

ASSET PURCHASE AGREEMENT

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This Agreement (hereinafter "Agreement") is entered into this 27th day of November, 2002, by and between KANI COMMUNICATIONS, INC. (hereinafter "Seller"), and HILO BROADCASTING (hereinafter "Buyer").

WITNESETH

WHEREAS, Seller is the licensee and operator of AM Radio Station KAHU 1060 kHz (the "Station") operated in Hilo, Hawai'i, under the authority of license issued by the Federal Communications Commission (the "FCC") for the term ending 3:00 a.m. February 1, 2006 (the "License"); and

WHEREAS, KE'OPI'O O PUNA, a non-profit, tax-exempt Cultural Academy pursuant to Section 501(c)(3) of the Internal Revenue Code owns 100% of the voting stock of the Licensee and desires that the Licensee assign the License and assets of the Station to Buyer; and

WHEREAS, Buyer desires to acquire "AS IS", and Seller desires to sell "AS IS", the Station and the real (excluding land or any interest or part thereof) and personal property, "AS IS," used and useful in connection with the operation of the Station pursuant to the terms and conditions hereof; and

WHEREAS, the Seller makes no representations and warranties; and

WHEREAS, such sale and purchase, as contemplated by this Agreement is subject to and conditioned upon the consent of the FCC to the terms and conditions hereof and the assignment of the License; and

NOW THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. ASSETS SOLD AND PURCHASED.

On the date of the closing of this Agreement, as provided for in Section 4 below (the "Closing Date"), the Seller will cause to be sold, transferred, assigned and conveyed to the Buyer, by assignments, bill of sale, and/or other appropriate

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instrument(s), and the Buyer will purchase, subject to the terms and conditions hereinafter set forth, the following assets (hereinafter collectively the "Assets"):

1.1 License. The FCC License, permit(s), authorizations for the operation of the Station, listed in *Exhibit 1*, attached hereto, and any other license, rights, permits and authorizations issued to Seller by any other regulatory agency which are used or useful in connection with the operation of the Station;

1.2 Personal Property. The fixed tangible personal assets used, useful or usable in the operation of the Station, including the physical assets listed in *Exhibit 2*, together with replacements thereof, or additions thereto made in the ordinary course of business, between the date hereof and the Closing Date, free and clear of all liens, claims, security instruments, and encumbrances, except for those permitted encumbrances expressly assumed herein by Buyer, and described in *Exhibit 3* hereto (collectively the "Personal Property");

1.3 Real Property Excluding the Land. The fixed tangible real assets excluding the land and that which is incidental and appurtenant thereto, and excluding anything growing upon the land. Included are the fixed tangible real assets erected or affixed to the land, used, useful or usable in the operation of the Station, including the physical assets listed in *Exhibit 4*, together with replacements thereof, or additions thereto made in the ordinary course of business, between the date hereof and the Closing Date, free and clear of all liens, claims, security instruments, and encumbrances, except for those permitted encumbrances expressly assumed herein by Buyer, and described in *Exhibit 5* hereto (collectively the "Real Property");

1.4 Contracts.

(a) The Seller's contract and/or other rights and interests concerning or pertaining to AM Radio Station KHLO 850 kHz currently broadcasting in Hilo, Hawai'i, and using the Seller's radio tower however characterized, as well as all other leases, licenses, and rental agreements respecting the transmitter and tower site of the Station, as described in *Exhibit 6* attached hereto, save, excepting, and expressly not transferable however the "Private Contract for Usage of Leased Hawaiian Home Lands," by and between FREDERICK H.K. BAKER, JR. and WENDELL J. KAEHUAEEA, both persons by birth native Hawaiian as pursuant to the Hawaiian Homes Commission Act 1920 (42 Stat. 108).

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To the extent that the assignment of any contract listed in Exhibit 6, may require the consent of a third party, Seller will use its best efforts to secure such consent. In the event that Seller is unable to secure such consent, Buyer will not be required to assume performance pursuant to such contract.

(b) Promptly after the execution of this Agreement, Seller will furnish Buyer with a complete list of all contracts, including those for the sale of broadcast time, and agreements to be attached hereto as *Exhibit 7*, which are to be in effect on the Closing Date, excepting those which will have expired by their own terms or which may have been unilaterally canceled by a party other than Seller, provided that legal rights, related to the period after Closing, if any, accrued to Seller by virtue of any such unilateral cancellation, by a party other than Seller, shall be assigned by Seller to Buyer;

(c) Reserved.

