

**ASSET PURCHASE AGREEMENT**

**among**

**THREE EAGLES OF JOLIET, INC.**

**and**

**WMMP, L.L.C. and WAITT RADIO, INC.**

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT**, together with all amendments and all Schedules, Exhibits and Certificates (the "Agreement") is made as of April 12, 2004, by and between **THREE EAGLES OF JOLIET, INC.**, a Delaware corporation (the "Buyer"), and **WMMP, L.L.C.**, a South Dakota limited liability company (the "Seller") and Waitt Radio, Inc., a South Dakota corporation ("Waitt").

### **RECITALS:**

A. Seller's corporate parent Waitt currently provides substantially all of the programming for broadcast stations (1) KWAT(AM), KIXX(FM) and KDLO-FM, in Watertown, South Dakota, (2) KKSD(FM) in Milbank, South Dakota, (3) KJJQ(AM) and KKQQ(FM) in Volga, South Dakota, (4) KDBX(FM) in Clear Lake, South Dakota, and (5) KVFD(AM) and KUEL(FM) in Fort Dodge, Iowa (collectively, the "Stations"), pursuant to (i) licenses issued by the Federal Communications Commission (the "FCC"), and (ii) an Interim Programming Agreement with Sorenson Broadcasting Corpn. ("Sorenson") dated January 1, 2000 as replaced by the Programming Agreement with Sorenson dated December 1, 2003 ("Original Programming Agreement").

B. Concurrently with this Agreement, Seller will enter into an agreement or agreements with Sorenson (the agreement or agreements shall be collectively referred to herein as, the "Exchange Agreement"), whereby, pursuant to prior FCC approval, Seller will acquire ownership of the Stations from Sorenson on or before the Closing Date (as defined in Section 13 below), subject to the terms and conditions set forth in the Exchange Agreement.

C. Concurrently with this Agreement, Sorenson and Waitt will assign Waitt's programming rights for the Stations to Buyer pursuant to a Programming Rights Assignment ("Programming Assignment").

D. Subject to the terms and conditions set forth in this Agreement, including but not limited to Seller's acquisition of the Stations from Sorenson and the FCC's approval of the corresponding FCC license assignments, Buyer desires to acquire from Seller the business of the Stations as a going concern and all of the real and personal property and all other tangible and intangible assets and rights used, useful or intended to be used, in the business and operations of the Stations and to secure an assignment from Seller of the licenses, permits and other authorizations issued by the FCC for the operation of the Stations and Seller desires to sell, assign, transfer and convey the same to Buyer.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and covenants expressed herein, the parties hereby covenant and agree as follows:

## ARTICLE I

### PURCHASE OF ASSETS

**1.1 Transfer of Assets.** On the terms and subject to the conditions set forth herein, on the Closing Date, as defined in Section 13 below, Seller shall sell, assign, transfer and convey to Buyer, and Buyer shall purchase from Seller, all of the assets, properties and business of Seller of every kind and description, real, personal and mixed, tangible and intangible, wherever situated, owned by Seller or in which Seller has any right or interest and used or usable in connection with the operation of the Stations as going concerns (the “Assets”), excluding the assets discussed below in Section 1.2 and including, without limitation, the following:

(a) *Licenses and FCC Licenses:* all of Seller’s rights in and to the licenses, permits and other authorizations issued to Seller by the United States, any state, any federal, state or local governmental entity or municipality or subdivision thereof or any authority, department, commission, board, agency, court or instrumentality thereof (collectively, the “Governmental Authorities”) which are used in or related to the business or operations of the Stations. Schedule 1.1 (a) sets forth all licenses, permits, and other authorizations, including, without limitation, the primary licenses for the operation of the Stations (collectively “the Station Licenses”), together with any additions thereto (including renewals or modifications of such licenses, permits and authorizations and applications therefor) between the date hereof and the Closing Date and all of its rights in and to the call letters for the Stations;

(b) *Real Estate:* all of Seller’s right, title and interest in any real property (the “Real Property”), including, without limitation, the fee and leasehold interests in real property identified in Schedule 1.1(b) hereto, together with any additions thereto between the date hereof and the Closing Date;

(c) *Equipment and Personal Property:*

(i) all of Seller’s broadcast, studio, and transmitting equipment and systems, equipment, office furniture and fixtures, office materials and supplies, inventory, spare parts, transmitters, transmission lines, transmitting towers and antennae with existing hardware, guy wires and anchor points, leasehold improvements, business machines and other tangible personal property of every kind and description (the “Personal Property”), including, without limitation, the items listed in Schedule 1.1(c)(i) hereto, together with any replacements thereof and additions thereto made between the date hereof and the Closing Date. (Schedule 1.1(c)(i) shall be replaced prior to Closing with the physical inventory list to be prepared by Buyer and Seller based on the physical inventory to be performed by them pursuant to Section 7.14 below.);

(ii) *Leases:* all leases entered into by Seller for the use of personal property to the extent such personal property is used in connection with the operations of the Stations (the “Personal Property Leases”), as set forth on Schedule 1.1(c)(ii).

(iii) *Libraries:* all programs and program production materials of whatever form or nature owned by Seller and used in the operations and programming of the Stations, including, but not limited to, all record libraries, records, cartridge tapes, compact discs, news archives, promotional materials and all other materials of a commercial nature (the “Libraries”), together with any replacements thereof and any additions thereto between the date hereof and the Closing Date;

(d) *Proprietary Rights and Intangibles:*

(i) all of Seller’s rights in and to the trademarks, trade names, service marks, patents, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, slogans, licenses and privileges, if any, and other similar intangible property rights and interests, and all similar intellectual property rights, owned or held by Seller (the “Proprietary Rights”), including, without limitation, those listed in Schedule 1.1(d) hereto, together with any associated good will, together with any additions thereto between the date of this Agreement and the Closing Date;

(ii) *Good Will:* the good will of the Stations;

(iii) *Intangible Assets:* all of Seller’s intangible assets used or useful in the business and operations of the Stations, including business lists, sales and operating plans, trade secrets, and potential claims which relate to the business and operations of the Stations (collectively, the “Intangible Assets”), together with any replacements thereof and additions thereto made between the date hereof and the Closing Date;

(e) *Contracts and Advertising Contracts and Customer Lists:*

(i) All Seller’s rights to any agreements, contracts, accounts, and franchises (collectively, “Contracts”);

(ii) *Customer Lists:* the customer lists of the Stations;

(f) *Books and Records:* all files, records, manuals, books of account, computer programs and software and logs relating to the operations of the Stations, including, without limitation, programming information and studies, technical information and engineering data, schematics, news and advertising studies or consulting reports, marketing and demographic data, sales correspondence, lists of advertisers, promotional materials, credit and sales reports, filings with the FCC, “public files” as required to be maintained by the FCC, and true and complete copies, or if available, executed originals, of all Assumed Contracts (as defined in Section 4.8);

(g) *Warranty Rights:* all of Seller's rights under manufacturers' and vendors' warranties relating to items included in the Assets and all other rights against third parties relating to items included in the Assets to the extent transferable;

(h) *Broadcast Rights:* all of Seller's right, title and interest in and to all broadcast, news, feature and syndication rights, programs, program rights and other broadcast materials, used or useful in the business and operations of the Stations which have not expired in accordance with their respective terms as of the Closing Date (collectively, "Broadcast Rights"), together with any replacements thereof and additions thereto made between the date hereof and the Closing Date;

(i) *Promotional Rights:* all of Seller's rights to any and all slogans, jingles, promotions, contents, themes and other promotional rights, including materials incorporating or using the same (collectively, "Promotional Rights"), together with any replacements thereof and additions thereto made between the date hereof and the Closing Date.

(j) The Assets will be transferred to Buyer free and clear of all debts, liens, security interests, mortgages, trusts, pledges, charges, claims, restrictions or other liabilities or encumbrances whatsoever, other than taxes not yet due and payable and encumbrances or liens which Buyer expressly agrees in writing to accept, as set forth in Schedule 1.1(j) ("Permitted Encumbrances"). In addition thereto, all revisions to any Schedule, Exhibit or Certificate, or additions or replacements thereto hereinabove contemplated, other than in the ordinary course of business, or other than as contemplated by Section 7.14 below, shall be subject to the approval by Buyer on the Closing Date.

**1.2 Excluded Assets.** Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the Assets shall not include the following (the "Excluded Assets"):

(a) Seller's charter documents and such other books and records as pertain to the organization and existence of Seller and duplicate copies of such business records as Seller shall require;

(b) any cash, certificates of deposit, cash equivalents, and marketable securities on hand and/or in banks and any prepaid Assets;

(c) accounts and notes receivable for services fully performed or provided by Seller prior to the Closing Date;

(d) ownership of the real property, for which Buyer shall assume leases, where the Watertown, Brookings and Ft. Dodge Studios are located; and

(e) any asset listed on Schedule 1.2.

## ARTICLE II

### **LIABILITIES ASSUMED**

**2.1 Assumption of Liabilities.** Buyer shall assume only the liabilities and obligations arising after the Closing Date, pursuant to the Assumed Contracts identified on Schedule 4.8, but only insofar as such liabilities and obligations relate to Buyer's operation of the Stations during the period after the Closing Date and arise out of events occurring after the Closing Date. Other than as specified in this paragraph, Buyer shall assume no obligations or liabilities of Seller. Notwithstanding any other provision of this Agreement to the contrary and except as set forth in the Programming Assignment, Buyer shall not assume (1) any obligations or liabilities under any contract not included in the Assumed Contracts, (2) any obligations and liabilities under the Assumed Contracts relating to the time period prior to the Closing Date, (3) any claims or pending litigation or proceedings relating to any action with respect to the operations of the Stations prior to the Closing Date, (4) any obligations or liabilities arising under capitalized leases or other financing agreements, (5) any obligations or liabilities arising under agreements entered into other than in the ordinary course of business, (6) any obligations or liabilities of Seller under any employee pension, retirement, or other benefit plans or collective bargaining agreements, including, any liabilities under existing health and welfare and disability plans for occurrences or conditions existing prior to the Closing Date, (7) any liability of Seller for income, transfer, sales, use, and other tax, fee, or assessment arising in connection with the consummation of the transactions contemplated hereby, or (8) any obligations or liabilities caused by, arising out of, or resulting from any action or omission of Seller prior to the Closing Date that are not approved by Buyer, and all such obligations and liabilities shall remain and be the obligations and liabilities solely of Seller.

## ARTICLE III

### **PURCHASE PRICE; PAYMENT**

**3.1 Purchase Price.** As consideration for the transfer of the Assets to Buyer, Buyer shall pay to Seller in the manner provided in Section 3.2 below the sum of Nine Million Four Hundred Fifty Thousand Dollars (\$9,450,000.00) subject to adjustment on account of the prorations to be made pursuant to Section 3.5.

**3.2 Payment of Purchase Price; Escrow Deposit.**

(a) If the Closing, as defined in Section 13.1 below, occurs, on the Closing Date Buyer shall pay to Seller by wire transfer of immediately available funds an amount equal to the Purchase Price less the Escrow Deposit (as defined below), and plus or minus any prorations as provided in Section 3.5 below (the "Cash Payment").

