

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is entered into as of this 10th day of January, 2023 (the “Effective Date”), by and between **FM 97 ASSOCIATES KFMN FM97**, a limited partnership organized under the laws of the State of Hawaii (“Seller”) and **PACIFIC RADIO GROUP, INC.**, a corporation organized under the laws of the State of Hawaii, or its assigns (“Buyer”) (each a “Party” and, collectively, the “Parties”).

RECITALS

WHEREAS, Seller is the licensee and operator of Station KFMN(FM), Facility No. 21843, Kauai, Hawaii and FM booster station KFMN-FM1, Facility No. 21844 (the “Stations”) pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”) and Seller owns all other assets used in connection with the operation of the Stations; and

WHEREAS, Buyer is entering into a Time Brokerage Agreement (“TBA”) simultaneously with the execution of this Agreement in order to present programming on the Stations prior to FCC approval in the form attached here as Exhibit A; and

WHEREAS, on the terms and conditions described herein, Seller desires to sell and Buyer desires to purchase substantially all of the assets owned or leased by Seller and used in connection with the operation of the Stations.

NOW, THEREFORE, taking the foregoing into account, and in consideration of the mutual covenants and agreements set forth herein, the Parties, intending to be legally bound, hereby agree to the following terms and conditions.

ARTICLE 1: SALE AND PURCHASE

1.1 **Station Assets**. Subject to the terms and conditions contained herein, Seller shall grant, convey, sell, assign, transfer, and deliver to Buyer on the Closing Date (defined below) all assets, properties, interest, and rights of Seller used or useful in connection with the operation of the Stations (collectively, the “Station Assets”), but excluding the Excluded Assets (defined below). The Station Assets shall include, without limitation, the following:

(a) **Licenses and Authorizations**. All licenses, authorizations, permits, and approvals issued to Seller with respect to the Stations by the FCC (and any pending applications before the FCC) as described and set forth on Schedule 1.1(a) attached hereto, and any pending applications, construction permits, renewals or modifications thereof (collectively, the “FCC Licenses”).

(b) **Tangible Personal Property**. All machinery and equipment, transmitters, antennas, furniture, fixtures, computers, cables, spare parts, and other tangible personal property of every kind and description (including associated manufacturers and vendor warranties) owned by Seller and used or useful in connection with the operation of the Stations including, but not

limited to, the tangible personal property listed in Schedule 1.1(b) (the “Tangible Personal Property”).

(c) **Leased Real Property.** All right, title, and interest of Seller in the lease with Grove Farm Company, Incorporated to the real estate used in the operation of KFMN (the “Ground Lease”), together with the oral agreement for space to operate FM Booster Station KFMN-FM1, as listed and described on Schedule 1.1(c) (the “Leased Real Property”).

(d) **Contracts.** The contractual obligations of the Stations which are usual and normal to their operation, such as music licensing agreements, news service contracts, studio and transmitter site leases listed in Schedule 1.1(d).

(e) **Intangible Property.** Seller’s rights in any trademarks, trade names, and service marks related to the Stations, the Stations’ call letters, telephone numbers, internet domain names and associated websites, copyrights, programs, and programming material (including program rights), jingles, slogans, logos, music libraries, computer programs, and other intangible property owned or held by Seller and used or held for use in the operation of the Stations and all goodwill associated with the foregoing including, without limitation, the items listed in Schedule 1.1(e) (collectively, the “Intangible Property”).

(f) **Files and Records.** The Stations’ online public inspection file, filings with the FCC relating to the Stations, and such other program logs, technical information, engineering data, books and records that relate to the Stations and the Station Assets being conveyed hereunder; all sales and promotional literature, manuals and data, sales and purchase correspondence, advertiser lists, lists of present and former suppliers, and lists of present and former customers that relate to the Stations and the Station Assets.

1.2 **Excluded Assets.** The following shall be excluded from the Station Assets and retained by Seller (collectively, the “Excluded Assets”):

(a) **Cash.** All cash, cash equivalents, or similar investments such as certificates of deposit, treasury bills and other marketable securities on hand and/or in banks and deposits of Seller.

(b) **Insurance.** Any insurance policies, inter-company accounts, promissory notes, amounts due from employees, or other similar items, any cash surrender value in regard thereto of Seller, and any proceeds from insurance claims made by Seller relating to property or equipment included in the Station Assets that has been repaired, replaced or restored by Seller prior to the Closing Date.

(c) **Tax Refunds.** Any interest in and to any refunds of federal, state or local franchise, income or other taxes of Seller for taxes incurred and actually paid by Seller prior to the Closing.

(d) **Personal Property.** Any tangible and intangible personal property of Seller disposed of or consumed between the date of this Agreement and the Closing in the ordinary course of business.

(e) **Accounts Receivable.** All accounts receivable of Seller arising from the operation of the Stations prior to the Closing which are outstanding and uncollected as of the Closing (the “Accounts Receivable”). All accounts receivable after the Closing or after the commencement of a TBA shall be the property of Buyer.

