



COPY

MEMO

TO: Dave Hicks

DATE: August 21, 1996

Attached is the computation of the allocation of revenue and expenses relating to WBYT and WRBR Radio in accordance with the Joint Sales Agreement. As I indicated, we used the spring Arbitron numbers and attached the allocation effective each September 1st. It so happens that this is the first time that the computation has not resulted in a 50/50 split but, rather, a 60% for WBYT and 40% for WRBR split.

If you have any questions, please call me.



Bob Watson

RAW/md

Attachment

Federal Communications Commission	
Doc# No. <u>MM-98-66</u>	Exhibit No. <u>49</u>
Presented by <u>Pathfinder</u>	
Disposition	Identified <input checked="" type="checkbox"/>
	Received <u>11-9-98</u>
	Rejected _____
Reporter <u>G. Holmes</u>	
Date <u>10-26-98</u>	

AMENDMENT TO JOINT SALES AGREEMENT

The Joint Sales Agreement ("Agreement") dated as of the 18th Day of December, 1992, by and between Pathfinder Communications Corporation ("Pathfinder") and Booth American Company ("Booth"), is hereby amended as follows. This Amendment is made pursuant to §12.6 of the Agreement and is effective as of January 1, 1997.

1. Hicks Broadcasting of Indiana, L.L.C. ("Hicks"), an Indiana limited liability company, which is the successor to Booth as licensee and owner of WRBR, is hereby substituted for Booth as a party to the Agreement, effective April 1, 1994. Hicks agrees, from and after that date, to fulfill all of Booth's obligations under the Agreement, and Hicks shall be entitled to all of Booth's benefits under the Agreement. Pathfinder, not having exercised its right of termination under §8.2(f), accepts Hicks as Booth's assignee, pursuant to §12.5 of the Agreement.

2. The call letters of Station WLTA, Elkhart, Indiana, have been changed to WBYT. Accordingly, all references in the Agreement to WLTA are changed to WBYT.

3. §8.1 of the Agreement specifies a term of five years, ending December 18, 1997. The parties agree that beginning December 18, 1997, the Agreement shall be extended from year to year, in one-year increments, unless terminated pursuant to §8.2, *provided, however*, that notice of termination may be given at any time after December 18, 1997, pursuant to §8.2(b), without regard to whether the party giving notice is in default under the Agreement.

4. §4.2 of the Agreement is amended as follows: The heading is changed to: From December 18, 1993, through December 31, 1996. The text prior to the first formula is amended to read: From December 18, 1993, through December 31, 1996, the Booth or Hicks share shall be determined on September 1 of each year, in accordance with the following formula:

5. The introductory clause of §4.4(b) ("During the term of this Agreement") is changed to read: "From December 18, 1992, through December 31, 1996".

6. The section number of §4.5 is changed to §4.6. The new §4.6 is effective only through December 31, 1996, and is deleted thereafter.

7. A new §4.5 is added to read as follows:

§4.5: From and After January 1, 1997. §4.3 of the Agreement shall apply only through December 1, 1996, and not thereafter. From and after January 1, 1997, the revenues and expenses of the Venture shall be divided between Pathfinder and Hicks as follows:

(a) Each party shall be credited with the gross revenues invoiced by the Venture for accounts attributable to sales of local, regional, national, and political air time on the station owned by that party. If any time sales are made that combine air time on stations owned by both parties without breaking down the rate for each station separately, collected revenues

Case
Reporter G. Adams
10-26-92

Disposition
Accepted
Rejected
Identified

Presented by M. J. Adams
Federal Communications Commission
Exhibit No. 50

RB-6-92

therefrom shall be divided between the parties by good faith agreement based on the relative rates for each station prevailing at that time.

(b) Each party shall be solely responsible for the payment of all expenses directly attributable to the sale of advertising time on its station, including, but not limited to, Advertising Agency Commissions, Local and National Sales Commissions, and Sales Promotion Expenses.

(c) All expenses of the Venture other than those expressly referenced in §4.5(b) of this Amendment shall be charged one-half to Pathfinder and one-half to Hicks.

(d) Notwithstanding §4.4(a) of the Agreement, invoiced revenues attributable to the sale of time on WRBR shall be distributed to Hicks by Pathfinder, as keeper of the Ventures books pursuant to §5.3, twice monthly, the first half approximately sixty (60) days, and the second half approximately ninety (90) days, after the end of the month in which the revenues were received.

8. The reference to "Vince Ford" in §2.5(a) is hereby deleted, as Mr. Ford is no longer working on behalf of the Venture.

9. Hicks hereby makes to Pathfinder each of the representations and warranties set forth in §9.1 of the Agreement, except that Hicks is a limited liability company rather than a corporation. Pathfinder hereby makes to Hicks each of the representations and warranties set forth in §9.2 of the Agreement, except that with respect to §9.2(f), Niles Broadcasting, Inc. has filed Informal Objections with the Federal Communications Commission ("FCC") against several pending license assignment and renewal applications to which Pathfinder is a party, alleging that this Agreement or the manner of administration thereof violates FCC regulations and/or policies.

10. The addresses for the giving of notices under §12.7 of the Agreement are hereby changed to the following:

If to Hicks: Mr. David Hicks
 7463 Cottage Oak Drive
 Portage, MI 49024

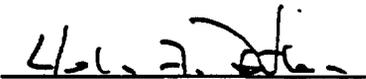
If to Pathfinder: Mr. John F. Dille, III
 Pathfinder Communications Corporation
 421 South Second Street
 Elkhart, IN 46516

The addresses for notices to counsel are deleted. If notice is given other than by U.S. mail or a courier service as described in §12.7 (such as by facsimile), the notice shall be effective only if the party giving notice can document that delivery was actually accomplished.

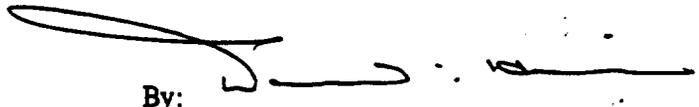
11. The parties hereby reaffirm all provisions of the Agreement not modified herein. In the event of a conflict between the Agreement and this Amendment, this Amendment shall prevail.

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

PATHFINDER COMMUNICATIONS
CORPORATION

By: 
John F. Dille, III
President

HICKS BROADCASTING OF
INDIANA, L.L.C.

By: 
David Hicks
Managing Member



SETTLEMENT AND STOCK PURCHASE AGREEMENT

THIS SETTLEMENT AND STOCK PURCHASE AGREEMENT (the "Agreement") is made as of August 8, 1997, by and between DAVID L. HICKS, an individual ("Hicks"), and CRYSTAL RADIO GROUP, INC., a Michigan corporation (the "Company").

Intending to be legally bound, the parties agree as follows:

ARTICLE I

INTRODUCTION

1.1 In 1993, The Air-Borne Group, Ltd. merged with and into the Company (f/k/a Hicks Broadcasting Corporation), with the Company surviving the merger, pursuant to an Agreement of Merger and Plan of Reorganization, dated as of April 7, 1993, as amended (the "Merger Agreement"). Hicks, as the sole shareholder of the Company prior to the merger, undertook certain indemnification obligations to the Company relating to representations and warranties made by the Company in the Merger Agreement.

1.2 Hicks, the Company, and Edward J. Sackley III, individually and as Trustee of the Edward J. Sackley III Trust, the Edward J. Sackley III Trust, Richard C. Doering, John N. Strandin, Janice J. Sackley, individually and as Trustee of the Janice J. Sackley Trust, the Janice J. Sackley Trust, Richard R. Zaragoza, Elise R. Zaragoza, and Edward J. Sackley, Individually and as Trustee of the Edward J. Sackley Trust, the Edward J. Sackley Trust (collectively, the "Shareholders"), are involved in a pending lawsuit in the Circuit Court for the County of Kalamazoo, Michigan, Case No. B94-3603-NZ (the "Lawsuit").

1.3 Hicks is the owner of 30,000 shares of the common stock of the Company, \$1 par value, represented by Stock Certificate No. 2 (collectively, the "Hicks Shares").

1.4 Subject to the terms and conditions set forth below, this Agreement is intended to (i) release any and all claims, liabilities, and obligations against or of Hicks under or in any way related to the Merger Agreement except as preserved in this Agreement, (ii) dismiss the pending Lawsuit with prejudice, (iii) accomplish the Company's purchase of all of the Hicks Shares from Hicks, and (iv) assure a period of noncompetition by Hicks.

1.5 Except in the case of default or as otherwise provided in this Agreement or the Promissory Note, the total amount paid to Hicks under the terms of this Agreement is \$2,450,000.00.

1.6 Immediately after the closing of the Air Borne/Company merger on August 31, 1993:

Report No. MM-98-6 Exhibit No. 533
Federal Communications Commission
Disposition
Presented by RMF/MLK
Identified 11-9-98
Received 11-9-98
Rejected 11-9-98
Reporter G. Holmes
Date 10-26-98

1.6.1 Hicks pledged the Hicks Shares to Michigan National Bank pursuant to a Pledge Agreement, dated August 31, 1993, between Michigan National Bank and Hicks (the "MNB Pledge Agreement"). As of the date of this Agreement, Michigan National Bank's security interest in and Hicks' pledge of the Hicks Shares (the "MNB Interest") has not been terminated.

1.6.2 Hicks guaranteed certain obligations of the Company pursuant to a Guaranty Agreement, dated August 31, 1993, between Michigan National Bank and Hicks (the "MNB/Hicks Guaranty"). As of November 27, 1996, the MNB/Hicks Guaranty has been terminated.

ARTICLE II

SALE OF STOCK

Subject to the terms and conditions of this Agreement:

2.1 **Stock Purchase.** At the "Closing" (as defined in Section 2.2 (*The Closing*)), Hicks will sell and transfer to the Company, and the Company will purchase from Hicks, the Hicks Shares. The purchase price for the Hicks Shares (the "Purchase Price") shall be \$1,605,800.00.

2.2 **The Closing.** The closing of the sale of the Hicks Shares (the "Closing") to the Company shall take place at 10:00 a.m. local time, at the offices of Miller, Johnson, Snell & Cumiskey, P.L.C., Cornerstone Building, 425 West Michigan Avenue, Kalamazoo, Michigan 49007-3765, on such date as the parties agree upon.

2.3 **The Company's Closing Obligations.** At the Closing, the Company shall deliver to Hicks:

2.3.1 **Cash.** The sum of \$330,800.00 by certified check of immediately available funds as partial payment of the Purchase Price and the sum of \$144,200.00 less seventy-five percent of the first years' cost of the Letter of Credit referred to in paragraph 2.5.1 by certified check in full satisfaction of all allocated but unpaid distributions owed to Hicks by the Company (the "Distribution Amount").

2.3.2 **Promissory Note.** A promissory note payable to Hicks in the principal amount of \$1,134,560.39 substantially in the form of Appendix A (the "Promissory

Note”), but subject to the approval as to form by Michigan National Bank executed by the Company.

2.3.3 Forgiveness of Hicks' Debt. Evidence reasonably acceptable to Hicks of the cancellation and forgiveness by the Company of his accounts receivable in favor of the Company in the aggregate amount of \$39,980.00. Hicks acknowledges that the Company shall report same as income to him on IRS Form 1099 and deduct such amount as an expense.

2.3.4 Stipulation to Set Aside Orders and Dismiss Case. A stipulation in the form of Appendix B, signed by counsel for the Company and the Shareholders to: (1) set aside the final judgment entered on March 21, 1997; (2) set aside the order entered on March 18, 1997, granting summary disposition of the shareholder oppression claim; (3) vacate the bench opinion of August 5, 1996; and (4) dismiss Case No. B94-3603-NZ with prejudice (the “Stipulation”).

