

#### **18.1.2. Default in Covenants or Adverse Legal Action.**

The default by either party hereto in the material observance or performance of any material covenant, condition or agreement contained herein, or if either party shall (a) make a general assignment for the benefit of creditors, (b) files or has filed against it a petition for bankruptcy, for reorganization or an arrangement, or for the appointment of a receiver, trustee or similar creditors' representative for the property or assets of such party under any federal or state insolvency law, which, if filed against such party, has not been dismissed or discharged within 60 days thereof, or, specifically and without limitation, if Licensee's or Broker's successors and assigns, including, without limitation, any assignee of the Commission license for the Station, refuses to abide by or terminates this Agreement during the term (initial or first, second or third extended terms) of this Agreement, such event shall constitute a breach by Licensee or Broker, as the case may be.

#### **18.1.3. Preemption.**

Licensee preempts or replaces more than 15 hours in the aggregate of any programming or advertising supplied by Broker for broadcast over Station in any two consecutive calendar weeks. Calendar weeks being defined as Sunday through Saturday. The parties agree that a default of this nature shall be an immediate default which cannot be cured.

#### **18.2 Cure Periods.**

An Event of Default shall not be deemed to have occurred until twenty (20) business days after the non-defaulting party has provided the defaulting party with written notice specifying the event or events that if not cured would constitute an Event of Default and specifying the actions necessary to cure within such period. This period may be extended for a reasonable period of time if the defaulting party is acting in good faith to cure and such delay is not materially adverse to the other party. The exception to this default is late or non-payments. Payments not received by the first will be considered to be in default with only a five day grace period for cure.

#### **18.3. Termination Upon Default.**

In the Event of the occurrence of an Event of Default, the non-defaulting party may terminate this Agreement provided that it is not also in material default hereunder. If Broker has defaulted in the performance of its obligations, Licensee shall be under no further obligation to make available to Broker any further broadcast time or broadcast transmission facilities and all amounts accrued or payable to Licensee up to the date of termination which have not been paid, less any payments made on behalf of Licensee by Broker and any payment credits, shall immediately become due and payable. If Licensee has defaulted in the performance of its obligations hereunder, Broker may terminate this Agreement.

#### **18.4. Liabilities Upon Termination.**

Broker shall be responsible for all liabilities, debts and obligations of Broker accrued from the purchase of air time and transmission services including, without limitation,

accounts payable, barter agreements and unaired advertisements, but not for Licensee's federal, state, and local tax liabilities associated with Broker's payments to Licensee as provided for herein. With respect to Broker's obligations for consideration in the form of airtime, Broker may propose compensation to Licensee for meeting these obligations, but Licensee shall be under no duty to accept such compensation or to perform such obligations. Upon termination, Broker shall return to Licensee any equipment or property of the Licensee used by Broker, its employees or agents, in substantially the same condition as such equipment existed on the date of this Agreement, ordinary wear and tear excepted.

#### **19. Broker Termination Options.**

Broker may elect to terminate this Agreement at any time during the term hereof in the event that Licensee preempts or substitutes other programming for that supplied by the Broker during fifteen (15) percent or more of the total hours of operation of the Station during any two consecutive week time period. In the event broker elects to terminate this Agreement pursuant to this provision, it shall give Licensee notice of such election at least thirty (30) days prior to the termination date. Upon termination, all sums owing to Licensee shall be paid and neither party shall have any further liability to the other except as may be provided by Paragraph 17 hereof.

The Broker may terminate as well if any action regarding change of City of License or change in the power of Station would result in less power of the Station or a change in City of License. Increase in power will within the City of License will not give the Broker the option to terminate.

