

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is dated as of July 14, 2016, by and between **SPEARFISH RADIO, INC.**, a South Dakota corporation ("Seller") and **REAL PRESENCE RADIO**, a North Dakota non-profit corporation ("Buyer") (collectively referred to as "Parties").

WITNESSETH:

WHEREAS, Seller is the licensee of FM Translator Station K234BR, Rapid City, South Dakota (Facility ID #88658) (the "Station"), pursuant to authorizations issued by the Federal Communications Commission (the "FCC"); and

WHEREAS, Seller desires to sell, transfer, assign, convey and deliver to Buyer, and Buyer desires to acquire from Seller, certain assets used in connection with the operation of the Station; and

WHEREAS, FCC authorizations may be assigned only with the prior consent of the FCC.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Sale of Assets.

(a) At Closing (as hereinafter defined), Seller agrees to sell, transfer, assign, convey and deliver to Buyer and Buyer shall purchase and assume from Seller, free and clear of any liens other than liens for taxes not yet due and payable, the following assets used in connection with the operation of the Station ("Assets"), but excluding the Excluded Assets described in subparagraph (b) below:

(i) Seller's equipment and other tangible personal property used in the transmission operations of the Station (the "Tangible Personal Property") identified on Schedule 1 hereto; and

(ii) The license granted by the FCC on June 8, 2012 for the operation of the Station in FCC File No. BLFT-20110620AAB, as renewed on March 22, 2013 in FCC File No. BRFT-20121119ACV, for a new eight year term that expires on April 1, 2021 (the "FCC Authorizations").

(b) Seller is not selling, assigning, or transferring to Buyer any assets, of whatever kind or nature, wherever located, which are held by Seller and used or useful in connection with the operations or ownership of any station or stations other than the Station,

including any privileges, rights, interests and claims associated therewith. Seller is also not selling, assigning, or transferring to Buyer the following assets of Seller (the "Excluded Assets"):

(i) Cash on hand and in banks (or their equivalents), and accounts receivable arising out of the operation of the Station prior to Closing;

(ii) All rights of Seller under all contracts, leases, and agreements, including contracts of insurance and insurance proceeds of settlement and insurance claims made by Seller relating to property or equipment repaired, replaced, restored by Seller prior to the Closing Date;

(iii) All deposits and all prepaid expenses and taxes;

(iv) Seller's corporate records;

(v) Seller's right, title and interest in and to Seller's leasehold, license or other interest in the current transmitter site used by the Station; and

(vi) All tangible and intangible personal and real property used or useful in connection with all of Seller's broadcast properties excluding the Station.

For the avoidance of doubt, the Parties have agreed that Seller will not selling, assigning, or subletting real property necessary for the operation of the Station's transmission facilities to Buyer and Buyer will be required to secure its own transmitter site, the securing of which is not a condition precedent to the consummation of the transaction contemplated by this Agreement.

2. **Consideration. Purchase Price.** The purchase price for all assets other than the FCC license of the Station shall be THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) in lawful money of the United States of America (the "*Purchase Price*"). In addition to the Purchase Price, Buyer will: (1) pay to Seller a monthly sum of FIVE HUNDRED DOLLARS (\$500.00) between August 1, 2016 and the Closing Date ("*Program Services Term*"), provided that Seller retransmits on the Station the signal of Seller's non-commercial educational FM Broadcast Station KJRC, 89.9 MHz, Rapid City, South Dakota, FCC Facility ID #90517 (the "*Program Services Payment*"), which Buyer hereby grants Seller retransmission consent to do so, and (2) reimburse Seller in the sum of THREE THOUSAND DOLLARS (\$3,000.00) by wire transfer, at Closing, for Seller's expenses incurred in this transaction (the "*Expense Reimbursement*"). Buyer has as of the date hereof placed into escrow, with Dennis J. Kelly, a member of the District of Columbia Bar ("Escrow Agent"), the sum of ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750.00) (the "Escrow"), as a good faith escrow for Buyer's performance of this Agreement. At Closing, Escrow Agent shall remit the foregoing deposit to Seller and Buyer shall pay to the Seller the sum of THIRTY-THREE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$33,250.00) by wire transfer, plus or minus any adjustments called for in this Agreement. In the event that all contingencies and conditions precedent of this Agreement are not met through no fault of Buyer, Buyer will be entitled to the immediate return of the Escrow held by the Escrow Agent, but not the Program Services Payment. For the avoidance of doubt, in the event that the commencement or termination date of

the Program Services Term is not on the first or last day of a calendar month, the payment of the Program Services Payment for such month shall be pro rata to the number of days of the Program Services Term in such calendar month.