2.4 Hicks' Closing Obligations. At the Closing, Hicks shall deliver to the Company:

2.4.1 Stipulation to Set Aside Orders and Dismiss Case. The Stipulation, executed by counsel for Hicks.

2.4.2 Stock Power and Releases. A duly executed stock power for transfer of the Hicks Shares to the Company, together with evidence reasonably satisfactory to the Company of the release of the interests in the Hicks Shares pursuant to the (i) Agreement for Sale and Pledge of Stock, dated as of August 31, 1993, between Hicks and Terrego, S.A., and (ii) Agreement for Sale and Pledge of Stock, dated as of August 31, 1993, between Hicks and Bridge Capital Investors (collectively, the “Bridge/Terrego Interest”).

2.4.3 Third Party Releases. A release substantially in the form of Appendix E executed by John F. Dille, III, and Pathfinder Communications Corporation and a second release, substantially in the form of Appendix F, executed by Hicks Broadcasting of Indiana, L.L.C., John F. Dille, IV, Alec C. Dille and Sarah D. Erlacher related to claims that may have arisen against the Company or its Shareholders related to Hicks Broadcasting of Indiana, L.L.C.'s acquisition of the assets of FM radio station WRBR and the Company's response to that acquisition and related to claims that have arisen or may have arisen against the Company or its Shareholders related to the Lawsuit.

2.5 The Company's Post-Closing Obligations. Within thirty (30) days of the Closing, the Company shall deliver to Hicks:

2.5.1 Standby Letter of Credit. A standby letter of credit issued by Michigan National Bank in the form substantially similar to Appendix C, but which form must be

acceptable to Michigan National Bank (the "Letter of Credit"). The Company agrees that it shall not submit the order of dismissal regarding the Lawsuit until it has delivered the Letter of Credit to Hicks. Additionally, the Company agrees to pay Hicks the sum of \$1,000 for each day the Letter of Credit remains undelivered after expiration of the thirty day period referenced above.

2.5.2 Release by Shareholders. A release substantially in the form of Appendix D, executed by the Shareholders, related to claims that they have or may have against Hicks. The Company agrees to pay Hicks the sum of \$1,000 for each day such release remains undelivered after expiration of the thirty day period referenced above.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. The Company represents and warrants to Hicks that:

3.1.1 Authority. This Agreement constitutes the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms. Upon the execution and delivery by the Company, or its duly authorized representative, of the Promissory Note and the Stipulation, those documents will constitute the legal, valid, and binding obligation of the Company, enforceable against the Company in accordance with its terms. The Company has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement, the Promissory Note and Stipulation and to perform its obligations under them.

3.1.2 No Conflict. Neither the execution and delivery of this Agreement by the Company nor the consummation or performance of any of the transactions contemplated by this Agreement by the Company will give any other person or entity the right to prevent, delay, or otherwise interfere with any of the transactions contemplated by this Agreement pursuant to: (i) any provision of the Company's articles of incorporation, bylaws, or any resolution adopted by the board of directors or the shareholders of the Company; (ii) any federal, state, or local law, regulation, judgment, or order to which the Company may be subject; or (iii) any contract or other agreement to which the Company is a party or by which it may be bound. The Company is not required to obtain any consent or approval from any person or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

3.1.3 No Negotiations. Except as contemplated by this Agreement and regarding the Company's Portage Road real estate, within the past year preceding the

date of the signing of this Agreement, neither the Company, the Shareholders, nor, to the knowledge of the Company, any of their representatives have, directly or indirectly, solicited, initiated, or encouraged any inquiries or proposals from, negotiated with, or provided any non-public information to, any person or entity relating to any transaction involving the sale of the business or assets of the Company, or any merger, consolidation, business combination, or similar transaction involving the Company.

3.1.4 No Assignment. Neither the Company nor any Shareholder has assigned to any person or entity, at any time, any right, obligation, benefit, claim, action, cause of action, or suit whatsoever that they had, have, or may have against Hicks related to the Lawsuit or the Merger Agreement.

3.1.5 Litigation. The Company has no knowledge of any suits, actions, administrative, arbitration or other proceedings or governmental investigations pending or threatened against the Company which question the validity of this Agreement, or any action taken or to be taken in connection herewith and, to the knowledge of the Company, no basis for such suits, actions, proceedings or investigations exists. Other than the litigation currently pending between the Company, the Shareholders and Hicks, which litigation shall be dismissed with prejudice upon the Closing, neither the Company, nor, to the Company's knowledge, any affiliate of Company or any other person or entity, has (i) any present intention to file, or (ii) any actual knowledge of facts sufficient to support, a claim against the Company or any Shareholders, with respect to the transactions contemplated by this Agreement.

3.1.6 Full Disclosure. No representation or warranty made by the Company in this Agreement, or in any certificate furnished or to be furnished by the Company pursuant hereto, contains or will contain any untrue statement of any material fact, or omits or will omit to state any material fact required to make any statement made herein or therein not misleading.

3.2 Representations and Warranties of Hicks. Hicks represents and warrants to the Company and the Shareholders that:

3.2.1 Authority. This Agreement constitutes the legal, valid, and binding obligation of Hicks, enforceable against him in accordance with its terms. Hicks has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and to perform his obligations under this Agreement.

3.2.2 No Conflict. Except with respect to the MNB Interest and the Bridge/Terrego Interest, neither the execution and delivery of this Agreement by Hicks nor the consummation or performance of any of the transactions contemplated by this Agreement by Hicks will give any person or entity the right to prevent, delay, or otherwise interfere with any of the transactions contemplated by this Agreement pursuant

to: (i) any federal, state, or local law, regulation, judgment, or order to which Hicks or the Hicks Shares may be subject; or (ii) contract or other agreement to which Hicks is a party or by which he may be bound. Except with respect to the MNB Interest and the Bridge/Terrego Interest, Hicks is not and will not be required to obtain any consent or approval from any person or entity in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated by this Agreement.

3.2.3 Free and Clear. Except with respect to the MNB Interest and the Bridge/Terrego Interest, Hicks is the record and beneficial owner and holder of the Hicks Shares, and such shares, as of the Closing, shall be free and clear of all encumbrances.

3.2.4 No Assignment. Hicks has not assigned to any person or entity, at any time, any right, obligation, benefit, claim, action, cause of action, or suit whatsoever that he had, have, or may have against the Company or the Shareholders related to the Lawsuit or the Merger Agreement.

3.2.5 Distribution Amount. Hicks acknowledges that the Distribution Amount to be paid to him by the Company at Closing is in full satisfaction of all unpaid distributions owing to him for periods prior to the Closing and that no distribution has or will be made to him regarding the payment of any taxes by Hicks due to the allocation of any income of the Company to him in 1997.

3.2.6 Certain Actions. Except as previously disclosed to the Company by Hicks or otherwise learned by the Company through the Lawsuit, Hicks has not taken, directly or indirectly, any actions on or prior to July 15, 1994 (the date of suspension of his employment with the Company) to obligate the Company or the Shareholders or to cause the Company or the Shareholders to incur any liabilities other than (i) in the ordinary course of the Company's business, or (ii) relating to obligations or liabilities which have been fully satisfied prior to the date of this Agreement. After July 15, 1994, Hicks has not taken, directly or indirectly, any actions to obligate the Company or the Shareholders or to cause the Company or the Shareholders to incur any liabilities.

3.2.7 Litigation. Hicks has no knowledge of any suits, actions, administrative, arbitration or other proceedings or governmental investigations pending or threatened against Hicks which question the validity of this Agreement, or any action taken or to be taken in connection herewith and, to the knowledge of Hicks, no basis for such suits, actions, proceedings or investigations exists. Other than the litigation currently pending between the Company, the Shareholders and Hicks, which litigation shall be dismissed with prejudice upon the Closing, neither Hicks, nor, to Hicks' knowledge, any affiliate of Hicks or any other person or entity, has (i) any present intention to file, or (ii) any actual knowledge of facts sufficient to support, a claim against the Company or any Shareholders, with respect to the transactions contemplated by this Agreement.

3.2.8 Full Disclosure. No representation or warranty made by Hicks in this Agreement, or in any certificate furnished or to be furnished by Hicks pursuant hereto, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact required to make any statement made herein or therein not misleading.

ARTICLE IV

COVENANTS

4.1 Covenant Not to Compete. If the Closing occurs:

4.1.1 No Competition. Effective as of the Closing, and for a period of three years thereafter, Hicks shall not directly or indirectly engage in the commercial radio business, either as an owner, officer, director, employee, consultant, or agent of any AM or FM full-service or translator radio station whose 60 dbu contour overlaps in whole or in part the current 60 dbu contours of either WKFR(FM), WRKR(FM) or WKMI(AM); provided, that ownership of less than 5% of the outstanding stock of any publicly traded corporation shall not be a breach of this Section 4.1.1.; provided further that Hicks' current ownership in WRBR(FM) shall not be deemed a breach of this Section 4.1.1 so long as the station does not solicit advertisers within the Kalamazoo radio market.

4.1.2 Compensation. As additional consideration for the covenants in Section 4.1.1 (*No Competition*), the Company will pay Hicks, by certified checks of immediately available funds, the aggregate sum of \$700,000, payable as follows: (a) \$175,000 at the Closing; and (b) \$175,000 on each of the first three anniversary dates of the Closing.

4.2 Best Efforts. Between the date of this Agreement and the Closing (or the termination of this Agreement in accordance with its terms, if earlier), the Company shall use its reasonable commercial efforts to cause the complete termination and release of the MNB Interest and the MNB/Hicks Guaranty without further obligation or liability to Hicks.

4.3 Ordinary Course of Business. Between the date of this Agreement and the Closing (or the termination of this Agreement in accordance with its terms, if earlier), the Company shall conduct its business only in the ordinary course of business.

4.4 Release of Hicks' Pledge to the Company. If the Closing occurs, each party acknowledges and agrees that Section 16 of the Pledge Agreement dated as of August 21, 1993, between Hicks and the Company (the "Company Pledge Agreement") automatically terminates the Company's security interest in and Hicks' pledge of the Hicks Shares to the Company pursuant to the Company Pledge Agreement, without further liability or obligation, except for

the obligations of the Company pursuant to such Section 16 of the Company Pledge Agreement to deliver the necessary documents to evidence such release.

ARTICLE V

MUTUAL RELEASE

If the Closing occurs:

5.1 **Release and Discharge.** Except as set forth in Section 5.5 (*Exceptions*), effective as of the Closing, Hicks, the Shareholders, the Company, and the Company's past, present and future shareholders, directors, officers, employees, affiliates, and agents, hereby release, discharge and fully extinguish each other from any and all actions, demands, claims, proceedings, or other causes of action, obligations, or liabilities, in law or in equity, known or unknown, asserted or unasserted, accruing in whole or in part any time before the date of this Agreement, including without limitation any action, claim or cause of action that they had, have or may have arising out of the Lawsuit and the Merger Agreement.

5.2 **No Admission.** Nothing contained herein shall be construed or interpreted as a concession or admission by any of the parties with respect to any issue disputed in the Lawsuit or regarding the Merger Agreement.

5.3 **Dismissal.** Upon the date of Closing, the parties shall dismiss the Lawsuit with prejudice and without costs.

5.4 **Covenant Not to Sue.** Each party hereby irrevocably covenants to refrain from, directly or indirectly, asserting any claim or demand, or commencing, instituting or causing to be commenced, any proceeding of any kind against any other party to this Agreement based upon any matter purported to be released by this Agreement; *provided, however*, that nothing in this Agreement shall limit or restrict the Company's ability to defend any of its government authorizations, including but not limited to, those granted and to be granted by the FCC, or to file applications in the future to promote the business of the Company.

