

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”) is made as of this ____ day of October, 2003 (“*Effective Date*”) by and among NextMedia Operating, Inc., a Delaware corporation (“*Operating*”), and NM Licensing LLC, a Delaware limited liability company (“*Licensing*”, and, collectively with Operating, the “*Buyer*”), Three Eagles of Joliet, Inc., a Delaware corporation (the “*Seller*”) and Three Eagles Communications, Inc., a Delaware, corporation (the “*Parent*”).

RECITALS

A. Seller owns and operates radio station WCCQ (FM), licensed to Crest Hill, Illinois (the “*Station*”).

B. Seller owns or holds certain tangible and intangible assets, including certain licenses, permits and authorizations issued by the Federal Communications Commission (the “*FCC*”), used or useful in the operation and ownership of the Station.

C. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain assets of Seller used or held for use in the ownership and operation of the Station.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, agreements and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. PURCHASE AND SALE OF ASSETS

1.1 Assets to be Transferred.

Subject to the terms and conditions of this Agreement, on the Closing Date (as hereinafter defined), Seller shall sell, transfer, convey, assign, and deliver to Buyer, and Buyer shall purchase and accept from Seller all of the assets of Seller that relate to the ownership and operation of the Station, together with all rights and privileges associated with such assets, including, without limitation, the following (collectively the “*Purchased Assets*”):

- (a) *Licenses*. The licenses, permits, and authorizations issued or granted by the FCC to Seller for the operation of the Station or used in connection with the operation of the Station as listed on Schedule 1.1(a) attached hereto (the “*FCC Authorizations*”), and all other licenses, permits and authorizations issued to Seller by any other governmental entity in connection with the ownership and operation of the Station as listed in Schedule 1.1(a) (collectively with the FCC Authorizations, the “*Licenses*”).
- (b) *Tangible Personal Property*. All items of tangible personal property and equipment owned, leased or held by Seller and used in connection with the

ownership and operation of the Station, including, but not limited to, those items which are described or listed in Schedule 1.1(b) attached hereto.

- (c) *Books and Records.* All of Seller's rights in and to the public files, technical information and engineering data, filings with the FCC, and logs and records related to the operation of the Purchased Assets (excluding records related to any Excluded Asset (as hereinafter defined)).
- (d) *Intellectual Property.* All of Seller's rights in and to all registered and unregistered trademarks, trade names, service marks, franchises, copyrights, including registrations and applications for registration of any of them, jingles, logos, slogans, licenses, patents, Internet domain names, Internet URLs, Internet web sites, content and databases, permits and privileges, and other intangible property rights and interests applied for, issued to or owned by Seller and used exclusively in connection with the Station which are described or listed in Schedule 1.1(d) attached hereto.
- (e) *Station Contracts.* The contracts, leases, and other instruments listed on Schedule 1.1(e) attached hereto (collectively, the "*Assumed Contracts*").

1.2 Excluded Assets.

Notwithstanding anything to the contrary contained herein, it is understood and agreed that the Purchased Assets shall not include any of the following assets or any right, title or interest therein (collectively, the "*Excluded Assets*"):

- (a) Seller's cash on hand as of the Closing and any of Seller's interests in its bank accounts and all of Seller's other cash, cash equivalents, security funds, securities, investments and deposits;
- (b) Any claims, rights and interests in and to any refunds of Taxes for periods prior to the Closing Date. For purposes of this Agreement, the terms "*Tax*" and "*Taxes*" shall mean all federal, state, local, or foreign income, payroll, Medicare, withholding, unemployment insurance, social security, sales, use, service, service use, leasing, leasing use, excise, franchise, gross receipts, value added, alternative or add-on minimum, estimated, occupation, real and personal property, stamp, duty, transfer, workers' compensation, severance, windfall profits, environmental (including Taxes under Section 59A of the Internal Revenue Code of 1986, as amended (the "*Code*")), or other tax, charge, fee, levy or assessment of the same or of a similar nature, including any interest, penalty, or addition thereto whether disputed or not;
- (c) Any accounts receivable for advertising broadcast on the Station up to and including the Closing Date, as further described in Section 7.10 below;
- (d) Seller's business name, all records relating to the Excluded Assets and to Seller's accounts payable and general ledger records, and Seller's books

and records relating to Seller's internal corporate matters and financial relationships with Seller's lenders;

- (e) Any insurance policies and proceeds thereof, promissory notes, bonds, certificates of deposits or other similar items and cash surrender value in regard thereto;
- (f) Any pension, profit-sharing, or employee benefits plans;
- (g) All of Seller's Tax Returns and supporting materials, all original financial statements and supporting materials, all books and records that Seller is required by law to retain, and all records of Seller relating to the sale of the Purchased Assets. The term "*Tax Return*" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes or any amendment thereto, and including any schedule or attachment thereto;
- (h) That certain studio lease located at 1520 N Rock Run Dr, Joliet, Illinois 60435, with Richard J. Venegoni as lessor;
- (i) The Prize Machine and the Station bus;
- (j) Tangible personal property disposed of or consumed in the ordinary course of business of Seller consistent with past practice between the Effective Date and the Closing Date;
- (k) The Lease for the Crest Hill, Illinois real property and tower equipment dated April 1, 1989, assigned to Weitendorf Enterprises and Holly Weitendorf on January 29, 1998; and
- (l) All contracts other than Assumed Contracts.

2. ASSUMPTION OF LIABILITIES

2.1 Liabilities to be Assumed.

Subject to the terms and conditions of this Agreement, on the Closing Date, Buyer expressly shall assume and agrees to perform and discharge those liabilities and obligations that arise solely from Buyer's ownership or operation of the Purchased Assets from and after the Closing Date (collectively, the "*Assumed Liabilities*").

2.2 Liabilities Not to be Assumed.

Notwithstanding anything contained in this Agreement to the contrary, Buyer does not assume or agree to pay, satisfy, discharge or perform, and will not be deemed by virtue of the execution and delivery of this Agreement or any document delivered in connection with the execution of this Agreement, or as a result of the consummation of the transactions contemplated by this Agreement, to have assumed, or to have agreed to pay, satisfy, discharge or

perform, any liability, obligation or responsibility, fixed or unfixed, known or unknown, asserted or unasserted, liquidated or unliquidated, secured or unsecured of Seller other than the Assumed Liabilities.

3. PURCHASE PRICE – PAYMENT; ESCROW; LETTER OF CREDIT

3.1 Purchase Price.

- (a) The purchase price (the “*Purchase Price*”) for the Purchased Assets shall be FOURTEEN MILLION DOLLARS (\$14,000,000), subject to adjustment as set forth herein.
- (b) At least five (5) business days before the Closing Date, Seller will deliver to Buyer a list of all barter, trade or similar agreements or arrangements for the sale of advertising on the Station for other than cash (“*Trade Agreements*”) which will be outstanding on the Closing Date. The Purchase Price may be reduced by any amount by which the value of the Station’s aggregate liability under the Trade Agreements as of the Closing Date exceeds the sum of (x) \$25,000 plus (y) the aggregate value of the goods or services to be received by the Station after the Closing Date.

3.2 Payment of Purchase Price.

At Closing, Buyer shall pay to Seller the Purchase Price in immediately available funds (which amount may include the Letter of Credit Proceeds as defined below).

3.3 Allocation of Purchase Price.

On or before the Closing Date, the aggregate Purchase Price (including the assumption by Buyer of the Assumed Liabilities, if any) shall be allocated among the Purchased Assets for tax purposes (the “*Allocation*”). At least five (5) business days before the Closing Date, Seller will deliver to Buyer a draft of its proposed allocation, to which Buyer will respond within two (2) business days. Seller and Buyer shall determine such Allocation in good faith. Seller and Buyer will follow and use the Allocation in all Tax Returns, filings or other related reports made by them to any governmental agencies.