(b) Simultaneously with the execution of this Agreement, Buyer has deposited with Wells Fargo Bank, as escrow agent (the “Escrow Agent”), in an interest-bearing escrow account, the sum of Four Hundred Seventy-Two Thousand Five Hundred Dollars (\$472,500.00), which amount, together with all interest earned thereon (the “Escrow Deposit”), shall be available funds to be held in accordance with the terms and conditions of an Escrow Agreement by and among Buyer, Seller and the Escrow Agent dated of even date herewith to secure the obligations of Buyer hereunder. The Escrow Deposit and accrued interest shall be paid to Seller and credited against the Purchase Price at the Closing, or if this Agreement is terminated without a Closing, paid to the party entitled thereto pursuant to Article 14.

**3.3 Allocations.** The allocation of the Purchase Price among the Assets and the Non-Competition Agreement shall be agreed upon in writing executed by both parties five (5) days prior to Closing (the “Allocation Agreement”). The Purchase Price allocation may distinguish between Assets located at the South Dakota and Iowa Stations and shall be done pursuant to the requirements of Section 1060 of the Internal Revenue Code of 1986, as amended and the regulations thereunder. Each party to this Agreement agrees to report the transaction for all purposes in a manner consistent with that allocation and in accordance with all applicable laws and taxing authorities. Any adjustment of the Purchase Price shall be applied to the allocation set forth in Allocation Agreement for the Assets as mutually determined by the parties in good faith.

**3.4 Non-Competition Agreement.** The consideration above includes compensation to Seller for a non-competition agreement, in the total amount of \$100,000. The Non-Competition Agreement will provide that damages for breach of said agreement shall not exceed the actual amount of damages incurred by Buyer. The terms and conditions of the Non-Competition Agreement shall be as set forth on Exhibit 11.3, attached hereto and incorporated herein by this reference.

**3.5 Proration of Income and Expenses.** Buyer and Seller shall initially prorate income and expenses in accordance with the Programming Assignment. At Closing, all remaining prorations shall occur in accordance with the following:

(a) All income and expenses arising from the operations of the Stations shall be prorated between Buyer and Seller in accordance with generally accepted accounting principles as of 11:59 p.m., local time, on the date immediately preceding the Closing Date. Seller shall be responsible for all liabilities and obligations incurred or accrued in connection with the operation of the Station through 11:59 p.m., local time, of the date immediately preceding the Closing Date, and Buyer shall be responsible for all such liabilities and obligations incurred or accruing thereafter. Such prorations shall include, without limitation, all ad valorem, real estate and other property taxes (but excluding taxes arising by reason of the transfer of the Assets as contemplated hereby, which shall be paid as set forth in Section 10.1 of this Agreement), business and license fees, music and other license fees (including any retroactive adjustments thereof), insurance, utility expenses, telephone expenses, liabilities and obligations under all Assumed Contracts, time sales

agreements, rents and similar prepaid and deferred items and all other income and expenses attributable to the ownership and operation of the Stations. Real estate taxes shall be apportioned on the basis of taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

(b) Ten (10) days prior to the Closing Date, Seller shall prepare and deliver to Buyer a statement of income and expense (the "Preliminary Closing Proration Statement"), setting forth the adjustment to the Purchase Price determined in accordance with Section 3.1 and prorations determined in accordance with this Section 3.5. The Preliminary Closing Proration Statement shall be prepared in a form that sets forth the amounts due to or from Buyer or Seller, as the case may be. Upon receipt of the Preliminary Closing Proration Statement, Buyer and its accountants shall have the right to examine, at Buyer's expense, the Preliminary Closing Proration Statement and all work papers, schedules, and other books and records used in the preparation of such Preliminary Closing Proration Statement, and to make reasonable inquiry of Seller and its accountants. If Buyer objects to the Preliminary Closing Proration Statement, it shall so advise Seller, and Seller and Buyer shall each use their best efforts to resolve their differences concerning the Preliminary Closing Proration Statement as soon as possible, but in any event prior to the Closing Date. If Seller and Buyer are unable to resolve the matter, they shall, or if they can not agree their respective outside accountants shall, jointly appoint an independent certified public accounting firm to resolve the dispute. The fees of such independent accounting firm shall be split evenly between Buyer and Seller. Seller and Buyer shall cooperate fully with such independent accounting firm. Such independent accounting firm's resolution of the dispute shall be final and binding upon the parties. The parties shall use their best efforts to cause the accounting firm to resolve such dispute, if any, concerning the Preliminary Closing Proration Statement as soon as possible, but in any event prior to the Closing Date.

(c) Within sixty (60) days following the Closing Date, Buyer shall prepare and deliver to Seller the Final Closing Proration Statement indicating the prorations as set forth above, together with copies of all work papers, schedules, and supporting documentation reasonably sufficient to allow Seller to verify the prorations prepared by Buyer. Within ten (10) days of receipt of the Final Closing Proration Statement, Seller shall either accept the prorations set forth in the Final Closing Proration Statement or give Buyer a Notice of Disagreement. If Seller fails either to accept the prorations set forth in the Final Closing Proration Statement or to give Buyer a Notice of Disagreement within ten (10) days of receipt of the Final Closing Proration Statement, then Seller shall be deemed to have accepted such prorations. The Notice of Disagreement shall state the amount of money Seller believes is due to or from Seller pursuant to the prorations set forth herein ("Seller's Amount"), and Buyer shall have ten (10) days to accept or reject Seller's Amount. If Buyer rejects Seller's Amount, any amount not in dispute shall be immediately paid and the remaining amount in dispute shall be submitted to an independent certified public accounting firm selected jointly by the parties, or their respective outside accountants if they can not agree, for resolution of the dispute, such resolution to be final and binding upon the parties. Buyer and Seller agree to share equally the cost and expenses of such accounting firm. All amounts owed pursuant to this Section 3.5 shall be paid within ten (10) days of acceptance,



failure to object or, if there is a dispute, resolution of the amount due. If such amount is not paid within such ten (10) day period, interest on such amount shall accrue until paid at 12%.

## **ARTICLE IV**

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

Each of Seller and Waitt represents, warrants and covenants to Buyer that: (i) the statements contained in this Article IV are correct and complete as of the date of this Agreement; and (ii) such statements will be correct and complete as of the Closing Date, as though made on the Closing Date unless any such statements, by their terms, are applicable only to a specified date, in which case such statements shall be correct and complete only as of such specified date. The parties expressly acknowledge that Sorenson was at all pertinent times prior to transferring them to Seller the licensee of the Stations and was in control of all day-to-day policies and practices of the Stations. However, as between Buyer, Seller and Waitt and for the purposes of this Agreement, Seller and Waitt make all of the following representations and warranties to Buyer with the intent that all representations and warranties be made as if Seller had ownership of, the owner's knowledge about, and the owner's legal duties and obligations with respect to, the Stations and the Assets during all periods that Waitt provided the programming to such Stations; as a result and for the purposes of this Agreement, if any of the following representations or warranties are incorrect or incomplete, Seller and Waitt, and not Sorenson, shall be responsible to Buyer for such breach of representation or warranty except as otherwise set forth in this Agreement or the Programming Agreement as modified by the Programming Assignment.

**4.1 Assets Used in the Conduct of Business.** The Assets as described in Sections 1.1(a) - 1.1(i) are all the assets, tangible and intangible, used in the conduct of the business and the operations of the Stations as conducted and operated on the date hereof. The Personal Property to be transferred by Seller to Buyer pursuant to this Agreement constitutes all of the Personal Property reasonably necessary to operate the Stations in the manner in which they are operated on the date of this Agreement.

**4.2 Organization and Standing.**

(a) Seller is a limited liability company and Waitt is a corporation, each duly organized, validly existing and in good standing under the laws of the State of South Dakota; each of Seller and Waitt is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required. Seller has the power and authority to acquire, own, lease and operate the Assets and to conduct the business of the Stations as now being conducted.

(b) Seller has executed the Exchange Agreement, pursuant to which and following FCC approval it will acquire all right, title and interest in and to the Assets. On or before the Closing Date, Seller shall have full power and authority and, at Closing, will have all

licenses, permits, and authorizations necessary to carry on the business of the Stations in which it is engaged and to own and use the properties owned and used by it.

**4.3 Authorization and Binding Obligation.** Seller has the power and authority to conduct its business with respect to the Stations as now being conducted, to enter into and perform its obligations under this Agreement and all other agreements, documents and instruments to be delivered by Seller pursuant to this Agreement and the transactions contemplated hereby, subject only to FCC consent as contemplated by Article VI. Seller's execution, delivery and performance of this Agreement and such other agreements have been duly and validly authorized by all necessary Seller action; and Waitt's execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary corporate action. This Agreement constitutes, and such other agreements that will on the Closing Date be duly executed and delivered by Seller and Waitt, as applicable, and each (when executed and delivered) will constitute, valid and binding obligations of each of Seller and Waitt, respectively, enforceable in accordance with their respective terms, except as limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

**4.4 Absence of Conflicting Agreements or Required Consents.** Except as set forth in this Agreement with respect to the consent of the FCC and any necessary consents set forth on Schedule 4.4, the execution, delivery and performance of this Agreement by Seller and Waitt: (a) do not require the consent of any third party; (b) will not violate any provisions of Seller's or Waitt's organizational documents or other agreement relating to operation as a limited liability company or corporation, as applicable and as amended to date; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any Governmental Authority to which Seller or Waitt is a party or by which it or any of the Assets are bound; (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, agreement, instrument, indenture, commitment, license, judgment, order, decree or permit to which Seller, Waitt or the Assets are now subject; and (e) will not result in the creation of any lien, charge or encumbrance on any of the Assets.

**4.5 Governmental Authorizations.** Schedule 1.1(a) hereto contains a true and complete list of the Licenses, and there are no other licenses, permits or other authorizations from Governmental Authorities that are required for the lawful conduct of the business and operations of the Stations in the manner in which they are now conducted. Upon FCC approval and following acquisition of the Stations from Sorenson (the "Sorenson Closing"), Seller shall be and until the Closing shall remain the authorized legal holder of the Station Licenses and other licenses, permits and authorizations listed in Schedule 1.1(a) hereto, none of which is subject to any restriction or condition not disclosed in Schedule 4.5 hereto. Except as set forth in Schedule 4.5 hereto, there are no actions, complaints or proceedings pending or threatened as of the date hereof before the FCC or any other Governmental Authority relating to the business or operations of the Stations other than actions, complaints or proceedings which generally affect the broadcasting industry. Except as disclosed in Schedule 4.5 hereto, there are no applications

before the FCC filed by Seller relating to the Stations. Except as disclosed in Schedule 4.5 hereto, the Station Licenses have been validly issued to Sorenson, are in full force and effect and are unimpaired by any act or omission of Seller or its employees, and the operations of the Stations by Sorenson is in accordance therewith in all material respects. Except as disclosed in Schedule 4.5, the Stations are broadcasting at full, licensed, effective radiated power and the antenna height does not exceed the licensed height. All material reports, forms and statements required to be filed with the FCC with respect to the Stations have been filed and are complete and accurate in all material respects. Except as disclosed in Schedule 4.5 hereto, there are no facts which under the Communications Act of 1934, as amended, or the existing rules and regulations of the FCC (the "Communications Act"), would disqualify Seller as an assignor of the Station Licenses. Seller has not taken any action that would be likely to result in the FCC's denying the application to be filed by Buyer and Seller with the FCC for consent to the assignment of the Station Licenses to Buyer.

