restore the affected property to its condition prior to any such loss, damage or destruction. In the event of any such loss, damage or destruction, the proceeds of any claim for any loss payable under any insurance policy with respect thereto shall be used to repair, replace or restore any such property to its former condition subject to the conditions stated below. In the event that property reasonably required for the normal operation of any of the Stations is not repaired, replaced, or restored prior to the Closing, Buyer, at its sole option, upon written notice to Sellers: (a) may elect to postpone the Closing until such time as the property has been repaired, replaced, or restored, or (b) may elect to consummate the Closing and accept the property in its then condition, in which event Sellers shall assign to Buyer all proceeds of insurance theretofore, or to be, received, covering the property involved; and if Buyer shall extend the time for Closing pursuant to clause (a) above, and the repairs, replacements, or restorations are not completed

within sixty (60) days after the date on which Initial Order has become a Final Order, Buyer may terminate this Agreement by giving written notice thereof to Sellers.

## ARTICLE 14

### MISCELLANEOUS

14.1 Binding Agreement. All the terms and provisions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, legal representatives, successors, and permitted assigns.

14.2 Assignment. This Agreement and all rights of Buyers shall not be assignable by Buyers without prior written consent of Sellers; except this Agreement shall be assignable by Buyer to one or more subsidiaries or affiliates of Buyers or to a third party which has the legal, technical and financial qualifications required by the FCC to consummate the transactions contemplated hereby. This Agreement shall not be assignable by Sellers without the prior written consent of Buyer. No assignment shall relieve the assigning party of its obligations hereunder.

14.3 Law To Govern. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Minnesota, without regard to principles of conflict of laws.

14.4 Notices. All notices shall be in writing (including facsimile transmission) and shall be deemed to have been duly given if delivered personally, when received by facsimile communications equipment or when deposited in the mail if mailed via registered or certified mail, return receipt requested, postage prepaid to the other party hereto at the following addresses:

***if to Sellers, to:***

Howard G. Bill  
625 19<sup>th</sup> Street, N.W., #507  
Rochester, Minnesota 55901  
Phone: (507) 288-1971  
Fax: (507) 288-1520

***with a copy to (which will not constitute notice):***

Edmundson & Edmundson  
1818 N. Street, N.W., Suite 700  
Washington, D.C. 200036  
Attn: James K. Edmundson, Esquire  
Phone: (703) 683-6370  
Fax: James K. Edmundson at (703) 549-8958

***if to any of Buyers, to:***

Cumulus Broadcasting, Inc.  
3535 Piedmont Rd.  
Building 14, 14<sup>th</sup> Floor  
Atlanta, Georgia 30305  
Attn: Richard S. Denning, General Counsel  
Phone: (404) 260-6600  
Fax: (404) 443-0742

***with a copy to (which will not constitute notice):***

Jones Day  
3500 SunTrust Plaza  
303 Peachtree Street  
Atlanta, Georgia 30308-3242  
Attn: John E. Zamer, Esq.  
Phone: (404) 521-3939  
Fax: (404) 581-8330

or to such other addresses as any such party may designate in writing in accordance with this Section 14.4.

14.5 Fees and Expenses. Except as expressly set forth in this Agreement, each of the parties shall pay its own fees and expenses with respect to the transactions contemplated hereby.

14.6 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, sets forth the entire understanding of the parties hereto in respect of the subject matter hereof and may not be modified or amended except by a written agreement specifically referring to this Agreement signed by all of the parties hereto. This Agreement supersedes all prior agreements and understandings among the parties with respect to such subject matter.

14.7 Waivers. Any failure by any party to this Agreement to comply with any of its obligations hereunder may be waived by Sellers in the case of a default by any of Buyers and by Buyer in case of a default by any of Sellers. No waiver shall be effective unless in writing and signed by the party granting such waiver, and until received in accordance with the notice provisions of Section 14.4 hereof by the party to whom the waiver is given, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

14.8 Severability. Any provision of this Agreement which is rendered unenforceable by a court of competent jurisdiction shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate or otherwise render ineffective any or all of the remaining provisions of this Agreement.

14.9 No Third-Party Beneficiaries. Nothing herein, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the parties hereto, any rights, remedies or other benefits under or by reason of this Agreement or any documents executed in connection with this Agreement.

14.10 Affiliate. For purposes of this Agreement, the term “affiliate” when used with respect to any person or entity, shall mean any person or entity which directly or indirectly, alone or together with others, controls, is controlled by or is under common control with such person or entity.

14.11 Drafting. No party shall be deemed to have drafted this Agreement but rather this Agreement is a collaborative effort of the undersigned parties and their attorneys.

14.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement.

14.13 Headings. The Section and paragraph headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said Sections and paragraphs.

14.14 Use of Terms. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the words “include” or “including” in this Agreement shall be by way of example rather than by limitation. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof. Unless otherwise indicated, reference in this Agreement to a “Section” or “Article” means a Section or Article, as applicable, of this Agreement. When used in this Agreement, words such as “herein”, “hereinafter”, “hereof”, “hereto”, and “hereunder” shall refer to this Agreement as a whole, unless the context clearly requires otherwise. The use of the words “or,” “either” and “any” shall not be exclusive. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

14.15 Other Matters. The Parties have provided for certain other matters as set forth in Schedule 14.15 hereto.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

CUMULUS BROADCASTING, INC.

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

CUMULUS LICENSING CORP.

**By:** \_\_\_\_\_  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

OLMSTED COUNTY BROADCASTING CO.

**By:** \_\_\_\_\_  
**Name:** Howard G. Bill  
**Title:** President



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**HOWARD G. BILL**

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**LUCILLE S. BILL**

## **EXHIBITS**

Exhibit 2.7	Form of Assignment and Assumption Agreement
Exhibit 2.10	Form of Escrow Agreement
Exhibit 2.12	Form of Non-Compete Agreement
Exhibit 7.1(g)	Form of FCC Opinion
Exhibit 7.1(l)	Form of Representation Letter