3.4 Proration of Income and Expenses.

- (a) All income and expenses arising from the operations of the Purchased Assets 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 Purchased Assets 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 Purchased Assets as contemplated hereby, which shall be paid as set forth in Section 7.5 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 Purchased Assets. 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 3.4. The Preliminary Closing Proration Statement shall be prepared in a form which 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 commercially reasonable 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 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 commercially reasonable 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, acting in good faith, rejects Seller's Amount and the disputed amount is \$10,000 or less, such amount shall be divided equally between Buyer and Seller. If Buyer rejects Seller's Amount and the disputed amount is in excess of \$10,000, the dispute shall be submitted to an independent certified public accounting firm selected jointly by the parties 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 3.4 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% per annum, or if such amount is deemed usurious under Delaware law, at the maximum rate permitted under Delaware law.

3.5 Letter of Credit.

Within three (3) business days following the Effective Date, Buyer shall deliver to the Escrow Agent an irrevocable letter of credit issued by Deutsche Bank Trust Company Americas in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "*Letter of Credit*"). The broker listed on Schedule 4.7 shall serve as the Escrow Agent. The Escrow Agent shall hold and disburse the Letter of Credit (or the proceeds received by the Escrow Agent upon its presentment of the Letter of Credit, hereafter the "*Letter of Credit Proceeds*") pursuant to the Escrow Agreement pursuant to this Agreement and the terms of the Escrow Agreement in the form previously agreed upon by the Buyer and Seller, which is being executed simultaneously with the execution and delivery of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF SELLER

Each of Parent and Seller makes the following representations and warranties to Buyer, except as set forth in the Schedules delivered to Buyer at the execution of this Agreement. The Schedules identify the relevant Section and paragraph hereof, modify and form a part of such relevant Section and paragraph, and may be amended pursuant to Section 7.4.

4.1 Organization; Power.

Each of Parent and Seller is a corporation validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to conduct business in Illinois. Seller has full power and authority to own, operate and lease the Purchased Assets and to carry on the business arising from the ownership and operation of the Purchased Assets as and where such is now being conducted and as proposed to be conducted by it. Each of Parent and Seller has full power and authority to enter into this Agreement and the other documents and instruments to be

executed and delivered by Seller and Parent pursuant hereto and to carry out the transactions contemplated hereby and thereby.

4.2 Authority.

The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Parent and Seller pursuant to this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Parent and Seller pursuant hereto will constitute, valid binding agreements of each of Parent and Seller, respectively, enforceable in accordance with their respective terms except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

4.3 No Violation.

Except for prior approval of the transfer of ownership of the FCC Authorizations by the FCC, and any third party consents listed on Schedule 4.3 attached hereto, neither the execution and delivery of this Agreement or the other documents and instruments to be executed and delivered by Seller or Buyer pursuant hereto, nor the consummation by Seller or Buyer of the transactions contemplated hereby and thereby (a) will violate any applicable law or order, (b) will violate any provision of its organizational instruments, (c) will, either with the giving of notice, the passage of time, or both, conflict with, constitute grounds for termination of, or result in a material breach of the terms of, or constitute a default under any agreement, instrument, or permit, (d) will result in the creation of any lien, charge or encumbrance on any of the Purchased Assets, (e) will in any way affect or violate the terms or conditions of, or result in cancellation of the Licenses, and (f) will require any authorization, consent, approval, exemption or other action by or notice to any entity.

4.4 Litigation.

Except as set forth on Schedule 4.4, there is no litigation pending or, to Seller's knowledge, threatened against Seller relating to its ownership and operation of the Purchased Assets, nor does Seller know of any reasonable basis for any such litigation.

4.5 Compliance With Laws and Orders.

- (a) *Compliance.* The Purchased Assets are in compliance in all material respects with all applicable laws and orders, including, without limitation, applicable environmental rules and regulations, the Communications Act of 1934, as amended ("*Communications Act*"), and the rules, orders and policies of the FCC. Seller: (i) has not received notice of any violation or alleged violation pertaining to the operation of the Purchased Assets, and (ii) to its knowledge, is subject to no liability for past or continuing violations of any laws or orders pertaining to the operation of the Purchased Assets. All material reports and returns pertaining to the operation of the Purchased Assets required to be filed by Seller with any

government entity have been filed and were accurate and complete in all material respects when filed.

- (b) *Licenses and Permits.* The FCC Authorizations are validly issued in the name of Seller. Seller is in compliance in all material respects with the FCC Authorizations. Each of the FCC Authorizations is in full force and effect and all fees with respect to the FCC Authorizations have been paid. Seller has not received any notice of any material violations of the terms of any of the FCC Authorizations, the Communications Act or the rules and regulations of the FCC thereunder that remain pending and unresolved. To the knowledge of Seller, there is no action pending or threatened by or before the FCC which, if determined adversely to Seller, would result in the revocation, cancellation, rescission or material and adverse modification of any of the FCC Authorizations other than proceedings to amend FCC rules of general applicability. To the knowledge of Seller, all towers and other structures of Seller in the ownership and operation of the Station are obstruction marked and lighted to the extent required by, and in accordance with, the rules and regulations of the Federal Aviation Administration (the “FAA”), the FCC and other federal, state and local authorities and appropriate notifications to the FAA and registrations with the FCC have been filed for such towers where required.

4.6 Title to and Condition of the Purchased Assets.

At Closing, Seller shall have, and shall convey to Buyer, good and marketable title to all the Purchased Assets, free and clear of all liens (statutory or otherwise), security interests, claims, pledges, licenses, equities, options, conditional sales contracts, assessments, levies, charges or encumbrances of any nature whatsoever except for (a) liens for Taxes not yet due and payable; (b) rights reserved by any governmental authority to regulate the affected property; or (c) as to leased assets, interests of the lessor thereof and liens affecting the interests of the Lessors thereof. Except for approval of the transfer of ownership by the FCC and the consents listed on Schedule 4.3, none of the Purchased Assets are subject to any restrictions with respect to the transferability thereof. The Purchased Assets are in good operating condition and repair, ordinary wear and tear excepted.

4.7 Broker Commission or Finder’s Fees.

Except as listed on Schedule 4.7, neither Seller, nor any entity acting on behalf of Seller, has agreed to pay a broker, commission, finder’s fee or similar payment in connection with this Agreement or any matter related hereto.

4.8 No Third Party Options.

There are no existing agreements with, operations of rights of, or commitments to any person other than Buyer to acquire any of the Purchased Assets or any interest therein.

4.9 Contracts.

Seller has delivered to Buyer true and complete copies of all written Assumed Contracts and true and complete memoranda of all oral Assumed Contracts, including any amendments and other modifications. The Assumed Contracts constitute valid and binding obligations of Seller and are in full force and effect as of the date hereof. Except as set forth on the Disclosure Schedule, neither Seller nor, to Seller's knowledge, any other party thereto is in default under any of the Assumed Contracts. Seller has not received or given written notice of any default thereunder from or to any of the other parties thereto. Except as disclosed on Schedule 4.3, Seller has all requisite power and authority to assign its rights under the Assumed Contracts to Buyer in accordance with this Agreement and such assignment will not affect the validity, enforceability or continuity of any such Assumed Contracts. To the extent that any Assumed Contract to be assigned hereunder requires the consent of any other person or party to its assignment, Seller shall use its commercially reasonable efforts to procure such consent and deliver it to Buyer prior to Closing. Failure to obtain such consent shall not, however, be deemed a breach by Seller of this Agreement.

4.10 Intellectual Property.

Schedule 1.1(d) lists all registered intellectual property applied for, issued to or owned by Seller for use exclusively in the operation of the Station and the call letters for the Station.

4.11 Employees.

Schedule 4.11 contains a complete and correct list, as of the date of this Agreement, of the names, positions and locations of all employees or other Station and broadcast personnel of the Station, which sets forth the current salaries of all such persons and the other compensation arrangements with Seller (the "*Covered Employees*"). No person is a party to any employment, or similar contract with Seller.