(d) Any franchises, materials, supplies, customer lists, and other rights and privileges relating to the operation and/or use of the Station, in effect as of the date hereof, and any of the foregoing which may be modified or acquired in the normal course of business with respect to the operation of the Station between the date hereof and the Closing Date hereunder, including contracts and agreements entered into in the normal course of business;

(e) This Agreement is limited to the assets herein described and Buyer is not purchasing Seller's cash, accounts receivable or notes receivable, books and records pertaining to the corporation, employee pension and other benefit plans or collective bargaining agreements, which shall remain the exclusive property of Seller, free and clear of any claim from Buyer. Buyer is not assuming any liabilities of Seller except as specifically stated in this Agreement; and

(f) Usage for the land upon which the Seller's radio tower is located will be drafted at a latter date, but prior to Closing, and shall be made a part of this Agreement and attached as *Exhibit 8-A*. It is understood and agreed by the parties that on the Closing Date the incidental land use will be executed by and between the Seller and the Buyer;

1.5 Reserved

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1.6 Books and Records. All books and records used in connection with the operation of the Station through the Closing Date, including but not limited to, all logs maintained in connection with the Station whether or not required by the FCC.

2. PURCHASE PRICE PLUS CONSIDERATION:

2.1 The purchase price for the Assets shall be the total sum of ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) which shall be paid by the Buyer to the Seller as follows:

(a) FORTY THOUSAND DOLLARS (\$40,000.00) down payment, of which TEN THOUSAND DOLLARS (\$10,000.00) shall be paid by Buyer into an interest bearing account in the Seller's and Buyer's name, at an institution of Seller's choosing, upon the execution of this Asset Purchase Agreement; and,

(b) The balance of the THIRTY THOUSAND DOLLARS (\$30,000.00) downpayment which sum shall be paid by Buyer into another interest bearing account in the Seller's and Buyer's name, at an institution of Seller's choosing, on the date the Assignment Application is filed with the FCC; and,

(c) The remaining sum of ONE-HUNDRED TEN THOUSAND DOLLARS (\$110,000.00) shall be paid by Buyer to Seller on or before the Closing, provided, however, under no circumstances shall the Closing take place without all payments due and payable by Buyer under this section of the Agreement have been paid.

2.2 In addition to the purchase price, aforementioned, Buyer shall also assume, as of Closing, as part of the consideration to be provided by Buyer, the following and only the following of Seller's liabilities:

(a) Seller's outstanding arrearage due to HELCO as of the signing of this Agreement respecting electricity provided by HELCO to Buyer for the Station; and

(b) Seller's outstanding payable due as of the signing of this Agreement to Hardy, Carey & Chautin, LLP respecting legal fees and costs incurred by Seller for this transaction as well as for past services rendered.

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3. **RESERVED.**

4. **CLOSING OF THE AGREEMENT:**

4.1 **Closing Date:** The closing of this Agreement (the "Closing") shall be within fifteen (15) days after the date on which FCC consent to the transfer and assignment of the License to Buyer has become a "Final Action." "Final Action," as used in this section, means an action of the FCC approving the assignment of the Station's license from Seller to Buyer, which action, due to the passage of time or otherwise, is no longer subject to FCC reconsideration and/or court review under the provisions of the Communications Act of 1934, as amended, and/or the Rules and Regulations of the FCC.

4.2 **Place of Closing:** The place of the Closing shall be at Buyer's counsel's office in Hilo, Hawai'i, or such other place as the parties may select.

5. **RESERVED**

6. **RESERVED**

7. **COVENANTS OF SELLER:** It is understood and agreed that the Seller makes no representations and/or warranties with and to the Buyer. However, the Seller covenants with and to the Buyer as follows:

7.1 **Organization:** Seller is now and will be on the Closing Date, a Hawai'i corporation doing business as Kani Communications, Inc. under the laws of the United States of America, the Hawaiian Homes Commission Act 1920, and Hawai'i.

7.2 **License and Authorizations:** Seller holds the FCC Licenses and all other permits and authorizations necessary for or used in connection with the operation of the Station, and those FCC Licenses and all such permits and authorizations are in full force and effect. The FCC License for the Station will expire at 3:00 a.m., on February 1, 2006. To the best of Seller's knowledge, except for Seller's pending License application (FCC Form 302-AM) to cover their 5kw upgrade, filed on or about November 12, 2002, there are no proceedings or material complaints pending at the FCC as of the date hereof relating to the business and

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operations of the Station, and such Station's authorizations or extensions or renewals thereof shall, on the Closing Date, be in full force and effect and unimpaired by any acts or omissions of Seller.

7.3 Between the date hereof and the Closing Date, the Station shall be operated in the normal and usual manner, and the Station's business shall be conducted only in the ordinary course.

