

## **PROGRAMMING RIGHTS ASSIGNMENT**

This PROGRAMMING RIGHTS ASSIGNMENT ("Assignment") is dated as of April 12, 2004 (the "Assignment Date"), by and between SORENSON BROADCASTING CORPN., a South Dakota corporation ("Licensee"), WAITT RADIO, INC., a South Dakota corporation ("Waitt"), and THREE EAGLES OF JOLIET, INC., a Delaware corporation ("Three Eagles"). Solely with respect to the Stations (defined below) and its programming rights under the Original Agreement (defined below), Three Eagles is referred to herein as "Programmer."

WHEREAS, Licensee is the licensee of the radio stations set forth on Schedule 1 hereto (collectively, the "Stations" or individually, a "Station" as the context may require);

WHEREAS, Waitt currently provides substantially all of the programming for the Stations, and other radio broadcast stations, not subject to this transaction, pursuant to an Interim Programming Agreement with Licensee dated January 1, 2000 as replaced, except as expressly stated otherwise therein, by that certain Programming Agreement with Licensee dated December 1, 2003 ("Original Agreement"), a copy of which is attached as Exhibit A;

WHEREAS, Three Eagles is involved in radio station ownership and operation;

WHEREAS, WMMP, LLC, a wholly-owned subsidiary of Waitt ("WMMP"), and Licensee have entered into an Exchange Agreement ("Exchange Agreement"), whereby WMMP will acquire ownership of the Stations from Licensee;

WHEREAS, WMMP and Three Eagles have entered into an Asset Purchase Agreement (the "Eagles Purchase Agreement"), whereby, subject to the prior approval of the Federal Communications Commission ("FCC"), Three Eagles will acquire ownership of the Stations from WMMP following WMMP's acquisition of the Stations from Licensee; and

WHEREAS, Licensee and Waitt now wish to retain Three Eagles to provide programming for the Stations that is in conformity with the Stations' policies and procedures, FCC policies for time brokerage arrangements, and the provisions hereof, through an assignment of Waitt's programming rights.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained, the parties hereto have agreed and do agree as follows:

### **1. Controlling Provisions; Intent; Schedules.**

(a) All capitalized terms shall have the meanings provided in the Original Agreement unless otherwise set forth herein. The Original Agreement is attached hereto without Exhibits or

Schedules. All Schedules referenced in the Original Agreement or the Interim Agreement are updated and attached hereto for the purposes of this Assignment as follows:

Schedule 1	Stations
Schedule 2	Station Agreements
Schedule 3	Accounts Receivable / Trade Agreements
Schedule 4	Undisclosed Liabilities
Schedule 5	FCC Authorizations
Schedule 6	Employees of the Stations
Schedule 7	Employee Benefit Plans

(b) The Original Agreement, including all Exhibits and Schedules attached thereto, established Waitt's programming rights and obligations for the Stations from January 1, 2000, to the Assignment Effective Date; the Original Agreement shall continue to govern all rights and obligations established thereby. For convenience, this Assignment incorporates the terms of the Original Agreement except as modified herein, and establishes Three Eagles' rights and obligations to provide programming for the Stations from and after the Assignment Effective Date and such modifications shall be of no force or effect with respect to the continuation of the Original Agreement as between Licensee and Waitt regarding the programming for stations not included in the Stations.

## **2. Assignment.**

(a) Subject to the terms set forth in this Assignment and for good and valuable consideration, Waitt hereby assigns all of its programming rights and obligations with respect to the Stations to Three Eagles from and after the Assignment Effective Date (defined below), and Three Eagles and Licensee hereby accept, agree and consent to such assignment; provided, however, Three Eagles, Licensee and Waitt all acknowledge that the Original Agreement shall continue as between Waitt and Licensee with respect to radio broadcast stations named therein but not included as one of the Stations, and Three Eagles shall have no rights or obligations in the Original Agreement, and such amendments contained herein shall not modify the Original Agreement, except as related to the Stations.

(b) Pursuant to this Assignment, Three Eagles does not assume and will not be liable for any liability, obligation or claim of Licensee or Waitt arising from the Original Agreement or operation and programming of the Stations (which includes any balance owed for services previously rendered or the value of services owed for services previously rendered under trade or barter agreements) other than those liabilities and obligations of the Stations arising on or after the Assignment Effective Date pursuant to Section 14 of the Original Agreement as amended herein.