5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller, except as set forth in the Schedules delivered to Seller at the execution of this Agreement. The Schedules identify the relevant Section and paragraph hereof, modify and form a part of such relevant Section and paragraph, and may be amended pursuant to Section 7.4.

5.1 Organization and Corporate Power.

- (a) *Organization.* Operating is a corporation validly existing and in good standing under the laws of the State of Delaware and is qualified to conduct business in Illinois. Licensing is a limited liability company validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in Illinois.
- (b) *Corporate Power.* Each Buyer has all requisite corporate or limited liability company power, as applicable, to enter into this Agreement and

the other documents and instruments to be executed and delivered by each Buyer and to carry out the transactions contemplated hereby and thereby.

5.2 Authority.

The execution and delivery of this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant to this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate or limited liability company action, as applicable. This Agreement constitutes, and when executed and delivered, the other documents and instruments to be executed and delivered by Buyer pursuant hereto will constitute, valid and binding agreements of Buyer, enforceable in accordance with their respective terms, except as such may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, and by general equitable principles.

5.3 No Violation.

Neither the execution and delivery of this Agreement or the other documents and instruments to be executed and delivered by Buyer pursuant hereto, nor the consummation by Buyer of the transactions contemplated hereby and thereby (a) will violate any applicable law or order, (b) will violate any provision of its organizational instruments, or (c) will, either with the giving of notice, the passage of time, or both, conflict with, constitute grounds for termination of, or result in a material breach of the terms of, or constitute a default under any agreement, instrument, trust instrument or permit.

5.4 Qualification.

Buyer knows of no fact that would, under the Communications Act or the rules, regulations and policies of the FCC as in effect on the date hereof, disqualify Licensing from acquiring the Licenses.

5.5 Broker or Finders Fee.

Neither Buyer, nor any entity acting on behalf of Buyer, has agreed to pay a broker, commission, finder's fee or similar payment in connection with the Agreement or any matter related hereto.

5.6 Financial Capability.

Buyer has and will have on the Closing Date sufficient cash and cash equivalents and/or credit facilities (and has provided Seller with evidence thereof) to purchase the Purchased Assets and to consummate the transactions contemplated by this Agreement, including, without limitation, payments of fees and expenses contemplated hereunder.

6. APPLICATIONS TO AND CONSENT BY FCC

6.1 FCC Consent.

Consummation of the transactions provided for herein and the performance of the obligations of Seller and Buyer under this Agreement are subject to the condition that the FCC, within one hundred eighty (180) days of the date of acceptance for filing of the Assignment Application (defined hereinafter), shall have issued its written consent to such assignment without any condition materially adverse to Buyer (the “*FCC Consent*”). In the event that Seller is unable to procure the FCC Consent, and such failure is not based on any action or inaction of the Buyer, Buyer may cancel the transaction and Buyer shall receive its Letter of Credit or Letter of Credit Proceeds, as applicable. As used herein, the “*Assignment Application*” shall mean the application or applications that Seller and Buyer must file with the FCC requesting its consent to the assignment of the FCC Authorizations from Seller to Buyer.

6.2 Assignment Application and Notice.

Within fifteen (15) days of execution of this Agreement, Buyer will prepare and deliver to Seller’s counsel the assignee’s portions of the Assignment Application. Seller shall use commercially reasonable efforts to cause the Assignment Application to be filed with the FCC as promptly as practicable, but in all events within five (5) business days after the receipt of the aforementioned materials from Buyer, including all information, data, exhibits, resolutions, statements and other materials required to be filed in connection with the Assignment Application. Seller shall, at its expense, give due notice of the filing of the Assignment Application by broadcasting notice of such filing on the Station or by such other means as may be required by the rules and regulations of the FCC; provided that Buyer shall deliver to Seller on the date the Assignment Application is filed with the FCC, the information relating to Buyer that is required to be included in such notice.

6.3 Mutual Covenant of Reasonable Cooperation.

Seller and Buyer shall diligently and expeditiously take all necessary and proper steps, provide any additional information requested by the FCC, and otherwise use their commercially reasonable efforts to obtain the FCC Consent and to comply with this Article 6.

6.4 Assignment Application Expenses and Fees.

Each party shall be solely responsible for the expenses incurred by it in the preparation, filing and prosecution of its respective portion of the Assignment Application. All filing fees relating to the Assignment Application imposed by the FCC shall be paid one-half each by Seller and Buyer.

6.5 Extension.

If the Closing shall not have occurred for any reason within the original effective period of the FCC Consent, and neither party shall have terminated this Agreement pursuant to Article 13, 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 13.

6.6 Pre-Closing Control.

Nothing in this Agreement shall confer any rights on the Buyer to control any aspect of the Station's programming or operations prior to the Closing. Seller shall have complete control in accordance with this Agreement over the programming and operations of the Station prior to the Closing Date.

7. OTHER MATTERS

7.1 Costs.

Except as otherwise provided herein, each party to this Agreement shall be responsible for and bear all of such party's own costs and expenses, including, without limitation, any broker's or finder's fees and the expenses of its representatives, incurred at any time in connection with pursuing or consummating the transactions contemplated by this Agreement.

7.2 Preclosing Covenants.

Between the Effective Date and the Closing Date, except with the prior consent of Buyer, Seller:

- (a) shall operate in the usual and ordinary course of business in accordance with past practice and comply in all material respects with the Communications Act, the rules and regulations of the FCC, and all applicable laws and orders;
- (b) shall not cause or permit the Licenses to expire or be surrendered or adversely modified; and
- (c) shall not, except for agreements relating to the sale of advertising, incur any new debts, obligations or liabilities (absolute, accrued, contingent, or otherwise) that include obligations (monetary or otherwise) to be performed by Buyer after the Closing that exceeds \$25,000 individually or \$100,000 in the aggregate.

7.3 Risk of Loss.

Risk of loss for damage to or theft, loss or destruction of the Purchased Assets (by any means, including, without limitation, acts of God) occurring after the date of this Agreement and prior to the Closing shall be borne by Seller, and after the Closing shall be borne by Buyer.

7.4 Updating of Schedules.

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. Notwithstanding the foregoing, Buyer and Seller agree that Seller's updated information for Trade Agreements shall be incorporated into the Schedules prior to Closing without triggering a breach by Seller, and Buyer's sole recourse for such updated information shall be the Purchase Price adjustment set forth in Section 3.1(b).

7.5 Transfer Taxes and Similar Charges.

All recordation, transfer and documentary taxes and fees, stamps, and any excise, sales or use taxes, and all similar costs of transferring the Purchased Assets in accordance with this Agreement shall be borne by Buyer. All such taxes and costs incurred by Seller, if any, shall be reimbursed by Buyer within fifteen (15) days after Buyer's receipt of reasonably detailed information regarding such taxes and costs.

7.6 Bulk Sales Law.

The parties do not believe that any bulk sales or fraudulent conveyance statute applies to the transactions contemplated by this Agreement. Buyer, therefore, waives compliance by Seller with the requirements of any such statutes and Seller agrees to indemnify, defend and hold Buyer harmless against any claim made against Buyer as a result of a failure to comply with any such statute.

7.7 Other Action.

Both Buyer and Seller shall use such party's commercially reasonable efforts to cause the fulfillment at the earliest practicable date of all of the conditions to each such party's obligations to consummate the transactions contemplated in this Agreement.

7.8 Disclosure.

Buyer and Seller shall each have a continuing obligation to promptly notify the other party in writing with respect to any matter hereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedule, but no such disclosure shall cure any breach of any representation or warranty which is inaccurate. Further, Buyer and Seller shall give prompt notice to other party at any occurrence that comes to its attention that may constitute a misrepresentation, breach of warranty, or nonfulfillment of any covenant or condition on the part of Seller or Buyer contained in this Agreement.