5.5 **Exceptions.** This Agreement shall not release or waive any of the parties' rights and obligations under this Agreement or any liability of Hicks under Article VIII of the Merger Agreement to provide indemnification for claims that solely arise or are alleged to arise from, in connection with, or resulting from fraud, intentional misrepresentation, or unpaid Taxes, provided, however, that no such claim for indemnification may be based upon claims described in the Notice of Claim of Indemnification dated August 27, 1996, or the Settlement Letter of July 19, 1995 from Craig H. Lubben to Robert J. Jonker.

ARTICLE VI

CLOSING CONDITIONS

6.1 Hicks' Obligation. Hicks' obligation to sell the Hicks Shares and to take the other actions required to be taken by Hicks at or after the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Hicks, in whole or in part):

6.1.1 MNB Interest. Hicks must receive the termination of the MNB Interest at or before the Closing.

6.1.2 No Injunction. There must not be in effect any law, regulation, court or regulatory order that prohibits or otherwise interferes with the transactions contemplated by this Agreement.

6.1.3 Closing Documents. The Company must have delivered each of the documents required of it pursuant to Section 2.3 (*The Company's Closing Obligations*).

6.2 The Company's Obligation. The Company's obligation to purchase the Hicks Shares and to take the other actions required to be taken by them at or after the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by them, in whole or in part):

6.2.1 No Injunction. There must not be in effect any law, regulation, court or regulatory order that prohibits or otherwise interferes with the transactions contemplated by this Agreement.

6.2.2 Closing Documents. Hicks must have delivered each of the documents required of him pursuant to Sections 2.4 (*Hicks' Closing Obligations*).

ARTICLE VII

REMEDIES

If the Closing occurs:

7.1 Breach of Covenant Not to Compete. Hicks acknowledges and agrees that money damages alone would be inadequate to compensate the injured party and would be an inadequate remedy for such breach of Section 4.1.1. The Company shall, therefore, be entitled, in addition to any other remedies that may be available, including money damages, to obtain specific performance of the terms of this Agreement without being required to prove actual damages, post bond or furnish other security, any requirement for which is expressly waived.

7.2 Acceleration for Certain Actions by Company. Upon the occurrence of the following events, all payments due to Hicks pursuant to Section 4.1.2 (*Compensation*) and pursuant to the Promissory Note shall become immediately due and payable without notice or demand, and all of Hicks' obligations under Section 4.1.1 (*No Competition*) shall terminate immediately:

7.2.1 If the Company has materially breached a representation and warranty set forth in Section 3.1 (*Representations and Warranties of the Company*) and such breach has not been cured within thirty days of receipt of written notice from Hicks to the Company;

7.2.2 If the Company defaults in the performance of any of its payment obligations under this Agreement and such default has not been cured within seven days of receipt of written notice from Hicks to the Company or if the Company defaults in the performance of any of its other material obligations under this Agreement and such default has not been cured within thirty days of receipt of written notice from Hicks to the Company;

7.2.3 If the Company ceases conducting business in the normal course, admits its insolvency, makes a general assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization which remains undismissed, undischarged or unbonded for a period of sixty days; or

7.2.4 If the Company withholds a payment due to Hicks under this Agreement or the Promissory Note without first obtaining the permission of an appropriate court under Section 9.5 (*Jurisdiction; Service of Process*) after actual notice and opportunity to be heard by Hicks.

The remedies provided in this Section 7.2 are cumulative and shall not prevent Hicks from asserting or seeking any other remedies available at law or in equity against the breaching party or parties.

7.3 Set Off. The Company, on behalf of itself and its past, present, or future shareholders, directors, officers, employees, affiliates, or agents (in their capacity as such) irrevocably covenant to refrain from, directly or indirectly, withholding any payment due to Hicks under the Promissory Note or this Agreement without first obtaining the permission of an appropriate court under Section 9.5 (*Jurisdiction; Service of Process*) after actual notice and opportunity to be heard by Hicks. Any breach of this provision shall result in the automatic and immediate forfeiture of the underlying claim or right upon which the withholding of payment is purportedly based.

7.4 Indemnification.

7.4.1 Indemnity by Hicks. Without limitation of any other provision of this Agreement or any other rights and remedies available to the Company at law or in equity, Hicks covenants and agrees to protect, indemnify, defend and hold harmless the Company and the Shareholders, and to promptly reimburse them for, all Losses (as defined below) arising out of, in connection with or relating to any breach of any covenant, representation or warranty of Hicks hereunder. "Losses" means any and all liabilities, obligations, duties, demands, claims, actions, causes of action, assessments, losses, costs, damages, deficiencies, taxes, fines or expenses, including, without limitation, interest, penalties, and reasonable attorneys' fees.

7.4.2 Indemnity by the Company. Without limitation of any other provision of this Agreement, the Company covenants and agrees to protect, indemnify, defend and hold harmless Hicks from, and to promptly reimburse Hicks for, Losses arising out of, or in connection with, or relating to any breach of any covenant, representation or warranty of the Company hereunder.

7.4.3 Procedure and Payment. If after the Closing either the Company and Shareholders or Hicks (the "Indemnitee") shall receive notice of any third party claim or alleged third party claim asserting the existence of any matter of the nature as to which the Indemnitee has been indemnified against under this Section 7.4 by the other parties hereto ("Indemnitor"), Indemnitee shall promptly notify Indemnitor in writing with respect thereto. Indemnitor shall have the right to defend against any such claim provided (i) Indemnitor shall, within ten days after the giving of such notice by Indemnitee, notify Indemnitee that it disputes such claim, giving reasons therefor, and that Indemnitor will, at its own cost and expense, defend the same, and (ii) such defense is instituted and continuously maintained in good faith by Indemnitor. In such event the defense may, if necessary, be maintained in the name of Indemnitee. Indemnitee may, if it so elects, designate its own counsel to participate with the counsel selected by Indemnitor in the conduct of such defense at its own expense. Indemnitor shall not permit any lien or execution to attach to the assets of the Indemnitee as a result of such claim, and the Indemnitor shall provide such bonds or deposits as shall be necessary to prevent the same. In any event Indemnitee shall be kept fully advised as to the status of such defense. If Indemnitor shall be given notice of a claim and shall fail to notify Indemnitee of its election to defend such claim within ten days, or after having so elected to defend such claim shall fail to institute and maintain such defense in accordance with the foregoing, or if such defense shall be unsuccessful, then, in any such event, the Indemnitor shall fully satisfy and discharge the claim within ten days after notice from Indemnitee requesting Indemnitor to do so. No Indemnitor shall settle any such claim without the prior written consent of the Indemnitee, which consent shall not be unreasonably withheld.

7.5 Letter of Credit. In order to secure the payment obligations (the "Obligations") of the Company under the Promissory Note and under Section 4.1.2 hereof, the Company shall deliver to Hicks within thirty (30) days of the Closing the Letter of Credit in the face amount of \$1,800,000.00. The face amount of the Letter of Credit shall be reduced from time to time by the amount of any principal and interest actually paid by the Company to Hicks pursuant to the Promissory Note or by the amount of compensation actually paid by the Company to Hicks pursuant to Section 4.1.2 hereof. The parties agree to take all actions necessary to cause the Letter of Credit to be reduced as provided herein. The amount of any fees and costs payable to the issuing bank regarding the Letter of Credit (the "L/C Fees") shall be paid by the Company but seventy-five percent of such amount for any years after the first year of the Letter of Credit shall be deducted from the amount of principal and interest payments due under the Promissory Note. The Company shall deliver to Hicks reasonable evidence of the amount of such fees and costs regarding the Letter of Credit with any payments made under the Promissory Note. Notwithstanding anything herein to the contrary, should the Company default in the payment of any of its Obligations and Hicks is forced to draw on the Letter of Credit, the Company shall be responsible for 100% of the L/C Fees for a portion of the Letter of Credit equal to the amount of the defaulted Obligations.

Notwithstanding anything to the contrary contained herein, in the Letter of Credit or in the Promissory Note, Hicks may not draw against the Letter of Credit unless (i) the Company is in default in payment of any of the Obligations and any applicable grace period or cure period has expired, and (ii) Hicks has delivered to the Company written notice of his intent to draw against the Letter of Credit at least eight (8) days prior to the date of such drawing. To the extent the Company has obtained the permission of an appropriate court and pursuant to Section 7.3 has set off against payments due to Hicks, Hicks shall not have the right to draw against the Letter of Credit for the amount of such setoff. Hicks acknowledges and agrees that any setoff which complies with Section 7.3 shall not be considered a default hereunder or under the Promissory Note.

ARTICLE VIII

[OMITTED]

ARTICLE IX

GENERAL PROVISIONS

9.1 Survival. All representations and warranties made by any party to this Agreement shall survive the Closing.

9.2 Construction. All parties have participated in the drafting of this Agreement through their respective counsel. None of the language of this Agreement will be presumptively construed in favor or against one or more of the parties.

9.3 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered

by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case marked "PERSONAL AND CONFIDENTIAL" to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

If to Hicks:
Mr. David L. Hicks
7463 Cottage Oak Drive
Portage, MI 49002

With copy to:
Mr. Robert J. Jonker
Warner Norcross Judd LLP
111 Lyon St. NW
Grand Rapids, MI 49503
Fax: (616) 752-2500

If to the Company or a Shareholder:
Crystal Radio Group, Inc.
4154 Jennings Dr.
Kalamazoo, MI 49001
Fax: (616) 344-4223

With copy to:
Mr. W. Jack Keiser
Miller Johnson Snell & Cummiskey
425 W. Michigan Ave.
Kalamazoo, MI 49007
Fax: (616) 226-2951

Receipt of the copy of the notice by counsel shall not be deemed sufficient notice by itself.

9.4 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the parties exclusively in the courts of the State of Michigan, County of Kalamazoo, or, if it has or can acquire jurisdiction, in the United States District Court for the Western District of Michigan, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to the preceding sentence may be served on any party anywhere in the world.

9.5 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the Agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

9.6 Assignments; Successors, and No Third-Party Rights. No party may assign any of its rights under this Agreement without the prior consent of the other parties which consent shall not be unreasonably withheld. This Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. If

Hicks dies before the Company's obligations pursuant to this Agreement and the Promissory Note have been paid in full, all such obligations of the Company shall instead be delivered at the time when such obligations become payable, to the beneficiary designated by Hicks in a written designation on file with the Company at the time of death or, if there is no such designation, to Hicks' estate. Nothing expressed or referred to in this Agreement will be construed to give any person or entity other than the parties referenced in this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties referenced in this Agreement and their successors and assigns.

9.7 **Time of Essence.** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

9.8 **Governing Law.** This Agreement will be governed by and construed under the laws of the State of Michigan, without regard to conflicts of law principles.

9.9 **Counterparts.** This Agreement may be executed in one or more identical counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

This Settlement and Stock Purchase Agreement is signed as of the date first written above.



DAVID L. HICKS

CRYSTAL RADIO GROUP, INC.

By 
Its PRESIDENT



- August 26, 1997

P.O. Box 487
Elkhart, IN 46515
219-294-1861

COPY

HICKS BROADCASTING
OF INDIANA L.L.C.

Robert L. Jamieson
Vice President
Commercial Banking Division
1st Source Bank
P.O. Box 1602
South Bend, Indiana 46634

Dear Bob:

Per Dave Hicks' request, attached are WRBR Radio's most recent financial statement. If you have any questions, please contact Dave Hicks or me.

Sincerely,



Robert A. Watson
Secretary-Treasurer

RAW/md

Attachments

Federal Communications Commission	
Report No. <u>MM 98-66</u>	Exhibit No. <u>54</u>
Presented by <u>Path Kinder</u>	
Disposition	Identified <u>X</u>
	Received <u>11-9-98</u>
	Rejected _____
Reporter <u>G. M. / h-s</u>	
Date <u>10-26-98</u>	

PATH01615



OPERATING AGREEMENT

OF

HICKS BROADCASTING OF INDIANA, L.L.C.