#### **20. Right of First Refusal.**

Under existing Commission ownership rules, Broker shall have the right of first refusal to purchase Station in its own name or by its designee if Licensee elects to sell the Station and an offer is received which Licensee wishes to accept, said right of first refusal to operate as follows: if Licensee receives a written offer which it wishes to accept, it shall give written notice to Broker of such intent to sell specifying all of the terms and conditions of the offer and accompanying said notice with a copy of the offer. Following receipt of said notice by Broker, Broker shall have fifteen (15) days within which to elect to purchase the Station on the monetary terms and the conditions offered. If Broker does not elect to purchase the Station, then Licensee shall be free for a period of thirty (30) days to enter into a contract to sell the Station with such offer or on the precise terms and conditions of the written offer presented to Broker. If Licensee does not enter into such contract to sell the Station within this thirty (30) day period, then this right of first refusal vested in Broker shall be reinstated. In case the Station is sold to a party other than the Broker the new Station Owner will be required to honor the terms of this agreement until the end of the current five year option. At that time this agreement will become null and void.

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### **20.1. Stock Option.**

Broker shall have the right of first opportunity to purchase any stock made available outside of the current stockholders, by the licensee, its stockholders, et al. Otherwise, Broker shall have first option to purchase Licensee's stock.

### **20.2. Time Brokerage Payment.**

Should Broker exercise the opportunity to purchase the station from the Licensee, fifty (50) percent of the Time Brokerage Payment paid by Broker will be applied toward the purchase price. The total amount is not to exceed \$50,000.00, however.

### **21. Termination as a Consequence of Governmental Action.**

In the event that a federal, state or local governmental authority designates a hearing with respect to the continuation or renewal of any license or authorization held by Licensee for the operation of the Station or orders the termination of this Agreement and/or orders the curtailment in any manner material to the relationship between the parties hereto of the provision of Programming by Broker hereunder (such materiality to be determined by Broker at its sole discretion), and/or determines that other similar time brokerage agreements, in whole or in part, are contrary to public or agency policy, at its option, Broker may seek administrative or judicial appeal of or relief from such order(s) (in which event Licensee shall cooperate with Broker provided that Broker shall be responsible for legal fees incurred in such proceedings) or Broker shall notify Licensee that it will terminate this Agreement pursuant to this paragraph. If the Commission designates the renewal application of Licensee of the Station for a hearing as a consequence of this Agreement or for any other reason, Licensee shall be responsible for its expenses incurred as a consequence of the Commission proceeding; provided, however, that Broker shall cooperate and comply with any reasonable request of Licensee to assemble and provide to the Commission information relating to Broker's performance under this Agreement. In the event of termination upon such governmental action(s), Broker shall pay to Licensee any fees due but unpaid as of the date of termination as may be permitted by such action(s), and Licensee shall reasonably cooperate with Broker to the extent permitted to enable Broker to fulfill advertising or other programming contracts then outstanding, in which event Licensee shall receive as compensation for the damage of such programming that which otherwise would have been paid to Broker thereunder. Thereafter, neither party shall have any liability to the other.

### **22. Representations and Warranties**

#### **22.1. Mutual Representations and Warranties.**

Both Licensee and Broker represent that they are legally qualified, empowered, and able to enter into this Agreement, and that the execution, delivery and performance hereof shall not constitute a breach or violation of any agreement, contract or other Obligation to which either party is subject or by which it is bound.

#### **22.2. Licensee's Representations, Warranties and Covenants.**

Licensee makes the following further representations, warranties and

covenants:

#### **22.2.1 Authorizations.**

Licensee owns and holds all licenses and other permits and authorizations necessary for the operation of the Station as presently conducted (including licenses, permits and authorizations issued by the Commission), and such licenses, permits and authorizations will be in full force and effect for the entire term, unimpaired by any acts or omissions of Licensee, its principals, employees or agents. There is not now pending or, to Licensee's best knowledge, threatened, any action by the Commission or other party to revoke, cancel, suspend, refuse to renew or modify adversely any of such licenses, permits or authorizations, and, to Licensee's best knowledge, no event has occurred that allows or, after notice or lapse of time or both, would allow, the revocation or termination of such licenses, permits or authorizations or the imposition of any restriction thereon of such a nature that may limit the operation of the Station as presently conducted. Licensee has no reason to believe that any such license, permit or authorization will not be renewed during the term of this Agreement in its ordinary course. Licensee is not in violation of any statute, ordinance, rule, regulation, order or decree of any federal, state, local or foreign governmental agency, court or authority having jurisdiction over it or over any part of its operations or assets, which default or violation would have an adverse effect on Licensee or its assets or on its ability to perform this Agreement.