7.9 Employee Matters.

- (a) Between the Effective Date and Closing, Buyer shall have reasonable access to all Covered Employees. All Covered Employees will be terminated by Seller at or prior to Closing. Seller shall be solely responsible for any sums, liabilities or obligations which may be owing to any employee as a result of such employee's employment with Seller prior to the date they are terminated by Seller.
- (b) At Closing, Buyer will offer each Covered Employee temporary employment for a period of sixty (60) days, at the same compensation rate specified on Schedule 4.11 ("*Probationary Period*"). At the end of the Probationary Period, Buyer may offer employment to any or all of the Covered Employees (any such Covered Employee offered employment by Buyer referred to as an "*Assumed Employee*"). The terms and conditions of employment with respect to Assumed Employees after the Probationary Period shall be determined by Buyer in its sole and absolute discretion. Buyer shall notify Seller of its intentions with respect to each of the Covered Employees within fourteen (14) days prior to the end of the Probationary Period.
- (c) Seller shall be solely responsible for all severance amounts (if any), liabilities or obligations which may be owing to any Covered Employee as a result of Seller's termination of any Covered Employee prior to Closing, or as a result of any Covered Employee not accepting or being offered employment by Buyer at the end of the Probationary Period. Seller agrees to indemnify, defend and hold harmless Buyer and Buyer's Affiliates (as defined herein) against any Claim (as defined herein) for severance made against Buyer or Buyer's Affiliates resulting from (x) Seller's termination of any Covered Employee prior to Closing, or (y) as a result of any Covered Employee not accepting or being offered employment from Buyer at the end of the Probationary Period. For the purposes of this Section 7.9, the terms "*Buyer's Affiliates*" and "*Claim*" shall have the meanings set forth in Article 11 below. Seller shall have no responsibility for any severance amounts owing to an Assumed Employee resulting from a termination of employment after the Probationary Period, or for any severance amount, unless otherwise required by law, which Buyer offers to any Covered Employee without Seller's consent.

7.10 Accounts Receivable.

- (a) All accounts receivable of Seller created before the Closing Date shall be and remain the sole property of Seller. All accounts receivable of Buyer created on or after the Closing Date shall be and remain the sole property of Buyer. The parties agree that Seller shall deliver a listing of its accounts receivable to Buyer on the Closing Date as Schedule 7.10. Buyer shall use commercially reasonable efforts to collect Seller's accounts receivable for

a period of one hundred twenty (120) days from the Closing Date (“*Collection Period*”), and shall distribute such collections in the manner specified in (b) below. At the end of the Collection Period, Seller shall assume the obligation to collect any of Seller’s accounts receivable that remain uncollected, provided that Buyer shall continue to pay over to Seller any amounts subsequently paid to it as payment of Seller’s accounts receivable.

- (b) During the Collection Period, Buyer shall remit to Seller by the tenth (10th) day of each month all of Seller’s accounts receivable, collected by Buyer during the previous month. Along with each payment, Buyer shall provide Seller with an accounting of the amounts collected during the applicable period. For purposes of such remittances, any partial month which falls within the Collection Period shall be treated as a whole month for purposes of determining the remittance date for accounts receivable collected during such partial month. All amounts collected with respect to a particular customer shall be applied first to the oldest receivable relating to that customer, unless a customer dispute exists with respect to such receivable, whether generated from transactions entered into prior to or after the Closing Date. During the Collection Period, Buyer shall not compromise or settle any accounts receivable that any account debtor contests the validity of its obligation with respect to such accounts receivable, without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed.

For the purposes of this Section 7.10, a “*month*” means a calendar month.

8. COVENANTS OF SELLER

Seller covenants and agrees as follows:

8.1 Conduct of Business Pending the Closing.

From the date hereof until the Closing, or the earlier termination of this Agreement without a closing, Seller shall have complete control and supervision of and sole responsibility for the operation of the Station and the Purchased Assets and during such period:

- (a) *Operation of the Station.* Seller shall operate the Station and shall take such action as may be necessary to maintain, preserve, renew and keep in force and effect the FCC authorizations.
- (b) *No Breach.* Seller shall not take or fail to take, or permit any act or failure to act, which may cause a breach of any commitment or obligation, or a breach of any representation, warranty, covenant or agreement made by Seller herein.
- (c) *No Negotiations.* Seller shall not directly or indirectly (through a representative or otherwise) solicit or furnish any information to any

prospective buyer, commence, or conduct presently ongoing, discussions or negotiations with any other party or enter into any agreement with any other party concerning the sale of the Purchased Assets or any part thereof (an “*acquisition proposal*”), and Seller shall immediately advise Buyer of the receipt of any written acquisition proposal.

8.2 Consents.

Seller shall use its commercially reasonable efforts prior to Closing to obtain all consents necessary for the consummation of the transactions contemplated hereby.

8.3 Access to Facilities, Files and Records.

At the request of Buyer, Seller shall from time to time give or cause to be given to the officers, employees, accountants, counsel, agents, consultants and representatives of Buyer: (a) full access during normal business hours to all equipment, machinery, fixtures, furniture and documentation that represents a part of the Purchased Assets; and (b) all such other information concerning the Purchased Assets as Buyer may reasonably request; provided that such requests and Seller’s compliance therewith do not interfere with the normal operations of the Station. Any investigation or examination by Buyer shall not in any way diminish or obviate any representations or warranties of Seller made in this Agreement or in connection herewith. Seller shall cause its accountants and any agent of Seller in possession of Seller’s books and records to cooperate with Buyer’s requests for information pursuant to this Agreement. Buyer will treat and hold as strictly confidential any such data or information it receives in the course of the reviews contemplated by this Section 8.3, will not use any of the data or information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, will return to the Seller all tangible embodiments (and all copies) of the same which are in its possession or control.

8.4 FCC Cooperation.

Seller will use its commercially reasonable efforts to cooperate with Buyer with any FCC filings that Buyer may make regarding the relocation of the Station’s broadcast facilities. Notwithstanding the foregoing, Seller shall not be obligated to take any action that would result in the incurrence of any out-of-pocket expense or would adversely effect the operation of Seller’s business.

8.5 Financial Statements.

Seller shall provide unaudited financial statements related to its operation of the Station as may be reasonably requested by Buyer to the extent that such information is available and in the form in which such information is available. Notwithstanding the foregoing, Seller shall provide such information to Buyer without any representation or warranty as to its accuracy or otherwise. Except as set forth in Section 8.8, Seller shall not be obligated to prepare any financial statements which are not readily available or to incur any expenses in connection with providing the information referenced in this Section 8.5.