#### **4.6 Real Property.**

(a) Schedule 1.1(b) hereto contains a complete and accurate list of, or reference to, as of the date hereof, all Real Property, including a correct legal description of all Real Property owned and a list of all leases and other agreements pursuant to which any Real Property is leased or used. At Closing, pursuant to the Exchange Agreement, Seller will have good and marketable title to the Real Property which is identified in such Schedule 1.1(b) as owned by Seller, free and clear of any liens, encumbrances, security interests, mortgages, trusts, claims, charges, restrictions or defects in title, other than (i) Permitted Encumbrances; and (ii) financing liens which will be removed by Seller at or prior to Closing. Schedule 1.1(b) contains true and complete copies of all leases and other agreements (the "Real Property Agreements") pursuant to which Seller is a lessee or other user of any Real Property, including any and all amendments and other modifications. The Real Property Agreements constitute valid and binding obligations, to the best of Seller's knowledge, of all other parties thereto, enforceable in accordance with their terms (except as limited by laws affecting creditors' rights or equitable principles generally), and are in full force and effect as of the date hereof. Seller will not at Closing be in default under any of the Real Property Agreements and, to the best of Seller's knowledge, the other parties to such agreements are not, and will not at Closing be, in default thereunder. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto, and no event has occurred, and no condition exists which, with the passage of time or giving of notice, or both, would give rise to such a default by Seller, or, to the best of Seller's knowledge, any other party, which has not been cured.

(b) All of the Real Property and improvements thereon and the use thereof comply in all material respects with all applicable laws, statutes, ordinances, rules and regulations of Governmental Authorities, including those relating to zoning and the rules and regulations of the FCC. At Closing, Seller shall have good and valid rights of ingress and egress to and from all of the Real Property from and to the public street systems for all usual street, road and utility purposes.

(c) Seller has not received any notice of any appropriation, condemnation or like proceeding, or of any violation of any applicable zoning law, regulation or other law, order, regulation or requirement relating to or affecting such Real Property, or of the need for any material repair, remedy, construction, alteration or installation with respect to such Real Property, or any change in the means or methods of conducting operations thereon, nor, to the best of Seller's knowledge, has any other person or entity received any such notice. The Real Property includes all real property used in the conduct of the business and operations of the Stations as now operated; provided however that all of the Studio property used in the operation of the Stations is leased and fee ownership of that property shall not be transferred as a result of this agreement.

(d) All towers, guy anchors and wires, buildings, fences and other improvements on the Real Property are located entirely within the boundary lines of such Real Property, and no structure of any kind encroaches on such Real Property in any manner that could adversely affect the use of such Real Property in the operations of the Stations.

**4.7 Personal Property.** Schedule 1.1(c) hereto identifies all material tangible personal property and assets that are used in or related to the business or operations of the Stations. At Closing, Seller will own and have good and marketable title to all such property and assets (and to all other tangible personal property and assets to be transferred to Buyer hereunder) subject to Permitted Encumbrances. Such personal property and assets include all tangible property used in the conduct of the business and operations of the Stations as now conducted. All such tangible personal property and assets, and the use and the state of maintenance thereof, are in compliance in all material respects with the Station Licenses and the rules and regulations of the FCC, and with all other applicable statutes, ordinances, rules and regulations of any Governmental Authority.

**4.8 Assumed Contracts.** "Assumed Contracts" are the agreements, contracts, leases, trade agreements, network agreements, commitments, understandings, options, rights, and interests written or oral, of Seller or to which Seller is a party, relating to the conduct of the operations of the Stations or the Assets which Buyer agrees to assume. Schedule 4.8 hereto sets forth complete and accurate copies of all Assumed Contracts as of the date of this Agreement (or, in the case of oral Assumed Contracts, true and complete written statements of the terms of such Assumed Contracts), including any and all amendments, waivers and other modifications to such Assumed Contracts. All such Assumed Contracts shall at Closing be valid and binding obligations of Seller and of all other parties thereto, enforceable in accordance with their terms (except as limited by laws affecting creditors' rights or equitable principles generally), and are in full force and effect as of the date hereof (regardless of whether any copy of such Assumed Contract included in Schedule 4.8 is partially or completely unexecuted). Seller has complied in all material respects with all Assumed Contracts and is not in default beyond any applicable grace periods under any of the Assumed Contracts, and, to the best of Seller's knowledge, no contracting party is in material default under any of the Assumed Contracts. Seller has or will have at the time of

Closing full power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement, and, upon the assignment of any such Assumed Contracts to Buyer at Closing, such Assumed Contracts will be enforceable by Buyer in accordance with their terms (except as limited by laws affecting creditors' rights or equitable principles generally), and will be in full force and effect, and such assignment will not adversely affect the validity, enforceability or continuity of any of such Assumed Contracts.

**4.9 Copyrights, Trademarks and Similar Rights.** Schedule 1.1(d) hereto is a true and complete list of all copyrights, trademarks, trade names, licenses, patents, permits, jingles, privileges and other similar intangible property rights and interests, if any, (exclusive of those listed in other Schedules) applied for, issued to or to be owned by Seller, or under which Seller is licensed or franchised, which are used in or related to the business or operations of the Stations. Seller has or will have as of the Closing Date good and marketable title to all of such rights and interests which have been issued to or are then owned by Seller, all of which will be free and clear of any third party interests or claims at the Closing, or if licensed or franchised to Seller such rights and interests are valid and in good standing and uncontested. Seller has delivered to Buyer copies of all documents establishing such rights, licenses or other authority. Seller has received no notice of any infringements or unlawful use of such property and is not aware of any grounds therefor.

**4.10 Financial Statements.**

(a) Attached hereto as Schedule 4.10 are the following financial statements as related to the Stations (collectively the "Financial Statements"): (i) unaudited balance sheets and statements of income, and cash flow as of and for the fiscal year ended December 31, 2002; (ii) unaudited balance sheets and statements of income, and cash flow as of and for the fiscal year ended December 31, 2003 (the "Most Recent Fiscal Year End"); and (iii) internally prepared unaudited balance sheets and statements of income, and cash flow (the "Most Recent Financial Statements") as of and for February 29, 2004. The Financial Statements (including any notes thereto) have been prepared in accordance with generally accepted accounting principals (GAAP) on a consistent basis throughout the periods covered thereby, present fairly the financial condition of Seller with respect to the Stations as of such dates and the results of operations of the Stations for such periods, are correct and complete, and are consistent with the books and records of Seller, which books and records are correct and complete; provided, however, that the Most Recent Financial Statements are subject to normal year-end adjustments (which will not be material individually or in the aggregate) and lack footnotes and other presentation items.

(b) The Financial Statements have been relied upon and are routinely used by Seller's executive officers in connection with Seller's business in connection with the Stations and no similar financial statements of Seller have been prepared with respect to any of the periods covered by the Financial Statements, except for the Seller's consolidated financial statements which include, in part, the Stations Financial Statements.

(c) None of the Financial Statements understate the costs and expense of conducting Seller's business in connection with the Stations, fails to disclose any material liability, or inflates the revenues of the Stations in any manner.

**4.11 Events Subsequent to Most Recent Fiscal Year End.** Except as set forth on Schedule 4.11, since the Most Recent Fiscal Year End and as of the Closing Date as related to the Stations:

(a) Seller has not sold, leased, transferred, or assigned any assets, tangible or intangible, outside the ordinary course of business;

(b) Seller has not entered into any agreement, contract, lease, or license outside the ordinary course of business;

(c) no party (including Seller) has accelerated, terminated, made material modifications to, or canceled any material agreement, contract, lease, or license to which Seller is a party or by which any of them is bound;

(d) Seller has not made any capital expenditures outside the ordinary course of business which are not disclosed on monthly financial statements of Seller;

(e) Seller has not made any material capital investment in, or any material loan to, any other person outside the ordinary course of business which is not disclosed in the monthly financial statements of Seller;

(f) Seller has not issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(g) Seller has not experienced any material damage, destruction, or loss (whether or not covered by insurance) to its property;

(h) Seller has not made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the ordinary course of business; and

(i) Seller has not made any other material change in employment terms for any of its directors, officers, and employees outside the ordinary course of business.

**4.12 Employees.** Schedule 4.12 hereto contains a complete and accurate list of all of Sorenson's and Seller's current employees with respect to the Stations, each such employee's salary or hourly rate, annual bonus, if any, for the calendar year ending December 31, 2003, current commission rate of any employees on commission, the total value and list of any other fringe benefits or incentive pay received by that employee within each such period, and any bonus

or other payment earned but not yet paid such employee. Except as set forth on Schedule 4.12, there are no written or oral collective bargaining or other employment agreements or understandings with or affecting Seller's employees. Hours worked by, and payments made to, employees of Seller have been in compliance with the laws of all jurisdictions governing such employees, including with respect to employees in the United States, the Fair Labor Standards Act and other applicable federal, state, and local laws. All payments due from Seller on account of employees' work, health or welfare insurance, under any agreement, whether oral or written, will have been paid as of the Closing Date. There is no liability to Buyer to any employee of Seller for any severance pay or payment if such employee's employment should terminate. Except as set forth in Schedule 4.12, (i) Seller is in compliance with all applicable laws in respect of the operations of the Stations relating to employment and employment practices, wages, hours, and terms and conditions of employment; (ii) there is no unfair labor practice charge or complaint in respect to the Stations pending before the National Labor Relations Board ("NLRB") or any similar agency of any jurisdiction in which Seller conducts its business; (iii) there is no labor strike, material slowdown or material work stoppage or lockout actually pending or, to Seller's knowledge, threatened against or affecting the operations of the Stations, and Seller has not experienced any strike, material slow down or material work stoppage, lockout or other collective labor action in respect of its business in connection with the Stations by or with respect to employees of Seller; (iv) there is no representation claim or petition pending before the NLRB or any similar agency in any jurisdiction in which the Seller conducts its business and no question concerning representation exists relating to the employees of the Stations; (v) there are no charges with respect to or relating to the operations of the Stations pending before the Equal Employment Opportunity Commission, the Equal Employment Office of the FCC, or any agency in any jurisdiction in which the Seller conducts its business responsible for the prevention of unlawful employment practices; and (vi) Seller does not have formal notice from any governmental agency responsible for the enforcement of labor or employment laws of an intention to conduct an investigation of the operations of the Stations and, to Seller's knowledge, no such investigation is in progress.

#### **4.13 Employee Benefits Plans.**

(a) Seller does not maintain or sponsor, and is not required to make contributions to, any pension, profit-sharing, savings, bonus, incentive or deferred compensation, severance pay, medical, life insurance, welfare or other employee benefit plan which affects Seller's employees working at the Stations, except as set forth in Schedule 4.13. Said Schedule fully discloses all of the plans, funds, policies, programs, arrangements or understandings sponsored or maintained by Seller pursuant to which any employee of the Stations (or any dependent or beneficiary of any such employee) might be or become entitled to (1) retirement benefits; (2) severance or separation from service benefits; (3) incentive, performance, stock, share appreciation or bonus awards; (4) health care benefits; (5) disability income or wage continuation benefits; (6) supplemental unemployment benefits; (7) life insurance, death or survivor's benefits; (8) accrued sick pay or vacation pay; (9) any type of benefit offered under any arrangement subject to characterization as an "employee welfare benefit plan" within the meaning

of Section 3(3) of ERISA; or (10) benefits of any other type offered through any arrangement that could be characterized as providing for additional compensation or fringe benefits. As to any such plan, fund, policy, program, arrangement or understanding, all of the following are true: (A) all material amounts due as contributions, insurance premiums and benefits to the date hereof have been fully paid by Seller; (B) all applicable material requirements of law have been observed with respect to the operation thereof, and all applicable reporting and disclosure requirements have been timely satisfied; and (C) Seller is not aware of any claim or demand by any employee (or beneficiary or dependent of any employee) for benefits (other than routine claims for benefits), or by any taxing authority for taxes or penalties which has not been satisfied in full or which may be or become subject to litigation or arbitration.