**3. Amendment to Original Agreement.** For purposes of setting forth the rights of Licensee and Three Eagles with respect to the Stations only (and not with respect to any other stations governed by the Original Agreement), the Original Agreement is incorporated herein by this reference and amended as follows:

A. Section 2 of the Original Agreement is deleted in its entirety and replaced by the following:

**“2. Payments.**

(a) As consideration for the air time made available hereunder Programmer shall pay to Waitt \$40,000 per calendar month, payable in advance on the first day of each month for a total of four (4) months and thereafter increasing by \$1968.75 per month for the remainder of the Assignment Term (defined below) (hereinafter the “Monthly Fee”).

(b) In addition, Programmer shall reimburse Licensee for all expenses incurred by Licensee which are directly related to the operation of the Stations from the Assignment Effective Date through the term of this Agreement, including expenses directly related to the employment of not more than two employees at each Station by Licensee, any music license fees paid by Licensee to ASCAP, BMI and SESAC, and for all expenses incurred by Licensee at the specific request of Programmer. Licensee shall submit to Programmer a schedule of such reasonable expenditures, and accompanying documentation, not later than ten (10) days after the end of each month. Programmer, within ten (10) days of receipt of such schedule, shall thereafter reimburse Licensee for the expenses.”

B. Section 3 of the Original Agreement is deleted in its entirety and replaced by the following:

**“3. Assignment Term.** Programmer’s programming rights and obligations hereunder shall begin on April [ ], 2004 (the “Assignment Effective Date”). All references to “Effective Date” are hereby amended to reference “Assignment Effective Date” solely with respect to the Stations. This Agreement shall continue in force (i) until the Closing Date, as such term is defined in the Eagles Purchase Agreement, or, (ii) if the Eagles Purchase Agreement is terminated without a Closing, until the last day of the month following the month in which the Eagles Purchase Agreement is terminated (the “Termination Date,” and such period of time, the “Assignment Term”, with all references to “Term” hereby amended to reference “Assignment Term”).”

C. In recognition that Waitt has previously hired its chosen Stations’ employees pursuant to the Original Agreement, Section 11(a) of the Original Agreement is modified to provide that Three Eagles shall hire Waitt’s Station employees for the Assignment Term. Further, Programmer shall not materially change the makeup of the employees or combine the Stations’ business and operations with the business and operations of any of Programmer’s other stations or businesses during the Assignment Term of the Programming Agreement.

D. In recognition that Licensee and Waitt have previously assigned and assumed, respectively, the “Station Agreements,” Section 12(a) of the Original Agreement is modified to provide that Waitt shall assign, and Three Eagles shall assume, the Station Agreements subject to the rights and limitations set forth in Section 12 of the Original Agreement on the Assignment Effective Date. Section 12(c) of the Original Agreement is further modified to provide that

while Licensee will retain and be responsible for all Retained Liabilities, Waitt shall retain and be responsible for all other liabilities arising under the Station Agreements through the Assignment Effective Date.

E. Section 13 of the Original Agreement is deleted in its entirety and replaced by the following (with all references to "Waitt" meaning Waitt Radio, Inc. as Programmer under the Original Agreement):