8.6 Estoppel Certificates.

Seller shall request from each of the landlords under the leases that are Assumed Contracts estoppel certificates in a form reasonably acceptable to Buyer evidencing (a) to the extent required in the Assumed Contract, the consent of landlords to assign such Assumed Contract to Buyer, (b) Seller's material compliance with all material terms of such Assumed Contracts, including the timely payment of rent, and (c) the existence of no known default by Seller under such Assumed Contract, and, as to the Tower Lease only (defined on Schedule 1.1(e)) such estoppel certificate (x) shall be combined with an amendment to the Tower Lease to attach a true and complete legal description of the leased premises as a new Exhibit "B" thereto, (y) shall state the current rental paid thereunder and the date through which such rental has been paid, and (z) shall have attached a true and complete copy of the Tower Lease. As to the Tower Ground Lease (defined on Schedule 4.3), Seller shall request from the ground lessor thereunder an estoppel certificate and ground lessor's consent in a form reasonably acceptable to Buyer evidencing (a) ground lessor's consent to the assignment to Buyer and amendment of the Tower Lease, (b) the existence of no known default by Seller under the Tower Lease, (c) the existence of no other land surface leases of the premises leased under the Tower Lease, or, in the alternative, disclosing and attaching as exhibits all such leases, (d) current rental rate paid under the Tower Ground Lease, (e) attaching as an exhibit a true and complete copy of the Tower Ground Lease including a complete legal description of the leased property, (f) ground lessor's agreement to (i) provide to Buyer a copy of any written notice of default given to the tenant under the Tower Ground Lease, at the time of and in the manner given to said tenant, (ii) allow Buyer the same opportunity as the tenant to cure any such default, and (iii) accept such cure as a cure on the part of the tenant under the Tower Ground Lease for all purposes, and (g) ground lessor's confirmation that there are no mortgages or other lienholders having rights in the leased premises who could terminate by foreclosure or otherwise the Tower Ground Lease or the Tower Lease (the "*Ground Lease Estoppel*"). In the event Buyer's title search regarding the leased premises under the Tower Lease reveals any mortgage, deed of trust or other lien on the leased premises that could allow the holder or a beneficiary thereof to terminate the leasehold interest of Buyer through foreclosure or otherwise, Seller shall request from such lienholder a non-disturbance and attornment agreement in form reasonably satisfactory to Buyer (collectively, the "*NDA*").

8.7 Temporary Use of Studios.

For a period of thirty (30) days after the Closing Date, Buyer shall operate the Station from the Station's current studio facilities on Seller's premises in Joliet, Illinois, subject

to, at all times, the usage requirements of Seller in the ownership and operation of Seller's business. During such time period, Buyer's employees shall be granted access to the Station's studios during regular operating hours. Seller shall have no liability for injury or property damage caused by Buyer's employees, and may refuse access to Buyer's employees unless and until Buyer can demonstrate liability and casualty insurance in appropriate amounts. Buyer shall indemnify, defend and hold harmless Seller and Seller's Affiliates (as defined herein) from and against all Claims (as defined herein) asserted against, imposed upon or incurred by Seller or Seller's Affiliates, directly or indirectly, by reason of or resulting from Buyer's use of Seller's studio facilities.

8.8 Financial Information.

At all times after the date hereof, Seller shall, and shall cause all of Seller's representatives (including their independent public accountants) to, cooperate in all reasonable respects with the efforts of Buyer and Buyer's independent auditors to prepare such audited and interim unaudited financial statements for the Station as Buyer may reasonably determine are necessary in connection with any filing required to be made by it or any of its Affiliates under the Securities Exchange Act of 1934, as amended, or the Securities Act of 1933, as amended. Seller shall use commercially reasonable efforts to cause its independent public accountants to make available to Buyer and its representatives all of their work papers related to the financial statements or Tax Returns of Seller (to the extent they relate to the Station) and to provide Buyer's independent public accountants with full access to those personnel who previously have been involved in the audit or review of Seller's financial statements or Tax Returns, subject to any limitations imposed by Seller's independent accountants. Any reasonable out-of-pocket costs incurred by Seller in connection with Seller's obligations under this Section 8.8 shall be reimbursed by Buyer within fifteen (15) days after Buyer's receipt of reasonably detailed information regarding such costs.

9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS

Each and every obligation of Buyer to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of each of the following conditions, any of which may be waived in writing by the Buyer:

9.1 Representations and Warranties True on the Closing Date.

Each of the representations and warranties made by Seller in this Agreement, and the statements contained in any instrument, certificate or writing delivered by Seller pursuant to this Agreement, shall be true and correct when made and shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for those given as of a specified date which must only be true and correct as of such specified date.

9.2 Compliance With Agreement.

Seller shall have performed and complied in all material respects with all of Seller's agreements and obligations under this Agreement which are to be performed or complied with by Seller prior to or on the Closing Date, including the delivery of the closing documents specified in Section 12.2 hereof; provided, however, that the inclusion of notice and cure rights of Buyer in sections E and F of the Ground Lease Estoppel (described in Section 8.6 of this Agreement), as well as cost and expense offset provisions in section I of the Tower Lease Estoppel Certificate, shall not be a condition precedent to Buyer's Obligations hereunder.

9.3 Absence of Litigation.

No litigation shall have been commenced or threatened, and to Seller's knowledge no investigation by any government entity shall have been commenced, against Buyer, Seller or any of the affiliates, officers, members or shareholders of any of them, with respect to the transactions contemplated hereby.

9.4 Consents and Approvals.

The FCC Consent shall have been received, and such FCC Consent shall have become a Final Order (as defined herein), or an Initial Order which is mutually acceptable to Buyer and Seller. The lessor to the Channahon tower facilities shall have consented to an assignment of such lease from Seller to Buyer, effective at Closing.

9.5 Closing Certificates.

Buyer shall have received a certificate, dated as of the Closing Date, from an authorized representative of each of Seller and Parent certifying that the conditions set forth in Sections 9.1 and 9.2 hereof have been fulfilled.

9.6 Opinion of Counsel.

Buyer shall have received a written opinion of Seller's FCC counsel dated as of the Closing Date, in substantially the form attached hereto as Exhibit A.

9.7 Station Revenues. The Station's aggregate gross revenues for September, October, November and December 2003 shall be equal to or greater than the Station's aggregate gross revenues for the same period in 2002.

9.8 Title Search. Seller shall have delivered to Buyer a true and complete legal description of the real property subject to the Tower Lease, and Buyer shall have had adequate and reasonable time following receipt of said legal description to have a title company perform a search of the public records for Buyer on such real property, in any event not less than three (3) weeks.

10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS

Each and every obligation of Seller to be performed on the Closing Date shall be subject to the satisfaction prior to or at the Closing of the following conditions, any of which may be waived in writing by the Seller:

10.1 Representations and Warranties True on the Closing Date.

Each of the representations and warranties made by Buyer in this Agreement, and the statements contained in any instrument, certificate or writing delivered by Buyer pursuant to this Agreement, shall be true and correct when made and shall be true and correct in all material respects (except for those representations and warranties that are qualified by materiality, which shall be true and correct in all respects) at and as of the Closing Date as though such representations and warranties were made or given on and as of the Closing Date, except for those given as of a specified date which must only be true and correct as of such specified date.

10.2 Compliance With Agreement.

Buyer shall have performed and complied in all material respects with all of Buyer's agreements and obligations under this Agreement which are to be performed or complied with by Buyer prior to or on the Closing Date, including the delivery of the closing documents and the Purchase Price specified in Section 12.3 of this Agreement.

10.3 Consents and Approvals.

The FCC Consent shall have been received, and such FCC Consent shall have become a Final Order (as defined herein), or an Initial Order which is mutually acceptable to Buyer and Seller.

10.4 Certifications, etc.

Seller shall have received a certificate, dated as of the Closing Date, from an authorized representative of each Buyer, certifying that the conditions set forth in Sections 10.1 and 10.2 hereof have been fulfilled.

10.5 Absence of Litigation.

No litigation shall have been commenced or threatened, and to Buyer's knowledge no investigation by any government entity shall have been commenced, against Buyer, Seller or any of the affiliates, officers, members or shareholders of any of them, with respect to the transactions contemplated hereby.

11. INDEMNIFICATION

11.1 By Seller and Parent.

Subject to the terms and conditions of this Article 11, Seller and Parent hereby jointly and severally agree to indemnify, defend and hold harmless Buyer, and its directors, officers, employees, members, managers and controlled and controlling persons (hereinafter "*Buyer's Affiliates*"), from and against all Claims (as defined herein) asserted against, imposed upon, or incurred by Buyer, Buyer's Affiliates or the Purchased Assets, directly or indirectly, by reason of, or resulting from:

- (a) the inaccuracy or breach of any representation or warranty of Seller contained in or made pursuant to this Agreement; provided that any claim for indemnification made by Buyer pursuant to this Section 11.1(a) must be made within the time period described in Article 14 of this Agreement;
- (b) the breach of any covenant of Seller contained in this Agreement;
- (c) any Claim brought by or on behalf of any broker or finder retained, employed or used by Seller or any of its directors, officers, employees, members or agents in connection with the transactions provided for herein or the negotiation thereof, whether or not disclosed herein;
- (d) any Claim relating to the conduct of the operations of the Station prior to the Closing Date including, without limitation, any liabilities arising under the FCC Authorizations which relate to events occurring prior to the Closing Date; or
- (e) any Claim made against Buyer as a result of a failure to comply with any bulk sales or fraudulent conveyance statute.