1.3 **Liabilities.** The Station Assets shall be transferred by Seller to Buyer free and clear of all debts, security interests, mortgages, trusts, claims, pledges, conditional sales agreements, equipment leases, and other liens, liabilities, and encumbrances of every kind and nature (“Liens”), other than (i) Liens disclosed and agreed between Seller and Buyer; (ii) for taxes not yet due and payable; (iii) Liens that will be discharged prior to Closing; and (iv) Buyer’s obligations to perform on and after the Closing Date the obligations arising under other Station Assets (“Permitted Liens”). Buyer shall assume and undertake to pay, discharge, and perform all obligations and liabilities relating to the other Station Assets arising or occurring after the Closing. Except as may be set forth in the TBA, Buyer shall not assume (i) any obligations or liabilities under the other Station Assets relating to the period prior to the Closing; (ii) any obligations or liabilities of Seller which are unrelated to the Station Assets being sold hereunder; (iii) any obligations or liabilities relating to employees, partners, or owners of Seller; (iii) any obligations or liabilities relating to the Excluded Assets; or (v) any federal, state, local franchise, or income taxes of Seller.

1.4 **Purchase Price.** The purchase price to be paid for the Station Assets is **THREE HUNDRED AND THIRTY THOUSAND DOLLARS (\$330,000.00)** (the “Purchase Price”), subject to the adjustments described below and prorations described in Section 1.5. The Purchase Price shall be paid as follows:

(a) Upon the execution of this Agreement, Buyer shall pay to Seller a down payment in the amount of Thirty-Three Thousand Dollars (\$33,000.00) by wire transfer of immediately available funds (the “Down Payment”). This Down Payment shall be nonrefundable, except in the event of default by Seller. At the Closing (defined below), the Down Payment shall be a credit against the Purchase Price.

(b) At Closing, Buyer shall pay the remainder of the Purchase Price in cash.

1.5 **Prorations.** Subject to the TBA, the parties agree to prorate all expenses arising out of the operation of the Stations which are incurred, accrued, or payable, as of 11:59 p.m. local time of the day preceding the Closing. The prorated items shall include, but not be limited to, power and utilities charges, FCC regulatory fees (based on the most recent publicly available information about the cost of such regulatory fees for the Stations), real and personal property taxes upon the basis of the most recent tax bills and information available, security deposits, and similar prepaid and deferred items. The prorations shall, insofar as feasible, be determined and paid on the Closing Date, with final settlement and payment to be made within forty-five (45) days after the Closing Date.

ARTICLE 2: FCC MATTERS; CLOSING

2.1 **FCC Consent; Assignment Application.** Not later than five (5) business days after the Effective Date of this Agreement, Buyer and Seller shall prepare, execute, and file an

application to the FCC (the “Assignment Application”) requesting the FCC’s consent (the “FCC Consent”) to the assignment of the FCC Licenses from Seller to Buyer. Buyer and Seller shall prosecute the Assignment Application and cooperate with each other and with the FCC in order to secure such FCC Consent without delay and to promptly consummate the transaction contemplated hereby.

2.2 **Expenses and Filing Fees.** Each party shall be solely responsible for all costs and expenses incurred by it in connection with the negotiation, preparation, and performance of and compliance with the terms of this Agreement. Notwithstanding the forgoing, Buyer shall pay the FCC Filing Fee assessed by the FCC in connection with the Assignment Application.

2.3 **Closing Date; Closing Place.** The closing (the “Closing”) of the transaction contemplated in this Agreement shall occur on a date (the “Closing Date”) that is no more than five (5) business days after the FCC grant becomes a Final Order, *i.e.*, no longer subject to administrative or judicial review, *provided, however*, Buyer shall have the right to freely waive the requirement for Final Order at any time. The Closing shall be held by exchange of documents via email, or as Seller and Buyer may agree.

ARTICLE 3: REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer:

3.1 **Organization and Authorization.** Seller is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of Hawaii. Seller has full power and authority to own and operate the Stations and to carry on the business of the Stations as now being conducted, and as proposed to be conducted by it between the date hereof and the Closing Date. Seller has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Seller have been duly and validly authorized by all necessary action on the part of Seller. This Agreement constitutes Seller’s valid, legal, and binding obligation, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors’ rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.2 **Absence of Conflicting Agreements or Required Consents.** Seller’s execution, delivery, and performance of this Agreement (a) does not require the consent of any third party, except for the FCC Consent and any consents required pursuant to the Ground Lease or the Leased Real Property; (b) will not violate any provision of Seller’s governing documents; (c) to the best of Seller’s knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, or ruling of any governmental authority; (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit to which Seller is subject and that is individually or in the aggregate material to the transactions contemplated hereby; (e) will not result in the creation of any lien, charge, or encumbrance on any of the Station Assets; and (f)

will not in any way affect or violate the terms or conditions of, or result in the cancellation, modification, revocation, or suspension of, any of the FCC Licenses.

3.3 **Liabilities.** To the best of Seller's knowledge, except for Seller's loan with the Small Business Association ("SBA") which will be paid off at or prior to Closing, there are no liens or encumbrances against the Station Assets. Seller has no knowledge of any circumstances, conditions, events, or arrangements relating specifically to the Seller and not to the radio industry as a whole which following Closing may hereafter give rise to any liabilities on the part of any successor to the business or in connection with the Stations.