**"13. Accounts Receivable.** Accounts receivable in connection with the operation of the Stations, including but not limited to accounts receivable for advertising revenues, for programs and commercials performed prior to the Assignment Effective Date and other broadcast revenues for services performed prior to the Assignment Effective Date shall remain the property of Waitt, all of which shall be identified by Waitt's delivery to Programmer of its accounts receivable aging as of April 15, 2004, which aging ("Licensee's Accounts") shall be delivered by Waitt to Programmer on or before April 30, 2004. Programmer shall acquire no beneficial right or interest therein or responsibility therefor, provided, however, Programmer shall collect all Waitt's Accounts in the same manner and with the same diligence that Programmer uses to collect its own accounts receivable for a period of ninety (90) days after the Effective Date. If this Agreement terminates other than on account of a Closing under the Eagles Purchase Agreement, Programmer shall deliver the uncollected Waitt Accounts to Waitt for collection by Waitt and any and all receivables generated by Programmer during the term of this Agreement to Waitt for collection by Waitt. Programmer's obligation to collect Waitt's Accounts under this section, however, shall not extend to the institution of litigation, employment of any collection agency, legal counsel, or other third party, or any other extraordinary means of collection of Programmer. So long as Waitt's Accounts are in Programmer's control or possession, neither Waitt nor its agents shall make any solicitation of the account debtors for collection of any of Waitt's Accounts or for any other purpose related to the business of the Stations and shall not institute litigation for the collection of any amounts due. Waitt shall notify Programmer in the event that any unsolicited accounts receivable are remitted directly to Waitt during the ninety (90) day period after the Assignment Effective Date. All remittances will be applied first to the oldest accounts receivable of Waitt or Programmer, unless the client specifies the identification of the account in the remittance, in which case the remittance shall be applied to the specified account. On or before the 20th day of each month following each calendar month occurring during the ninety (90) day period after the Assignment Effective Date, Programmer shall deliver to Waitt a statement showing all collections effected with respect to Waitt's Accounts since the last previous report together with a check or draft of the amount of such collections. Programmer's obligation to collect Waitt's Accounts shall expire at the end of the ninetieth (90th) day following the Assignment Effective Date and within twenty (20) days after the end of such period, Programmer shall render a final statement or report showing Waitt's Accounts collected and uncollected. Except as expressly provided herein, Programmer shall have no responsibility for, or any obligation regarding, any of Licensee's accounts or Waitt's Accounts. Any of Waitt's Accounts which remain uncollected ninety (90) days after the Effective Date shall be reassigned to Waitt on that date and Waitt shall be free to take

whatever measures it deems necessary, including legal collection proceedings, to collect any of Waitt's Accounts for its own account."

F. Section 14 of the Original Agreement is hereby amended to provide that all deposits, reserves and prepaid and deferred income and expenses relating to the Station Agreements shall be prorated between Three Eagles on the one hand, and Waitt and Licensee on the other hand, in accordance with GAAP principles as of 11:59 p.m. Central time, on the date immediately preceding the Assignment Effective Date.

G. Section 15 of the Original Agreement is hereby amended by the deletion of Sections (a), (b) and (c), which are replaced by the following:

"(a) *Indemnification by Programmer.* Programmer shall indemnify and hold Waitt, Licensee and their stockholders, directors, partners, officers, agents, employees, successors, and assigns harmless from and against any and all claims, expenses, causes of action and liability resulting from or relating to (i) the broadcast of Programming during the Assignment Term, (ii) any and all promotions, contests and on-air "give-aways" relating to the Stations during the Assignment Term, (iii) a breach of Programmer's representations, warranties, covenants or agreements contained herein, (iv) any liability resulting from Programmer's default under the Station Agreements during the Assignment Term following their successful assignment hereunder to Programmer, and (v) all other matters arising out of or related to Programmer's activities involving the Stations or use of the Licensee Station facilities or relating to the obligations assumed by Programmer on or after the Assignment Effective Date.

(b) *Indemnification of Programmer.* Licensee and Waitt each agrees to indemnify, defend, and hold harmless Programmer and its stockholders, directors, officers, agents, employees, successors and assigns from and against any and all claims, expenses, causes of action and liability resulting from or relating to (i) material broadcast by Licensee, and/or Waitt, including, without limitation, the Licensee Programming, on the Stations, (ii) liabilities (including the loss of advertising revenue which is specifically tied to the particular programming being pre-empted, but not loss of general advertising revenue) that arise as a result of Licensee's alteration of any and/or all Programming prior to broadcast by Licensee, (iii) a breach of such party's representations, warranties, covenants or agreements contained herein, (iv) the Retained Liabilities, and (v) employment claims, shareholder claims or other litigation related to Licensee's employees or Licensee's shareholders, where the subject of such claims or litigation occurred prior to the Assignment Effective Date or which are based upon this transaction.

(c) *Procedures: Third Party and Direct Indemnification Claims.* The obligations and liabilities of Programmer, Licensee and of Waitt hereunder with respect to their respective indemnities pursuant to this Section 15, resulting from any claim or other assertion of liability by third parties are subject to the procedures for indemnification originally set forth in the Option Agreement and as provided in the attached Schedule 8."

H. Section 16 of the Original Agreement is hereby amended by the deletion of Section 16(a)(iv).

I. Section 17 of the Original Agreement is hereby amended to clarify that only Licensee and Three Eagles shall have termination rights with respect to the Programming Agreement solely as applicable to the Stations.