AN INDIANA LIMITED LIABILITY COMPANY

THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, OR THE SECURITIES ACT OF ANY STATE. THE MEMBERSHIP INTERESTS MAY NOT BE RESOLD, TRANSFERRED, OR ASSIGNED BY A MEMBER UNLESS A MEMBER HAS COMPLIED WITH THE TERMS OF THIS AGREEMENT, INCLUDING THE REQUIREMENT THAT A MEMBER (i) OBTAIN THE WRITTEN CONSENT OF ALL MEMBERS AND, IF REQUIRED BY THE MEMBERS, (ii) DELIVER TO THE COMPANY AN OPINION OF COUNSEL ACCEPTABLE TO THE MEMBERS THAT REGISTRATION IS NOT REQUIRED UNDER APPLICABLE FEDERAL AND STATE SECURITIES LAWS, THAT ALL OF THE PROVISIONS OF THIS AGREEMENT HAVE BEEN COMPLIED WITH, AND THAT THE SALE OF MEMBERSHIP INTERESTS, TOGETHER WITH ALL OTHER SALES OF MEMBERSHIP INTERESTS WITHIN THE PRECEDING TWELVE (12) MONTHS WILL NOT RESULT IN THE TERMINATION OF THE COMPANY PURSUANT TO SECTION 708 OF THE INTERNAL REVENUE CODE.

Federal Communications Commission	
Report No.	<u>NM 98-66</u> Exhibit No. <u>65</u>
Presented by	<u>Patricia Funder</u>
Disposition	Identified <u>X</u>
	Received <u>X 11-4-98</u>
	Rejected _____
Reporter	<u>G. Holmes</u>
Date	<u>11-4-98</u> <u>10-26-98</u>

HICKS 518

HICKS 000520

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OPERATING AGREEMENT
OF
HICKS BROADCASTING OF INDIANA, L.L.C.

THIS OPERATING AGREEMENT (the "Agreement") is made effective the ____ day of _____, 1994 by and among DAVID L. HICKS, SARAH DUNKLE, ALEC DILLE AND JOHN F. DILLE IV, each of whom shall hereafter be admitted as a Member in a limited liability company to be formed in accordance with the provisions of the Act. The Members hereby agree as follows:

ARTICLE 1.
FORMATION; TERM

1.1. **Formation.** After execution of this Agreement, the Members shall cause to be prepared and filed with the Indiana Secretary of State Articles of Organization in such form as the Members shall determine.

1.2. **Term of Company.** The Company shall be formed at the time of the filing of the initial Articles of Organization of the Company in the office of the Indiana Secretary of State (or at any later time specified in the initial Articles of Organization) and shall continue until December 31, 2035 unless sooner terminated as hereinafter provided.

ARTICLE 2.
NAME OF COMPANY; OFFICES; PURPOSE

2.1. **Name.** The name of the company shall be HICKS BROADCASTING OF INDIANA, L.L.C.

2.2. **Offices; Registered Agent.**

(a) **Principal Office.** The principal office of the Company shall be located at _____, Elkhart, Indiana 46516, or at such other place within or without the State of Indiana as may be determined by the Members. The Company shall maintain at its principal office: (i) a current list of the full name and last known mailing address of each Member and all former Members in alphabetical order; (ii) a copy of the Articles of Organization and all certificates of amendment thereto; (iii) copies of the Company's federal, state and local tax returns and reports, if any, for the three (3) most recent years; (iv) copies of this Agreement, any amendments to this Agreement, and any operating agreements no longer in effect; (v) copies of any financial statements of the Company for the three (3) most recent years; (vi) a current list showing the amount of cash and a description and a statement of the value of other property or services which each Member agreed to contribute to the Company and actually contributed to the Company; and (vii) the books and records of the Company.

(b) **Other Offices.** The Company may also have such other offices, within or without the State of Indiana, as may from time to time be determined by the Members.

(c) **Registered Agent and Office.** The initial registered agent of the Company shall be David L. Hicks, who is a resident of the State of Indiana. The business address of the initial registered agent, which shall be the Company's registered office, is _____, Elkhart, Indiana 46516. The registered agent may be changed from time to time as may be determined by the Members.

2.3. **Purpose.** The purpose and business of the Company shall be to acquire and conduct the business of a radio station and all incidental activities, including but not limited to acquiring, mortgaging and other activities relating to the Property. The Company may also undertake any other lawful act or engage in any other business or venture permitted under the Act as may from time to time be determined by unanimous consent of the Members. All property originally brought into the Company, subsequently acquired by purchase or otherwise by the Company, or with Company funds shall be Company property, and no Member, individually or otherwise, shall have any ownership or any other interest in such property.

**ARTICLE 3.
CERTAIN DEFINED TERMS**

Capitalized terms used in the body of this Agreement and in Exhibit B attached hereto but not defined herein or therein shall have the meanings ascribed to them in Exhibit A attached hereto and incorporated herein.

**ARTICLE 4.
CAPITAL OF THE COMPANY; LOANS**

4.1. Initial Capital Contributions. Upon formation of the Company, each Member shall contribute to the capital of the Company the amount of cash or property set forth opposite his or her name under the heading "Capital Contribution" on Schedule I attached hereto in consideration of and as payment for his or her interest in the Company. The Book Value and adjusted tax basis of contributions of property are also set forth on Schedule I.

4.2. Loans.

(a) Third-Party Loans. If, at any time or from time to time, additional capital is necessary to pay the debts and obligations or maintain the financial integrity of the Company, the Members shall, in the following order and in the name and on behalf of the Company, endeavor to borrow the necessary funds from commercial banks, lending institutions and/or other persons:

(i) first, on an unsecured basis; and

(ii) second, on a secured basis with the borrowings secured by the Property and other assets of the Company.

(b) Loans From Members. In the event the Members are unable to arrange third-party financing as herein contemplated, then any one or more of the Members may, but shall not be obligated to, advance the necessary funds upon the unanimous consent of the Members. All amounts so advanced shall be treated as loans to the Company for all purposes and shall bear interest at the Prime Rate, as such rate may be adjusted from time to time, plus one percent (1%) from the date such funds are advanced until the date the loan is repaid in full. Loans to the Company made by Members under this Article are in addition to and not in lieu of any Additional Capital Contributions that may be required under Article 4.3(a) hereof.

4.3. Additional Capital Contributions.

(a) Obligation of Members. If, and to the extent that, the Members are unable to obtain financing on reasonably acceptable terms and conditions, and it is determined by the unanimous agreement of the Members that additional contributions are required for the proper operation of the Company's business, then, unless otherwise agreed by the Members, each Member shall be obligated to make Additional Capital Contributions in amounts proportionate to their respective Members' Percentages. Any Additional Capital Contributions required hereunder shall be made by each Member within fifteen (15) days after the date of notice from the Company requesting such Additional Capital Contributions.

(b) Default in Obligation. If a Member fails to make any Additional Capital Contribution in the manner and time required by Article 4.3(a), such Member shall be a "Defaulting Member." Upon the occurrence of a default, the Company may elect to pursue any one or more of the following remedies:

(i) Pursue such legal or equitable remedies as are available to it against the Defaulting Member, including, without limitation, the institution of a suit or suits at law or in equity, and, in such event, the Defaulting Member shall be required to compensate the Company for costs incurred and damages suffered by reason of such default, including reasonable attorneys' fees.

(ii) Redeem the interest of the Defaulting Member for an amount equal to seventy-five percent (75%) of the current balance of such Defaulting Member's Capital Account.

(iii) Permit the nondefaulting Members to make the Defaulting Member's share of the required Additional Capital Contribution. If one or more Members desires to make the required Additional Capital Contribution, they shall be entitled to make such additional contributions in proportion to their respective Members' Percentages, unless they agree otherwise. The Defaulting Member's Members' Percentage shall be reduced to a percentage amount determined by multiplying the Defaulting Member's Members' Percentage by a fraction (A) the numerator of which is the Defaulting Member's Capital Contributions as of the date of default, and (B) the denominator of which is the Capital Contributions made by the Defaulting Member plus the Defaulting Member's Additional Capital Contribution. Any reduction in a Defaulting Member's Members' Percentage shall be reallocated to the nondefaulting Members who make the Defaulting Member's share of the Additional Capital Contribution in proportion to the manner in which they made such Additional Capital Contribution to the Company.

Any or all of the foregoing remedies may be exercised simultaneously and the exercise of any one shall not constitute an election; *provided, however*, that the Company shall not be entitled to recover more than the unpaid Additional Capital Contribution, interest thereon, and damages and expenses suffered or incurred by the Company in connection with or as a result of the failure of a Member to make the required Additional Capital Contribution.

4.4. **Capital Accounts.** The Company shall maintain a Capital Account for each Member as set forth in Section 10 of Exhibit A hereof.

4.5. **Liability of Members.** No Member shall be required to make any contribution to the capital of the Company except as set forth in this Article 4 nor shall any Member, in his capacity as such, be bound by, or personally liable for, any expense, liability, or obligation of the Company except to the extent of his interest in the Company and the obligation to return distributions made to him under certain circumstances as required by the Act.

4.6. **Return of Contribution; Interest.** No Member shall have any right to the return or withdrawal of any Capital Contribution until termination of the Company, unless such return or withdrawal is consented to by all other Members or as otherwise provided for herein. No Member shall have the right to demand and receive a distribution from the Company in a form other than cash unless such distribution is consented to by all other Members. No interest shall be paid on any Capital Contributions.

ARTICLE 5. ALLOCATIONS AND DISTRIBUTIONS

5.1. Cash From Operations.

(a) **Priority of Distributions.** Except as otherwise provided in Article 5.1(b) below, Cash from Operations received by the Company during any year of the Company or part thereof shall be distributed as follows:

(i) First, to the discharge, to the extent required by any lender or creditor, of any debt or obligation of the Company, including loans or advances from Members;

(ii) Second, to the creation of any reserves which the Members may deem reasonably necessary for the payment of contingent liabilities of the Company; and

(iii) Third, the balance, if any, to the Members in accordance with their respective Members' Percentages.

(b) Distributions for Taxes. Except as otherwise prohibited by this Agreement or by law, quarterly distributions of Cash from Operations shall be made to the Members in an amount, for each taxable year of the Company, which is not less than the federal and state income taxes payable by the Members on account of the income of the Company which is taxable to them, assuming that all such income will be taxed at the highest marginal rate applicable to the type of income involved. To the extent practicable, all quarterly distributions made pursuant to this Article 5.1(b) shall be made at least fifteen (15) days before quarterly federal income tax estimated payments are due.

(c) Timing of Distributions. Cash from Operations distributable to the Members as provided in Article 5.1(a) shall be distributed not less frequently than annually within ninety (90) days after the last day of the year in which the Company received the amounts to be distributed, but such distributions may be made at such earlier time or times as the Members may reasonably determine.

5.2. Cash From Sales and Cash from Financings.

(a) Cash From Financings. Cash from Financings shall be distributed as follows:

(i) First, to the discharge, to the extent required by any lender or creditor, of any debt or obligation of the Company, including loans or advances from Members;

(ii) Second, to the creation of any reserves which the Members may deem reasonably necessary for the payment of contingent liabilities of the Company;

(iii) The balance, if any, shall be distributed to the Members as follows:

(A) First, to the Members, on a Pro Rata Basis, an amount equal to the Aggregate Adjusted Capital Contributions of the Members on the date of the distribution to the Members; and

(B) Second, the balance, if any, to the Members in accordance with their respective Members' Percentages.