7.4 Personal Property.

(a) On the Closing Date, Seller will have good and marketable title to the personal property listed and described in Exhibit 2 hereto, or replacements thereof, made in the normal course of business, free and clear of all liens, mortgages, pledges, and encumbrances, except for those encumbrances expressly assumed by the Buyer and described in Exhibit 3 hereto.

(b) The transmitter and studio equipment used by Seller in the operation of the Station will, at the Closing Date, be in good operating condition consistent with good engineering practices and in substantial compliance with the FCC's Rules and Regulations, except for any violation which would not have a material adverse effect on the business of the Station. Between the date of this Agreement and the Closing Date, there will be no more than normal wear and tear and expandability with respect to the assets listed in Exhibit 2 hereto. The Buyer accepts the assets as is and with all faults.

(c) Reserved.

7.5 Real Property Excluding the Land:

(a) The real property expressly excluding the land, but including only that which is on the land and appurtenant to that which is on the land. Including the FCC Tower Registration Number 1011944 (the "Tower") and guys, all transmission equipment and other broadcast equipment, two transmitter buildings and surrounding chain link fence, listed in Exhibit 4 to be transferred to Buyer hereunder is, and will be on the Closing Date, operable in accordance with standards for like radio stations presently prevailing in the AM Radio business, normal wear and tear excepted. The Buyer accepts the assets as is and with all faults.

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(b) **Tower and Main Studio Site:** Seller's tower and main studio site is located on land so described in *Exhibit 8-A and 8-B*, respectively, and attached hereto. The property is located on Hawaiian Home Lands and leased by FREDERICK H.K. BAKER, JR. pursuant to the terms and conditions of the Hawaiian Homes Commission Act 1920, is a portion of the land now used by Seller and useful in or necessary for the lawful operation of the Station. On the Closing Date, Seller shall enter into a *Usage Agreement* for that portion of the land required to operate the Station. Provided, however, such Usage Agreement can not in any way be assigned or sub-used by a third party without the express written consent of Seller. Said Usage Agreement to be attached hereto as Exhibits 8-A (Tower Site), and at Buyer's option 8-B (Main Studio Site). There are no pending or to the best of Seller's knowledge, contemplated condemnation or eminent domain proceedings that may affect the land or premises. To the best of Seller's knowledge, Seller's use and occupancy of land premises comply in all material respects with all authority and laws that are applicable to those federal lands in Hawai'i known as Hawaiian Home Lands, as pursuant to the Hawaiian Homes Commission Act 1920.

7.6 Seller is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any environmental law. Seller has no basis to expect, nor has Seller received, any actual or threatened order, notice, or other communication from any governmental body or private citizen, any actual or potential violation or failure to comply with any hazardous material laws, or any actual or threatened obligation to undertake or bear the cost of any environmental, health, and safety liabilities with respect to any of the Assets. There are no pending or, to the knowledge of Seller, threatened claims, or other restrictions of any nature, arising under or pursuant to any hazardous material laws, with respect to or affecting any of the Assets.

7.7 **FCC Licenses.** The FCC Licenses to be assigned to Buyer hereunder are, and will be at the Closing, valid and existing authorizations in every material respect for the purpose of operating the Station. All applications, reports and other disclosures required by the FCC with respect to the Station for such periods during which the Station is owned by Seller have been, and will be as of the Closing duly filed. Such items as are required to be placed in the Station's local public records file have been placed in such file. All proofs of performance and measurements that are required to be made by Seller with respect to the Station's transmission facilities have been completed and filed at the station.

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7.8 Disposal of Assets. Between the date hereof and the Closing Date, Seller will not sell or agree to sell or otherwise dispose of the fixed and tangible assets listed in Exhibits 2 and 4 hereto (or any replacements thereof in the ordinary course of business) used or useful in the operation of the Station, unless such assets are not material to the operation of the Station nor are replaced with assets of comparable value.

7.9 Reserved

7.10 Employment Contracts. No employee of the Station has, or will be on the Closing Date, have a contract of employment unless otherwise stipulated in *Exhibit 9* attached hereto.

7.11 Insolvency Proceedings. No insolvency proceedings of any character including, without limitation, bankruptcy, receivership, reorganization, composition or arrangement of creditors, voluntary or involuntary, affecting Seller or any of its assets or properties are pending or, to the knowledge of Seller, threatened, and to the best of its knowledge Seller has made no assignment of its' assets or properties for the benefit of creditors, or taken any action with a view to, or which would constitute the basis for, the institution of any such insolvency proceedings.