J. Section 21 of the Original Agreement is hereby deleted and replaced with the following representations and warranties, as substantially set forth in the Interim Agreement between Licensee and Waitt, with defined terms having the meanings given them in the Interim Agreement and as provided in the attached Schedule 9:

**“Representations, Warranties and Covenants of Licensee.** Licensee, subject to any act or omission by Waitt which would render the following inaccurate, false or misleading for which Waitt shall be solely responsible, makes the following representations, warranties and covenants to Programmer:

(a) Organization; Qualification. Licensee is duly organized, validly existing and in good standing under the laws of the State of South Dakota and is authorized as a foreign corporation doing business in the State of Iowa. Licensee has the full power and authority to own and operate its Assets and carry on the business operations of the Stations as such operations are now being conducted.

(b) Authority Relative to this Agreement. Licensee has the full corporate power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and shareholder action, and this Agreement has been duly and validly executed and delivered by Licensee and constitutes a legal, valid and binding obligation of Licensee enforceable against Licensee in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency or similar law affecting the rights of creditors generally.

(c) No Defaults. The execution, delivery and performance of this Agreement by Licensee will not (a) conflict with any provision of either of its Articles of Incorporation or Bylaws, (b) result in a default (or give rise to any right of termination, cancellation or acceleration) under or conflict with any of the terms, conditions or provisions of any Material Contract, note, bond, mortgage or other instrument or obligation relating to the Stations’ business and to which Licensee is a party and to which any of the Stations’ assets may be subject, (c) violate any law, statute, rule, regulation, order, injunction or decree of any federal, state or local governmental authority or agency applicable to Licensee or to any of the Stations or (d) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever on any of the Stations’ assets.

(d) Licenses and Authorizations.

(i) As of the date of this Agreement, Licensee is the holder of the FCC Authorizations listed in Schedule 5 to this Agreement. Licensee has delivered to Programmer true and complete copies of the FCC Authorizations for the Stations. Such FCC Authorizations constitute all of the licenses and authorizations required under the Communications Act of 1934, as amended (the "Communications Act"), and the current rules, regulations and policies of the FCC for and/or used in the operation of the Stations as now operated. The FCC Authorizations were validly issued, are in full force and effect and are unimpaired by any act or omission of Licensee, or their officers, directors, employees or agents. There is not now pending or to the knowledge of Licensee threatened any action by or before the FCC to revoke, cancel, rescind, modify or refuse to renew any of such FCC Authorizations other than proceedings of a rulemaking or legislative nature, and there is not now pending or to the knowledge of Licensee threatened, issued or outstanding by or before the FCC, any investigation, Order to Show Cause, Notice of Violation, Notice of Apparent Liability or Notice of Forfeiture or complaint against Licensee or any of its affiliates with respect to the Stations. In the event of any such action, or the filing or issuance of any such order, notice or complaint against Licensee, or Licensee's learning of the threat thereof, Licensee shall notify Programmer, within three business days, of same in writing and shall take all reasonable measures, at its expense, to contest in good faith or seek removal or rescission of such action, order, notice or complaint. The Stations are operating in material compliance with the FCC Authorizations, the Communications Act and the current rules, regulations and policies of the FCC. All material reports, forms and statements required to be filed by Licensee with the FCC with respect to the Stations since the grant of the last renewal of the FCC Authorizations have been filed and are complete and accurate. Licensee has no reason to believe that the FCC Authorizations will not be renewed in the ordinary course.

(ii) In addition to the FCC Authorizations described above, Schedule 5 to this Agreement lists all other licenses, permits and authorizations that are held by Licensee as of the date hereof that are required for the conduct of the Stations' business operations, as presently conducted. All such licenses, permits and authorizations are in full force and effect with no material violations of any of them having occurred.

(e) Balance Sheets. Licensee has furnished to Programmer (i) the internally prepared balance sheet of Licensee with respect to the Stations for the fiscal year ended December 31, 2002 and (ii) internally prepared interim balance sheet for the periods through December 31, 2003 (the "Balance Sheet Date") (together, the "Financials"). The Financials have been prepared from and are in accordance with the books and records regularly maintained by Licensee, in accordance with generally accepted accounting principles, with respect to the Stations, and they fairly present the results of operations and financial position of the Stations. No material adjustments of the Financials are required for a fair presentation of the results of operations and financial position of the Stations.