3. **FCC Consent; Section 73.3517(a).** At a date not later than five (5) business days after the date hereof, Buyer and Seller shall execute, file and vigorously prosecute an application with the FCC (the "Assignment Application") requesting its consent to the assignment, from Seller to Buyer, of all FCC Authorizations pertaining to the Station (the "FCC Consent"). Buyer and Seller shall take all reasonable steps to cooperate with each other and with the FCC to secure such FCC Consent without delay. Seller hereby grants Buyer permission pursuant to 47 C.F.R. §73.3517(a) to file an FCC Form 349 application to make minor changes in the facilities of the Station, for which Buyer shall pay all legal, engineering, and FCC application processing fees and charges.

4. **Closing Date; Closing Place.** The closing (the "Closing") of the transactions contemplated by this Agreement shall occur not later than five (5) business days following the date of which the FCC Consent shall have become a Final Order (as hereinafter defined) (the "Closing Date") and the conditions to closing set forth in Section 8 have either been waived or satisfied. For purposes of this Agreement, the term "Final Order" means action by the FCC consenting to an application that is not reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which action no timely request for stay, petition for rehearing or appeal is pending, and as to which the time for filing any such request, petition or appeal or reconsideration by the FCC on its own motion has expired. The Closing shall be held by mail, facsimile, or electronic mail, as the Buyer and Seller may agree. Buyer shall have the sole right to waive a Final Order and close at any time subsequent to receipt of FCC staff approval of this transaction, subject to giving Seller five (5) calendar days' advance notice of the Closing Date.

5. **Representations and Warranties of Seller.** Seller hereby makes the following representations and warranties to Buyer:

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of South Dakota. Seller has the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

(b) Schedule 1 hereto contains a list of the Tangible Personal Property owned by Seller that shall be transferred to Buyer. Seller owns and has, and will have on the Closing Date, good and marketable title to the Tangible Personal Property. Other than as specifically set forth in this Section 5(b), each material item on Tangible Personal Property shall be conveyed to Buyer without representation or warranty, "as-is, where-is."

(c) The FCC Authorizations are in full force and effect, unimpaired by any act or omission of Seller. Seller lawfully holds each of the FCC Authorizations described in this

Agreement, none of which is subject to any restrictions or conditions that would limit in any material respect the operations of the Station, except such conditions as are stated on the face thereof.

(d) No representation or warranty made by Seller in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transaction herein contemplated, 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.

(e) There is no broker or finder or other person who would have any valid claim for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Seller.

6. **Representations and Warranties of Buyer.** Buyer hereby makes the following representations and warranties to Seller:

(a) This Agreement has been duly and validly executed and delivered by Buyer and constitutes the legal, valid and binding agreements of Buyer enforceable in accordance with their respective terms, except as may be limited by bankruptcy, insolvency or other laws affecting generally the enforcement of creditors' rights or the application of principles of equity.

(b) Buyer is legally, financially and technically qualified to acquire and become the licensee of, acquire, own and operate the Station under the Communications Act of 1934, as amended (the "*Communications Act*") and the rules, regulations and policies of the FCC. There are no facts that would, under existing law and the existing rules, regulations, policies and procedures of the FCC, disqualify Buyer as an assignee of the FCC Authorizations or as the owner and operator of the Station. No waiver of any FCC rule or policy with respect to Buyer, its business or operations, is necessary for the FCC Consent to be obtained. Buyer has and will have available on the Closing Date sufficient funds to enable it to consummate the transactions contemplated hereby.

(c) There is no broker or finder or other person who would have any valid claim against Seller for a commission or brokerage in connection with this Agreement or the transaction contemplated hereby as a result of any agreement, understanding or action by Buyer.

(d) No representation or warranty made by Buyer in this Agreement, and no statement made in any certificate, document, exhibit or schedule furnished or to be furnished in connection with the transactions herein contemplated, 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 other such statement not misleading to Seller to the best of Buyer's knowledge.