3.4 **Tangible Personal Property.** The Tangible Personal Property is being sold "as is, where is" with no warranties or representation other than with respect to title of ownership. The Seller is the owner, lessee, or licensee of all the Tangible Personal Property listed on the Schedules to this Agreement. Following Closing, Buyer will have good, valid, and marketable title to all of the Tangible Personal Property free and clear of all security interests of every kind or character (other than Permitted Encumbrances).

3.5 **Intangible Property.** To the best of Seller's knowledge, the Seller has (or, on the Closing Date, will have) all right, title, and interest in and to all Intangible Property necessary or desirable in the conduct of the Stations as presently operated. The Seller has not received notice of any claim against it involving any conflict or claim of conflict of any of the items listed on Schedule 1.1(d). Each item of Intangible Property owned or used by the Seller immediately before the Closing will be owned or available for use by the Buyer on identical terms and conditions immediately after the Closing. To Seller's knowledge, no service provided by the Seller or any programming or other material used, broadcast or disseminated by the Seller or the Stations, infringes on any copyright, patent, or trademark of any other party. The Seller has not received any notice of any claim of infringement of any third-party's copyright, patent, trademark, service mark, logotype, license, or other proprietary right, including the use of any call sign, slogan or logo by a broadcast station or cable systems in the marketing area of the Stations which may become confusingly similar to the call sign, slogans and logos currently used by the Stations.

3.6 **FCC Licenses.** Schedule 1.1(a) hereto contains a true and complete list of the FCC Licenses (including any pending applications). The FCC Licenses are in full force and effect. Seller lawfully holds each of the FCC Licenses listed on Schedule 1.1(a), unimpaired by any act or omission of Seller, and none of which are subject to any restrictions or conditions that would limit in any material respect the operations of the Stations, other than (i) as may be set forth on the faces of such FCC Licenses and other licenses, or (ii) as may be applicable to the radio broadcasting industry generally. Seller is operating the Stations in compliance with the FCC Licenses, the Communications Act of 1934, as amended, and all regulations and published policies of the FCC (the "Communications Laws"). There is not now pending or, to the knowledge of Seller, threatened any action by or before the FCC to revoke, cancel, rescind, modify, or refuse to renew any of such FCC Licenses, and Seller has not received any notice of, and has no knowledge of, any pending, issued, or outstanding order by or before the FCC, or of any investigation, order to show cause, notice of violation, notice of apparent liability, notice of forfeiture, or material complaint against the Stations or Seller.

3.7 **Compliance With Laws.** Seller has not received any notice asserting any non-compliance in any material respect by it with any applicable statute, rule, or regulation, federal, state, or local, or any agency thereof, having jurisdiction over it. Seller is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, and to the best of Seller's knowledge, Seller is in compliance in all material respects with all laws, regulations, and governmental orders applicable to the conduct of the business and operations of the Stations.

3.8 **Ground Lease.** Schedule 1.1(c) contains a copy of the Ground Lease being assigned as a part of this transaction. The Ground Lease remains in full force and effect; however Seller is in payment default under the Ground Lease, and such delinquency will be paid by Seller at or immediately after Closing. The Seller has not received any notice alleging that the Ground Lease or the tower located on the site fails to comply with applicable zoning laws or the building, health, fire, and environmental protection codes of applicable government jurisdictions. The land described in the Ground Lease and tower space being used for KFMN-FM1 constitutes all the real property now used by the Seller in the operation of the Stations. Prior to Closing, the Seller shall obtain an estoppel agreement from the owner of the land being leased certifying that the Ground Lease remains in effect and is not in default.

3.9 **Owned Broadcast Tower.** The Tower and all of the guy anchors, guy wires, cables, driveways, parking lots, ground systems, transmitting equipment, buildings, and other improvements relating to the Stations' operations are located entirely on and wholly within the boundaries of the Leased Real Property.

3.10 **Brokers.** Seller has signed an brokerage agreement with Jim Glogowski/Lifebridge Media Group which includes a brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby. Seller shall be responsible for payment of the fee due under the brokerage agreement.

3.11 **Litigation; Compliance with Law.** To the best of Seller's knowledge, Seller has held the FCC Licenses and operated the Stations in compliance with all laws, regulations, orders, or decrees. Seller is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of the Stations or the Station Assets or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and to Seller's knowledge no such proceeding is pending. To the best of Seller's knowledge, there is no litigation or proceeding pending against Seller in any federal, state, or local court, or before any administrative agency (including, without limitation, any proceeding which seeks the revocation or forfeiture of or opposes or challenges the renewal of any of the FCC Licenses), which might have a material adverse effect upon the ability of the parties hereto to consummate the transactions contemplated in this Agreement or which seeks to enjoin or prohibit, or otherwise questions the validity of, any action taken or to be taken pursuant to or in connection with this Agreement.

3.12 **Tax Matters.** Seller is not a party to any action for the collection of taxes, nor is Seller aware of any threatened or contemplated action for the collection of taxes from Seller which might impede the parties' ability to consummate the transactions contemplated in this Agreement.