(b) Cash From Sales. Cash from Sales shall be distributed as follows:

(i) First, to the discharge, to the extent required by any lender or creditor, of any debt or obligation of the Company, including loans or advances from Members;

(ii) Second, to the creation of any reserves which the Members may deem reasonably necessary for the payment of contingent liabilities of the Company; and

(iii) Third, if any one or more Members has a positive balance in his Capital Account, then among the Members in the proportion that the positive balance of each Member's Capital Account bears to the aggregate of such positive balances after the distribution of Cash from Operations, Cash from Financings and any previous distributions of Cash from Sales and allocations of Net Income, Net Losses, and Net Gains and Net Losses from Capital Transactions.

(c) Timing of Distributions. Cash from Sales and Cash from Financings distributable to the Members as provided in Articles 5.2(a) and 5.2(b) shall be distributed not less frequently than annually within ninety (90) days after the last day of the year in which the Company receives the amounts to be distributed, but such distributions may be made at such earlier time or times as the Members may reasonably determine. In the event of a sale of a capital asset in which a portion of the proceeds is deferred, the principal amount of the purchase price, solely for the purposes of calculating distributions of Cash from Sales and allocations of Net Gains and Net Losses from Capital Transactions, shall be allocated among the Members in the same proportions as if cash in such amount had been distributed, and any payments received by the Company in respect of such obligation (including, by example and not limitation, installments of principal).

after deducting expenses of the Company and reserves which the Members deem reasonably necessary, shall be distributed among the Members in the amounts they would have received had the Company been liquidated as of the date of sale and the allocable portions of the instrument evidencing the deferred payment obligation been distributed among the Members.

5.3. Restrictions on Distributions. Notwithstanding anything to the contrary contained herein, no distributions shall be made to the Members if, after giving effect to such distribution, the Company would not be able to pay its debts as they become due in the usual course of business or if the Company's total assets would be less than the sum of its total liabilities except liabilities to Members on account of their Capital Contributions.

5.4. Net Income and Net Losses. After giving effect to the special allocations set forth in Exhibit B attached hereto and incorporated herein, if applicable, and subject to the other allocation rules set forth in Exhibit B, Net Income and Net Losses (except Net Gains and Net Losses from Capital Transactions) shall be allocated to each Member in accordance with the Members' respective Members' Percentages.

5.5. Net Gains and Net Losses from Capital Transactions. After giving effect to the special allocations set forth in Exhibit B, if applicable, and subject to the other allocation rules set forth in Exhibit B, Net Gains and Net Losses from Capital Transactions shall be allocated as set forth below.

(a) Net Gains. Net Gains from Capital Transactions shall be allocated as follows:

(i) First, proportionately among the Members who have negative Capital Accounts until all negative Capital Accounts shall have been increased to zero;

(ii) Second, to the Members, on a Pro Rata Basis, an amount necessary to cause the Capital Accounts of the Members to be equal to the Members' Aggregate Adjusted Capital Contributions;

(iii) Third, to the Members in accordance with their respective Members' Percentages.

(b) Net Losses. Net Losses from Capital Transactions shall be allocated:

(i) First, to the Members, on a Pro Rata Basis, an amount necessary to cause the Capital Accounts of the Members to be equal to their Aggregate Adjusted Capital Contributions;

(ii) Second, proportionately among the Members who have a positive balance in their Capital Accounts until all Capital Accounts have been reduced to zero; and

(iii) Third, the balance, if any, to the Members in accordance with their respective Members' Percentages.

5.6. Members Bound. The Members are aware of the income tax consequences of the allocations made by this Article 5 and Exhibit B and agree to be bound by the provisions hereof in reporting their shares of Company income and loss for income tax purposes.

5.7. Tax Elections. The Members shall make such elections and shall take such other action as the Members believe necessary: (a) to extend the statute of limitations for assessment of tax deficiencies against the Members with respect to any adjustment to the Company's federal and state income tax returns; (b) to cause the Company and the Members to be represented before the Internal Revenue Service, any other taxing authorities or any courts in matters affecting the Company and the Members; and (c) to cause to be executed any agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company or the Members. All elections required or permitted by the Company under the Code shall be made by the Members in such manner as will be most advantageous to all Members and the Company. In the event of the distribution of property by the Company within the meaning of Section 734 of the Code, or the transfer of an interest in the Company within the meaning of Section 743 of the Code, the Members may elect to adjust the basis of the Company property pursuant to Sections 734, 743 and 754 of

the Code. Any Members affected by such election shall supply the information as may be required to make, or give effect to, such elections by the Company.

5.8. **Tax Matters Member.** David L. Hicks is hereby specifically authorized to act as the "Tax Matters Member" under the Code and in any similar matter under state law, with full power and authority to act on behalf of the Company and the Members in such capacity.

ARTICLE 6. MANAGEMENT AND OPERATION OF THE BUSINESS

6.1. Management of the Company.

(a) Management by Members. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Members. Except as otherwise provided herein, all decisions and determinations regarding the operation of the Company shall be made by a Majority in Interest of the Members. The Members shall be under no duty to devote their full time to the business of the Company, but shall devote only such time as they may deem necessary to conduct the Company's business and to operate and manage the Property in an efficient manner.

(b) Designation of Officers and Other Agents. The Members shall have the right to delegate authority for the day-to-day operations of the Company to a Member or another individual, who may be designated as the President of the Company, or, if a Member, as Managing Member. The Members may also appoint one or more Members or other individuals to act as officers or other specified agents of the Company, with such titles or other designations as the Members may determine. Any such officer or other agent so appointed shall have such authority, and shall carry out such duties and responsibilities, as may directed by the Members and shall serve in such position until resignation or removal, with or without cause, by the Members. Any officer or other designee who is a Member shall automatically be removed from such office or position upon the occurrence of an Event of Dissociation with respect to such Member or upon transfer by such Member of all of his interest in the Company.

6.2. **Compensation.** Except to the extent authorized by the Members, no Member shall be entitled to receive any salary or draw for services rendered in connection with the management and operation of the Company. However, nothing contained herein shall be deemed to prohibit a firm, corporation or association of which any Member is a member, employee, director, officer or stockholder or an individual to whom a Member is related by blood or marriage from receiving compensation for services rendered to the Company.

6.3. **Expenses of Members.** The Members may charge to the Company all ordinary and necessary costs and expenses, direct and indirect, attributable to the activities, conduct and management of the business of the Company. The costs and expenses to be borne by the Company shall include, but are not limited to, all expenditures incurred in the acquisition, financing, operation, refinancing and disposition of the Property, legal and accounting fees and expenses, taxes levied on the Property, salaries of employees of the Company, insurance premiums and interest.

6.4. Restrictions on Authority.

(a) Acts Requiring Majority Approval. In addition to any other acts which may be prohibited or restricted by this Agreement or by law, no Member or officer or other agent of the Company may, without the consent of a Majority in Interest of the Members:

(i) Refinance any indebtedness of the Company;

(ii) Sell, transfer, assign, pledge, lease or otherwise convey all or any part of the
Property;

(iii) Make any expenditure or incur any indebtedness in excess of _____
Thousand Dollars (\$____,000) or enter into any contract or agreement with a term of more than one
(1) year;

(iv) Institute actions at law or in equity; or

(v) Appoint officers or agents (other than the Members) with authority to act on behalf
of, and to bind, the Company.

(b) Acts Requiring Unanimous Approval. In addition to any other acts which may be prohibited or
restricted by this Agreement or by law, no Member or officer or other agent may, without the unanimous consent of the
Members:

(i) Admit any person or entity as a Member in the Company;

(ii) Do any act in contravention of this Agreement or the Articles of Organization;

(iii) Do any act which would make it impossible to carry on the ordinary business of
the Company; *provided, however,* that this requirement shall not be construed so as to require the
unanimous consent of the Members for the sale, transfer, assignment, pledge, lease or conveyance of all
or any portion of the Property;

(iv) Confess a judgment against the Company;

(v) Possess or in any manner deal with the assets of the Company or assign the rights
of the Company in the assets of the Company for other than Company purposes;

(vi) Perform any act (other than an act required by this Agreement or any act taken
in good faith reliance upon counsel's opinion) which would, at the time such act occurred, subject any
Member to liability as a general partner in any jurisdiction;

(vii) Commingle the funds of the Company with the funds of any other person or
entity; or

(viii) Effectuate a merger of the Company under the Act.

6.5. **Member Meetings.** A meeting of the Members to consider any matter may be called by any Member or
Members who hold more than ten percent (10%) of the Members' Percentages. Such meeting may be called by such
Members by giving notice to all Members of the time, date, location and purpose of the meeting. Any meeting called
hereunder shall be held on a date not earlier than five (5) days nor later than sixty (60) days after delivery of the notice
of the meeting. Notice of any meeting may be waived in writing by a Member before or after the date and time stated
in the notice of the meeting or by attendance by the Member, without objection, at such meeting.

6.6. **Member Consents.** Any consent of a Member required or permitted by this Agreement may be given as
follows:

(i) By a written consent, signed and dated by the consenting Member and received by
the Company at or prior to the doing of the act or thing for which the consent is solicited; or

(ii) Except to the extent the written consent of the Members is required under the terms
of this Agreement, by the affirmative vote by the consenting Member to the doing of the act or thing for
which the consent is solicited at any meeting called pursuant to Article 6.5 to consider the doing of such
act or thing.

6.7. **Reserves.** The Members may, from time to time, cause the Company to create reserves in such amounts and for such purposes as they determine to be in the best interests of the Company.

6.8. **Indemnification and Exculpation of Members.** No Member, officer or other designated agent of the Company shall be liable or accountable in damages or otherwise to the Company or any Member for any action performed or omitted in good faith on behalf of the Company within the scope of the authority conferred herein and for a purpose reasonably believed by such Member, officer or agent to be in the best interests of the Company, unless such action or omission was a result of fraud or constituted willful misconduct or gross negligence. The Members, officers and other designated agents may consult with such legal or other professional counsel as they may select. Any action taken or omitted by a Member, officer or other designated agent in good faith reliance on, and in accordance with, the opinion or advice of such counsel shall be full protection and justification with respect to the action taken or omitted. The Company shall indemnify and save harmless each Member, officer or designated agent from any loss, damage or expense (including reasonable attorneys' fees) incurred by reason of any act taken or omitted for and on behalf of the Company and in furtherance of its interests unless such act constituted gross negligence, willful misconduct or a breach of this Agreement.

ARTICLE 7. TRANSFER AND WITHDRAWAL

7.1. **Transfer or Withdrawal.** Except as provided in this Agreement or with the consent of all Members, no Member shall have the right or power to pledge, mortgage, sell, assign, gift or otherwise dispose of (whether voluntarily or by operation of law) all or any portion of his interest in, or resign or withdraw from, the Company. Any action in violation of the terms of this Agreement shall be null and void as against the Company.

7.2. **Event of Dissociation.** Upon the occurrence of an Event of Dissociation, as defined in Exhibit A of this Agreement, with respect to a Member, the Company shall be dissolved unless all of the remaining Members, within ninety (90) days after the occurrence of the Event of Dissociation, agree in writing to continue the business of the Company.