7.12 Litigation. To the best of Seller's knowledge no judgment is presently pending against Seller and except for proceedings of general applicability or specific applicability to this market, there is no litigation, proceeding or investigation by or before the FCC (except for the FCC Form 302-AM referenced in section 7.2 herein), or by or before any other person, firm or, to the knowledge of Seller, threatened with respect to the Station which might result in any material adverse change in the operation of the Station or would have a material adverse effect on the right, title or interest of Seller in the property and assets to be transferred hereunder or would have a material adverse effect on the ownership, use or possession of the Station or any such property or assets by Buyer or which may question the validity of any action taken pursuant to or in connection with any of the provisions of this Agreement, and Seller does not know of any basis for any such litigation, proceeding, or investigation.

7.13 The execution and delivery of this Agreement has been duly authorized by Seller and constitutes a valid and binding agreement and is enforceable

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in accordance with its terms and the performance of this Agreement will not conflict with any other obligation of Seller.

7.14 No Breach. To the best of Seller's knowledge, the execution and performance of this Agreement will not violate any order, rule, judgment, or decree to which Seller is subject or breach any contract, agreement, or other commitment to which Seller is a party or by which Seller is bound.

7.15 No Misleading Statements. To the best of Seller's knowledge, no covenant by Seller in this Agreement and no information furnished or to be furnished by Seller to Buyer regarding Seller or the Station contains or will contain any untrue statements of a material fact, or omits or will omit to state a material fact necessary to make the statements contained herein not misleading.

7.16 Buyer Reliance. The foregoing covenants are made by Seller with the knowledge and expectation that Buyer is placing complete reliance thereon in entering into this Agreement.

8. COVENANTS, REPRESENTATIONS, and WARRANTIES **of BUYER.**

Buyer hereby makes the following covenants, representations, and warranties each of which shall be deemed to be a separate covenant, representation, and warranty, all of which have been made for the purpose of inducing Seller to join in and execute this Agreement, and in reliance on which Seller has entered into this Agreement.

8.1 Corporate Existence. Buyer is and will be at the time of the Closing, a _____ existing, in good standing under the laws of Hawai'i, and authorized to do business in the State of Hawai'i.

8.2 Corporate Authorization. The execution, delivery and consummation of this Agreement will have been duly authorized by the Board of Directors of Buyer and no further authorization, approval or consent will be required.

8.3 No Breach. The execution, delivery and consummation of this Agreement will not conflict with any provision of the By-laws or Articles of Incorporation of Buyer.

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8.4 Buyer Qualified. Buyer is legally, financially and otherwise qualified to acquire and operate the Purchased Assets consistent with the Communications Act of 1934, as amended, and the rules and regulations of the Federal Communications Commission. To the best of Buyer's knowledge after inquiry, no circumstances exist which reasonably could support a conclusion by the FCC that Buyer lacks the requisite qualifications to acquire and operate the Station.

8.5 Compliance with Laws. To the best of Buyer's knowledge, neither the execution or delivery of this Agreement nor compliance with the terms of this Agreement will:

(a) Conflict with any order, judgment, injunction, award or decree or any governmental body, administrative agency or court, or any agreement, lease or commitment, to which Buyer is a party or by which Buyer is bound; or

(b) Constitute a violation by Buyer of any law or regulation applicable thereto.

8.6 Litigation. There is no claim, litigation, proceeding or governmental investigation pending or threatened, or any judgment, order, injunction or decree outstanding, against Buyer and Buyer does not know of any valid basis for future claims, litigation, proceedings or investigations against Buyer that might materially and adversely affect its ability to consummate the transactions contemplated by this Agreement.

8.7 Confidentiality. Buyer shall keep confidential and cause to be kept confidential, any and all studies, reports, documents, or other information conveyed to or shown to Buyer, or Buyer's agents, employees, or representatives, in the course of Buyer's review of the Station and Seller. The failure of Buyer, or Buyer's agents, employees, or representatives to diligently enforce the confidentiality provision herein shall be deemed a material breach of this Agreement. Buyer agrees, upon the Closing Date, or in the event the parties fail to close this Agreement and the Agreement is terminated, to return or cause to be returned to Seller any and all copies of such studies, reports, documents, or other information. The provisions of this Section 8.7 shall survive the termination of this Agreement.

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8.8 Seller Reliance. The foregoing representations and warranties are made by Buyer with the knowledge and expectation that Seller is placing complete reliance thereon in entering into this Agreement.

9. INDEMNIFICATION.

9.1 Buyer's Right to Indemnification. Seller undertakes and agrees to hold Buyer harmless against any and all costs, liabilities, claims, and obligations, including reasonable attorney's fees, for and against:

- (a) All liabilities of Seller not assumed by Buyer pursuant to this Agreement;
- (b) Any liens, charges, or encumbrances on any of the assets transferred hereunder not specifically excepted herein; and
- (c) All liabilities of Seller accruing prior to Closing under the contracts, leases and agreements assigned to Buyer hereunder.