3.13 **Disclosure.** No representation or warranty made by Seller in this Agreement, and no statement made by or on behalf of Seller in any certificate, document, exhibit, or schedule delivered or to be delivered in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer makes the following representations and warranties to Seller:

4.1 **Organization and Standing.** Buyer is a corporation organized under the laws of the State of Hawaii. Buyer has full power and authority to enter into and perform this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action on its part. This Agreement constitutes Buyer's valid, legal, and binding obligation, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally, and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.2 **Absence of Conflicting Agreements or Required Consents.** Buyer's execution, delivery, and performance of this Agreement (a) do not require the consent of any third party, except for the FCC Consent; (b) will not violate any provision of Buyer's governing documents; (c) to the best of Buyer's knowledge, will not violate any applicable law, judgment, order, injunction, decree, rule, regulation, or ruling of any governmental authority; and (d) will not, either alone or with the giving of notice or the passage of time or both, conflict with, constitute grounds for termination of, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any agreement, instrument or permit to which Buyer is subject and that is individually or in the aggregate material to the transactions contemplated hereby.

4.3 **No Defaults.** The execution, delivery, and performance of this Agreement by Buyer will not (i) conflict with or result in any breach of any provision of the articles of incorporation or bylaws of Buyer; or (ii) result in a default (or give rise to any right of termination, cancellation, or acceleration) under, or conflict with, any of the terms, conditions, or provisions of any note, bond, mortgage, indenture, agreement, lease, or other instrument or obligation relating to Buyer or its business, except for such defaults (or rights of termination, cancellation, or acceleration) or conflicts as to which requisite waivers or consents have been obtained and delivered to Seller; (iii) violate any statute, regulation, order, injunction, or decree of any federal, state, or local governmental authority or agency which is applicable to Buyer; or (iv) require the consent or approval of any governmental authority, lending institution, or other third party other than the FCC Consent.

4.4 **Buyer's Qualification.** Buyer has no knowledge of any facts which would, under present law (including the Communications Act of 1934, as amended) and present rules, regulations, and practices of the FCC, disqualify Buyer as an assignee of the FCC Licenses or as an owner and/or operator of the Station Assets or which might delay the grant of the Assignment

Application, and Buyer will not take, or unreasonably fail to take, any action which Buyer knows or has reason to know would cause such disqualification.

4.5 **Litigation.** Buyer is not subject to any order, writ, injunction, judgment, arbitration, decision, or decree having a binding effect and affecting the business of Buyer or which restrains or enjoins, or purports to restrain or enjoin, or could reasonably be expected to restrain or enjoin, the transaction contemplated hereby, and no such proceeding is pending. There is no material litigation pending by or against, or, to the knowledge of Buyer, or threatened against Buyer, that would prevent or materially impede the consummation by Buyer of the transaction contemplated by this Agreement.

4.6 **Brokers.** There is no broker or finder or other person who would have any valid claim through the Buyer against any of the parties to this Agreement for a commission or brokerage fee or payment in connection with this Agreement or the transactions contemplated hereby as a result of any agreement of, or action taken by, the Buyer.

4.7 **Disclosure.** No representation or warranty made by Buyer in this Agreement, and no statement made by or on behalf of Buyer in any certificate, document, exhibit, or schedule delivered or to be delivered in connection with the transactions contemplated by this Agreement, contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make such representation or warranty or any such statement not misleading.

ARTICLE 5: COVENANTS OF SELLER

5.1 **Pre-Closing Covenants of Seller.** Between the date hereof and the Closing Date, except as contemplated by this Agreement, under the terms of a TBA, or with the prior written consent of Buyer:

(a) **Affirmative Covenants.** Seller shall:

- (i) Maintain and preserve the FCC Licenses without material change;
- (ii) Carry on operations of the Stations and keep its books and accounts, records, and files in the usual and ordinary manner in which the business of the Stations have been conducted in the past;
- (iii) Continue the Stations' broadcasts and conduct the business and operations of the Stations in the ordinary course and in accordance in all material respects with the Communications Act, the FCC Rules and Regulations, and any other applicable federal, state, or local rules and regulations. Upon receipt of notice of violation of any such laws, rules, and regulations, promptly notify Buyer of such notice and use its commercially reasonable best efforts to contest in good faith or to cure such violation prior to the Closing Date;
- (iv) Maintain all Tangible Personal Property in its present condition and repair, reasonable wear and tear excepted;

(v) Preserve intact the Assets and maintain in effect the casualty and liability insurance on the Assets heretofore in force;

(vi) Notify Buyer of any litigation or administrative proceeding pending or, to its knowledge, threatened which is likely to delay or otherwise interfere with Closing or otherwise adversely affect any of the FCC Licenses; any material damage or destruction of any of the Station Assets; and any adverse change in the condition of the Stations which is likely to delay or otherwise interfere with Closing, or otherwise adversely affect any of the FCC Licenses;

(vii) Promptly give or cause to be given to the officers, employees, and representatives of the Buyer, at the request of the Buyer, full access to the Stations' studio and technical facilities, insurance policies, agreements, contracts, commitments which are to be assumed by Buyer or may impose any obligation on Buyer after the Closing, and such other information concerning the Seller, the Stations and the Assets as the Buyer may reasonably request, with any such investigation or examination by the Buyer in connection with the foregoing not in any way diminishing or obviating any representations or warranties of the Seller made in this Agreement, the Exhibits, Schedules and documents delivered pursuant to this Agreement; and

(vii) Fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement and use its best efforts to cause the transactions contemplated by this Agreement to be fully carried out.