#### **22.2.2 Filings.**

All reports and applications required to be filed with the Commission (including ownership reports and renewal applications) or any other governmental agency, department or body in respect of the Station have been, and in the future will be, filed in a timely manner and are and will be true and complete and accurately present the information contained therein. All such reports and documents, to the extent required to be kept in the public inspection files of the Station, are and will be kept in such files. Upon request by Licensee, Broker shall provide in a timely manner any such information in its possession which will enable Licensee to prepare, file or maintain the records and reports required by the Commission.

#### **22.2.3. Facilities.**

All of the Station's equipment necessary to operate the Station according to, and with good engineering standards necessary to deliver a high quality technical signal to the area served by the Station, and with all applicable laws and regulations (including the requirements of the Communications Act and the rules, regulations, policies and procedures of the Commission promulgated thereunder), shall be maintained by the Broker. Maintenance and repair of equipment shall be done at the direction of the Licensee. The broker, with the Licensee's concurrence may enter into maintenance agreements and contracts to repair equipment. In any event, the Broker will pay directly for repairs or reimburse Licensee for such repairs. All such reimbursements shall be made within 15 days of presenting repair charges. Broker will maintain, solely, at Broker's expense all equipment used by Broker and owned by the Broker. Licensee warrants that all equipment will be provided in good working order. Licensee will replace transmitter and antennas only if they are not repairable. All capital expenditures

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reasonably required to maintain the quality of the Station's signal, except those mentioned herein, shall be made promptly at the direction of Licensee and such expenses to be reimbursed by Broker. Broker will promptly reimburse Licensee for any fees associated with a STL license for a Paoli studio, if applicable.

The Licensee will provide the Broker the following equipment at its Tower Site in Orange County.

- Tower and 4 Bay FM PSI Antenna
- 10 x 10 concrete building
- 2.5 Harris Transmitter
- BEXT Exciter
- Audio Processor
- STL Receive Antenna
- Energy Onix Digital Encoder/Decoder. This item will not be replaced if it fails and the Broker will have to replace it with something else that meets FCC requirements.
- Innovonics Model 530 Modulation Monitor/Analyzer
- Gorman Redlich MVZEAS1 Emergency Alert Encoder
- Sine Systems Remote Control
- Network Indiana Receiver
- Indianapolis Colts Receiver and Dish
- ABC Receiver

All equipment listed above shall only be used for the operation of WKLO 96.9

Brownfield AG receiver will be supplied by Brownfield.

The Broker must notify in writing to the Licensee of any removal of any equipment from the tower site.

Immediately upon signature of this document the Broker will have all utilities and telephone lines at the tower site switched to Broker's name and pay all utilities associated with the operation at the tower site.

The Licensee will warrant that all equipment is in good working order as of January 1, 2006. Broker will maintain equipment at his expense thereafter.

#### **22.2.4. Payment of Obligations.**

Licensee has agreements, contracts, commitments or understanding to broadcast on the Station on or after the date specified in Paragraph 1 hereto, specific programs and/or commercial matter. These might include, but are not necessarily limited to Indiana Pacers, Indianapolis Colts, Purdue Football and Basketball, Brownfield Agriculture Network, and ABC Real Country and news. Broker shall maintain these contracts and other programming contracts for the existing contract period and according to the specific

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requirements listed in Attachment III. Existing contracts and durations are listed under Attachment III. Licensee will maintain control over half of the complimentary sports tickets from the Pacers (for this year through the playoffs) and the Colts. Broker may drop the Pacers at the end of the contract term. However, as long as the Licensee requires the Broker to carry the Indianapolis Colts the half of the complimentary ticket clause shall remain in affect. Licensee and Broker shall pay in a timely fashion all of their respective debts, assessments and obligations relating to or affecting the operations of the Station, as they come due from and after the effective date of this Agreement.