7.3. **Transfer on Death, Incapacity, Termination, or Bankruptcy of a Member.**

(a) **Transfer to Successor.** If the business of the Company is continued pursuant to Article 7.2 after the death, Bankruptcy, termination of existence, or Incapacity of a Member, then, except as otherwise provided in Article 7.3(b) hereof, such Member's estate, successor-in-interest or legal representative shall immediately succeed to such Member's interest in the Company, including the Member's share of Net Income, Net Losses, Net Gains and Net Losses from Capital Transactions, Cash from Operations, Cash from Sales, Cash from Financings and Liquidation Proceeds, and shall be deemed the Assignee of the deceased, Bankrupt, terminated, or Incapacitated Member. Subject to the provisions set forth in Article 7.4 below, the legal representative may assign such interest, and the Assignee thereof may become a substitute Member if the requirements of Article 7.6 are satisfied. The estate, successor-in-interest or legal representative, as the case may be, of the deceased, Bankrupt, terminated, or Incapacitated Member shall be liable for, and shall be bound by, all of such Member's obligations under this Agreement, including the Member's financial obligations, if any, under Article 4 hereof and the restrictions on transfer set forth in Article 7.1 hereof. In no event, however, shall the estate, legal representative or successor become a substitute Member unless the requirements of Article 7.6 are satisfied.

(b) **Mandatory Buy-Sell Obligations.**

(i) If any Member should become Bankrupt, should die or suffer an Incapacity, or if any other event should occur which would result in a transfer of all or any portion of an interest in the Company held by such Member, then such Member, or his estate or legal representative, shall be required to sell all of the interest then held by such Member to the Company or the other Members at the price and on the terms and conditions set forth in Article 7.3(h)(iv).

(ii) The Company shall have an option to purchase all or any portion of the interest to be sold pursuant to Article 7.3(b)(i), which option shall become exercisable as of the date the Company

receives notice of the event giving rise to the obligation to sell. The Company shall give written notice of its intent to exercise such option to the Member required to sell his interest (or to his estate or legal representative), and to all other Members, within sixty (60) days after the date upon which the Company's option becomes exercisable. If the Company elects to buy all or any portion of the interest to be sold pursuant hereto, the purchase shall be closed within thirty (30) days after the date upon which the Company's option becomes exercisable.

(iii) If the Company fails to exercise its option to purchase all of the interest to be sold within the period set forth in Article 7.3(b)(ii), then the other Members of the Company shall be obligated to purchase all of the interest not purchased by the Company, such purchases to be pro rata in proportion to the Members' Percentages held by the other Members unless they agree otherwise. Purchases by the other Members pursuant hereto shall be closed within sixty (60) days after the date the Company's option to purchase the interest expires.

(iv) The purchase price for the sale of a Member's entire interest in the Company to the Company or the other Members pursuant to this Article 7.3(b) shall be an amount equal to the selling Member's Capital Account balance as of the date the purchase is closed. The portion of the purchase price to be paid by each of the Company and the respective purchasing Members shall be pro-rated in accordance with the percentage of such interest being acquired by such parties. The purchase price shall be payable to the selling Member or his estate or legal representative, as the case may be, in five (5) equal annual installments, with the first such installment being due and payable on the first anniversary of the closing date. Unpaid portions of the purchase price shall bear interest at six percent (6%) per annum (or at any higher rate which may be necessary to avoid the imputation of interest under the applicable provisions of the Code and other relevant U.S. income tax authority existing at that time), which interest shall be payable annually in arrears on the occasions of the due dates of the principal payments. Company and/or any Members purchasing any portion of the interest shall have the right to prepay the balance of the unpaid purchase price at any time or in any amount without penalty, although interest due to the date of payment shall be paid. In the event of the default of any party to pay any installment of principal or interest, the unpaid principal balance owed by such defaulting party, plus interest, shall immediately become due and payable at the option of the selling Member or his estate or legal representative, as the case may be.

(v) The closing of the redemption or sale of the interest of a Member pursuant to this Article 7.3(b) shall take place at the principal office of the Company at such time and upon such date within the period specified herein as the Company shall specify in a notice to the selling Member or his estate or legal representative, as the case may be. At the closing, the buyer(s) shall deliver to selling Member or to his estate or legal representative, as the case may be, the consideration to be paid for the selling Member's interest, and the selling Member or his estate or legal representative, as the case may be, shall deliver such instruments of assignment as may be necessary or advisable to transfer the interest to the buyer(s), free and clear of all liens, claims or other encumbrances. Any transfer taxes or fees payable in connection with the transfer of the interest shall be solely the liability and obligation of the selling Member.

7.4. Sale, Assignment, or Other Voluntary Transfer of Interest.

(a) Permitted Transfers. A Member, or an Assignee thereof, may sell, assign, gift, or otherwise transfer all or any part of his interest in the Company to any person who is, immediately prior to such transfer, a Member in the Company.

(b) Consent to Transfer; Right of First Refusal. Except as provided in Article 7.4(a), no Member, or Assignee thereof, shall sell, assign or otherwise transfer any or all of his interest in the Company without: (i) obtaining the written consent of a Majority in Interest of the Members and (ii) giving notice to the Company and to all other Members of his intention or desire to make a sale, assignment or other transfer. Such notice from a Member desiring to

make a sale, assignment or other transfer shall set forth a sales price and all other terms and conditions of the proposed sale, assignment or transfer, with the name and address of the purchaser (if applicable). For a period of sixty (60) days after such notice is given, the Company, the Company and the other Members, or the other Members alone, in the order listed, shall have the option to elect to buy all, but not less than all, of the interest offered by the offering Member. Such option shall be exercised by giving notice thereof to the offering Member, the Company and the other Members. The purchase shall be closed not more than sixty (60) days after expiration of the period during which the option may be exercised. If the Company fails to exercise its option with respect to the entire interest being offered, and more than one Member desires to purchase such interest, they shall be entitled to acquire such interest in proportion to the Members' Percentages held by the Members desiring to purchase such interest, unless they agree otherwise. If neither the Company nor any of the Members accept the offer and close the purchase as provided above, then for ninety (90) days thereafter and subject to receiving the consent of a Majority in Interest of the Members, the offering Member may sell, assign or otherwise transfer his interest in the Company to others at a sales price and upon other terms and conditions no less favorable to the offering Member than those set forth in the notice from the offering Member regarding his desire or intention to sell, assign or otherwise transfer an interest in the Company.

(c) Information on Proposed Assignee. Prior to consenting to any sale, assignment, or other transfer, the Members shall be assured that, among other things, the proposed Assignee is financially responsible, understands the nature of the Company, and intends to take and hold the interest transferred for investment for his own account and not for resale to others. In assuring themselves that the proposed Assignee satisfies the foregoing requirements, the Members may, at their option, require the proposed Assignee to submit such financial and other information as the Members, in their sole discretion, deem necessary or desirable. The Members shall not consent to a sale, assignment or other transfer of less than all of the interest of a Member unless, in the opinion of the Members, the Member's interest in the Company is large enough to be practicably divided.

(d) Legal Opinion. Prior to consenting to any sale, assignment, or other transfer, the Members may, at their option, require the transferor to deliver to the Company an opinion of counsel acceptable to the Members that registration is not required under applicable federal and state securities laws with respect thereto, that all of the provisions of this Agreement have been complied with and that such sale, assignment or other transfer, together with all other sales or transfers of interests in the Company within the preceding twelve (12) months, will not result in a termination of the Company pursuant to Section 708 of the Code.

7.5. Basis Adjustment. In the event of a transfer of all or part of the interest of a Member by sale or transfer in accordance with this Agreement, or on the death of a Member, at the request of any Member or the executor, administrator or other legal representative of a deceased Member, the Members may cause the Company to elect, pursuant to Section 754 of the Code, to adjust the basis of Company property as provided by Sections 734 and 743 of the Code.

7.6. Substitute Members.

(a) Admission of Assignee as a Member. The Assignee of a deceased, Bankrupt, terminated, or Incapacitated Member under Article 7.3, or an Assignee of an interest transferred in accordance with the terms of Article 7.4, may become a substitute Member subject to receiving the written consent of all of the other Members, which consent shall be within the sole discretion of the Members and shall be conditioned upon:

(i) The instrument of sale, assignment, or other transfer being in form and substance satisfactory to the Members:

(ii) The Assignee's written acceptance and adoption of all the terms, provisions and obligations under this Agreement, as the same may have been amended:

(iii) The Assignee paying to the Company all reasonable expenses connected with his admission, including, but not limited to, the cost of preparing any amendments to this Agreement to effect such admission; and

(iv) The satisfaction of such other conditions and the execution and acknowledgment of such instruments, documents, certificates, or other agreements as the Members may deem necessary or desirable.

(b) Refusal to Admit. If after a transfer in accordance Articles 7.3 or 7.4, the Assignee is not admitted as a substitute Member, such Assignee shall have none of the rights of a Member, except the right to receive the Assignee's share of Net Income, Net Losses, Net Gains and Net Losses from Capital Transactions, Cash from Operations, Cash from Sales, Cash from Financings and Liquidation Proceeds. Further, a Member who has transferred his entire interest in the Company in accordance with Article 7.4 shall continue to be a Member in the Company, with all of the rights and obligations of a Member under this Agreement, until removed as a Member by the vote of a Majority in Interest of the Members or until the occurrence of an Event of Dissociation (other than removal) with respect to such Member.

(c) Obligations of Transferor Member. No Member or former Member shall be relieved of such Member's obligations to make any Capital Contributions required hereunder, or to return distributions as required by the Act, without the express prior written consent of all Members. Such consent shall be within the sole discretion of the Members, who may impose such conditions as may be deemed necessary or advisable, including, without limitation, the agreement of the transferor Member's Assignee to assume all of such transferor Member's financial obligations.

ARTICLE 8. DISSOLUTION AND TERMINATION

8.1. Dissolution of the Company.

(a) Dissolution Events. The Company shall be dissolved and its business wound up:

(i) Upon the expiration of the term set forth in Article 1.2 hereof;

(ii) Upon the unanimous determination of the Members that the Company should dissolve;

(iii) Upon the sale, exchange, forfeiture or other disposition of all or substantially all of the assets of the Company;

(iv) Upon the Bankruptcy of the Company;

(v) Except as otherwise provided in this Agreement, upon the occurrence of an Event of Dissociation with respect to a Member; or

(vi) Except as otherwise provided in this Agreement, upon the occurrence of an event, other than an Event of Dissociation, which results in the dissolution of the Company under the laws of the State of Indiana.

(b) Continuation by Consent. Notwithstanding the provisions of Article 8.1(a)(iv), (v) or (vi), the Company's business shall be continued pursuant to the terms and conditions of this Agreement if, within ninety (90) days after the occurrence of any event referred to in Article 8.1(a)(iv), (v) or (vi), all of the Members elect in writing to continue the business of the Company.

8.2. Winding Up of the Business.

(a) Articles of Dissolution. Upon the dissolution, without reconstitution, of the Company, the Members shall cause Articles of Dissolution to be prepared and filed with the Indiana Secretary of State as soon as is reasonably feasible.

(b) Distributions Upon Dissolution. Upon the dissolution, without reconstitution, of the Company, no further business shall be conducted by the Company except as necessary to wind up the affairs of the Company and to distribute its assets. The Members shall act as liquidators and shall, except as set forth in Article 8.2(c), liquidate the assets of the Company and make final distributions as provided herein. All Liquidation Proceeds shall be applied and distributed in the following order of priority:

(i) First, to the payment of the debts and liabilities of the Company (excluding any loans or advances that may have been made by any Members to the Company) and the expenses of liquidation;

(ii) Second, to the payment of any debts and liabilities of the Company owing to any Member, but in the event the amount available for such payment is insufficient to satisfy all such debts and liabilities, then to such Members in the proportion which their respective claims bear to the claims of all such Members;

(iii) Third, to the creation of any reserves which the Members may deem reasonably necessary for the payment of any contingent or unforeseen liabilities or obligations of the Company arising out of or in connection with the business and operation of the Company; and

(iv) Fourth, if one or more of the Members has a positive balance in his Capital Account, then among the Members in the proportion that the positive balance of each Member's Capital Account bears to the aggregate of such positive balances after distributions of Cash from Operations, Cash from Sales, Cash from Financings and allocations of Net Income, Net Losses, and Net Gains and Net Losses from Capital Transactions in compliance with Section 1.704-1(b)(2) of the Regulations.