(b) Negative Covenants. Seller shall not:

(i) create, assume, or permit to exist any mortgage, pledge, lien or other charge or encumbrance or rights affecting any of the Station Assets, other than Permitted Liens;

(ii) sell, assign, lease, or otherwise transfer or dispose of any of the Station Assets outside the ordinary course of business;

(iii) make any material change in the Stations' buildings, leasehold improvements, or fixtures;

(v) waive any material right relating to the Stations or the Station Assets;

(vi) agree to or participate in any minor modification or other filing with the FCC with respect to the Stations;

(vii) except with the written consent of the Buyer, enter into, extend, or renew, any contracts or leases related to the Assets that extend beyond, or cannot be cancelled effective as of the Closing Date;

(viii) either itself or through any of its officers, directors, shareholders, employees, agents, or any other person or entity acting on Seller's behalf, directly or indirectly,

solicit or initiate any offer from, or conduct any negotiations with, any person or entity other than Buyer or its assignee(s) concerning the direct or indirect acquisition of the Stations or the sale of all or a substantial portion of its air-time pursuant to a time brokerage agreement, or enter into any such transaction;

(ix) cause or permit, by any act or failure to act, any of the FCC Licenses to expire or be surrendered or adversely modified, or take any action which could cause the FCC or any other governmental authority to institute proceedings for the suspension, revocation, or adverse modification of any of the FCC Licenses; or

(x) take any other action inconsistent with its obligations under this Agreement or which could hinder or delay the consummation of the transactions contemplated by this Agreement.

ARTICLE 6: COVENANTS OF BUYER

Buyer covenants and agrees that from the date hereof until the completion of the Closing, Buyer shall use best efforts to fulfill and perform all conditions and obligations on its part to be fulfilled and performed under this Agreement, and to consummate the transaction contemplated hereby. Except as provided in the TBA, Buyer shall not, directly or indirectly, control the operations of the Stations prior to Closing. Consistent with the Communications Act and the FCC rules and regulations, ultimate control, supervision, and direction of the Stations prior to Closing shall remain the responsibility of Seller as the holder of the FCC Licenses.

ARTICLE 7: JOINT COVENANTS

Buyer and Seller hereby covenant and agree as follows:

7.1 **Confidentiality**. Subject to the requirements of applicable law, all non-public information regarding the parties and their business and properties that is disclosed in connection with the negotiation, preparation, or performance of this Agreement shall be confidential and shall not be disclosed to any other person or entity, except the parties' representatives and lenders for the purpose of consummating the transactions contemplated by this Agreement.

7.2 **Announcements**. Prior to the filing of the FCC Application with the FCC, no party shall, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), issue any press release or make any other public announcement concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law, in which case such party shall give advance notice to the other, and except that the parties shall cooperate to make a mutually agreeable announcement, and except as necessary to enforce rights under or in connection with this Agreement.

7.3 **Employees**. Employee agreements for IRS designated W9 contractors, employment service companies, and full time or part time IRS designated 1099 employees (if any) will not transfer to buyer.

ARTICLE 8: CONDITIONS TO THE OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date.

8.1 **Representations, Warranties, and Covenants.**

(a) All representations and warranties of Buyer made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse (as determined by Seller in its sole discretion) which arise after the date hereof in the ordinary course of the business of the Stations. All of the terms, covenants, and conditions to be complied with and performed by Buyer on or prior to the Closing Date shall have been complied with or performed in all material respects.

(b) Buyer shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

8.2 **Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effectuate the transactions contemplated by this Agreement in accordance with its terms.

8.3 **FCC Consent.** The FCC Consent shall have been issued by the FCC.

8.4 **Deliveries.** Buyer shall have delivered to Seller instruments in form and substance reasonably satisfactory to counsel to Seller effecting the assumption of Buyer's obligations arising subsequent to the Closing Date in and to the Station Assets pursuant to the terms of this Agreement.

ARTICLE 9: CONDITIONS TO THE OBLIGATIONS OF BUYER

The obligations of Buyer under this Agreement are subject to the fulfillment of the following conditions prior to or on the Closing Date.

9.1 **Representations, Warranties, and Covenants.**

(a) All representations and warranties of Seller made in this Agreement, or in any exhibit, schedule, certificate, or other document delivered pursuant hereto, shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date, except for changes contemplated by this Agreement or changes that are not materially adverse. All of the terms, covenants, and conditions to be complied with and performed by Seller on or prior to the Closing Date shall have been complied with or performed in all material respects.

(b) Seller shall have performed and complied with each and every covenant and agreement required by this Agreement to be performed or complied with by it prior to or on the Closing Date.

9.2 **Proceedings.** No suit, action, or governmental proceeding shall have been instituted against, and no order, decree, or judgment of any court, agency, or other governmental authority shall have been rendered against, the parties or either of them which would render it unlawful, as of the Closing Date, to effectuate the transactions contemplated by this Agreement in accordance with its terms.

9.3 **Governmental Authorizations.** Seller shall be the holder of the FCC Licenses, and there shall not have been any modification of any of the FCC Licenses which could have a material adverse effect on the Stations. No proceeding shall be pending, the effect of which could be to revoke, cancel, fail to renew, suspend, or modify materially and adversely any of the FCC Licenses or the transfer thereof to Buyer.