(b) Seller has no obligation to provide health or other welfare benefits to former, retired or terminated employees, except as specifically required under Section 4980B of the Code.

(c) Seller is not a party to any collective bargaining agreement or union contract.

(d) As of the Closing Date, any amounts due to Seller's employees pursuant to the existing §401K program shall be paid by Seller and/or the applicable plan and Seller shall take whatever action is necessary to ensure that Buyer has no liability for any contributions or reporting requirements for Seller's §401K program. Seller will cooperate with Buyer in accomplishing a trustee to trustee transfer of the Seller's §401K program's benefits into a similar program established by Buyer, if Buyer, in its discretion, determines that a transfer is appropriate, and if plan participants elect such a transfer.

(e) Seller shall be responsible for providing its employees with any COBRA notices.

**4.14 Litigation.** Except as set forth in Schedule 4.14 hereto, each of Waitt and Seller is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree which could affect Waitt's or Seller's ability to perform its obligations hereunder, and there is no litigation, proceeding or investigation pending or threatened against Seller or Waitt or relating to the Stations in any federal, state or local court, or before any administrative agency or arbitrator or before any other tribunal duly authorized to resolve disputes, which could have any effect upon the business, property, assets or condition (financial or otherwise) of the Stations or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement or which could materially adversely affect Seller's or Waitt's ability to perform its obligations under this Agreement.

**4.15 Compliance With Laws.** Except as disclosed in Schedule 4.15, neither Seller, Waitt or Sorenson, to Seller's and Waitt's knowledge, has received any notice asserting any noncompliance with any applicable statute, rule or regulation, whether federal, state or local.



Seller and Waitt are not in default with respect to any judgment, order, injunction or decree of any court, administrative agency or other Governmental Authority or any other tribunal duly authorized to resolve disputes. Subject to Sorenson's ownership and control, Seller is in compliance in all material respects with all laws, regulations and governmental orders applicable to the Assets and the conduct of the business and operations of the Stations, the failure to comply with which could have a material adverse effect on the business, operations or condition (financial or otherwise) of the Stations, including without limitation all FCC and Federal Aviation Administration rules and regulations with respect to the height, lighting, effective radiated power and signal of the towers, antennae and other equipment used by the Stations. Except for the consent of the FCC to the assignment of the Station Licenses to Buyer as contemplated hereunder, no action, consent or other approval is required from Governmental Authorities in connection with the transactions contemplated by this Agreement. To Seller's knowledge, the "public files" of the Stations comply with FCC rules and policies.

**4.16 Taxes.** Each of Seller and Waitt has filed or caused to be filed all federal, state and other tax returns and reports required to be filed by Seller and Waitt and has paid or caused to be paid all taxes and other assessments and levies (including all interest and penalties), including, without limitation, income, franchise, real estate, sales, gross receipts, use and telecommunications excise and service taxes, and employment and employee withholding taxes, owed by Seller and Waitt. Each of Seller and Waitt has not waived any statute of limitation with respect to any tax or other assessment or levy applicable to Seller, Waitt or the Assets and all such taxes and other assessments and levies which Seller or Waitt is required by law to withhold, collect or deposit have been duly withheld, collected and deposited with the proper Governmental Authorities or segregated and set aside for such payment and, if so segregated and set aside, shall be so paid by Seller or Waitt as required by law. Neither the IRS nor any other taxing authority is now asserting or is threatening to assert against Seller or Waitt any deficiency or claim for additional taxes or interest thereon or penalties in connection therewith.

**4.17 Insurance.** Set forth on Schedule 4.17 hereto is a list and description of all insurance policies maintained by Sorenson and Seller with respect to the Assets or the business of the Stations. Sorenson and Seller maintain policies of fire, casualty, liability and other forms of insurance in such amounts and against such risks and losses as each believes are reasonable and adequate for the business and the properties of the Stations.

**4.18 No Misstatements or Omissions.** None of the information or documents furnished or to be furnished by Seller and Waitt to Buyer or to any of Buyer's representatives is or will be false or misleading as to any material fact. Seller has provided to Buyer all material information with respect to the Assets and the business and operations of the Stations.

**4.19 Environmental, Health and Safety.**

(a) Except as set forth on Schedule 4.19, the Stations are in compliance with all Environmental, Health, and Safety Laws, and no action, suit, proceeding, hearing,

investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure so to comply. Without limiting the generality of the preceding sentence, Seller has obtained and been in compliance with all of the terms and conditions of all permits, licenses, and other authorizations which are required under, and has complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all Environmental, Health, and Safety Laws.

(b) Seller has no liability and Seller has not handled or disposed of any substance, arranged for the disposal of any substance, exposed any employee or other individual to any substance or condition, or owned or operated any property or facility in any manner that could form the basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand against Sorenson or Seller for damage to any site, location, or body of water (surface or subsurface), for any illness of or personal injury to any employee or other individual, or for any reason under any Environmental, Health, and Safety Law.

(c) Except as set forth on Schedule 4.19, all properties and equipment used in the business of the Stations have been free of PCB's, methylene chloride, trichloroethylene, 1,2-transdichloroethylene, dioxins, dibenzofurans, and Extremely Hazardous Substances (as defined in Section 302 of the Emergency Planning and Community Right to Know Act of 1986) (collectively, "Hazardous Materials"). If, through the Closing Date, any Hazardous Material is found on, in, or under the Assets, Seller, at its own cost and expense, shall immediately take such action as is necessary to prevent the spread of and remove or clean up, or otherwise remedy the existence or spread of, such Hazardous Material to the extent required by applicable laws; provided, however, that if the cost of any remedial action exceeds fifty thousand dollars (\$50,000), then Seller may choose not to take such remedial action without breaching this subsection 4.19(c), and Buyer may, at its sole option, either terminate this Agreement whereupon all liability with respect to this subsection 4.19(c) shall cease and the Escrow Deposit shall be released to Buyer, or close this Agreement and take the Assets subject to such Hazardous Material (subject to the Purchase Price adjustment provided for in Section 7.13).

(d) "Environmental, Health, and Safety Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Occupational Safety and Health Act of 1970, each as amended, together with all other laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, or employee health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial hazardous, or toxic materials or wastes.

**4.20 Undisclosed Liabilities.** Seller has no material liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due, including any liability for taxes), except for (i) liabilities set forth on the face of the Most Recent Balance Sheet (rather than in any notes thereto), (ii) liabilities which have arisen after the Most Recent Fiscal Month End in the ordinary course of business, and (iii) liabilities which will not be binding upon Buyer or on the Assets following the Closing.

**4.21 Family Relationships.** Except as set forth on Schedule 4.21, no officer or director of Seller is related to any employee of the Stations by marriage or blood.

**4.22 Tangible Assets.** At the Closing, Seller shall own or lease all buildings, equipment and other tangible assets reasonably necessary for the conduct of the business of the Stations as conducted prior to the date of this Agreement. Except as disclosed in Schedule 1.1(c)(i), each such tangible asset is free from defects, is in good operating condition and repair, subject to normal wear and tear, has been maintained in accordance with industry practice, and is suitable for the purposes for which it presently is used. The tangible assets have been made available to Buyer for inspection.

**4.23 Suppliers/Customers.** To the best of Seller's knowledge, there are no pending or threatened developments with respect to any suppliers or customers of the Stations that would have a material adverse effect on the stations.

## ARTICLE V

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

Buyer represents, warrants and covenants to Seller that: (i) the statements contained in this Article V are correct and complete as of the date of this Agreement; and (ii) such statements will be correct and complete as of the Closing Date, as though made on the Closing Date, unless any such statements, by their terms, are applicable only to a specified date, in which case such statements shall be correct and complete only as of such specified date.

**5.1 Organization and Standing.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer is qualified to do business in Illinois. As of the Closing Date, Buyer is qualified to do business in South Dakota and Iowa. Buyer has the power and authority to acquire, own, lease and operate the Assets.

**5.2 Authorization and Binding Obligation.** Buyer has the power and authority to enter into and perform its obligations under this Agreement and all other agreements, documents and instruments to be delivered by Buyer pursuant to this Agreement and the transactions contemplated hereby, and Buyer's execution, delivery and performance of this Agreement and

such other agreements have been duly and validly authorized by all necessary action on its part. This Agreement has been and such other agreements will be on the Closing Date duly executed and delivered by Buyer and each (when executed and delivered) will constitute Buyer's valid and binding obligation, enforceable in accordance with its terms, except as limited by laws affecting the enforcement of creditors' rights or equitable principles generally.

**5.3 Absence of Conflicting Agreements or Required Consents.** Except as set forth in Section 4.1 with respect to the consent of the FCC, the execution, delivery and performance of this Agreement by Buyer: (a) do not require the consent of any third party; (b) will not violate any provisions of Buyer's Articles of Incorporation, as amended to date, or Bylaws, as amended to date; (c) will not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any Governmental Authority to which Buyer is a party or by which it is bound; and (d) will not, either alone or with the giving of notice or the passage of time, or both, conflict with, constitute grounds for termination of or result in a breach of the terms, conditions or provisions of, or constitute a default under any agreement, instrument, indenture, commitment, license, judgment, order, decree or permit to which Buyer is now subject.

**5.4 Litigation; Compliance with Law.** Buyer is not subject to any judgment, award, order, writ, injunction, arbitration decision or decree which could materially adversely affect Buyer's ability to perform its obligations hereunder, and there is no litigation, proceeding or investigation pending or, to the best of Buyer's knowledge, threatened against Buyer in any federal, state or local court, or before any administrative agency or arbitrator or before any other tribunal duly authorized to resolve disputes, which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement or which could materially adversely affect Buyer's ability to perform its obligations under this Agreement.

**5.5 FCC Qualifications.** Buyer is, and at Closing will be, in compliance with all of the requirements of the FCC for consent and approval of the assignment of the Station Licenses to it as contemplated herein, including without limitation the FCC's multiple ownership rules and policies. The foregoing notwithstanding, Buyer shall not be deemed to be in breach of this agreement if it is not in compliance on the Closing Date based upon a change of law, rule, regulation or policy interpretation of the FCC, except to the extent caused by Buyer's action or omission subsequent to such change. Neither Buyer nor any of its owners, officers or directors presently have, nor will they at any time prior to Closing acquire any interest in any medium of mass communications which would cause the acquisition of the Stations to be prohibited under the FCC's multiple ownership rules or policies. Buyer has completed a multiple ownership study, conducted in accordance with current FCC requirements for such studies, which will be filed with the FCC as part of Buyer's portion of the application for assignment of the Station Licenses to Buyer as set forth in Section 6.2, and which study, to Buyer's knowledge, establishes Buyer's compliance with current FCC multiple ownership rules and policies as of the date hereof.