As used in this Article 11, the term "*Claim*" shall include losses, damages, liabilities, judgments, awards, penalties and settlements, demands, claims, suits, actions, causes of action, proceedings and assessments, and the costs and expenses (including court costs and fees and reasonable attorneys' fees and expenses) in connection therewith and related thereto.

Notwithstanding anything to the contrary contained in this Agreement and except for fraud, (i) the rights of Buyer to indemnification under this Article 11 shall constitute the sole and exclusive remedy of Buyer for any breach by the Seller or the Parent of any provision of this Agreement and (ii) no claim may be asserted nor any action commenced against the Seller or the Parent for indemnification under this Section 11.1 unless a written Indemnification Notice with

respect to the subject matter of such Claim or action is received by the Seller on or prior to the date on which the representation, warranty, covenant or agreement on which such Claim or action is based ceases to survive as expressly set forth in Article 14, regardless of whether the subject matter of such Claim or action shall have occurred before such date; provided, however, that Buyer may pursue specific performance and other equitable remedies for any matter that is indemnifiable under Section 11.1(b) or as specified in Section 15.4.

11.2 By Buyer.

Subject to the terms and conditions of this Article 11, Buyer hereby agrees to indemnify, defend and hold harmless Seller and Parent, and their respective directors, officers, employees, members, managers, and controlled and controlling persons (hereinafter “*Seller’s Affiliates*”) from and against all Claims asserted against, imposed upon or incurred by Seller or Seller’s Affiliates, directly or indirectly, by reason of or resulting from:

- (a) the inaccuracy or breach of any representation or warranty of Buyer contained in or made pursuant to this Agreement and as a result of such breach the conditions set forth in Section 9.1 would not be satisfied, provided that any claim for indemnification made by Seller pursuant to this Section 11.2(a) must be made within the time period described in Article 14 of this Agreement;
- (b) the breach of any covenant of Buyer contained in this Agreement;
- (c) any Claim brought by or on behalf of any broker or finder retained, employed or used by Buyer or any of its directors, officers, employees, members or agents in connection with the transactions provided for herein or the negotiation thereof, whether or not disclosed herein; or
- (d) any Claim relating to the ownership or operation of the Purchased Assets arising from events that occurred on or after the Closing Date including, without limitation, any Liabilities arising under the FCC Authorizations which relate to events occurring on or after the Closing Date.

Notwithstanding anything to the contrary contained in this Agreement and except for fraud, (i) the rights of Seller and Parent to indemnification under this Article 11 shall constitute the sole and exclusive remedy of Seller and Parent for any breach by the Buyer of any provision of this Agreement and (ii) no claim may be asserted nor any action commenced against the Buyer for indemnification under this Section 11.2 unless a written Indemnification Notice (as defined below) with respect to the subject matter of such Claim or action is received by the Buyer on or prior to the date on which the representation, warranty, covenant or agreement on which such Claim or action is based expressly ceases to survive as set forth in Article 14, regardless of whether the subject matter of such Claim or action shall have occurred before such date; provided, however, that Seller and Parent may pursue specific performance and other equitable remedies for any matter that is indemnifiable under Section 11.2(b).

11.3 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 11, 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. The Indemnified Party or the Indemnifying Party, as the case may be, shall have the right to participate in (but not control), at its own expense, the defense of any Third Party Claim which the other is defending as provided in this Agreement.
- (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 11 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.

11.4 Payment.

The Indemnifying Party shall promptly pay the Indemnified Party any amount due under this Article 11. 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 of any indemnification Claim or the payment of any judgment or settlement with respect to a Third Party Claim, the Indemnifying Party shall be subrogated to the extent of such payment to the rights of the Indemnified Party against any person or entity with respect to the subject matter of such indemnification Claim or Third Party Claim. The Indemnified Party shall assign or otherwise cooperate with the Indemnifying Party, at the cost and expense of the Indemnifying Party, to pursue any claims against, or otherwise recover amounts from, any person liable or responsible for any Claim for which indemnification has been received pursuant to this Agreement

11.5 Limits on Indemnity.

Notwithstanding any other provision hereof or of any applicable law, neither party will be entitled to make a claim against the other party under Sections 11.1(a) or 11.2(a) for any breach of a representation and warranty unless and until the aggregate amount of claimed losses exceeds Twenty-Five Thousand Dollars (\$25,000) (the “*Deductible*”), in which event the party seeking indemnification will be entitled to make a claim against the other party for the amount in excess of the Deductible. Notwithstanding the foregoing, the aggregate amount of claims that may be asserted for indemnification hereunder shall in no event exceed One Million Four Hundred Thousand Dollars (\$1,400,000). Notwithstanding the foregoing, in no event shall there be a limitation on, nor shall the Deductible apply to, claims arising out of fraud.

12. CLOSING

12.1 Closing.

The closing of this transaction (the “*Closing*”) shall take place no later than the fifteenth (15th) day after the date the FCC Consent shall have become a Final Order (as defined herein), or, upon the Buyer’s and Seller’s mutual agreement, upon receipt of the Initial Order of the FCC, or on such other date to which the parties mutually agree (the “*Closing Date*”). The Closing shall be conducted by exchange of documents by facsimile, electronically, and overnight carrier or such other means as the parties mutually agree. For purposes of this Agreement, the FCC Consent shall have become a final order (the “*Final Order*”) when it is no longer subject to rehearing, reconsideration or review by the FCC or to appeal or review by any court under the Communications Act or the regulations of the FCC.

12.2 Documents to be Delivered by Seller.

At the Closing, Seller shall deliver to Buyer the following documents, in each case duly executed or otherwise in proper form:

- (a) *Compliance Certificate.* The certificates described in Section 9.5 of this Agreement.
- (b) *Assignment of FCC Authorizations.* An assignment of FCC Authorizations sufficient in the opinion of Buyer and its counsel to assign the FCC Authorizations to Buyer.
- (c) *Opinions of Counsel.* A written opinion of Seller's FCC counsel, dated as of the Closing Date, addressed to Buyer, in substantially the form of Exhibit A attached hereto.
- (d) *Resolutions.* A copy of the resolutions of the board of directors of each of Seller and Parent authorizing and approving this Agreement and the transactions contemplated by this Agreement.
- (e) *Good Standing Certificates.* Good standing certificates from Delaware and Illinois for Seller and Parent.
- (f) *Transfer Documents.* Such bills of sale, assignments, and other good and sufficient instruments of transfer as Buyer may reasonable request in order to convey and transfer to Buyer title to the Purchased Assets.
- (g) *Estoppel Certificates.* The certificates described in Section 8.6 of this Agreement.
- (h) *Ground Lease Estoppel.* The estoppel and consent described in Section 8.6 of this Agreement.
- (i) *NDA.* NDA for each lienholder, if any, described in Section 8.6 of this Agreement.
- (j) *Other Documents.* All other documents, instruments or writings required to be delivered at or prior to the Closing pursuant to this Agreement and other certificates of authority and documents as Buyer may reasonably request.

12.3 Documents to be Delivered by Buyer.

At the Closing, Buyer shall deliver to Seller the following documents, in each case duly executed or otherwise in proper form:

- (a) *Cash Purchase Price.* A wire transfer of immediately available funds as required by Section 3.2 of this Agreement.