(c) In-Kind Distributions. The Members may determine whether and to whom properties should be distributed in kind rather than liquidated. The value of property distributed in kind shall be determined by a qualified independent appraiser selected by the Members. Any property distributed in kind shall be treated as though the property were sold for its appraised value at the time of distribution and the cash proceeds were distributed. The difference between the appraised value of property distributed in kind and its Book Value shall be treated as Net Gains or Net Losses from Capital Transactions and shall be credited or charged to the Members' Capital Accounts in accordance with their interests in such Net Gains or Net Losses from Capital Transactions.

(d) Deficit Capital Account. Notwithstanding anything to the contrary contained herein, in the event and to the extent, following the liquidation of the Company or the liquidation of a Member's entire interest in the Company, there is a deficit in the Capital Account of any Member (after giving effect to all contributions, distributions and allocations for all taxable years, including the fiscal year or other period of the Company during which such liquidation occurs), resulting from or attributable to deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Agreement in accordance with its terms, such deficit shall not be an asset of the Company, and such Member shall not be obligated to make any Capital Contribution to bring the balance of such Member's Capital Account to zero. Any Member obligated to restore any portion of a deficit balance shall be required to do so at a time not later than the latest permissible time permitted under Treas. Reg. § 1.704-1(b)(2)(ii).

(e) Return of Contributions. No Member shall have a priority over any other Member with respect to distributions made hereunder, and distributions made in accordance with this Article 8 shall be in full satisfaction of a Member's claim against the Company for distribution and liquidation. Except as otherwise provided by law or as expressly provided in this Agreement, each Member shall look solely to the assets of the Company for the return of his Capital Contributions, and no Member shall have recourse against any other Member if the assets of the Company are insufficient to return the Capital Contributions of one or more Members after debts and liabilities owed to creditors (including any Members who are creditors) are satisfied.

(f) Time to Dissolve. A reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the discharge of liabilities to creditors so as to minimize the normal losses attendant upon such

liquidation. After the dissolution and termination of the Company, each of the Members shall be furnished with statements similar, so far as may be practicable, to those set forth in Article 11.4(b) of this Agreement prepared by the certified public accountants for the Company for the period ending with the date of termination.

8.3. **Date of Termination.** The Company shall be terminated when all of its assets have been applied and distributed in accordance with the provisions of Article 8.2. The establishment of any reserves for the payment of any contingent or unforeseen liabilities or obligations of the Company shall not have the effect of extending the term of the Company, and such reserve shall be applied and distributed in the manner otherwise provided in Article 8.2 upon the expiration of the period of such reserve.

ARTICLE 9. ENTIRE AGREEMENT; AMENDMENTS

9.1. **Full Integration.** This Agreement, including Exhibit A, Exhibit B and the Schedules hereto, sets forth the entire understanding of the parties, there being no oral or written agreements or understandings between them relating to the Company, and supersedes all previous oral or written agreements with regard to the Company. This Agreement shall not be amended, altered, changed or added to except by the written consent of all Members.

9.2. **Amendment.** Any Member may propose amendments to this Agreement by mailing to the other Members a notice describing the proposed amendment and a form to be returned by the other Members, indicating whether they consent to or disapprove of the adoption of such amendment. Such notice shall include the text of the proposed amendment, which shall have been approved in advance by legal counsel for the Company. If, within sixty (60) days after any notice proposing an amendment or amendments to this Agreement has been given, all of the Members have properly executed and returned the form indicating their consent to the proposed amendment, such amendment will become effective as of the date specified in such notice.

ARTICLE 10. RIGHTS AND REMEDIES OF MEMBERS

10.1. **Waiver of Actions.** Each Member expressly acknowledges and agrees that the parties hereto have carefully considered all matters relating to the Company and that all rights and remedies of the Members are, and shall be deemed to be, exclusively those set forth in this Agreement. No Member shall have the right or power to cause the dissolution and winding up of the Company, by court decree or otherwise, except as set forth in this Agreement. No Member shall have the right or power to bring an action for partition against the Company, or for an accounting, or for the appointment of a liquidator by judicial action. If a Member brings any action in contravention of the terms of this Article 10.1:

(i) Such Member shall pay all costs, fees and expenses incurred by the Company and the other Members in defending such action including, without limitation, attorneys' and paralegals' fees and expenses, accounting fees and expenses, and all other costs relating to the action; and

(ii) Upon the unanimous consent of the other Members, such Member shall be removed as a Member and his entire interest in the Company shall be redeemed by the Company for an amount equal to seventy-five percent (75%) of the balance of such Member's Capital Account as of the date such Member filed the action prohibited hereby.

10.2. **Attorneys' Fees.** In the event the Company or any Member finds it necessary to bring an action at law or other proceeding against a Member or the Company to enforce any of the terms, covenants and conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be entitled to recover from the other party all reasonable attorneys' fees and costs incurred by such party. In the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in such judgment as determined by the court and not by the jury.

ARTICLE 11.
BANK ACCOUNT, FISCAL YEAR, BOOKS AND RECORDS

11.1. **Bank Account.** All funds of the Company shall be deposited in the Company's name in such bank or banks, and all withdrawals therefrom shall be upon such signatures, as may from time to time be determined by the Members.

11.2. **Fiscal Year.** Both the fiscal year and taxable year of the Company shall be the calendar year. The fiscal year of the Company may from time to time be changed by the Members in accordance with the provisions of the Code.

11.3. **Books.** The Members shall keep or cause to be kept complete and accurate records and books of account, in which shall be entered fully and accurately all transactions and such other matters relating to the Company's business as are usually entered into records and books of account maintained by persons engaged in businesses of a like character. The books and records shall at all times be kept and maintained at the Company's principal office and shall be available during normal business hours for inspection and copying, at the reasonable request of and at the expense of any Member. The Company's books and records shall be prepared in accordance with such method of accounting as shall be determined by the Members.

11.4. **Annual Financial Information.**

(a) **Annual Tax Information.** Within ninety (90) days after the end of each year, the Company shall send to each person who was a Member or Assignee at any time during such year such tax information, including, without limitation, federal tax Schedule K-1 (Form 1065), as shall be reasonably necessary for the preparation by such person of his federal and state income tax returns.

(b) **Financial Statements.** Upon the written request of any Member on or before the last day of any year of the Company, within one hundred twenty (120) days after the end of such year, the Company shall prepare, or cause to be prepared, and shall send to each person who was a Member at any time during such year, financial statements for the Company, including: (i) a balance sheet as of the end of the year; (ii) a cash flow statement (based upon accrued operating results) for such year; and (iii) a statement of profit and loss for such year, none of which need to be audited, compiled, or reviewed by an independent certified public accountant. Each Member shall have the right, at his own cost and expense, to retain an independent certified public accountant to audit the books and records of the Company.

ARTICLE 12.
GENERAL PROVISIONS

12.1. **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or by overnight courier, or mailed by certified or registered mail, postage prepaid, return receipt requested. Notices to a Member shall be mailed or delivered to the address of the Member set forth on Schedule I attached hereto. Notices to the Company shall be mailed or delivered to the principal office of the Company. Members shall give notice of a change of address to the Company and the other Members in the manner provided in this Article 12.1.

12.2. **No Third Party Beneficiaries.** The provisions of this Agreement are solely for the benefit of the Members and the Company, and no creditor of any Member or of the Company shall have any rights or benefits hereunder or be entitled to rely on any provisions of this Agreement.

12.3. **Independent Ventures.** Any of the Members may engage in or possess an interest in other business ventures of every nature and description, independently or with others, and neither the Company nor any of the Members shall have any rights by virtue of this Agreement in and to such independent ventures or the profits derived therefrom.

12.4. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the Members to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

12.5. Interpretation and Governing Law. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural and the masculine gender shall include the neuter or female gender as the context may require. The Article and Section headings or titles and the table of contents shall not define, limit, extend or interpret the scope of this Agreement or any particular Article or Section. This Agreement shall be construed in accordance with the internal laws of the State of Indiana without regard to principles of conflicts of law.

12.6. Binding Effect. This Agreement and all the terms and provisions hereof shall, except as herein otherwise provided, shall inure to the benefit of the Company and the Members and shall be binding upon the Members and their respective heirs, personal and legal representatives, successors and permitted assigns.

12.7. Severability. If any of the terms and provisions of this Agreement are determined to be invalid, such invalid term or provision shall not affect or impair the remainder of this Agreement, but such remainder shall continue in full force and effect to the same extent as though such invalid term or provision were not contained herein.

12.8. Investment Representation. Each Member hereby represents to the Company that (i) he is acquiring his interest in the Company for investment purposes only, for his own account and without a view to the resale, transfer or distribution thereof and (ii) he has had access to or has received all the material facts with respect to the Company and his interest therein. Each Member understands that his interest in the Company is not being registered under any applicable federal or state securities law, in reliance upon certain exemptions thereunder, and cannot be resold unless the interest is registered under those laws or unless an exemption from registration is available. Each Member further acknowledges that the reliance of the Company upon such exemptions from registration is predicated upon the foregoing representations.

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

MEMBER:

David L. Hicks

MEMBER:

John F. Dille IV

MEMBER:

Sarah Dunkle

MEMBER:

Alec Dille

JST06002

SCHEDULE I

CAPITAL CONTRIBUTIONS AND MEMBER PERCENTAGES

The capital contributions of the Members and the Member's Percentages are as set forth below.

<u>Member</u>	<u>Capital Contributions</u>	<u>Member's Percentages</u>
David L. Hicks	\$ _____	51%
Sarah Dunkle	\$ _____	16.33
Alex Dille	\$ _____	16.33
John F. Dille IV	\$ _____	16.33

EXHIBIT A
TO OPERATING AGREEMENT
OF
HICKS BROADCASTING OF INDIANA, L.L.C.
CERTAIN DEFINED TERMS

1. "Act" means the Indiana Business Flexibility Act, IND. CODE § 23-18-1-1, *et seq.*, as the same may be amended from time to time, or any successor legislation.

2. "Additional Capital Contributions" means any cash contributions to the capital of the Company required to be made by a Member pursuant to the provisions of Article 4.3 of this Agreement.

3. "Adjusted Capital Account Deficit" means, with respect to any Member or Assignee, the deficit balance, if any, in such Member's or Assignee's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member or Assignee is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to the penultimate sentence of Treas. Reg. § 1.704-2(g)(1) or would be deemed obligated to restore if Member Nonrecourse Deductions were treated as Nonrecourse Deductions; and

(b) Debit to such Capital Account the items described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6).

This definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

4. "Adjusted Capital Contributions" means all Capital Contributions made by a Member or his predecessor-in-interest on or by a particular date minus all Cash from Sales, Cash from Financings and the value of any property distributed to such Member or his predecessor-in-interest on or by such date.

5. "Aggregate Adjusted Capital Contributions" means the aggregate or total of the Adjusted Capital contributions of the Members or their respective predecessors-in-interest on or by a particular date.

6. "Agreement" means this Operating Agreement and all Exhibits and Schedules hereto, as the same may be amended from time to time.

7. "Assignee" means the assignee or transferee of an interest in the Company, assigned or transferred by a Member in accordance with the provisions of Article 7 of this Agreement.

8. "Bankruptcy" or "Bankrupt" means, with respect to any person, including the Company or any of the Members, that such person has made an assignment for the benefit of creditors; filed a voluntary petition in bankruptcy; been adjudged a bankrupt or insolvent, or had entered against such person an order of relief in any bankruptcy or insolvency proceeding; filed a petition or an answer seeking for such person any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; filed an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of such nature; sought, consented to, or acquiesced in the appointment of a trustee, receiver, or liquidator of such person or of all or any substantial part of his properties; one hundred twenty (120) days have elapsed after the commencement of any proceeding against such person seeking reorganization, arrangement, or similar relief under any statute, law, or regulation and such proceeding has not been dismissed; or ninety (90) days have elapsed since the appointment without his consent or acquiescence of a trustee, receiver, or liquidator of such person or of all or any substantial part of his properties and

such appointment has not been vacated or stayed or the appointment is not vacated within ninety (90) days after the expiration of such stay.