7. **Covenants.** Seller covenants with Buyer that, between the date hereof and the Closing Date, Seller shall take all reasonable actions necessary to keep the FCC Authorizations,

including all material permits and applications pending before the FCC, valid and in full force and effect.

8. **Conditions Precedent to Obligation to Close.**

(a) The performance of the obligations of Seller hereunder is subject to the satisfaction of each of the following express conditions precedent, unless waived in writing by Seller:

(i) Buyer shall have performed and complied in all material respects with all of the agreements, obligations and covenants required by this Agreement to be performed or complied with by Buyer prior to or as of the Closing Date;

(ii) The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have become a Final Order, unless waived by Seller; and

(iv) Buyer shall have delivered to Seller on the Closing Date, the documents and payments required to be delivered pursuant to Section 9(b);

(b) The performance of the obligations of Buyer hereunder is subject to the satisfaction of each of the following express conditions precedent:

(i) Seller shall have performed and complied in all material respects with all the agreements, obligations and covenants required by this Agreement to be performed or complied with by Seller prior to or as of the Closing Date;

(ii) The representations and warranties of Seller set forth in this Agreement shall be true and correct in all material respects on and as of the Closing Date with the same effect as if made on and as of the Closing Date;

(iii) The FCC Consent contemplated by this Agreement shall have been granted;

(iv) The FCC Authorizations shall be in full force and effect and there shall be no proceedings pending before the FCC to revoke, cancel, rescind, or refuse to renew any of such FCC Authorizations; and

(v) Seller shall have delivered to Buyer, on the Closing Date, the documents required to be delivered pursuant to Section 9(a).

9. **Closing Deliveries.**

(a) At the Closing, Seller shall deliver to Buyer the following, each of which shall be in form and substance satisfactory to Buyer and its counsel:

(i) A Bill of Sale transferring title to the Tangible Personal Property to Buyer;

(ii) An Assignment and Assumption of the Station's FCC Authorizations;

(iii) A joint notice to the Escrow Agent;

(iv) A certificate that the conditions set forth in Section 8(b)(i) and 8(b)(ii) have been satisfied by Seller as of the Closing Date; and

(v) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Buyer shall reasonably request, each in form and substance satisfactory to Buyer and its counsel.

(b) Prior to or at the Closing, Buyer will deliver to Seller the following, each of which shall be in form and substance satisfactory to Seller and its counsel:

(i) The Purchase Price and the Expense Reimbursement (including a joint notice to the Escrow Agent to deliver the Purchase Price to Seller);

(ii) An Assignment and Assumption of the Station's FCC Authorizations;

(iii) A certificate that the conditions set forth in Section 8(a)(i) and 8(a)(ii) have been satisfied by Buyer as of the Closing Date; and

(iv) Such other documents, instruments and agreements necessary to consummate the transactions contemplated by this Agreement or as Seller shall reasonably request, each in form and substance satisfactory to Seller and its counsel.

10. **Indemnification.** Each party agrees to indemnify the other for its breach of any representations, warranties and covenants contained herein. The several representations and warranties of Seller and Buyer contained in or made pursuant to this Agreement shall expire three (3) months after the Closing Date. Notwithstanding the foregoing, the maximum that Buyer may recover by indemnification or otherwise from Seller as post-closing claims shall be limited to an aggregate of Ten Thousand Dollars (\$10,000.00).

11. **Termination.**

(a) This Agreement may be terminated by either Buyer or Seller, if the party seeking to terminate is not in default or breach of any of its material obligations under this Agreement upon written notice to the other upon the occurrence of any of the following: (i) if, on or prior to the Closing Date, the other party breaches any of its material obligations contained herein, and such breach is not cured by the earlier of the Closing Date or ten (10) days after receipt of the notice of breach from the non-breaching party; or (ii) if the Assignment Application is denied by the FCC and such denial shall have become a Final Order; or (iii) if there shall be in effect any judgment, final decree or order that would prevent or make unlawful the Closing of this Agreement, or (iv) by Seller, if the Closing has not occurred within 12 months of the date hereof.