- (b) *Compliance Certificate.* The certificate described in Section 10.4 of this Agreement.
- (c) *Resolutions.* A copy of the resolutions of the resolutions of the board of directors and/or managers of each Buyer authorizing and approving this Agreement and the consummation of the transactions contemplated by this Agreement.
- (d) *Other Documents.* All other documents, instruments or writings required to be delivered to Seller at or prior to the Closing pursuant to this Agreement and such other certificates of authority and documents as Seller may reasonably request.

13. TERMINATION

13.1 Right of Termination Without Breach.

This Agreement may be terminated without further liability of any party and the Letter of Credit shall be returned to Buyer at any time prior to the Closing:

- (a) by mutual written agreement of Buyer and Seller,
- (b) by either Buyer or Seller if the FCC has not issued a Final Order (or, upon mutual agreement of the Buyer and Seller, an Initial Order) on or before the date which is one hundred eighty days (180) from the date on which the Assignment Application is accepted for filing by the FCC, provided the terminating party has not, through breach of a representation, warranty or covenant, prevented the issuance of such Order from occurring on or before such date,
- (c) by either Buyer or Seller if either Buyer or Seller is required to take any action to obtain the FCC Consent that would have a material adverse effect the operation of such party's business, or
- (d) by either Buyer or Seller if the lessor and ground lessor of the land underlying the Channahon tower facilities shall not have consented to an assignment of the Tower Lease from Seller to Buyer, effective at Closing.

13.2 Termination for Breach.

- (a) *Termination by Buyer.* If (i) Seller has failed to cure any material violation or breach of any of its agreements, representations or warranties contained in this Agreement within thirty (30) days after delivery of written notice of such violation of breach from Buyer, or (ii) there has been a failure of satisfaction of a condition to the obligations of Buyer which has not been waived by Buyer (and such failure has not been caused by an act or failure to act by Buyer), then Buyer, by written notice to

Seller at any time prior to the Closing that such violation, breach or failure is continuing, may terminate this Agreement.

- (b) *Termination by Seller.* If (i) Buyer has failed to cure any material violation or breach of any of its agreements, representations or warranties contained in this Agreement within thirty (30) days after delivery of written notice of such violation or breach from Seller, or (ii) there has been a failure of satisfaction of a condition to the obligations of Seller which has not been waived by Seller (and such failure has not been caused by an act or failure to act by Seller), then Seller, by written notice to Buyer at any time prior to the Closing that such violation, breach or failure is continuing, may terminate this Agreement.

13.3 **Effect of Termination.** If this Agreement is validly terminated pursuant to Sections 13.1 or 13.2, this Agreement shall become null and void and all further obligations of the Parties under this Agreement shall terminate and there shall be no liability on the part of any party hereto, except as set forth in Section 13.4; provided, however, that the termination of this Agreement shall not relieve any party for liabilities arising from a knowing and willful breach of this Agreement.

13.4 **Forfeiture of the Letter of Credit Proceeds.** The Escrow Agent shall present the Letter of Credit for payment in accordance with its terms and the Letter of Credit Proceeds shall be delivered to Seller as liquidated damages upon the occurrence of the following events: (i) this Agreement is validly terminated by Seller pursuant to Section 13.2(b); (ii) the Seller is not then in material default or breach of this Agreement; and (iii) the conditions set forth in Sections 9.1, 9.2, 9.3, 9.5, 9.6 and 9.7 are able to be satisfied as of the time of such termination. The Escrow Agent shall deliver the Letter of Credit to Buyer if this Agreement is validly terminated by Buyer pursuant to Section 13.2(a). The delivery of the Letter of Credit Proceeds to Seller pursuant to this Section 13.4, shall constitute liquidated damages and shall be the sole and exclusive remedy of Seller for any and all damages arising under or in connection with a termination of this Agreement.

14. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All representations and warranties of Seller and Buyer contained in this Agreement shall survive for six (6) months after the Closing Date. All covenants and other agreements herein shall survive indefinitely unless otherwise specified herein.

15. MISCELLANEOUS

15.1 Further Assurances.

From time to time, at Buyer's request and without further consideration, Seller shall execute and deliver to Buyer such documents, instruments and consents and take such other action as Buyer may reasonably request in order to consummate more effectively the transactions contemplated hereby, to discharge the covenants of Seller and to vest in Buyer good, valid and marketable title to the Purchased Assets. Buyer acknowledges and agrees that, from and after the Closing Date, that Buyer shall cooperate with Seller and shall take such action as Seller shall

reasonably request so that Buyer may continue to operate the Excluded Assets or otherwise address any matter relating to Seller's ownership of the Purchased Assets or operation of the Station prior to the Closing Date. In connection with Buyer performing its obligations under this Section 15.1, Buyer shall not be obligated to incur any out-of-pocket costs or expenses in satisfying the above requests.

15.2 Disclosures and Announcements.

Both the timing and the content of all disclosure to third parties and public announcements concerning the transactions provided for in this Agreement by either Seller or Buyer shall be subject to the approval of the other party in all material respects, except that neither party's approval shall be required as to any statements and other information which either party may submit to the FCC, or be required to make pursuant to any rule or regulation of the FCC, or otherwise as required by law; provided that to the extent reasonably practicable such disclosing party shall provide the other party with prior written notice of such obligation.

15.3 Assignment; Parties in Interest.

- (a) *Assignment.* Except as expressly provided herein, the rights and obligations of a party hereunder may not be assigned, transferred or encumbered without the prior written consent of the other party. Notwithstanding the foregoing, Buyer may, upon written notice to Seller, cause one or more assignees of Buyer to carry out all or part of the transactions contemplated hereby; provided, however, that Buyer shall, nevertheless, remain liable for all of its obligations to Seller hereunder.
- (b) *Parties in Interest.* This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Nothing contained herein shall be deemed to confer upon any other person any right or remedy under or by reason of this Agreement.

At Seller's request and without further consideration, Buyer agrees that Seller may assign its right to the Purchase Price to a Qualified Intermediary and, at Seller's direction, Buyer agrees to remit and deposit the Purchase Price with a designated Qualified Intermediary in the event that Seller elects to attempt a like-kind exchange under Section 1031 of the Code.

15.4 Equitable Relief.

Seller agrees that any breach of Seller's obligation to consummate the sale of the Purchased Assets on the Closing Date will result in irreparable injury to Buyer for which a remedy at law would be inadequate; and that, in addition to any relief at law which may be available to Buyer for such breach and regardless of any other provision contained in this Agreement, Buyer shall be entitled to the equitable relief of specific performance and any and all other remedies available at law or in equity. If any action is brought by Buyer against Seller for failure by Seller to complete the sale of the Purchased Assets on the Closing Date, Seller will waive the defense that there is an adequate remedy at law.

15.5 Law Governing Agreement.

This Agreement shall be construed and interpreted according to the internal laws of the State of Delaware, excluding any choice of law rules that may direct the application of the laws of another jurisdiction. The State and Federal courts for Denver, Colorado shall be the exclusive forum in any action to enforce the terms of this Agreement.

15.6 Amendment and Modification.

Buyer and Seller may amend, modify and supplement this Agreement in such manner as may be agreed upon by them in writing.

15.7 Notice.

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Seller or Parent, to:

Three Eagles Investors, LLC
Attn: Rolland Johnson
19340 Furrow Road
Monument, Colorado 80132
Telephone: (719) 481-9378
Facsimile: (719) 481-8793

(with copies to)

Wachovia Capital Partners 2002, LLC
Attn: Walker Simmons
301 South College Street, 12th Floor
Charlotte, NC 28288-0732
Sparks Willson Borges Brandt & Johnson, P.C.
24 South Weber Street, Suite 400
Colorado Springs, Colorado 80903
Attention: David Steigerwald
Telephone: (719) 475-0097
Facsimile: (719) 633-8477

or to such other person or address as Seller shall furnish to Buyer in writing.