9.2 Seller's Right to Indemnification. Buyer undertakes and agrees to hold Seller harmless against any and all costs, liabilities, claims, and obligations, including reasonable attorney's fees, for and against:

- (a) All liabilities of Buyer, including any of the covenants, representations and warranties contained in this Agreement;
- (b) Any and all liabilities or obligations accruing after the Closing Date under the contracts, leases, and agreements assumed by Buyer hereunder; and
- (c) Any and all actions by Buyer after Closing.

9.3 Procedure. If any claim or proceeding covered by the foregoing agreements to indemnify and hold harmless shall arise, the party who seeks indemnification shall give written notice thereof to the other party promptly, in no event more than ten (10) days after it learns of the existence of such claim or proceeding. The party from whom indemnification is sought shall have the right to employ counsel to defend against any such claim or proceeding or to compromise, settle or otherwise dispose of the same, if the indemnifying party deems it advisable to do so, all at the expense of the indemnifying party. The parties will fully

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cooperate in any such action, for the defense of any such claim or proceeding. If the party from whom indemnification is sought does not furnish a written acknowledgment of its undertaking to defend or settle such claim or proceeding within ten (10) days after receipt of the notice of claim from the party seeking indemnification, the party seeking indemnification shall then be free to dispose of the matter, at the expense of the indemnifying party, in any reasonable way which it deems in its best interest.

10. ACTIONS PENDING CLOSING. Pending the Closing of this Agreement, Seller will:

10.1 Access: Any and all access by Buyer, Buyer's agents, employees, or representatives is strictly subject to the confidentiality provisions and restrictions of Section 8.7 of this Agreement.

(a) Give Buyer and its representatives reasonable access during normal business hours and upon making prior arrangements, to the business properties and public records of the Station, and furnish Buyer with other information concerning the Station and its assets as Buyer may reasonably request, provided, however, all strictly subject to the restrictions of Section 8.7 herein. Buyer agrees to take no action which would interfere with the normal business or operation of the Station.

(b) Give Buyer and its representatives reasonable access upon making prior arrangements, to the main studio and studio equipment and the right to inspect transmitting tower and equipment, except during such times as such facilities or equipment are being used by Seller in connection with the operation of the Station.

10.2 Compliance with Laws. Comply in all material respects with the Supreme Laws of the Land of the United States of America and Hawai'i, including the Hawaiian Homes Commission Act 1920, and the Communications Act 1934, and the rules and regulations of the FCC.

10.3 Continuing Maintenance. Keep and maintain in normal operating repair and efficiency all property to be sold hereunder and including all of the items of property set forth in Exhibits 2 and 4 hereto; provided, that, to the extent required in the normal operation of the Station, such items of property may be replaced with similar property of similar value.

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11. CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS TO

CLOSE. The obligation of Buyer to consummate this Agreement is subject, at the election of Buyer, to each of the following conditions:

11.1 Covenants. The covenants of Seller in this Agreement shall be true and correct in all material respects at and as of the Closing Date, and there shall not have occurred any materially adverse change in the Assets since the date of this Agreement.

11.2 License. On the Closing Date, Seller shall be the holder of the license, in good standing, for the operation of the Station.

11.3 No Litigation Threatened. No litigation, investigation or proceeding of any kind shall have been instituted or threatened which would have a material adverse effect on the assets or operations of the Station.

11.4 FCC Consent. At the time of the Closing the Licenses and any other FCC authorizations shall have been assigned and transferred to Buyer and shall contain no adverse modifications of the terms of the License and such authorizations as they presently exist.

11.5 Compliance with Conditions. All of the terms, covenants, and conditions to be complied with, or performed by Seller on or before the Closing Date shall have been duly complied with and performed.

11.6 Delivery of Assets. At Closing, Seller shall deliver or cause to be delivered to Buyer all of the Assets transferred hereunder.

11.7 Closing Documents. At Closing, Seller shall deliver or cause to be delivered to Buyer all the closing documents specified in Section 14, all of which documents shall be duly executed.

12. CONDITIONS PRECEDENT TO SELLER'S OBLIGATIONS TO

CLOSE. The obligation of Seller to consummate this Agreement is subject, at the election of Seller, to each of the following conditions:

12.1 Payments. All payments which are due and payable by Buyer under this Agreement on or before the Closing Date shall have been paid in

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accordance with the terms of this Agreement. Buyer shall have signed off on the joint bank account, and executed the necessary documents for the assumable liabilities required by Section 2 hereof.