9.4 **FCC Consent.** The FCC Consent shall have been issued by the FCC.

9.5 **Seller Certificate.** Seller shall have furnished Buyer with a certificate, dated the Closing Date and duly executed by an officer or manager, as applicable, of Seller, to the effect that the conditions set forth in Section 9.1 have been satisfied.

9.6 **Deliveries.** Seller shall have delivered to Buyer instruments in form and substance to Buyer effecting the sale, transfer, assignment, and conveyance of Seller's right, title, and interest in and to the Stations' Assets to Buyer pursuant to the terms of this Agreement including, without limitation, each and every one of the obligations set forth in Section 10.1.

ARTICLE 10: ITEMS TO BE DELIVERED AT CLOSING

10.1 **Deliveries by Seller.** At Closing, Seller shall deliver to Buyer, duly executed by Seller or such other signatory as may be required by the nature of the document:

(a) a bill of sale sufficient to sell, convey, transfer, and assign the Tangible Personal Property and any other assets included in the Station Assets (other than the FCC Licenses) to Buyer free and clear of any Liens (the "Bill of Sale");

(b) an assignment sufficient to assign the FCC Licenses (including the Stations' call letters) to Buyer (the "FCC Licenses Assignment");

(c) an Assignment and Assumption Agreement sufficient to assign the Ground Lease and the contracts being assigned to Buyer under this Agreement;

(d) an Assignment of Intangible Assets sufficient to assign the Intangible Assets to Buyer;

(e) a Certificate required by Section 9.5 hereto; and

(f) the Estoppel Agreement required under Section 3.8 of this Agreement sufficient to express the consent of the owner of the Ground Lease to its assignment and that the Ground Lease remains in full effect.

10.2 **Deliveries by Buyer.** At the Closing, Buyer shall deliver to Seller, duly executed by Buyer or such other signatory as may be required by the nature of the document:

(a) payment of the remainder of the Purchase Price in accordance with Section 1.5; and

(b) an executed Assignment and Assumption Agreement sufficient to accept assignment of the Ground Lease and the Contracts being assigned to Buyer under this Agreement.

ARTICLE 11: INDEMNITY

11.1 **Seller's Indemnity Obligation.** Seller hereby agrees to indemnify, defend, save, and hold Buyer harmless with respect to any and all claims, losses, obligations, liabilities, costs and expenses, including reasonable attorneys' or counsel fees, threatened, suffered, incurred, or sustained by Buyer by reason of (i) Seller's ownership of the Assets or operation of the Stations prior to the Closing Date hereunder; or (ii) any inquiries or disputes raised by Seller's partners concerning any aspect of this transaction. This Section 11.1 shall survive Closing for one (1) year.

11.2 **Buyer's Indemnity Obligation.** Buyer hereby agrees to indemnify, defend, save, and hold Seller harmless with respect to any and all claims, losses, obligations, liabilities, costs, and expenses, including reasonable attorney's or counsel fees, threatened, suffered, incurred, or sustained by Seller by reason of Buyer's ownership of the Assets or operation of the Stations subsequent to the Closing Date hereunder. This Section 11.2 shall survive Closing for one (1) year.

ARTICLE 12: TERMINATION

12.1 **Termination.** This Agreement may be terminated at any time prior to Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by written notice of Seller to Buyer if Buyer defaults in any material respect in the performance of any of Buyer's covenants or agreements under this Agreement, and in any of which events such default is not cured within the Cure Period (as defined below), if applicable;

(c) by written notice of Buyer to Seller if Seller defaults in any material respect in the performance of any of Seller's covenants or agreements under this Agreement, and in any of which events such default is not cured within the Cure Period (as defined below), if applicable; or

(d) by written notice of Seller to Buyer, or Buyer to Seller if the Closing has not been consummated within eight (8) months of the Effective Date.

12.2 **Cure Period.** The term “Cure Period” as used herein means a period commencing with the date that Buyer or Seller receives from the other Party written notice of breach or default hereunder and continuing until ten (10) business days thereafter.

12.3 **Liability.** If this Agreement is terminated pursuant to Section 12.1(b) above the non-refundable Down Payment shall be treated as liquidated damages and as the exclusive remedy of Seller against Buyer. Upon termination of this Agreement under Section 12(c) of this Agreement, this Agreement shall be deemed null and void and the Down Payment shall be returned to Buyer and neither party will have any further liability or obligation to the other.

12.4 **Specific Performance.** Seller acknowledges that the Station Assets are unique assets not readily obtainable on the open market and money damages alone will not be adequate to compensate Buyer for its injury if Seller breaches its obligations under this Agreement. Therefore, Seller agrees and acknowledges that in the event of Seller’s failure to perform its obligation to consummate the transaction following satisfaction of, and in accordance with, the terms and conditions herein, as an alternative to terminating this Agreement, Buyer shall be entitled to seek specific performance of only such obligations to consummate the transaction by Seller, and in such proceeding Seller shall waive the defense that there is an adequate remedy at law.

ARTICLE 13: MISCELLANEOUS

13.1 **Employees.** Seller shall terminate all of Seller’s employees effective as of the date of Closing, and pay all termination and severance costs in connection with such termination.