(f) Undisclosed Liabilities. Except as set forth on Schedule 4, Licensee has no obligations or liabilities (including any balance owed for services previously rendered or the value of services owed for services previously rendered under trade or barter agreements) to be reflected or reserved against in any of the Financials that are not fully reflected or reserved against in the Financials. No representation or warranty made by Licensee in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Programmer. Since the Balance Sheet Date, the business of the Stations has been conducted in the ordinary course and in substantially the same manner as it was before the Balance Sheet Date.

(g) Licensee Control. Licensee hereby verifies that for the term of this Agreement it shall maintain ultimate control over the Stations' facilities, including specifically control over the Stations' finances, personnel and programming, and nothing herein shall be interpreted as depriving Licensee of the power or right of such ultimate control.

(h) Insurance. Licensee shall maintain in full force and effect, subject to reimbursement by Programmer, throughout the term of this Agreement insurance with responsible and reputable insurance companies or associations covering such risks (including fire and other risks insured against by extended coverage, public liability insurance, insurance for claims against personal injury or death or property damage and such other insurance as may be applicable) and in such amounts and on such terms as conventionally carried by broadcasters operating radio stations with facilities in the area comparable to those of the Stations. Programmer shall be listed as an additional insured on such insurance policies. Any insurance proceeds received by Licensee in respect of damaged property shall be used to repair or replace such property so that the operations of the Stations conform with this Agreement. Licensee shall present to Programmer prior to the execution of this Agreement certificates of insurance or binders for such insurance policies. If requested by Programmer and subject to reimbursement, Licensee shall maintain, at Programmer's expense, business interruption insurance for Programmer's benefit. In the event and to the extent that such insurance is paid to Programmer, Programmer shall continue to make the Monthly Payment.

(i) Litigation and Compliance with Laws. (i) Licensee has not, with respect to the Stations, been operating under or subject to, or in default with respect to, any order, writ, injunction, judgment or decree of any court or federal, state or local governmental authority or agency on the business of the Stations; (ii) neither Licensee nor any of its officers or agents have received any inquiry, written or oral, from any such authority concerning any of the operations or business of the Stations during the 12-month period prior to the date of this Agreement on the business of the Stations; (iii) Licensee has not received notice of, nor any knowledge of, any litigation or arbitration pending by or against, or to its knowledge threatened against, Licensee or the Stations; (iv) Licensee, to its knowledge, is in material compliance with all laws, regulations, orders or decrees



applicable to the Stations and (v) the present uses by Licensee of the Stations, to its knowledge, do not to its knowledge violate any such laws, regulations, orders or decrees, and Licensee has no knowledge of any basis for any claim for compensation or damages or other relief from any violation of the foregoing.

(j) Employees. Schedule 6 lists the names and positions of all the full- and part-time employees of the Stations as employed by Licensee. Licensee is not a party to any collective bargaining agreement or any other labor agreement covering or relating to any of its employees with the exception of the Sorenson Broadcasting Corp'n's Employee Stock Ownership Plan, nor has Licensee recognized or received a demand for recognition of any collective bargaining representative. Licensee has no written or oral contracts of employment with any employee of the Stations except as listed on Schedule 6. The business and operations of the Stations are in compliance with all laws and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination and the payment of social security and other payroll-related taxes, and neither Licensee nor the Stations have received any notice alleging a failure to comply in any material respect with any such laws or regulations. No material controversies are pending or, to the knowledge of Licensee, threatened against Licensee that involve any employee of the Stations.

(k) Taxes. With respect to the Stations, (i) Licensee has filed, or caused to be filed, all federal, state and local tax returns required to be filed, and (ii) Licensee has paid or made provisions for the payment of (A) all taxes due for the periods covered by such returns, except such accrued and unpaid taxes for which appropriate accruals have been made, and (B) all deficiencies assessed as a result of any examination of such returns. No events have occurred with respect to the Stations which could impose on Programmer any liability (as transferee or otherwise) for any taxes, penalties or interest due or to become due from Licensee.