**5.6 No Misstatements or Omissions.** None of the information or documents furnished or to be furnished by Buyer to Seller or to any of Seller's representatives is or will be false or misleading as to any material fact.

**5.7 Actions or Omissions Related to Seller's Representations, Warranties and Covenants.** Buyer shall be responsible, and shall hold Seller harmless, for any act or omission of Buyer relating in any respect whatsoever to its programming of the Stations pursuant to the Programming Agreement, as modified by, and subject to, the Programming Assignment, during the Assignment Term (as defined in the Programming Assignment).

## ARTICLE VI

### **FCC APPLICATION/CONSENT**

**6.1 Consent.** It is specifically understood and agreed that the consummation of this Agreement is and shall be subject to prior FCC consent to the joint assignment of the FCC Licenses issued for the operation of the Stations from (A) the assignment of the Station Licenses (1) from Sorenson to Seller and (2) from Seller to Buyer, and (B) the assignment of the Waitt Stations licenses from Seller to Sorenson ("Joint Assignment"; the FCC orders granting the Joint Assignment are mutually referred to as the "FCC Consent").

**6.2 FCC License Assignment Procedure.** The FCC procedure with respect to the assignment of the Station Licenses will be as follows:

(a) Buyer will immediately prepare and deliver to Seller's counsel the assignee's portions of the FCC applications for the assignment of the Station Licenses from Seller to Buyer. Seller shall cause the Joint Assignment applications to be filed with the FCC not later than April 15, 2004. Seller shall also cause the FCC application for the assignment of the FCC licenses from Waitt to Sorenson (as contemplated by the Exchange Agreement (the "Waitt Stations")), within two business days after the receipt of the aforementioned materials from Buyer.

(b) The applications to assign the Station Licenses and the Waitt Stations licenses will be diligently prosecuted in good faith by Buyer and Seller and Seller shall cause Sorenson to diligently prosecute its applications for assignment in good faith.

(c) The cost of the FCC filing fee in connection with the applications for the Station License assignments with respect to Buyer's and Seller's applications shall be divided equally between Buyer and Seller. Buyer and Seller shall be individually responsible for their respective attorney's fees connected with the applications.

**6.3 FCC Conditions.** Each party agrees to comply with any condition imposed on it by the FCC Consent, except that no party shall be required to comply with a condition that would

have an adverse effect upon it unless the condition was imposed as the result of a circumstance which constitutes a breach by that party of any of its representations, warranties or covenants in this Agreement. Buyer and Seller shall oppose any requests for reconsideration or judicial review of the FCC Consent, but nothing in this Section 6.3 shall limit any party's right to terminate this Agreement as set forth herein.

**6.4 Extension.** If the Closing shall not have occurred for any reason within the original effective period of the latest order constituting the FCC Consent, and neither party shall have terminated this Agreement pursuant to Article XIV, the parties shall jointly request an extension of the effective period of the FCC Consent. No extension of the FCC Consent shall limit the exercise by either party of its right to terminate this Agreement pursuant to Article XIV.

## **ARTICLE VII**

### **COVENANTS**

Buyer and Seller covenant and agree that between the date hereof and the Closing Date they shall act in accordance with the following:

**7.1 Conditions.** Buyer and Seller shall each exercise good faith and use its reasonable efforts to cause the conditions precedent to its obligations to close the transactions contemplated hereby to be fulfilled. If any event should occur, either within or without the control of such party, which would prevent the fulfillment of the conditions to its obligations to consummate the transactions contemplated hereby, it shall use reasonable efforts to cure the event as expeditiously as possible.

**7.2 Confidentiality.** Buyer and Seller shall keep confidential all information obtained by them with respect to the other party in connection with this Agreement, and if the transactions contemplated hereby are not consummated for any reason, each shall upon written request return to the other, without retaining a copy thereof, any confidential schedules, documents or other written information obtained from the other in connection with this Agreement and the transactions contemplated hereby, except where such information is known or available through other lawful sources or where such party is advised by counsel that its disclosure is required in accordance with the law.

**7.3 Cooperation.** The parties hereto shall cooperate fully with each other in taking any actions, including actions to obtain the required consent of any Governmental Authority or any third party necessary or helpful to accomplish the transactions contemplated by this Agreement.

**7.4 Control of Stations.** Subject to the Programming Agreement as modified by the Programming Assignment, Buyer shall not, directly or indirectly, control, supervise or direct, or

attempt to control, supervise or direct, the operations of the Stations. Such operations, including complete control and supervision of all programs, employees and policies of the Stations, shall be the sole responsibility of Sorenson. Buyer shall not, pursuant to the Programming Agreement as modified by, and subject to, the Programming Assignment, materially modify the programming operations of the Stations, the employees, or any other combination of properties, employees and programming until after the Closing.

**7.5 Notices and Consents.** Seller will give any notices to third parties, and the Seller will use its best efforts to obtain any third party consents that the Buyer may request.

**7.6 Operation of Business.** Subject to the Programming Agreement and Seller's rights thereunder, Seller and Seller's employees will not engage in any practice, take any action, or enter into any transaction with respect to the business or operations of the Stations.

**7.7 Programming Agreement Assignment.** Seller, Buyer and Sorenson shall enter into the Programming Assignment on the date of this Agreement, pursuant to which Seller shall assign its programming rights for the Stations to Buyer in accordance with the terms therein.

**7.8 Access.** From the date of this Agreement until the Closing Date, Seller (with Sorenson's consent) will afford Buyer, its officers, counsel, accountants, engineers and other representatives, upon two (2) business days prior written notice, full access to the Assets, and all of Seller's real and personal properties, contracts, commitments and other related records, at all reasonable times during Seller's normal business hours, and such representatives will be furnished true and complete copies of the same as such representatives may reasonably request; provided, however, that such review shall be conducted so as to not interfere unreasonably with or disrupt the business and broadcast operations of Seller or the Stations. Such access shall include, but not be limited to, the right to conduct or have conducted environmental, soil and other tests and to inspect the structural and physical condition of the Real Property and all improvements located thereon, and the mechanical, engineering, plumbing and utility systems located at such Real Property, together with all other aspects of the Real Property.

**7.9 Notice of Developments.** Each party will give prompt written notice to the other party of any material adverse development causing a breach of any of the representations and warranties in Article IV and Article V above. No disclosure of any party pursuant to this Article 7.9, however, shall be deemed to amend or supplement a Schedule or to prevent or cure any misrepresentations, breach of warranty, or breach of covenant.

**7.10 Exclusivity.** Seller will not (i) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to the acquisition of any capital stock or other voting securities, or any substantial portion of the assets, of Seller, or (ii) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in or facilitate in any other manner any effort or attempt by any person to do

**or seek any of the foregoing. Seller will notify the Buyer immediately if any person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing.**

**7.11 Survey; Title Search.** With respect to each parcel of Real Property, Seller will assist Buyer to procure within thirty (30) days of the date of this Agreement a title search and a current survey of the Real Property certified to the Buyer, prepared by a licensed surveyor and conforming to current ALTA Minimum Detail Requirements for Land Title Surveys, disclosing the location of all improvements, easements, party walls, sidewalks, roadways, utility lines, and other matters shown customarily on such surveys, and showing access affirmatively to public streets and roads (the "Survey"). The Survey shall not disclose any material survey defect or encroachment from or onto the Real Property which has not been cured or (at Buyer's sole election) insured over prior to the Closing. The survey and title search costs shall be paid by Seller.

**7.12 Title Insurance.** Buyer may at its option obtain title insurance commitments, policies, and riders with respect to each parcel of Real Property. If elected by Buyer, the cost of said commitments, policies and riders shall be paid one-half each by Seller and Buyer. If it should appear that the Real Property is affected by any outstanding interest, or questions of title which are reasonably objected to by Buyer or which render title uninsurable or reasonably objectionable, and if such interest, question of title or violation may, according to reasonable expectations, be removed as an objection to title, Seller shall remove such question or discharge such interest, for which purpose Seller shall have a reasonable time, but in no event later than the Closing Date. If the Real Property shall be affected by any lien or encumbrance which may be discharged by the payment of an ascertainable amount, then it shall be Seller's obligation to discharge such lien or encumbrance at or prior to Closing. If Seller shall be unable to satisfy any reasonable objections of Buyer or to convey insurable and marketable title, subject to and in accordance with the provisions hereof, Buyer shall have the right to cancel this Agreement by giving written notice of such cancellation to the Seller whereupon all liability by reason of this Agreement shall cease, and the Escrow Deposit shall be released to Buyer. Buyer may, nevertheless, at its option, accept such title as Seller may be able to convey, and Buyer shall be entitled to a reduction of the Purchase Price in an amount equivalent to the reasonable costs incurred by Buyer related to such objectionable or uninsurable title.

**7.13 Environmental Assessment.** For each parcel of real estate set forth on Schedule 1.1(b), Buyer may obtain prior to Closing a Phase I Environmental Site Assessment and Seller shall be responsible for performing any remediation recommended in said Assessment. The cost of preparation of the Phase I Environmental Site Assessment shall be paid one-half each by Seller and Buyer; any remediation costs shall be borne solely by Seller, provided, however, in the event that the projected cost of all such remediation exceeds \$50,000, then Seller may choose not to take such remedial action without breaching this section, and Buyer may, at its sole option, either terminate this Agreement whereupon all liability with respect to this section shall cease and the Escrow Deposit shall be released to Buyer, or close this Agreement and take the Assets subject to such remediation matters but with an adjustment to the Purchase Price in the amount of \$50,000.



**7.14 Physical Inventory.** Within thirty (30) days following the date of this Agreement and with the consent of Sorenson, Buyer and Seller shall jointly perform a physical inventory of the tangible personal property located at the Stations. The resulting list of tangible personal property shall be substituted for the Schedule 1.1(c)(i) of this Agreement which has been attached to this Agreement upon the execution hereof and shall replace Schedule 1.1(c)(i) to this Agreement for all purposes.

**7.15 Suppliers/Customers.** Subject to the Programming Agreement, Seller shall not take any action or omission to damage good relations with the suppliers and customers of the Stations.

## ARTICLE VIII

### **CONDITIONS PRECEDENT TO BUYER'S OBLIGATION AT CLOSING**

The obligation of Buyer to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction of all of the following conditions, any of which may be waived in writing by Buyer:

**8.1 Accuracy of Representations.** All material and substantive representations and warranties made by each of Seller and Waitt in this Agreement, or in any document, instrument, schedule or exhibit delivered pursuant to this Agreement, shall have been true, correct and complete in all respects on the date of this Agreement and shall be true, correct and complete on the Closing Date with the same force and effect as if they had been made on and as of that date, except insofar as the inaccuracy or incompleteness of any such representation or warranty may be caused by the act or omission of Buyer during its operations pursuant to the Programming Agreement.

**8.2 Performance of Agreement.** Seller shall have performed and complied with all of its material and substantive obligations, agreements and covenants under this Agreement which are to have been performed or complied with on or prior to the Closing Date, except insofar as Seller's performance shall have been prevented by the act or omission of Buyer during its operations pursuant to the Programming Agreement.