12.2 Representations, and Warranties True and Correct. Each of the covenants, representations, and warranties of Buyer contained herein shall, to the extent applicable, be true at and as of the Closing Date, as though each such covenant, representation or warranty had been made at and as of such time.

12.3 Reserved.

12.4 Third Party Consents. Seller shall have duly received, without any conditions materially adverse to it, all consents and approvals under any agreement to which Seller is a party, and under any law, necessary for:

- (a) Consummation of the sale of the Assets to Buyer; and
- (b) Buyer to acquire control of the Station.

12.5 Final Order. The Final Order of the Commission shall be in effect.

12.6 Legal Actions. There shall not be in effect an injunction or restraining order issued by a court of competent jurisdiction in any action or proceeding against the consummation of the sale of the Assets contemplated by this Agreement.

12.7 Such other documents as may be necessary for the implementation and consummation of this Agreement.

13. FCC APPROVAL and APPLICATION.

13.1 Condition of FCC Consent. Consummation of the transactions contemplated by this Agreement is subject to and conditioned upon receipt of consent from the FCC to the assignment of License to Buyer, which consent shall have become final on or before the Closing. Such consent shall be deemed the "Final Order" when it is no longer subject to timely review by the FCC or by any court or,

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in the event of reconsideration upon its own motion or otherwise by the FCC or in the event of an appeal by any person or any court, when the decision of such body is no longer subject to appeal or review. The requirement that the consent of the FCC shall have become final may be waived by mutual consent of the parties to this Agreement.

13.2 Application for Consent. The parties to this Agreement agree to proceed as expeditiously as practicable to file or cause to be filed, an application requesting FCC consent to the assignment and transfer of the License and other authorizations, as contemplated by this Agreement (the "Assignment Application"). The parties agree that the Assignment Application shall be duly filed with the FCC not later than fourteen (14) days after the date of this Agreement, and that such application shall be prosecuted in good faith and with due diligence. The failure of either party to timely file or diligently prosecute its portion of the Assignment Application shall be deemed a material breach of this Agreement. The Buyer agrees to pay the filing fee for the Assignment Application. The Buyer also agrees to pay the cost of any engineering studies required by the FCC, or other FCC filings and filing fees required to consummate the favorable consideration of the Assignment Application.

13.3 Absence of Commission Consent. If a Final Order granting the Assignment Application is not secured within six (6) months after the Assignment Application is filed, then this Agreement may be terminated at the option of either party upon written notice to the other, provided, however, that neither party may terminate this Agreement if such party is in default hereunder, or if a delay in any decision or determination by the Commission respecting the Assignment Application has been caused or materially contributed to by any failure of such party to furnish, file or make available information within its control or caused by the willful furnishing by such party of incorrect, inaccurate or incomplete information to the Commission, or caused by any action taken by such party for the purposes of delaying any decision or determination respecting the Assignment Application. For purposes of this Agreement, an order becomes a "Final Order" when, by lapse of time or otherwise, it is no longer subject to administrative or judicial reconsideration or review.

13.4 Designation for Hearing. The time for FCC consent provided in Sections 13.3 notwithstanding, either party may terminate this Agreement upon written notice to the other, if, for any reason, the Assignment Application is

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designated for hearing by the FCC, provided, however, that the party giving such notice is not in default under the terms of this Agreement. Upon termination pursuant to this paragraph, the parties shall be released and discharged of all obligations hereunder, and the interest bearing account in Seller's and Buyer's name shall be returned to Buyer.

13.5 Control of Station Pending Closing. This Agreement shall not be consummated until after the FCC has given its written consent thereto, and between the date of this Agreement and the Closing Date, Buyer shall not directly or indirectly control, supervise or direct, or attempt to control, supervise or direct the operation of the Station. Such operation shall be the sole responsibility of Seller.

14. CLOSING DOCUMENTS. On the Closing Date at the closing place,

14.1 Seller will deliver to Buyer:

(a) An Assignment transferring all of the interest of Seller in and to the Station Licenses and all other licenses, permits, and authorizations issued by any other regulatory bodies which are used or useful in the operation of the Station listed in Exhibit 1 hereto;

(b) A Bill of Sale and assignment conveying to Buyer all right, title, and interest of Seller in and to the personal property tangible assets listed in Exhibit 2 hereto, free and clear of all liens, claims, security interests, and encumbrances of any kind whatever;

(c) A Bill of Sale and assignment conveying to Buyer all right, title, and interest of Seller in and to the fixed tangible real (excluding the land) assets expressly listed in Exhibit 4 hereto, free and clear of all liens, claims, security interests, and encumbrances of any kind whatever;

(d) An assignment conveying to Buyer all rights, title, and interests, as well as all obligations, in and to the contracts and agreements listed in Exhibit 7 hereto;