13.2 **Assignment.** Buyer may freely assign this Agreement with the written consent of Seller, which consent shall not be unreasonable withheld. The rights and obligations of the parties hereunder shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

13.3 **Waiver of Jury Trial; Attorneys’ Fees.** If, notwithstanding the provisions of Section 14, any law suit is filed to resolve an issue as to the interpretation or enforcement of this agreement and is not dismissed on the basis of Section 14, each party irrevocably waives trial by jury and the right thereto in any and all litigation in any court with respect to, in connection with, or arising out of this Agreement.

13.4 **Construction and Venue for Legal Actions.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Hawaii without regard to choice of laws principles. Each party submits to the jurisdiction of any court sitting in Kuaai County in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Each party waives any defense of inconvenient forum or lack of personal jurisdiction to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the other party with respect thereto.

13.5 **Attorneys' Fees and Costs.** Should any party default in the performance of any of the terms or conditions of this Agreement, which default results in the filing of a lawsuit or any action, the prevailing party in such lawsuit shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court.

13.6 **Risk of Loss.** The risk of loss or damage to the Assets shall be upon Seller at all times prior to Closing. In the event of material loss or damage, Seller shall promptly notify Buyer thereof and use its best efforts to repair, replace, or restore the lost or damaged property to its former condition as soon as possible. In the event that any loss, damage, or destruction to the Assets has not been repaired, restored, and/or replaced prior to the Closing Date, the Closing shall nevertheless take place and Seller shall assign their rights to receive any insurance proceeds with respect to the damaged, lost, or destroyed assets to Buyer and, to the extent that the insurance proceeds so assigned are insufficient to cover all of the costs of repairing and/or replacing the assets that were damaged, lost, or destroyed, the Purchase Price shall be adjusted to cover such shortfall.

13.7 **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing (which shall include notice by facsimile transmission) and shall be deemed to have been duly made and received when personally served, or when delivered by Federal Express or a similar overnight courier service, expenses prepaid, or, if sent by facsimile communications equipment, delivered by such equipment, addressed as set forth below:

If to **Seller**, then to:

FM 97 Associates KFMN FM97
P.O. Box 1566
Lihue, HI 96766-5566

with a copy, given in the manner prescribed above, to:

Nancy A. Ory, Esq.
Lerman Senter PLLC
2001 L St., N.W.
Washington, DC 20036

If to **Buyer**, then to:

Mr. Richard Charles Bergson
President
Pacific Radio Group, Inc.
311 Ano St.
Kahului, HI 96732

with a copy, given in the manner prescribed above, to:

Dan J. Alpert, Esq.
The Law Office of Dan J. Alpert
2120 21st Rd. N
Arlington, VA 22201

13.8 **Multiple Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. All of such counterpart signature pages shall be read as though all of the signers had signed a single signature page. This Agreement may be signed and exchanged by facsimile transmission or by a scanned PDF sent by email, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

13.9 **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereof, supersedes all other and prior memoranda and agreements between the parties with respect to such subject matter and may not be modified or amended except by a written instrument signed by all of the parties hereto.

13.10 **Captions.** The section captions and headings in this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

13.11 **No Waiver.** Unless otherwise specifically agreed to in writing to the contrary: (a) the failure of any party at any time to require performance by another party of any provision of this Agreement shall not affect such party's right thereafter to enforce the same; (b) no waiver by any party of any default by another party shall be taken or held to be a waiver by such party of any other preceding or subsequent default; and (c) no extension of time granted by any party for the performance of any obligation or act by another party shall be deemed to be an extension of time for the performance of any other obligation or act hereunder.

13.12 **Further Assurances.** From time to time at another party's request and without further consideration, a party shall execute and deliver such further instruments of conveyance, assignment, and transfer, and take such other actions as the requesting party may reasonably request, in order to more effectively convey and transfer any of the Station Assets.

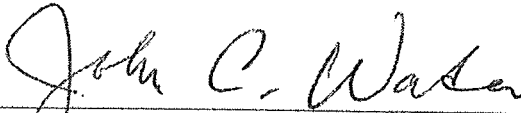
13.13 **Counsel.** Each party has had the right to obtain independent review of the documents and, consequently, each party hereby waives the application of any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the party whose counsel drafted that provision.

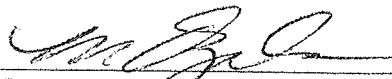
SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT


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

SELLER:

FM 97 ASSOCIATES KFMN FM97

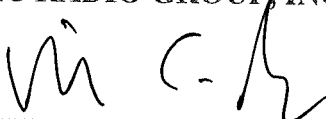
By: 
Name: John C. Wada
Title: General Partner

By: 
Name: Milton R. Ozaki
Title: General Partner

By: 
Name: Peter M. Yukimura
Title: General Partner

BUYER:

PACIFIC RADIO GROUP, INC.