(l) Changes. Since the Balance Sheet Date, Licensee has not, with respect to the business of the Stations, (i) mortgaged, pledged or subjected to a lien or any other encumbrance, any of the Stations or their Assets, (ii) sold or transferred any material asset used or useful in the business of the Stations or (iii) increased the compensation payable or to become payable to any employee or agent, except increases in accordance with historical practices. Since the Balance Sheet Date and subject to the Original Agreement, Licensee has conducted the business and operations of the Stations only in the ordinary and usual course and there has not been (A) any damage, destruction or loss, whether covered by insurance or not, materially and adversely affecting the Stations; (B) any sale or other disposition of any assets, other than sales or other dispositions made in the ordinary course of business and sales or other dispositions which individually or in the aggregate are not material to the business, prospects, operations, property or condition (financial or other) of the Stations; (C) any write-offs or write-downs of accounts receivable with respect to the Stations other than in the ordinary course of business and consistent with the past practices of Licensee; or (D) any agreement by Licensee to take any action described in this paragraph.

(m) Brokers. There is no broker or finder or other person who would have any valid claim against Programmer for a commission or brokerage in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Licensee.

(n) Employee Benefit Plans.

(i) Except as set forth on Schedule 7, there are no employee benefit or compensation plans or arrangements, including “employee benefit plans,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and including arrangements relating to former employees, such as retiree medical plans or life insurance, maintained by Licensee (the “Licensee Benefit Plans”). Licensee has complied with the terms of all Licensee Benefit Plans, and no default exists with respect to the obligations of Licensee under such Licensee Benefit Plans.

(ii) All Licensee Benefit Plans are in compliance with the applicable provisions of ERISA, the Internal Revenue Code of 1986 and all other applicable laws. Each of the Licensee Benefit Plans which is intended to meet the requirements of Section 401(a) of the Internal Revenue Code of 1986, as amended (the “Code”), has been determined by the Internal Revenue Service and continues to be “qualified” within the meaning of such Section of the Code. There have not been any “prohibited transactions,” as such term is defined in Section 4975 of the Code or Section 406 of ERISA, involving the Licensee Benefit Plans. This transaction will not result in any withdrawal liability under any multiemployer plan. Licensee has not engaged in any transaction described in Section 4069 of ERISA.

(iii) No notice of a “reportable event,” within the meaning of Section 4043 of ERISA (for which the 30-day reporting requirement has not been waived) has been required to be filed for any Licensee Benefit Plan within the 12-month period ending on the date hereof except as would not be material.

(o) Full Disclosure. All of the information provided by Licensee and its representatives herein or in the disclosure schedules and exhibits to this Agreement is true, correct and complete in all material respects, and no representation, warranty or statement made by Licensee in or pursuant to this Agreement, the disclosure schedules or exhibits contains any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty or statement not misleading.

(p) Contingent Agreements. Licensee covenants to use commercially reasonable efforts to execute, make deliveries as may be required, provide assistance in Programmer’s due diligence efforts, and to close the respective transactions contemplated under the Exchange Agreement.”

K. Section 22 of the Original Agreement is hereby deleted in its entirety and replaced by the following:

**“Representations, Warranties and Covenants of Waitt.** Waitt makes the following representations, warranties and covenants to Programmer:

(a) Organization. Waitt is a corporation duly organized, validly existing and in good standing under the laws of the State of South Dakota.

(b) Authority Relative to This Agreement. Waitt has the full corporate power, authority and legal right and is financially qualified to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate and shareholder action, and this Agreement has been duly and validly executed and delivered by Waitt and constitutes a legal, valid and binding obligation of Waitt enforceable against Waitt in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency or similar law affecting the rights of creditors generally. A true, correct and complete copy of the Original Agreement is attached hereto as Exhibit A (subject to such redactions as Waitt feels appropriate for confidentiality purposes).

(c) No Defaults. The execution, delivery and performance of this Agreement by Waitt will not (i) conflict with or result in any breach of any provision of its Articles of Incorporation or bylaws or (ii) violate any law, statute, rule, regulation, order, injunction or decree of any federal, state or local governmental authority or agency applicable to Waitt.

(d) Brokers. Except Richard Chapin, for whom Waitt shall be solely responsible for the payment, there is no broker or finder or other person, engaged by or on behalf of Waitt, who would have any valid claim against Programmer for a commission or brokerage in connection with this Agreement or the transactions contemplated hereby as a result of any agreement, understanding or action by Waitt with such broker or finder.

(e) Litigation and Compliance with Laws. With respect to the Stations: (i) Waitt has not been operating under or subject to, or in default with respect to, any order, writ, injunction, judgment or decree of any court or federal, state or local governmental authority or agency; (ii) neither Waitt nor any of its officers or agents have received any inquiry, written or oral, from any such authority concerning any of the operations or business of the Stations during the 12-month period prior to the date of this Agreement; (iii) there is no litigation or arbitration pending by or against, threatened against, Waitt; (iv) Waitt has complied with all laws, regulations, orders and decrees and (v) Waitt has no knowledge of any basis for any claim for compensation or damages or other relief from any violation of the foregoing.