#### **22.2.5. Insurance.**

Broker will maintain in full force and effect throughout the term of this Agreement insurance with responsible and reputable insurance companies or associations covering such risks (including fire and other risks insured against by extended coverage, public liability insurance, insurance for claims against personal injury or death or property damage and such other insurance as may be required by law) and in such amounts and on such terms as is conventionally carried by broadcasters operating radio stations with facilities comparable to those of the Station. Any insurance proceeds received by Licensee in respect of damaged property will be used to repair or replace such property so that the operations of the Station conform to this Agreement.

#### **23. Publicity.**

Licensee or Broker shall not issue any press release or otherwise make any public statement with respect to the transactions contemplated herein except as may be required by law or regulation or as agreed by Licensee and Broker.

#### **24. Modification and Waiver.**

No modification or waiver of any provision of this Agreement shall in any event be effected unless the same shall be in writing and signed by the party adversely affected by the waiver or modification, and then such waiver and consent shall be effective only in the specific instance and for the purpose for which given.

#### **25. No Waiver Remedies Cumulative.**

No failure or delay on the part of Licensee or Broker in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right of power, preclude any other or further exercise thereof or the exercise of any other right of power. The rights and remedies of Licensee and Broker herein provided are cumulative and are not exclusive of any right or remedies which it may otherwise have.

#### **26. Construction.**

This Agreement shall be construed in accordance with the laws of the State of Indiana, and the obligations of the parties hereto are subject to all federal, state or municipal laws or regulations now or hereafter in force and to the regulations of the Commission and all other governmental bodies or authorities presently or hereafter to be constituted.

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**27. Headings.**

The headings contained in this Agreement are included for convenience only and no such heading shall in any way alter the meaning of any provision.

**28. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of the Licensee and its respective successors and assigns, including, without limitation, any assignee of the Commission license for the Station. However, the Broker may not assign or transfer this agreement to any other party. If Broker is a sole proprietor, partnership of any kind, incorporated, or involved in any kind of legal entity, and Broker sells or transfers its assets, stock, ownership, and/or business to any other principal other than those stated in this agreement, then Licensee may terminate this agreement.

**29. Counterpart Signatures.**

This Agreement may be signed in one or more counterparts, each of which shall be deemed a duplicate original, binding on the parties hereto notwithstanding that the parties are not signatory to the original or the same counterpart. This Agreement shall be binding and effective as of the date on which the executed counterparts are exchanged by the parties.

**30. Notices.**

Any notice required hereunder shall be in writing and any payment, notice or other communications shall be deemed given when delivered personally, emailed with sign receipt, or mailed by certified mail or Federal Express, postage prepaid, with return receipt requested, and addressed in accordance with the listing set forth in Attachment II hereto.

**31. Entire Agreement.**

This Agreement embodies the entire agreement between the parties and there are no other agreements, representations, warranties, or understandings, oral or written, between them with respect to the subject matter hereof. No alterations, modification or change of this Agreement shall be valid unless by like written instrument.

**32. Severability.**

The event that any of the provisions contained in this Agreement is held to be invalid, illegal or unenforceable shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

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

Hembree Communications, Inc.

By: [Signature]  
Larry D. Hembree, President

Company Name Diamond Signs Broadcasting, LLC

By: [Signature]  
Company Name Title

[Signature]  
Witness

[Signature]  
Witness

State of Indiana  
County of Clark <sup>of Ind</sup> ⑧

Before me appeared Larry D. Hembree, duly authorized representative of Hembree Communications, Inc., who acknowledged the execution of the foregoing Lease on this

1st day of January, <sup>2006</sup>~~2005~~

My commission expires: 3/16/07

Lisa A. Thompson Notary Public Residing in Clark Co., IN

State of Indiana  
County of Clark <sup>of Ind</sup> ⑧

Before me appeared Blair's Kelly Deak, duly authorized representative of Diamond Signs Broadcasting who acknowledged the execution of the foregoing Lease on this

1st day of January, <sup>2006</sup>~~2005~~

My commission expires: 3/14/07

Lisa A. Thompson Notary Public Residing in Clark Co., IN