(e) Execute and deliver to Buyer the Usage Agreement(s) aforesaid in Section 7.5(b) hereof;

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(f) A certificate, dated as of the Closing Date, executed by the Seller, confirming the truth and correctness of all of Seller's representations and warranties as of the Closing Date, and confirming that all agreements, covenants and undertakings of Seller to be performed or fulfilled have been performed or fulfilled;

(g) A certificate, dated as of the Closing Date, of the Seller certifying that all necessary action by Seller has been taken to authorize the consummation of the transactions described herein;

(h) Deliver the books and records referred to in Section 1.6 hereof; and

(i) Such other documents as may be reasonably necessary for the implementation and consummation of this Agreement.

14.2 Buyer will deliver to Seller:

(a) Deliver, or cause to be delivered, the signed off joint accounts previously set up, and the remaining balance provided in Section 2 hereof, in a Certified Cashier's Check or cash;

(b) Deliver an executed certificate of assumed liability to HELCO and Hardy, Carey & Chautin, L.L.P. provided for in Section 2 hereof;

(c) Execute and deliver to Seller the Usage Agreement(s) aforesaid in Section 7.5(b) hereof;

(d) Deliver an executed certificate, dated as of the Closing Date, evidencing Buyer's assumption and agreement to perform all of the obligations in the contracts and agreements assigned to Buyer hereunder, and evidencing Buyer's acceptance and conveyance of title to the assets assigned and conveyed to it hereunder;

(e) Deliver a certificate, dated as of the Closing Date, executed by the Buyer confirming the truth and correctness of all of Buyer's representations and warranties as of the Closing Date, and confirming that all agreements, covenants and undertakings of Buyer to be performed or fulfilled have been performed or fulfilled;

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(f) Deliver a certificate, dated as of the Closing date, of Buyer certifying that all necessary corporate or other action by Buyer has been taken to approve this Agreement and to authorize the consummation of the transactions described herein; and,

(g) Such other documents as may be reasonably necessary for the implementation and consummation of this Agreement.

15. PRORATIONS.

15.1 Apportionment of Income and Expenses. Seller shall be entitled to all income received, and shall be responsible for all expenses arising out of, the operations of the Station through the close of business on the Closing Date. Buyer shall be entitled to all income received, and shall be responsible for all expense arising out of the operations of the Station after the close of business on the Closing Date. All overlapping items of income or expense, including the following, shall be prorated between the Seller and Buyer as of the close of business on the Closing Date (the "Prorations"):

(a) Advanced payments received from advertisers prior to or on the Closing Date for services to be rendered in whole or in part after the Closing Date;

(b) Prepaid expenses and deposits arising from payments made for goods or services prior to the close of business on the Closing Date where all or part of the goods or services have not been received or used at the cost of business

on the Closing Date (i.e. rents paid in advance for a rental period extending beyond the Closing Date);

(c) Liabilities, customarily accrued, arising from expenses incurred but unpaid as of the close of business on the Closing Date of Station employees who enter into Buyer's employ after closing, utility services, sales commissions, an business and professional services; and,

(d) Other liabilities or prepaid items or other pro-ratable items existing on the Closing Date;

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15.2 Determination and Payment. The Prorations between the Seller and Buyer shall be prorated on the basis of the number of days of the calendar year elapsed to the close of business on the Closing Date.

(a) Prorations shall be made and paid, insofar as feasible, on the Closing Date and shall be paid by separate check and not by way of adjustment to the Purchase Price;

(b) As to Prorations that cannot be made on the Closing Date, a "final accounting" concerning these matters shall be presented, in writing, by Seller to Buyer within sixty (60) days after the Closing Date, and within fifteen (15) days thereafter Buyer shall pay to Seller or Seller shall pay to Buyer, as the case may be, the net amount due;

(c) If Buyer does not concur with Seller's determinations the Buyer shall advise the Seller, in writing, within fifteen (15) days after Buyer receives said final accounting, and in that event, Buyer and Seller shall meet in an attempt to resolve any dispute;

(d) If the parties are unable to resolve the matter, Buyer and Seller agree to submit all disputed matters to their Business Owners Legal Solutions Plan attorney, whose decision shall be final and whose fees and expenses shall be shared equally by Seller and Buyer.

16. SPECIFIC PERFORMANCE; NOTICE OF TERMINATION and CURE PERIOD:

16.1 Specific Performance: Seller and Buyer agree that the Assets cannot be readily obtained on the open market and that both parties will be irreparably injured if this Agreement is not specifically enforced, due to fault of Buyer or Seller or the failure by Buyer or Seller to comply with any covenant, agreement, representation, or warranty under this Agreement. Either party may institute any action specifically to enforce the other party's performance under this Agreement, provided, however, that neither party may institute an action if such party is in default hereunder.