9. "Book Value" means, with respect to any item of Company property as of any particular date:

(a) With respect to any item of property contributed by a Member to the capital of the Company, Book Value shall be the agreed-upon gross fair market value of such item of property as of the date such property was contributed to the Company, as adjusted for depreciation, depletion, cost recovery and amortization deductions with respect to such property computed in the manner provided in Section 29 below; and

(b) With respect to any other item of Company property, Book Value shall be its adjusted basis for Federal income taxation purposes.

10. "Capital Account" means the capital account of each Member, determined and maintained in accordance with the rules of Treas. Reg. § 1.704-1(b), as follows:

(a) There shall be credited to each Member's Capital Account: (i) the amount of each Member's cash capital contributions; (ii) the fair market value of any property contributed by the Member to the Company (net of liabilities securing such contributed property that the Company is considered to assume or take subject to under Section 752 of the Code); and (iii) allocations to the Member of Company income and gain (or items thereof), including income and gain exempt from tax and income and gain described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding income and gain described in Treas. Reg. § 1.704-1(b)(4)(i).

(b) There shall be debited to each Member's Capital Account: (i) the amount of cash distributed to the Member by the Company; (ii) the fair market value of property distributed to the Member by the Company (net of liabilities securing such distributed property that such Member is considered to assume or take subject to under Section 752 of the Code); (iii) allocations to the Member of expenditures of the Company described in Section 705(a)(2)(B) of the Code; and (iv) allocations of Company loss and deduction (or item thereof), including loss and deduction described in Treas. Reg. § 1.704-1(b)(2)(iv)(g), but excluding items described in clause (iii) of this subparagraph and loss or deduction described in Treas. Reg. § 1.704-1(b)(4)(i) or (iii).

(c) Each Member's Capital Account shall be otherwise adjusted as required by Treas. Reg. § 1.704-1(b)(2)(iv).

(d) Each Member who has more than one interest in the Company shall have a single Capital Account that reflects all such interests as required by Treas. Reg. § 1.704-1(b).

(e) The Capital Accounts of the Members shall be restated in the event that additional contributions are made to the Company, Company property is distributed to a Member, a new Member is admitted to the Company, a Member withdraws from the Company, the Company is dissolved or in any other event as the Members deem appropriate. A Capital Account restatement shall be effected in such manner and at such time as required by Section 704(b) of the Code. The Capital Accounts shall be restated by: (i) determining the fair market value of all Company assets (taking Section 7701(g) of the Code into account) as of the date of such restatement; (ii) allocating any unrealized income, gain, loss or deduction inherent in such assets (that has not been reflected previously in the Capital Accounts) among the Members as if there were a taxable disposition of such assets for their fair market value as of the date of such restatement; (iii) making any adjustment required in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(g) for allocations to the Members of depreciation, depletion, amortization and gain or loss, as computed for book purposes, with respect to such assets; and (iv) determining the Member's distributive share of depreciation, depletion amortization, and gain or loss, as computed for tax purposes.

with respect to such assets so as to take into account the variation between the adjusted tax basis and the Book Value of such property in the same manner as required by Section 704(c) of the Code.

(f) This Section 10 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with the requirements of Section 1.704-1(b) of the Regulations and shall be interpreted and applied in a manner consistent with such Regulations. If the Members determine that it is prudent to modify the manner in which the Capital Accounts, or any debits or credits to them (including, without limitation, debits or credits relating to liabilities that are secured by contributed or distributed property or that are assumed by the Company or the Members), are computed to comply with such Regulations, the Members may make such modifications; provided that such modifications are not likely to have a material effect on the amounts distributable to any Member pursuant to Article 5. The Members shall also make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Section 1.704-1(b) of the Regulations.

11. "Capital Contributions" means all cash and the value of any property or services contributed to the capital of the Company by a Member or his predecessor-in-interest.

12. "Capital Transaction" means any sale, exchange, condemnation, loss or other disposition of any capital asset of the Company.

13. "Cash from Financings" means the amount or portion of the cash received by or remaining to the Company from the proceeds of any loan made to or obtained by the Company (whether as or from new financings or the refinancing of any indebtedness of the Company) after the payment or the provision for the payment of all costs and expenses incurred by the Company in connection with such loan, and after the payments made or required to be made on any prior indebtedness of the Company or encumbrance against the Property in connection with such mortgaging or partial sale.

14. "Cash From Operations" means the excess of cash revenue from operations of the Company over cash disbursements without deduction for recovery deductions.

15. "Cash From Sales" means the amount or portion of the cash received by or remaining to the Company from the proceeds (including, without limitation, any installment, interest on installment or interest on principal in the event of an installment sale) of any Capital Transaction or from the proceeds of policies of insurance received by the Company for or as a result of damage to or destruction of the Property or other capital asset of the Company (to the extent such proceeds exceed the actual or estimated costs of repairing or replacing the Property or other assets damaged or destroyed) after the payment or provision for the payment of all costs and expenses incurred by the Company in connection with such sale or the receipt of such insurance proceeds, as the case might be, and after the payments made or required to be made on any prior indebtedness of the Company or encumbrances against the Property in connection with such event.

16. "Code" means the Internal Revenue Code of 1986, as amended (or any corresponding provision or provisions of succeeding law).

17. "Company Minimum Gain" has the same meaning as "partnership minimum gain" set forth in Treas. Reg. § 1.704-2(d).

18. "Event of Dissociation" means the occurrence of any of the following events:

- (a) The death of any Member who is an individual;
- (b) The Bankruptcy of a Member;
- (c) The Incapacity of a Member;

- (d) The dissolution and commencement of the winding up of a Member which is a partnership or limited liability;
- (e) The dissolution of a Member which is a corporation;
- (f) The distribution by any Member which is an estate of such Member's entire interest in the Company;
- (g) The termination of the trust for which a Member is acting as a Member by virtue of his position as trustee;
- (h) The resignation or withdrawal of a Member from the Company in accordance with the provisions of this Agreement; or
- (i) The removal of a Member from the Company in accordance with the provisions of this Agreement.

19. "Incapacity" or "Incapacitated" means the inability of a Member who is an individual to manage the Member's own person or property by reason of mental or physical infirmity or other incapacity. The Incapacity of Member shall be established by (a) the entry of an order or decree by a court of competent jurisdiction or (b) a written statement signed by two (2) licensed physicians (i) certifying that (A) they have examined the Member and (B) they are of the opinion that such Member is Incapacitated and (ii) representing that (A) each such physician has been certified by a recognized medical board, including the identity of such board, and (B) each such physician currently practices medicine in the county or metropolitan area in which the Member is then residing.

20. "Liquidation Proceeds" means all cash of whatever type and however derived that is held by the Company as of the date of the dissolution, without reconstitution, of the Company.

21. "Majority in Interest of the Members" means, at any time, the Members who own more than fifty percent (50%) of the Members' Percentages of all of the Members.

22. "Member Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a nonrecourse liability (as defined in Treas. Reg. § 1.704-2(b)(3)), determined in accordance with Treas. Reg. § 1.704-2(i).

23. "Member Nonrecourse Debt" has the same meaning as "partner nonrecourse debt" set forth in Treas. Reg. § 1.704-2(b)(4).

24. "Member Nonrecourse Deductions" has the same meaning as "partner nonrecourse deductions" set forth in Treas. Reg. § 1.704-2(i)(2). The amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a Company fiscal year equals the excess, if any, of the net increase, if any, in the amount of Member Minimum Gain attributable to such Member Nonrecourse Debt during that fiscal year over the aggregate amount of any distributions during that fiscal year to the Members or Assignees that bear the economic risk of loss for such Member Nonrecourse Debt to the extent such distributions are from the proceeds of such Member Nonrecourse Debt and are allocable to an increase in Member Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treas. Reg. § 1.704-2(i)(2).

25. "Members" means the persons listed on Schedule I of this Agreement as members and any person(s) admitted as a substitute Member pursuant to the provisions of Article 7 of this Agreement or any person(s) admitted as a new Member upon the unanimous consent of the Members.

26. "Members' Percentages" means the percentage interest of each Member in the Company set forth on Schedule I, as such percentages may be amended from time to time.

27. "Net Gains from Capital Transactions" and "Net Losses from Capital Transactions" mean the Net Income and Net Losses consisting of gains (including, without limitation, any interest on installment or interest on principal in the event of an installment sale) or losses, as the case may be, realized by the Company as a result of or upon any Capital Transaction or the damage or destruction of the Property or other capital asset of the Company.

28. "Net Income" or "Net Loss," means the Company's taxable income or taxable loss for Federal income taxation purposes as determined by the accountants then employed by the Company in accordance with Section 703(a) of the Code, with the items required to be separately stated by Section 703(a)(1) of the Code combined into a single net amount; provided, however, that in the event the taxable income or taxable loss of the Company for such fiscal year is later adjusted in any manner, as a result of an audit by the Internal Revenue Service (the "Service") or otherwise, then the taxable income or taxable loss of the Company shall be adjusted to the same extent. "Net Income" and "Net Loss" shall be further adjusted as follows:

(a) "Net Income" and "Net Loss," as the case may be, shall be adjusted to treat items of tax-exempt income described in Section 705(a)(1)(B) of the Code as items of gross income, and to treat as deductible items all non-deductible, non-capital expenditures described in Section 705(a)(2)(B) of the Code, including any items treated under Treas. Reg. § 1.704-1(b)(2)(iv) as items described in Section 705(a)(2)(B) of the Code.

(b) In lieu of depreciation, depletion, cost recovery and amortization deductions allowable for Federal income taxation purposes to the Company with respect to property contributed to the Company by a Member, there shall be taken into account an amount equal to the product derived by multiplying the Book Value of such property at the beginning of such fiscal year by a fraction, the numerator of which is the amount of depreciation, depletion, cost recovery or amortization deductions allowable with respect to such property for Federal income taxation purposes and the denominator of which is the adjusted basis for Federal income taxation purposes of such property at the beginning of such fiscal year.

(c) In lieu of actual gain or loss recognized by the Company for Federal income taxation purposes as a result of the sale or other disposition of property of the Company, there shall be taken into account the gain or loss that would have been recognized by the Company for Federal income taxation purposes if the Book Value of such property as of the date sold or otherwise disposed of by the Company were its adjusted basis for Federal income taxation purposes.

29. "Nonrecourse Deductions" has the meaning set forth in Treas. Reg. § 1.704-2(c). The amount of Nonrecourse Deductions for a Company fiscal year equals the net increase, if any, in the amount of Company Minimum Gain during that fiscal year, determined according to the provisions of Treas. Reg. § 1.704-2(c).

30. "Prime Rate" means the Prime Rate as published from time to time in *The Wall Street Journal*, and which is described as the base rate on corporate loans at large U.S. money center commercial banks, as such rate may vary from time to time. If such base rate is expressed in a range in said publication, the higher rate of the reported range will apply. If *The Wall Street Journal* ceases to publish a Prime Rate, a similar source shall be used to determine the Prime Rate.

31. "Property" means that certain real estate which is described on Schedule II to this Agreement.

32. "Pro Rata Basis" means an allocation or distribution to the Members in proportion to their respective Adjusted Capital Contributions.

33. "Regulations" means such regulations, including any interim or temporary regulations, as may be promulgated by the Treasury Department under the Code.