**8.3 Governmental Consents.** The FCC shall have consented to all of (A) the assignment of the Station Licenses (1) from Sorenson to Seller, and (2) from Seller to Buyer, and (B) the assignment of the Waitt Stations licenses from Seller to Sorenson, and all such consents shall have become Final Orders, as defined below, on or before July 29, 2004, or such additional period as set forth in Section 6.4, and such Final Orders shall not be subject to any unfulfilled conditions which might have a material adverse effect on Buyer, except as may have been caused by the acts or omissions of Buyer. For purposes of this Agreement, a Final Order of the FCC is one with respect to which no appeal or petition for rehearing or consideration is pending and as to

which the time for filing protests or petitions for rehearing and reconsideration or appeal has expired or, if filed, has been denied, dismissed or withdrawn and the time for any further legal proceedings has expired. In its sole and absolute discretion, Buyer may elect to waive this contingency and close this transaction upon the FCC's initial staff approval ("Initial Order") of all of (A) the Stations' assignment from (1) Sorenson to Seller and (2) Seller to Buyer, and (B) the Waitt Stations' assignment from Seller to Sorenson.

#### **8.4 Required Consents.**

(a) Material Consent, as used in this paragraph, means the consent and approval of any third party to any Contract identified by the parties on Schedule 4.8 with a \*\*, that is a material contract.

(b) With regard to material consents, Seller shall have delivered same to Buyer prior to Closing.

(c) With regard to any consents set forth on Schedule 4.8 which the parties do not identify as material, Seller shall exercise reasonable efforts (not involving the payment by Seller of any money to any party to any Contract) to obtain, prior to Closing, such consent and approval. The failure to obtain any such non-material consent or approval shall not entitle Buyer to terminate this Agreement or to seek damages or other remedies from Seller.

(d) Wells Fargo Bank, N.A., and the other financial institutions party to the Credit Agreement dated October 3, 2002 as amended (for the benefit, directly or indirectly, of Three Eagles), shall have consented to Buyer's acquisition of the Assets.

**8.5 Station Licenses.** None of the Station Licenses shall have been revoked or suspended; no proceeding for such revocation or suspension shall be pending, except as may have been caused by the acts or omissions of Buyer; and Seller (and to Seller's knowledge Sorenson) shall not have received any notice that any Governmental Authority has instituted any such proceeding. Except as disclosed in Schedule 4.5, Seller shall be the holder of the Station Licenses, free and clear of any conditions, competing applications, petitions to deny, complaints, appeals, or any restrictions outstanding which might limit or adversely affect the operations of the Stations as presently authorized.

**8.6 Adverse Proceedings.** No suit, action, claim or governmental proceeding shall be pending which seeks to restrain or prohibit this Agreement or consummation of the transactions contemplated hereby, and no order, decree or judgment of any court, agency or other Governmental Authority shall have been rendered against any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms, or which would impair materially the ability of Buyer to realize the benefits of the transactions contemplated by this Agreement.

**8.7 Opinion of Seller's Counsel.** Buyer shall have received opinions, in forms and substance reasonably satisfactory to Buyer's counsel, dated as of the Closing Date, of Seller's counsel, covering the matters and in the form set forth in the attached Exhibit 8.7 based upon factual assumptions or investigations as is reasonably appropriate under the circumstances and subject to reasonable and customary qualifications, exclusions and limitations.

**8.8 UCC Searches.** Buyer, at its option, may obtain Uniform Commercial Code financing statement searches not later than five (5) days prior to the Closing Date, from each state and county in which Seller owns or leases any property, showing, no security interests, pledges, liens, claims or encumbrances in or affecting any part of the Assets, other than: (i) those which Seller causes to be released prior to or concurrently with the Closing Date; (ii) those for which Seller has assumed responsibility; (iii) Permitted Encumbrances; or (iv) those which Purchaser finds acceptable. The cost of said searches shall be paid one-half each by Seller and Buyer.

**8.9 Tax Lien Searches.** Buyer, at its option, may obtain certified searches not later than five (5) days prior to the Closing Date, of the tax records of each taxing authority to which Seller pays taxes or files tax or information returns showing no tax liens have been filed against any of the Assets as represented by Seller in Section 4.16. If such tax lien searches confirm that no tax liens have been filed of record, the cost of said searches shall be paid for by Buyer; otherwise, they shall be paid for by Seller.

**8.10 Real Property Title Searches/Deeds.** No later than forty-five (45) days after Buyer obtains the Real Property surveys described in Section 7.11, Buyer (if it elects) shall have received a title insurance commitment described in Section 7.12, showing reasonably unobjectionable, unencumbered and marketable title in Sorenson or Seller, as may be applicable, for each parcel of real property to be conveyed to Buyer, except for standard exclusions and reservations, restrictions and easements of record. Buyer shall notify Seller promptly of Buyer's approval of title or of any defects in said title which make it reasonably objectionable or unmarketable, and Seller shall have a reasonable time in which to correct such defects. Conveyance of title, in the same form as the deeds granted to Seller, shall be delivered to Buyer in sufficient time prior to Closing to allow for review by Buyer's local counsel. The representations and warranties as to title of the Real Property shall not be merged into the deeds but shall survive Closing and transfer of the Real Property for the period set forth in Section 12.1.

**8.11 Consent Certificates.**

(a) On Schedule 4.8, the parties shall identify those Contracts to be assigned to or assumed by Buyer that are material by marking same with \*\*.

(b) A consent certificate shall certify to the effect that (i) such Contract is in full force and effect; (ii) Seller is not in default under any of its obligations under such Contract; (iii) the assignment of such Contract and sale of the Assets to Buyer does not create or result in a default thereunder or a change in its terms; and (iv) if applicable, the outstanding amount due

thereunder, the amount of any periodic payments, the date of the last payment, and the period to which the last payment was applied.

(c) With regard to any Contract marked with a \*\* on Schedule 4.8, Seller shall have delivered a consent certificate to Buyer prior to Closing.

**8.12 Documentation.** All documents relating to the transactions contemplated in this Agreement shall comply with normal industry practice and in this connection shall be reasonably satisfactory in form and content to Buyer's attorneys.

**8.13 Employees.** Buyer shall coordinate with Seller with respect to Seller's Station employees in accordance with the terms of the Programming Assignment. Except as set forth in the Programming Assignment, Seller shall be responsible for satisfying all obligations to the Stations' employees for compensation, vacation, severance and other employee benefits accruing prior to the date of this Agreement. Seller will pay Buyer the value of any benefits accrued but unpaid as of the Closing Date to all employees of Seller. To the extent Buyer is paid the value of any said accrued benefits, Buyer shall pay such benefits to those employees in accordance with the policies previously established by Seller.

**8.14 Additional Documents and Acts.** Seller shall have delivered or caused to be delivered all other documents and instruments required to be delivered by it under the terms of this Agreement or reasonably requested by Buyer to evidence compliance with the terms and conditions of this Agreement on the part of persons other than Buyer or to effectuate the intent and purpose of this Agreement.

**8.15 Broadcast Cash Flow.** The Broadcast Cash Flow of the Stations for the first quarter of 2004 shall equal or exceed the Broadcast Cash Flow as similarly calculated for the first quarter of 2003. For the purposes of this Agreement, Broadcast Cash Flow shall mean the total of net revenues on an accrual basis (after agency commissions and excluding barter transactions) of the Stations less all operating expenses (excluding barter transactions).

**8.16 Tax-Free Exchange.** The Closing Date, if any, shall occur within one hundred eighty days of February 1, 2004, and neither Buyer nor Seller shall have any reasonably reliable notice that the transactions contemplated hereby or in the Exchange Agreement do not materially qualify as a tax-free exchange under IRC 1031.

**8.17 Allocations.** Buyer shall have been provided with the asset allocation for the Stations and Assets delivered to Seller pursuant to the Exchange Agreement, and Buyer and Seller shall have agreed upon the Asset allocation hereunder pursuant to Section 3.3, with both such allocations final and complete at least five (5) days before the Closing Date.

## ARTICLE IX

## **CONDITIONS PRECEDENT TO SELLER'S OBLIGATION AT CLOSING**

The obligation of Seller to consummate the transactions contemplated by this Agreement at the Closing is subject to the satisfaction of all of the following conditions, any of which may be waived in writing by Seller:

**9.1 Accuracy of Representations.** All material and substantive representations and warranties made by Buyer in this Agreement, or in any document, instrument, schedule or exhibit delivered pursuant to this Agreement, shall have been true and correct in all respects on the date of this Agreement and shall be true and correct on the Closing Date with the same force and effect as if they had been made on and as of said date.

**9.2 Performance of Agreement.** Buyer shall have performed and complied with all of its material and substantive obligations and covenants under this Agreement and the Programming Agreement which are to have been performed or complied with on or prior to the Closing Date.

**9.3 Governmental Consents.** The FCC shall have consented to all of (A) the assignment of the Station Licenses (1) from Sorenson to Seller and (2) from Seller to Buyer, and (B) the assignment of the Waitt Stations licenses from Seller to Sorenson, and all such consents shall have become Final Orders, as defined below, on or before July 29, 2004, or such additional period as set forth in Section 6.4, and such Final Orders shall not be subject to any unfulfilled conditions which might have a material adverse effect on Seller, except as may have been caused by the acts or omissions of Seller. Assuming all other conditions precedent to Seller's obligation at closing have been resolved, Buyer in its sole and absolute discretion may elect to cause Seller to close this transaction upon receipt of the Initial Orders of the FCC, as more fully set forth in Section 8.3.

**9.4 Documentation.** All documents relating to the transactions contemplated in this Agreement shall comply with normal industry practice and in this connection shall be reasonably satisfactory in form and content to Seller's attorneys.

## **ARTICLE X**

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

**10.1 Transfer Taxes and Similar Charges.** Except as set forth in Section 10.2 and 10.3 hereof, all costs of transferring the Assets in accordance with this Agreement, including recordation, transfer and documentary taxes and fees, and any excise, sales or use taxes, shall be borne by Seller.

**10.2 Governmental Filing or Grant Fees.** Any filing or grant fees imposed by any governmental authority (including, but not limited to the FCC), the consent of which is required

to the transactions contemplated hereby between Buyer and Seller, shall be borne equally by Buyer and Seller.

**10.3 Expenses.** Except as otherwise provided in this Agreement, each party hereto shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation and performance of, and compliance with, the terms of this Agreement. Without limiting the foregoing, if any petition or objection is filed opposing the FCC Application, the party against whose qualifications the petition or objection relates shall be responsible for the costs and expenses of responding thereto as well as the costs and expenses of any administrative or judicial appeal in respect thereof and shall reimburse the other party for reasonable expenses that the other party may incur in assisting with respect to such response or appeal.

## ARTICLE XI

### **ADDITIONAL AGREEMENTS**

**11.1 Brokerage.** Seller agrees to be responsible for the brokerage commissions to be paid to Chapin Enterprises of Lincoln, Nebraska. Seller agrees to indemnify and hold harmless Buyer against and in respect of any obligation or liability, contingent or otherwise, incurred by Buyer for brokerage or finders' fees or agents' commissions or other like payment in connection with this Agreement or the transactions contemplated hereby as a result of Seller's actions. Buyer agrees to indemnify and hold harmless Seller against and in respect of any obligation or liability, contingent or otherwise, incurred by Seller for brokerage or finders' fees or agents' commissions or other like payment in connection with this Agreement or the transactions contemplated hereby as a result of Buyer's actions.