(f) Compliance with 47 C.F.R. '73.3555(a). Waitt hereby verifies that execution and performance of this Agreement complies with the Commission's restrictions on local radio ownership set out in Sections 73.3555(a) of the FCC Rules.

(g) Complaints. Waitt has not received any public or FCC complaint or inquiry concerning the Programming on the Stations.

(h) Information for FCC Reports. Upon request by Programmer, Waitt shall provide in a timely manner any such information in its possession which shall enable Programmer or Licensee to prepare, file or maintain the records and reports required by the FCC.

(i) Payola/Plugola. Waitt has not accepted any payola or plugola with respect to the Stations during the term of the Original Agreement unless the payer was identified in the program as having paid for or furnished such consideration, in accordance with FCC requirements.

(j) Station Maintenance. Waitt has performed all maintenance related to the day to day operation of the Stations.

(k) Contingent Agreements. Waitt covenants to use its best efforts to execute, make required deliveries, and complete all other actions necessary to close under the Exchange Agreement and the Purchase Agreement.

(l) Financial Statements and Annual Results. Waitt has furnished to Programmer (i) the internally prepared financial statements of Waitt with respect to the Stations (the "Financial Statements") for the fiscal year ended December 31, 2002 and (ii) internally prepared interim financial statements for the periods through December 31, 2003 (the "Balance Sheet Date"). The Financial Statements have been prepared from and are in accordance with the books and records regularly maintained by Waitt, in accordance with generally accepted accounting principles, with respect to the Stations, and they fairly present the results of operations and financial position of the Stations. No material adjustments of the Financial Statements are required for a fair presentation of the results of operations and financial position of the Stations. Waitt specifically represents to Programmer that the Stations had broadcast cash flow (as defined in Section 8.15 of the Asset Purchase Agreement) of approximately \$572,699.00 for 2003.

(m) Business Since the Balance Sheet Date. Since the Balance Sheet Date, the business of the Stations has been conducted in the ordinary course and in substantially the same manner as it was before the Balance Sheet Date.

(n) Undisclosed Liabilities. Except as set forth on Schedule 4, Waitt has no obligations or liabilities (including any balance owed for services previously rendered or the value of services owed for services previously rendered under trade or barter agreements) to be reflected or reserved against in any of the Financial Statements that are not fully reflected or reserved against in such Financial Statements. No representation or warranty made by Waitt in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, contains or will contain any untrue statement of a

material fact or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading to Programmer.

(o) **Employees.** Schedule 6 lists the names and positions of all the full- and part-time employees of Waitt who work at the Stations subject to Licensee's oversight and control. Waitt is not a party to any collective bargaining agreement or any other labor agreement covering or relating to any of its employees, nor has Waitt recognized or received a demand for recognition of any collective bargaining representative. Waitt has no written or oral contracts of employment with any employee of the Stations except as listed on Schedule 6. The business and operations of the Stations are in compliance with all laws and regulations relating to the employment of labor, including those related to wages, hours, collective bargaining, occupational safety, discrimination and the payment of social security and other payroll-related taxes, and neither Waitt nor the Stations have received any notice alleging a failure to comply in any material respect with any such laws or regulations. No material controversies are pending or, to the knowledge of Waitt, threatened against Waitt that involve any employee of the Stations.

(p) **Waitt's operations under the Original Agreement.** Waitt has taken no action or omission, the result of which would cause any of Licensee's representations and warranties under Section 21 to be materially untrue or misleading, and shall, to the extent caused by Waitt's act or omission, be responsible for such breach of Licensee's representation or warranty.

L. The Original Agreement is amended by the addition of a new Section 22A., which Section shall be representations and warranties made by Three Eagles to Licensee as follows:

(a) *Compliance with 47 C.F.R. §73.3555(a).* Programmer hereby verifies that execution and performance of this Agreement complies with the Commission's restrictions on local radio ownership set out in Sections 73.3555(a) of the FCC Rules.