16.2 Notice of Termination. If either Seller or Buyer determines that the other has defaulted under any provision(s) of this Agreement, and proposes to

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terminate this Agreement, based upon such default(s), it shall notify the other, in writing, of its decision to terminate, and identify, specifically, the nature of the default(s) it relies upon. The defaulting party shall be given ten (10) days (or such longer period as Seller and Buyer mutually agree upon), from the receipt of that notification, to cure the default(s), and if cured, to the satisfaction of Seller or Buyer, termination shall not occur.

16.3 Cure Period. If there is a dispute concerning:

- (a) Whether the default(s) occurred; and/or
- (b) Whether the default(s) has or have been cured,

Seller and Buyer agree to submit such question(s) to the Provider Attorney Firm whose decision shall be final and binding on the parties. The scheduled Closing under this Agreement will be postponed, if necessary, to permit the defaulting party to cure the default(s) within the said time period.

17. RISK OF LOSS. The risk of loss or damage to any of the Assets shall be upon Seller at all times prior to the Closing. In the event of such loss or damage, the proceeds of, or any claim for, any loss payable under any insurance policy with respect thereto shall go to Seller, and be used to repair, replace, or restore such loss or damaged assets. In the event such loss or damage prevents the broadcast transmission by the Station in the normal or usual manner, Seller shall give prompt notice thereof to Buyer. If Seller cannot restore the facilities so that normal and usual transmission can be resumed before the Closing Date, the Closing Date shall be postponed, the exact date and time of such postponed closing to be designated by Seller upon five (5) days notice to Buyer. In the event the facilities cannot be restored within the effective period of the FCC's grant of approval, the parties shall join in a request for the FCC to extend the effective period of its grant for a period not to exceed forty-five (45) days, unless otherwise agreed between Buyer and Seller. If the facilities have not been restored by the Closing Date or any extension of the effective period of the FCC's consent, Buyer shall have the right, upon written notice to Seller, to terminate this Agreement without any further obligations of Buyer or Seller.

19. RESERVED.

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20. **BROKERAGE.** The parties hereby represent and warrant that there has been no broker or other intermediary involved in the negotiation of this Agreement.

21. **BENEFIT; ASSIGNMENT.** This Agreement shall operate or take effect to the benefit and be binding upon the parties hereto. Buyer may not assign its rights and obligations hereunder. Seller shall not assign its rights or obligations to this Agreement.

22. **EXHIBITS.** The Exhibits to this Agreement are a material part hereof.

23. **PUBLIC ANNOUNCEMENTS.** No party hereto shall make or shall authorize any other person to make any public announcement relating to any aspect of the transactions described herein without having first consulted with Seller and Buyer concerning the requirement for, and timing and content of, such public announcement and having received their prior consent thereto. Notwithstanding the foregoing, actions relative to obtaining approvals and like matters shall be permissible and Buyer may make all disclosures in its judgment necessary to obtain financing for purposes of carrying out the transactions described in this Agreement.

24. **HEADINGS.** The headings of the paragraphs of this Agreement are for convenience only and in no way modify, interpret or construe the meaning of specific provisions of the Agreement.

25. **CHOICE OF LAWS.** This Agreement is to be construed and governed by the Supreme Law of the Lands of the United States of America, including the Hawaiian Homes Commission Act 1920, and Hawai'i.

26. **NOTICES.** All necessary notices, demands, and requests required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed duly given if mailed by registered mail, return receipt requested, postage prepaid, and addressed as follows:

26.1 **If to Buyer:** Hugh Gordon
Hilo Broadcasting
c/o Crudele & De Lima
101 Aupuni Street, PH1014A
Hilo, Hawai'i 96720

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26.2 If to Seller: Frederick H.K. Baker, Jr.
KANI Communications, Inc.
P.O. Box 4727
Hilo, Hawai'i 96720-0727

27. SEVERABILITY. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

28. ENTIRE AGREEMENT. This Agreement supersedes any prior agreements between the parties and contains all of the terms agreed upon with respect to the subject matter hereof. This Agreement may not be altered or amended except by an instrument in writing signed by the party against whom enforcement of any such change is sought.

29. COUNTERPARTS. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were on the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date and year first written above.

Seller:
KANI COMMUNICATIONS, INC.

By: Frederick H.K. Baker, Jr.
Frederick H.K. Baker, Jr.
Its President

Buyer:
HILO BROADCASTING

By: Hugh E. Gordon
Hugh Gordon
Its _____