**11.2 Accounts Receivable; Trade Agreements.** Buyer shall coordinate with Seller with respect to the collection and remittance of accounts receivable from the Stations and the run-off, engagement and proration of trade and barter agreements in accordance with the terms of the Programming Assignment.

**11.3 Covenant Not to Compete.** Attached as Exhibit 11.3 is the form of Non-Competition Agreement to be executed by Seller and delivered to Buyer at Closing.

## ARTICLE XII

### **SURVIVAL AND INDEMNIFICATION**

**12.1 Survival.** The representations, warranties, indemnities and covenants made in this Agreement and in any agreement or instrument executed and delivered in connection with this Agreement shall survive the Closing Date for a period of twenty four (24) months.

**12.2 Indemnification of Buyer.** Each of Waitt and Seller hereby agrees, jointly and severally, to indemnify, defend, and hold Buyer, its owners, successors and assigns, harmless from and against any and all claims, damages, liability, loss, costs or expenses, including attorney's fees, which Buyer may suffer or become liable for as a result of or in connection with:

(a) any and all liabilities, obligations, or claims not assumed by Buyer pursuant to the provisions of this Agreement, including without limitation any and all liabilities and obligations of, or claims, demands, liens, or judgments against Buyer incurred or which arise from or in any way relate to the activities and operations of the Stations or the conveyance of the Assets where the basis for liability occurred prior to the Closing Date, provided that any notice of any claim made under this Section 12.2(a) must be given within the period set forth in Section 12.1 of this Agreement;

(b) any and all liabilities, obligations, or claims against Buyer arising from, in connection with or as a result of: (i) the failure to file any tax returns or reports required to be filed in connection with the Stations or Assets for periods prior to the Closing Date; or (ii) the failure to pay all taxes required by such reports or returns, including all income, gross receipts, excise, import, property, franchise, ad valorem, license, sales, use, and withholding taxes required for periods prior to the Closing Date, provided that any notice of any claim made under this Section 12.2(b) must be given within the period set forth in Section 12.1 of this Agreement;

(c) any material breach of any representation, warranty, covenant or agreement of Seller contained in or made pursuant to this Agreement or any document or instrument delivered pursuant to the terms of this Agreement, provided that such material breach by Seller was not the result of Buyer's action or omission during its operations pursuant to the Programming Agreement, and provided further that any notice of any claim made under this Section 12.2(c) must be given within the period set forth in Section 12.1 of this Agreement;

provided, however, that within fifteen (15) days after learning of the assertion by a third party of any claim against which Buyer claims indemnification hereunder, Buyer shall notify Seller and afford it the opportunity to assume the defense or settlement thereof at its own expense with counsel of its choosing, and Buyer shall have cooperated fully to make available to Seller all pertinent information under its control or in its possession. Buyer shall have the right to join in the defense of any such claim with counsel of its own choosing and at its own expense.

**12.3 Indemnification of Seller.** Buyer hereby agrees to indemnify, defend, and hold Seller, its owners, successors and assigns, harmless from and against any and all claims, damages, liability, loss, costs or expenses, including attorney's fees, which Seller may suffer or become liable for as a result of or in connection with:

(a) any material breach of any representation, warranty, covenant or agreement of Buyer contained in or made pursuant to this Agreement or any document or instrument delivered pursuant to the terms of this Agreement; provided that any notice of any claim made

under this Section 12.3(a) must be given within the period set forth in Section 12.1 of this Agreement; or

(b) any and all liabilities, obligations or claims against Seller assumed by Buyer pursuant to the provisions of this Agreement, including without limitation, any and all liabilities and obligations of, or claim demands, liens or judgments against Seller incurred or which arise from or in any way relate to the operations of the Stations by Buyer subsequent to the Closing Date, provided that any claim made under this Section 12.3(b) must be given within the period set forth in Section 12.1 of this Agreement; provided, however, that within fifteen (15) days after learning of the assertion of any claim by a third party against which Seller claims indemnification hereunder, Seller shall notify Buyer and afford it the opportunity to assume the defense or settlement thereof at its own expense with counsel of its choosing, and Seller shall have cooperated fully to make available to Buyer all pertinent information under its control or in its possession. Seller shall have the right to join in the defense of any such claim with counsel of its own choosing and at its own expense.

#### **12.4 Indemnification of Third-Party Claims.**

The following provisions shall apply to any claim subject to indemnification which is (i) a suit, action or arbitration proceeding filed or instituted by any third party, or (ii) any other form of proceeding or assessment instituted by any government entity:

- (a) *Notice and Defense.* The party or parties to be indemnified (whether one or more, the “*Indemnified Party*”) will give the party from whom indemnification is sought (the “*Indemnifying Party*”) prompt written notice of any such Claim, and the Indemnifying Party may undertake the defense thereof by representatives chosen by it. Failure to give such notice shall not affect the Indemnifying Party’s duty or obligations under this Article XII, except to the extent the Indemnifying Party is prejudiced thereby. So long as the Indemnifying Party is defending any such Claim actively and in good faith, the Indemnified Party shall not settle such claim. The Indemnified Party shall make available to the Indemnifying Party or its representatives all records and other materials required by them and in the possession or under the control of the Indemnified Party, for the use of the Indemnifying Party and its representatives in defending any such claim, and shall in other respects give reasonable cooperation in such defense.
- (b) *Failure to Defend.* If the Indemnifying Party, within a reasonable time after notice of any such claim, decides not to defend such claim actively and in good faith, the Indemnified Party will (upon further notice) have the right to undertake the defense, compromise or settlement of such claim or consent to the entry of a judgment with respect to such claim, on behalf of and for the account and risk of the Indemnifying Party, and the Indemnifying Party shall thereafter have no right to challenge the



Indemnified Party's defense, compromise, settlement or consent to judgment.

- (c) *Indemnified Party's Rights.* Anything in this Article XII to the contrary notwithstanding, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right to defend, compromise or settle such claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all liability in respect of such claim.
- (d) *Payment.* The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Article XII. Upon judgment, determination, settlement or compromise of any third party Claim, the Indemnifying Party shall pay promptly on behalf of the Indemnified Party, and/or to the Indemnified Party in reimbursement of any amount theretofore required to be paid by it, the amount so determined by judgment, determination, settlement or compromise and all other Claims of the Indemnified Party with respect thereto, unless in the case of a judgment, an appeal is made from the judgment. If the Indemnifying Party desires to appeal from an adverse judgment, then the Indemnifying Party shall post and pay the cost of the security or bond to stay execution of the judgment pending appeal. Upon payment in full by the Indemnifying Party, the Indemnifying Party shall succeed to the rights of such Indemnified Party, to the extent not waived in settlement, against the third party who made such third party Claim.

**12.5 Failure to Give Notice Timely.** Notwithstanding the notice requirements provided in Sections 12.2 and 12.3 above, the right to indemnification under this Agreement shall not be affected by any failure to give or any delay in giving the required fifteen (15) day notice unless, and then only to the extent that, the rights and remedies of the party to whom such notice was to have been given shall have been prejudiced. Timely compliance with the two (2) year notice requirement in Sections 12.2 and 12.3 shall be an absolute condition to any indemnification claim.

**12.6 Remedial Action.** The parties hereto shall each use reasonable efforts to minimize the obligation of the other to indemnify hereunder, by, among other reasonable things and without limiting the generality of the foregoing, taking such reasonable remedial action as it believes may minimize such obligation and seeking to the maximum extent possible reimbursement from insurance carriers under applicable insurance policies covering any such liability.

**12.7 Assignment of Claims.** The parties hereto agree that upon satisfaction of the obligation to indemnify hereunder, and in consideration thereof, to assign to the party making such payment or giving such credit, any and all claims, causes of action and demands of whatever kind and nature which such indemnified party may have against any person, firm or other entity giving rise to such indemnified loss, and to reasonably cooperate in any efforts to recover therefrom.

**12.8 Remedies Exclusive.** The remedies provided for under this Article XII and Sections 14.1(e) and 14.3 shall be the exclusive monetary remedies of the parties for any claim arising out of this Agreement and the transactions contemplated hereby, excluding fraud. The parties retain the right to non-monetary equitable remedies, including rescission, specific performance and injunction.

**12.9 Certain Limitations on Amount.** In any claim for indemnification pursuant to this Agreement, (a) neither party shall be entitled to recover against the other party until the amount to which it would otherwise be entitled pursuant to Section 12.2, in the case of Buyer, or 12.3, in the case of Seller, exceeds \$5,000.00 in the aggregate, and then it shall be entitled to recover only the excess over \$5,000.00, and (b) the amount of any and all obligations of a party to provide indemnification pursuant to this Article XII to the other party shall not exceed the Purchase Price. The limitations on amount specified in (a) above shall not apply in the event of fraud. The limitations on amount specified in (a) above shall not apply to any amounts paid by Buyer to third parties after the Closing Date which are necessary to place the tangible personal Property used in broadcasting from the Stations into working order, but only to the extent (i) such tangible personal Property was not in working order on the Closing Date, and (ii) it is necessary for the Stations to comply with the FCC's specifications for broadcasting at the Stations' licensed authority.

## ARTICLE XIII

### CLOSING

**13.1 Closing.** Unless this Agreement shall have been terminated pursuant to a provision of Article XIV, a closing (the "Closing") will be held on a date which is not more than five (5) business days after the date on which the FCC's written consent to the assignment of the Station Licenses to Buyer becomes a Final Order, as defined in Section 8.3, or, in Buyer's sole and absolute discretion, upon receipt of the Initial Order of the FCC, or on such earlier date as the parties may mutually agree (the date on which the Closing is held is called the "Closing Date"). The Closing shall be at such location as Buyer and Seller may mutually determine.

**13.2 Seller's Deliveries.** At the Closing, Seller shall deliver to Buyer:

- (a) title to, and where applicable possession or access to, all of the Assets;

(b) warranty bills of sale, and assignments transferring all of the Assets to Buyer, in form and content reasonably satisfactory to Buyer;

(c) assignments of all Licenses, including the Station Licenses, to Buyer, in form and content reasonably satisfactory to Buyer;

(d) assignment and assumption agreements and estoppel certificates (the “Assignment and Assumption Agreements”) transferring all Contracts (including all leases and Personal Property Leases) to be assigned to Buyer hereunder, in form and content reasonably satisfactory to Buyer;

(e) all certificates of title for all certificated assets included in the Assets;

(f) the opinion of counsel provided in Section 8.7;

(g) certified resolutions of Seller’s directors approving the terms and conditions of this Agreement and the sale of the Assets as provided in this Agreement;

(h) Good Standing Certificates for Seller dated not more than thirty (30) days prior to the Closing certified by the applicable jurisdictions in which Seller was formed or is licensed to conduct business;

(i) copies of Seller’s Articles of Organization, as amended, certified by the applicable government agency as true and correct; and, copies of Seller’s Operating Agreement, together with all amendments, certified to be true, correct and complete as of the Closing Date by Seller’s secretary;

(j) a certificate, dated as of the Closing Date, from an authorized representative of each of Seller and Waitt certifying that the conditions set forth in Sections 8.1 and 8.2 hereof have been fulfilled; and

(k) a Non-Competition Agreement with Seller; and

(l) such other documents and instruments as may be reasonably requested by counsel for Buyer.