(b) *Compliance with Applicable Law.* Programmer covenants that its performance of its obligations under this Agreement and its furnishing of Programming shall be in compliance with, and shall not violate, any applicable laws or any applicable rules, regulations, or orders of the FCC or any other governmental agency and Programmer acknowledges that Licensee has not urged counseled, or advised the use of any unfair business practice.

(c) *Handling of Complaints.* Programmer shall promptly advise Licensee of any public or FCC complaint or inquiry that Programmer receives concerning the Stations and shall cooperate with the Licensee and take all actions as may be reasonably requested by Licensee in responding to any such complaint or inquiry.

(d) *Copyright and Licensing.* Programmer represents and warrants to Licensee that Programmer has and shall have throughout the term of this Agreement the full authority to broadcast the programming on the Stations and that Programmer shall not broadcast on the Stations any material in violation of the Copyright Act. All music

supplied by Programmer shall be: (i) licensed by ASCAP, SESAC or BMI; (ii) in the public domain; or (iii) cleared at the source by Programmer.

(e) *Information for FCC Reports.* Programmer shall provide in a timely manner any such information in its possession which shall enable Licensee to prepare, file or maintain the records and reports required by the FCC.

(f) *Payola/Plugola.* Programmer covenants that it shall not accept, and shall instruct its employees not to accept, any consideration, compensation, gift or gratuity of any kind whatsoever, regardless of its value or form, including, but not limited to, a commission, discount, bonus, materials, supplies or other merchandise, services or labor, whether or not pursuant to written contracts or agreements between Programmer and merchants or advertisers, unless the payer is identified in the program as having paid for or furnished such consideration, in accordance with FCC requirements. Programmer agrees to annually, or more frequently at the request of Licensee, execute and provide Licensee with an affidavit regarding payola/plugola compliance.

(g) *Further Assurances.* Programmer covenants that it will deliver all information, documents or further assistance necessary to complete the transactions contemplated hereby, including, without limitation the execution of all documents, assignments, conveyances, regulatory applications or other material or actions as may be reasonable requested by Licensee.

(h) *Station Maintenance.* Programmer agrees to perform all maintenance related to the day to day operations of the Stations. In the event that the Assets of the Stations are not acquired by Programmer, and Programmer has purchased replacement equipment used in the day to day operations of the Stations, such equipment will remain at the respective Station in the same condition, location and function as existed on the Effective Date as property of the Licensee.

(i) *Brokers.* Programmer has retained no brokers or other parties for which Licensee may become obligated for payment or otherwise.

M. Section 30 of the Original Agreement is amended by the addition of a Notice provision for Three Eagles, as follows:

Three Eagles of Joliet, Inc.  
c/o Three Eagles Investors, LLC  
Attn: Rolland Johnson  
19340 Furrow Road  
Monument, CO 80132  
Telephone: (719) 481-9378  
Facsimile: (719) 481-8793

(with copies to)

Wachovia Capital Partners 2002, LLC  
Attn: Walker Simmons  
301 South College Street, 12<sup>th</sup> Floor  
Charlotte, NC 28288-0732

Sparks Willson Borges Brandt & Johnson, P.C.  
24 South Weber Street, Suite 400  
Colorado Springs, CO 80903  
Attention: David Steigerwald  
Telephone: (719) 475-0097  
Facsimile: (719) 633-8477

[remainder of page intentionally left blank]

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

**LICENSEE:**

SORENSEN BROADCASTING CORPN., a South  
Dakota corporation

By: \_\_\_\_\_  
Name: Dean Sorenson  
Title: President

**WAITT:**

WAITT RADIO, INC., a South Dakota corporation

By: \_\_\_\_\_  
Name: Steven W. Seline  
Title: Vice Chairman and Vice President

**THREE EAGLES:**

THREE EAGLES OF JOLIET, INC., a Delaware  
corporation

By: \_\_\_\_\_  
Name: Rolland C. Johnson  
Title: CEO



# **PROGRAMMING RIGHTS ASSIGNMENT**

## **EXHIBIT A**

### **Original Agreement**

## **SCHEDULES**

Schedule 1	Stations
Schedule 2	Station Agreements
Schedule 3	Accounts Receivable / Trade Agreements
Schedule 4	Undisclosed Liabilities
Schedule 5	FCC Authorizations
Schedule 6	Employees of the Stations
Schedule 7	Employee Benefit Plans
Schedule 8	Procedures for Indemnification from Option Agreement
Schedule 9	Defined Terms from the Interim Agreement