(b) If to Buyer to:

Next Media Operating, Inc.
6312 S. Fiddler's Green Circle, Suite 360E
Englewood, Colorado 80111
Attention: Sean Stover
Facsimile: (303) 694-4940

(with a copy to)

Weil, Gotshal & Manges LLP
200 Crescent Court, Suite 300
Dallas, Texas 75201
Attention: Glenn D. West, Esq.
John E. Quattrocchi, Esq.
Facsimile: (214) 746-7777

or to such other person or address as Buyer shall furnish to Seller in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

15.8 Confidentiality.

Any and all information, disclosures, knowledge or facts regarding Buyer or Seller or their respective businesses or properties to which the other party is exposed as a result of the negotiation, preparation or performance of this Agreement shall be confidential and shall not be divulged, disclosed or communicated to any other person, firm, corporation or entity, except for the other party's employees, attorneys, accountants, investment bankers, investors and lenders, and their respective attorneys, on a need-to-know basis for the purpose of consummating the transactions contemplated by this Agreement. Notwithstanding the foregoing, no party shall be required to keep confidential information that (a) is in the public domain, (b) is required to be disclosed pursuant to an order or request of a judicial or governmental authority (provided the non-disclosing party is given reasonable prior notice such that it may seek, at its expense, confidential treatment of the information to be disclosed), or (c) is required to be disclosed under applicable law or rule, as reasonably determined by counsel for the receiving party. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the parties hereto are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transactions contemplated in this Agreement, shall not apply to the tax structure or tax treatment of such transactions, and each party hereto (and any employee, representative or agent of any party hereto) may disclose to any and all persons,

without limitation of any kind, the tax structure and tax treatment of such transactions. The preceding sentence is intended to cause such transactions not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code, and shall be construed in a manner consistent with such purpose. In addition, each party hereto acknowledges that it has no proprietary or exclusive rights to the tax structure of such transactions or any tax matter or tax idea related to such transactions.

15.9 Entire Agreement.

This instrument embodies the entire agreement between the parties hereto and supersedes all prior oral or written agreements, understandings, representations and warranties and courses of conduct and dealing between the parties with respect to the transactions contemplated herein.

15.10 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of this Agreement, facsimile signatures shall be treated the same as original signatures.

15.11 Headings.

The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

15.12 Severability.

If any one or more of the provisions contained in this Agreement should be found invalid, illegal or unenforceable, in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Any illegal or unenforceable term shall be deemed to be void and of no force and effect only to the minimum extent necessary to bring such term within the provisions of applicable law and such term, as so modified, and the balance of this Agreement shall then be fully enforceable.

15.13 Attorneys' Fees.

If either party initiates any litigation against the other party involving this Agreement, the prevailing party in such action shall be entitled to receive reimbursement from the other party for all reasonable attorneys' fees and other costs and expenses incurred by the prevailing party in respect of that litigation, including any appeal, and such reimbursement may be included in the judgment or final order issued in that proceeding.

15.14 Counsel.

Each party has been represented by its own counsel in connection with the negotiation and preparation of this Agreement and, consequently, each party hereby waives the

application of any rule of law that would otherwise be applicable in connection with the interpretation of this Agreement, including, but not limited to, any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

15.15 Schedules.

The Schedules and Exhibits attached to this Agreement and any other documents delivered to Buyer by Seller pursuant hereto are hereby made a part of this Agreement as if set forth in full herein.

[Signature Page Follows]

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

SELLER:

THREE EAGLES OF JOLIET, INC.

By: _____
Name: _____
Title: _____

PARENT:

THREE EAGLES COMMUNICATIONS, INC.

By: _____
Name: _____
Title: _____

BUYER:

NEXTMEDIA OPERATING, INC.

By: _____
Name: _____
Title: _____

NM LICENSING LLC

By: _____
Name: _____
Title: _____

SCHEDULE 1.1(a)

LICENSES

SCHEDULE 1.1(b)

TANGIBLE PERSONAL PROPERTY

SCHEDULE 1.1(d)

INTELLECTUAL PROPERTY

SCHEDULE 1.1(e)

CONTRACTS

SCHEDULE 4.3

CONSENTS

SCHEDULE 4.4

LITIGATION

SCHEDULE 4.7

BROKER

SCHEDULE 4.11

EMPLOYEE LIST

Exhibit A
FCC Opinion

SCHEDULE 1.1(a)

List of FCC Authorizations

FM Station WCCQ, Channel 252A, 98.3 MHz, Crest Hill, Illinois, Facility ID 10677

Main License:

FCC File No. BLH-20000301ABY, expires December 1, 2004

Broadcast Auxiliary:

Aural Studio-Transmitter-Link WLD990

Tower Registration:

ASR No. 1055361

SCHEDULE 1.1(d)

Intellectual Property

WHOIS SEARCH RESULTS

WHOIS RECORD FOR

wccq.com

[Back-order this name](#)

Registrant:

KRKR-FM ([WCCQ-DOM](#))
 3800 Cornhusker Highway
 Lincoln, NE 68504
 US

Domain Name: WCCQ.COM

Administrative Contact:

Mach, Coby ([271573581](#)) coby@kfor1240.com
 Three Eagles Communications
 3800 Cornhusker Highway
 Lincoln, NE 68504
 US

402-466-1234 fax: (402) 467-4095

Technical Contact:

Schay, Peter ([PSK357](#)) pschay@SITESHELL.COM
 SiteShell Corporation
 c/o Peter Schay
 2 Marks Rd
 Riverside, CT 06878-2323
 US
 203-698-1979 fax: 203-698-0875

Record expires on 12-May-2008.

Record created on 08-Sep-2002.

Database last updated on 26-Sep-2003 12:56:01 EDT.

Domain servers in listed order:

CTS.CTSSERVER.COM 206.222.53.5
 DNS1.CTSSERVER.COM 206.222.53.9

**Get t
 Dom
 you i
 want**

Introducin
**Next I
 Rights**

Get the ne
 when it be



**We
 S**

[SEARCH AGAIN](#)

[People Search!](#)

[Find a Business Fast!](#)

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SCHEDULE 4.4

Litigation

Seller, as operator of the Station, is currently the defendant in employment related hearings as described below. In accordance with the Purchase Agreement, Seller retains all responsibility and obligations, and Buyer assumes no liability or obligation, under such matters.

(a) Whitledge: Seller hired Harry Whitledge as full-time sales person in October 2001. Whitledge voluntarily left Seller's employment after his compensation plan was changed from a guaranteed base to a commission on cash receipts in June of 2002. Whitledge alleges that he injured, or re-injured, his back while loading stage equipment after a Station event in February 2002. Two actions are currently pending as follows:

(1) ILLINOIS INDUSTRIAL COMMISSION: Whitledge filed an application for adjustment of claim on 07/15/02 to obtain payment for "Temporary Total Disability." This claim has been forwarded to Seller's Worker's Compensation insurance company, Cincinnati Insurance and case manager Tim Fritz. The first hearing was scheduled for 10/07/02. The case was continued to 01/06/03.

(2) COUNTY COURT: Whitledge filed suit on 05/19/03 in Will County (Case #03 L 306) for approximately \$50,000 on grounds of wrongful termination. Seyfarth & Shaw is handling this matter for Seller. Currently, Seller is waiting for responses to interrogatories and arranging depositions. Court date has not been set yet.

(b) Kruger: MaryLu Kruger was a part-time announcer who did traffic reports for the Station. She was terminated on 7/20/03 after failure to show up for work for several weeks. One action is currently pending as follows:

(1) COUNTY COURT: On 9/30/03 Kruger filed suit in Cook County (claim #02L12362) for \$50,000 alleging wrongful termination. The next hearing is scheduled for October 14, 2003, and Seller is seeking a dismissal.