(b) If Closing does not occur due to a breach by the Buyer of any of its material obligations under this Agreement, Seller's exclusive remedy upon a termination of this Agreement shall be payment of the Deposit which shall be considered liquidated damages and not a penalty. Seller and Buyer each agree that this amount is reasonable in light of the anticipated harm which will be caused by a breach of this Agreement, the difficulty of proof of loss, the inconvenience and non-feasibility of otherwise obtaining an adequate remedy. If Seller is entitled to the Deposit as liquidated damages, Buyer shall take all actions required to effectuate the delivery of the Deposit from the Escrow Agent to Seller. If the Agreement terminates for any reason other than the material breach by Buyer, the Deposit shall be returned to Buyer, which shall not be Seller's sole remedy at law.

(c) Seller acknowledges that the Station is a unique asset not readily obtainable on the open market and that, in the event that Seller fails to perform its obligations to consummate the transaction contemplated hereby, money damages alone will not be adequate to compensate Buyer for its injury. Therefore, Seller agrees and acknowledges that in the event of Seller's failure to perform its obligation to consummate the transaction contemplated hereby, Buyer shall be entitled to specific performances of the terms of this Agreement and of Seller's obligation to consummate the transaction contemplated hereby. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law, and Buyer shall be entitled to receive from Seller all court costs, attorney's fees and other out-of-pocket expenses incurred by Buyer in enforcing its rights under this provision.

12. **Notices.** All notices, elections and other communications permitted or required under this Agreement shall be in writing and shall be deemed effectively given or delivered upon personal delivery (or refusal thereof), or twenty-four (24) hours after delivery to a courier service which guarantees overnight delivery, or five (5) days after deposit with the U.S. Post Office, by registered or certified mail, postage prepaid, and, in the case of courier or mail delivery, addressed as follows (or at such other address for a party as shall be specified by like notice):

If to Seller, to:

Spearfish Radio, Inc.
Post Office Box 680241
Park City, UT 84069-0241
Attention: Mario Hieb, President

With a copy (which shall not constitute notice) to:

Barry A. Friedman, Esquire
Thompson Hine, LLP
1919 M Street, N.W.
Suite 700
Washington, D.C. 20036-3537
If to Buyer, to:

Real Presence Radio
Post Office Box 13703
Grand Forks, ND 58208-1370
Attention: Edward E. Schmitz, Vice-President/Board Chairman

With a copy (which shall not constitute notice) to:

Dennis J. Kelly, Esquire
Law Office of Dennis J. Kelly
Post Office Box 41177
Washington, DC 20018-0577

13. **Governing Law; Venue.** This Agreement shall be construed and enforced in accordance with the laws of the State of South Dakota, without giving effect to the choice of law principles thereof. Venue shall lie in the state or federal courts located in or having jurisdiction over Pennington County, South Dakota.

14. **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any provision contained herein shall, for any reason, be held to be invalid or unenforceable, such provision shall be ineffective to the extent of such invalidity or unenforceability without invalidating the remainder of such provision or any other provisions hereof, unless such a construction would be unreasonable.

15. **Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed and exchanged by facsimile transmission or electronic mail, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document.

16. **Expenses; Prorations.** Except as otherwise set forth herein, 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. The parties shall share equally the FCC application processing fee for the assignment of license application. Seller shall pay sales or use taxes, transfer taxes, and similar taxes and fees incurred up to the

date of Closing and Buyer shall pay any costs of recordation, filing fees or the like, and taxes incurred subsequent to the Closing Date.

17. **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party may voluntarily assign its interest or delegate its duties under this Agreement without the prior written consent of the other party.

18. **Judicial Interpretation.** Should any provision of this Agreement require judicial interpretation, the Parties agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by the reason of the rule of construction that a document is to be construed more strictly against the Party which itself or through its agent prepared the same, it is being agreed that the agents of each Party have participated in the preparation hereof.

19. **Entire Agreement.** This Agreement, and the exhibits attached hereto, supersede all prior agreements and understandings between the parties with respect to the subject matter hereof and may not be changed or terminated orally, and no attempted change, amendment, or waiver of any of the provisions hereof shall be binding unless in writing and signed by parties.

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

SELLER:

SPEARFISH RADIO, INC.

By: 

Mario Hieb
President

7/12/16

BUYER:

REAL PRESENCE RADIO

By: 

Edward E. Schmitz,
Vice-President/Board Chairman

SCHEDULE 1

Tangible Personal Property

1- Tepco J-340 FM Translator
1- Scala FMV antenna
150' (approx) 9913 coaxial cable.