**13.3 Buyer’s Deliveries.** At the Closing, Buyer shall deliver to Seller:

(a) the Cash Payment and Escrow Deposit;

(b) the Assignment and Assumption Agreements in form and content reasonably satisfactory to Seller;

(c) Certified Resolutions of Buyer's directors approving the terms and conditions of this Agreement and the purchase of the Assets as provided in this Agreement;

(d) Good Standing Certificates for Buyer dated not more than thirty (30) days prior to the Closing certified by the applicable jurisdictions in which Buyer was formed or is licensed to conduct business;

(e) copies of Buyer's Certificate of Incorporation, as amended, certified by the applicable government agency as true and correct; and, copies of Buyer's Bylaws, together with all amendments, certified to be true, correct and complete as of the Closing Date by Buyer's secretary;

(f) a certificate, dated as of the Closing Date, from an authorized representative of Buyer certifying that the conditions set forth in Sections 9.1 and 9.2 hereof have been fulfilled;

(g) Waitt Ag Network Affiliation Agreements with KWAT, KDLO, KJJQ, KKQQ and KVFD substantially in the form of Exhibit 13.3(g); and

(h) such other documents and instruments as may be reasonably requested by counsel for Seller.

**13.4 Escrow Agent's Deliveries.** At the Closing, the Escrow Agent shall deliver the Escrow Deposit, including accrued interest, to the obligation of Buyer.

## ARTICLE XIV

### **TERMINATION OF AGREEMENT**

**14.1 Events of Termination; Right to Partial Closing.** This Agreement may be terminated at any time prior to the Closing Date:

(a) by the mutual consent of all parties hereto;

(b) by Seller if any of the conditions provided in Article IX hereof have not been met by the time required and have not been waived and if Seller is not in material default;

(c) by Buyer pursuant to this Article XIV or if any of the conditions provided in Article VIII hereof have not been met by the time required and have not been waived and if Buyer is not in material default;

(d) by any nondefaulting party hereto if the FCC staff has denied any of the assignments contemplated by this Agreement and the FCC shall have approved such denial; or

(e) by Buyer pursuant to Sections 4.19(c), 7.12 and 7.13.

**14.2 Result of Termination; Payment of Escrow Deposit.** If this Agreement is terminated pursuant to its terms without default on the part of Buyer, or if Seller shall wrongfully refuse to close in accordance with the provisions of the Agreement, Buyer shall be entitled to return of the Escrow Deposit and all interest thereon. If this Agreement is terminated pursuant to its terms without default by Seller due to a breach by Buyer, or if the Buyer shall wrongfully refuse to close in accordance with the provisions of this Agreement, Seller shall be entitled to the Escrow Deposit, and all interest thereon, as liquidated damages, it being agreed that the Escrow Deposit shall constitute full payment for any and all damages suffered by Seller by reason of Buyer's breach. Buyer and Seller agree in advance that Seller's actual damages if Buyer breaches its obligations under this Agreement would be difficult to ascertain and that the amount of the Escrow Deposit paid to Seller is a fair and equitable amount to reimburse Seller for damages sustained from the termination of this Agreement for the above-stated reason.

**14.3 Specific Performance.** Seller and Buyer agree that the property being sold and the rights conferred pursuant to this Agreement are unique and, in addition to any other rights Buyer may be legally entitled to in the event of a material breach of this Agreement by Seller, Buyer shall have the right to obtain specific performance of this Agreement, conditioned with respect to this Agreement on the prior consent of the FCC. Election of the remedy of specific performance by Buyer does not and will not waive the right to pursue any other remedies or claims under this Agreement or otherwise at law or in equity. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law.

**14.4 Resolution of Disputes.**

(a) Arbitration. If a dispute arises relating to this Agreement, the parties, broker and Escrow Agent involved in such dispute shall first proceed in good faith to submit the matter to arbitration in accordance with the Commercial Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall occur in Lincoln, Nebraska.

(c) Costs and Expenses. In the event of any arbitration or litigation arising out of this Agreement, the arbitrator(s) or court shall award to the substantially prevailing party all reasonable costs and expenses, including attorney's fees.

**ARTICLE XV**

**MISCELLANEOUS**

### **15.1 Risk of Loss.**

Except as caused by the act or omission of the Buyer during its operations under the Programming Agreement, the risk of loss or damage to any of the Assets prior to the Closing Date shall be upon Seller. Subject to the terms of the Programming Assignment, Seller shall continue in effect all property, casualty, and liability insurance existing as of March 1, 2004. Seller shall repair, replace and restore any such damaged or lost Assets to their prior condition as soon as practicable; provided, however, that unless the loss is caused by Buyer's act or omission (in which case, none of this shall apply), in the event that the cost of any such repair, replacement or restoration exceeds \$500,000, then Seller may choose not to take such action without breaching this section, and Buyer may, at its sole option, either terminate this Agreement whereupon all liability with respect to this section shall cease and the Escrow Deposit shall be released to Buyer, or close this Agreement and take the Assets subject to such loss but with an adjustment to the Purchase Price in the amount of \$500,000. If the restoration and replacement of any property damaged or destroyed, before the Closing Date, has not been completed at the time the Closing would otherwise be held, then unless Seller and Buyer otherwise agree, the Closing Date shall be delayed and shall take place within fifteen (15) days after Seller gives written notice to Buyer of completion of the restoration or replacement of such Asset, but in no event shall the Closing take place later than the outside date for Closing set forth in Section 13.1 unless consented to by Buyer.

**15.2 Force Majeure.** Notwithstanding anything to the contrary contained herein, if the performance of any obligation under this Agreement on the part of either party is prevented or delayed by an event of force majeure, such as wars (whether declared or not), insurrections, strikes, earthquakes, fires, floods or other natural catastrophes, acts of a government in its sovereign capacity, blockades or embargoes, provided such event is without the fault of or beyond the reasonable control of the party invoking force majeure, that party's duty to perform those obligations affected by the event of force majeure shall be suspended for a period equal to the delay directly resulting from the occurrence of such event. In the event of force majeure, neither party shall be responsible for any damage, increased costs or loss which the other party may sustain by reason of such a failure or delay of performance. In the event that either party wishes to invoke this force majeure provision, that party shall, within seven (7) days after the occurrence of the event of force majeure has become known to that party, send written notice of such event to the other party. The party affected shall take appropriate measures to minimize or remove the effects of force majeure and, within the shortest possible time to resume performance of the obligations affected by the event of force majeure.

**15.3 Notices.** Any and all notices, requests, demands and other communications permitted or required hereunder shall be in writing and shall be deemed given, on receipt if personally delivered or sent by facsimile or other electronic means, or five (5) business days after mailing if mailed, postage prepaid, certified or registered, return receipt requested, to the parties as follows, or at such other addresses as they may indicate by written notice given as herein provided:

(a) If to Buyer, to:

Three Eagles of Joliet, Inc.  
c/o Three Eagles Investors, Inc.  
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

(b) If to Seller to:

WMMP, L.L.C.  
Attn: Steven W. Seline  
1125 South 103<sup>rd</sup> Street, Suite 200  
Omaha, NE 68124  
Telephone: (402) 330-2520  
Facsimile: (402) 330-2445

(with copies to)

E. Preston, P.C.  
2169 South Uravan Street  
Aurora, CO 80013  
Telephone: (303) 696-7412  
Facsimile: (303) 696-7422

**15.4 Headings.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**15.5 Governing Law.** This Agreement has been executed in, and shall be construed and enforced in accordance with the laws of the State of Nebraska.

**15.6 Benefit.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

**15.7 Entire Agreement.** This Agreement, including the exhibits and the schedules attached or to be attached hereto, is and shall be deemed to be the complete and final expression of the agreement between the parties as to the matters herein contained and relative thereof, and supersedes any previous agreements between the parties pertaining to such matters.

**15.8 Severability.** If any part of this Agreement is held to be invalid or unenforceable under the laws of any jurisdiction where this Agreement is to be governed or sought to be enforced, the remaining provisions shall be enforceable to the maximum extent permitted by law; provided, the remaining provisions effectuate the intent of the parties as manifested herein.

**15.9 Construction.** Seller and Buyer acknowledge that each of them has equally participated in the final wording of this Agreement. Accordingly, the parties agree that this Agreement shall be construed equally against each party, and shall not be more harshly construed against a party by reason of the fact that the particular party's counsel may have prepared this, the final version of the Agreement between the parties hereto.

**15.10 Waiver.** The waiver by any party of any breach of any provision hereof shall not operate or be construed as a waiver of any subsequent or similar breach.

**15.11 Amendment.** This Agreement may only be amended by written agreement executed by the parties hereto, or their respective successor or assigns.

**15.12 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement. Counterparts may be delivered by facsimile or other electronic means and shall have the same force and effect as an original, provided that the parties deliver originals within five (5) days.

**15.13 1031 Assignment.** Each of Buyer and Seller, as applicable, are permitted to assign to a qualified intermediary, pursuant to a form of assignment described in Treas. Regs. §1.1031(k)-1(g)(4)(iv), their respective rights under this Agreement to acquire the Assets to be exchanged between the parties. The assignment shall provide for such assigning party to deliver title to and ownership of the exchanged property directly to the other party without the need for the qualified intermediary to take title thereto. Both Buyer and Seller, are hereby notified and



consent to such assignment. An assignment pursuant to this Section shall not prejudice enforcement of the rights, obligations and responsibilities by one party against the other.

**15.14 Schedule Updates.** From time to time after the execution of this Agreement and prior to the Closing, Seller will promptly supplement or amend the Schedules delivered in connection herewith with respect to any matter which exists or occurs after the date of this Agreement and which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules or which is necessary to correct any information therein; provided, however, that the provisions of this Section are informational only and Buyer shall not be bound to the terms of any changed Schedules unless they are incorporated into this Agreement by a written amendment signed by Buyer. Buyer shall reasonably cooperate with respect to any changed Schedules.

*[Rest of page intentionally left blank – signature pages follow.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be fully executed as of the day and year first written above.

**“BUYER”**

THREE EAGLES OF JOLIET, INC.

By: \_\_\_\_\_

Name: Rolland C. Johnson

Title: Chief Executive Officer

**“SELLER”**

WMMP, L.L.C.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**“WAITT”**

WAITT RADIO, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULES**

1.1(a)	Licenses and FCC Licenses
1.1(b)	Real Property
1.1(c)(i)	Personal Property
1.1(c)(ii)	Personal Property Leases
1.1(d)	Proprietary Rights
1.1(j)	Permitted Encumbrances
1.2	Excluded Assets
4.4	Required Consents
4.5	Governmental Authorizations
4.8	Assumed Contracts
4.10	Financial Statements
4.11	Material Adverse Changes Events Subsequent to Most Recent Fiscal Year End
4.12	Employees / Salaries / Agreements
4.13	Employee Benefit Plans
4.14	Judgments, Awards, Orders, Litigation
4.15	Noncompliance with Laws
4.17	Insurance Policies
4.19	Environmental Disclosures
4.21	Family Relationships

## **EXHIBITS**

- 8.7 Opinion of Seller's Counsel
- 11.3 Non-competition Agreement
- 13.3 Ag Network Affiliation Agreements