By: 
Name: Richard Charles Bergson
Title: President

List of Schedules/Exhibits to Asset Purchase Agreement

Schedules:

- | | |
|--------|----------------------------|
| 1.1(a) | FCC Licenses |
| 1.1(b) | Tangible Personal Property |
| 1.1(c) | Leased Real Property |
| 1.1(d) | Contracts to be Assumed |
| 1.1(e) | Intangible Property |

Schedule 1.1(a)
FCC Licenses

Current FCC Licenses, Authorizations
and Pending Authorizations For
Stations KFMN(FM), Lihue, Hawaii
Facility ID Number 21843; and
KFMN-FM1, Waimea, HI, Facility No. 21844

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
Broadcast Renewal	KFMN	0000161073	9/29/2021	2/1/2030
Broadcast License	KFMN	BLH-19880310KC	3/10/1988	2/1/2030
Broadcast License	KFMN-FM1	BPFTB-19880901TD	2/23/1989	2/1/2030
Broadcast Renewal	KFMN-FM1	0000161073	9/29/2021	2/1/2030

Schedule 1.1(b)
Tangible Personal Property

<u>Equipment Description</u>	<u>Model #</u>	<u>Serial #</u>
<u>KFMN-1 Booster</u>		
Ibar Ultra Surge Protector	12	51000115
Tieline Bridge-It IP Codec	STLB5100	36105
Crown Transmitter	FM30	95147
Portable Stereo AM/FM/Cassette Player		
<u>Transmitter Site</u>		
CCA 20 KW transmitter	FM20000GZ3	177008
Bext Exciter	XT150	1602714
Belar FM Amp	RFA-1	403123
Belar FM Stereo Monitor	FMS-2	170810
Belar FM Modulation Monitor	FMM-2	160838
Isobar Surge Protector	12	
Burk Remote Control	ARC-16	8954409
Burk Relay Unit	IP-8	8954414
BEXT STL Aural Receiver	LDR	1403921
Bird Wattmeter	4610-202	3031
Onkyo Stereo Receiver	TX-8020	113DC2924027607B
OWI Speaker (2 each)	202	8914386
MQ Power 60KVA Generator	DCA-60SSI	Requires New Transfer Switch
<u>Main Studio</u>		
Samson Stereo Power Amplifier	Servo-170	170J1389
Isobar Ultra Surge Protector	12	51001093
Inovonics Modulation Analyzer	530	1603
Isobar Ultra Surge Protector	12	51001097
OZ Audio Headphone Amplifier	HR-4	D138176
Aphex Audio Processor/limiter	Compellor	AXC4705
Orban Optimod FM Processor/Generator	8300	412221-020
JBL Studio Monitor (2 each)	4410A	
Tieline Bridge-It IP Codec	STLB5100	34988
TFT Multi-Module Receiver	EAS930A	10101807
Sony CD Player	CDP-D11	301551
Tascam Digital Recorder	SS-R200	350115
Dynamax 12 Channel Audio Console	MX-12LW	ML109006
Telos Hybrid Phone System	HX1	HX1L3230
BEXT STL Aural Transmitter	LDT-LCD	
SAGE Digital ENDEC	3644	8417541
Electro-Voice Microphone (3 each)	RE20	
OC Pro Boom with Shock Mount (3 each)		
DBX Mic preamp/processor (3 each)	286S	
Marti Receiver	SR-30	109298-5
Pyle Stereo Amplifier	PCA-2	
MQ Power 60KVA Generator	DCA-60SSI	Transfer Switch Operational

Americool Portable Air Conditioner (New Spare)	WPC-5000	21,200 BTU/208 Vac
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Production Studio

Dynamax 12 Channel Audio Console	MX-12LW	ML109007
Tascam Digital Recorder	SS-R200	360276
Rolls FM Receiver	RS-79	79-0140540
JBL Studio Monitor	4208	97819
JBL Studio Monitor	4208	97827
Sony Mini-Disc Recorder	MDS-JES20	
AudioArts Distribution Amplifier	8400	
DBX Mic preamp/processor	286SV	12001003429
Telos Hybrid Phone System	Delta 100	140DK2574
Sony DVD/CD Player	DVP-N557P	8054688
Sony Dual Cassette Recorder	TC-WE305	779687
Samson Stereo Power Amplifier	Servo-170	171J1390
Isobar Surge Protector	IB4060	S1000116
OC Pro Boom with Shock Mount (2 each)		
Electro-Voice Microphone (2 each)	RE20	
Stanton Turntable Preamp	310	B101
Technics Turntable	SL-1200MK2	MJ7820F393
Cyber Power UPS		
ESE Timer	ES-510ER	744
Tascam Portable Recorder	DR-05	572180

Voice Over Room

Ovi Speakers (2 each)	
Cyber Power UPS	
Isobar Surge Protector	
Symetrix Stereo Amp	A-220

Office

Desktop Computers	11 each	(8 operational)
Fax Machine	1 each	
Network Printer/Copier	1 each	
Dedicated Printer (accounting)	1 each	
Technics Speaker	1 each	
Realistic Speaker	1 each	
Kenmore Vacuum Cleaner	1 each	
Lucent Partner Telephone System	11 stations	

Schedule 1.1(c)
Leased Real Property

“License Agreement” dated December 19, 2000, by and between Grove Farm Company, Incorporated and FM 97 Associates

“License Agreement” dated June 9, 2003 by and between Grove Farm Company, Incorporated and FM 97 Associates

Oral agreement with Gene Otoman to use a portion of his home for KFMN-1 booster station in Waimea. The rent is \$450/month which includes electricity. FM97 pays for the internet service with Spectrum.

Schedule 1.1(d)
Contracts to be Assigned

None

Schedule 1.1(e)
Intangible Property

Call Sign: KFMN