

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of January 16, 2020, by and between **35 COMMUNICATIONS, LLC**, a Texas limited liability company (the “Seller”), and Xavier Entertainment, LLC, a Texas limited liability company (the “Buyer”).

RECITALS

WHEREAS, Seller owns and operates FM broadcast station KOTX, Hebbroville, Texas (FCC Facility ID No. 171012) (the “Station”), pursuant to certain authorizations issued by the Federal Communications Commission (the “FCC”); and

WHEREAS, Seller desires to sell and Buyer desires to purchase certain of the assets used and useful in the operation of the Station on the terms and subject to the conditions set forth herein; and

WHEREAS, in order to induce Buyer to enter into this Agreement, Seller is willing to make certain representations and warranties to, and covenants and agreements with, Buyer; and in order to induce Seller to enter into this Agreement, Buyer is willing to make certain representations and warranties to, and covenants and agreements with, Seller, all as reflected in this Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1 **PURCHASE AND SALE OF ASSETS**

1.1 Assignment and Acquisition of Assets. On the terms and subject to the conditions hereof, on the Closing Date (as hereinafter defined), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and assume from Seller, all of the right, title and interest of Seller in and to the following assets, which are used in the operation of the Station (the “Station Assets”). The Station Assets include, without limitation, the following:

1.1.1 all licenses, permits and other authorizations which are held by or issued to Seller by the FCC with respect to the Station (the “FCC Licenses”), including those described on *Schedule 1.1.1* attached hereto, and including any renewals or modifications thereof between the date hereof and the Closing Date;

1.1.2 the Station’s call letters and Seller’s rights in and to the trademarks, goodwill attached to the Station and all trade names, service marks, franchises, copyrights, websites, domain names, programs and programming material, jingles, slogans, logos, and other intangible property which are used exclusively in the operation of the Station, as listed on *Schedule 1.1.2* attached hereto (the “Intangible Property”);

1.1.3 the Station equipment, including transmitter(s), rack, antenna(s), satellite dish(es), cables, vehicles, furniture, fixtures, spare parts and other tangible personal property, including those items listed on *Schedule 1.1.3* attached hereto, except for any retirements or dispositions thereof made between the date hereof and Closing in the ordinary course of business (the “Tangible Personal Property”);

1.1.4 all the files (or copies thereof) relating to the operation of the Station, including the Station’s local public files, technical information and engineering data;

1.1.5 Seller’s rights in and to the leasehold interest in the real property on which the Station transmission facilities are located (the “Antenna Site Lease”). *Schedule 1.1.5* contains a correct legal description, street address and tax parcel identification number of the lot in which Seller has a leasehold interest and an accurate description (by location, name of lessor, date of Lease and term expiration date) of the Antenna Site Lease;

1.1.6 All claims of Seller against third parties relating to the Station Assets whether choate or inchoate, known or unknown, contingent or noncontingent; and

1.1.7 All rights of Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect to any of the Tangible Personal Property and the Antenna Site Lease being transferred pursuant to this Agreement.

Notwithstanding the foregoing, the transfer of the Station Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Station Assets unless Buyer expressly assumes that Liability pursuant to an assignment and assumption of such at Closing.

1.2 No Liens. The Assets shall be transferred to Buyer by Bill of Sale, free and clear of liens, claims and encumbrances (“Liens”) except for the following (collectively, “Permitted Liens”): (i) any obligations of Seller in conjunction with the Assets arising or to be performed during the period after the Closing Date (collectively, the “Assumed Obligations”), (ii) liens for taxes and assessments not yet due and payable, including FCC Regulatory Fees, and (iii) liens or encumbrances on the Assets that will be discharged on or before the Closing Date. Except for the Assumed Obligations and the Permitted Liens, Buyer does not assume and will not be deemed by execution and delivery of this Agreement or any agreement, instrument or document delivered pursuant to or in connection with this Agreement or otherwise by reason of the consummation of the transactions contemplated hereby, to have assumed any liabilities, obligations or commitments of Seller of any kind, whether or not disclosed to Buyer, and all such liabilities and obligations of Seller shall be the sole responsibility of Seller before and after the Closing Date.

1.3 Excluded Items. Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that the transaction involving the assignment of the Assets shall not include the following: any contracts or obligations of Seller related to the Station and Seller’s cash, cash equivalents, all contracts of insurance, insurance proceeds, refunds or claims, claims for tax refunds, company seal, Seller’s company records, ownership record books; such other books and records as pertain to the organization or existence of Seller; and duplicate copies of such records as are necessary to enable Seller to file its tax returns and reports as well as any other records or materials relating to Seller generally and not involving or relating to the Station Assets.

ARTICLE 2
CONSIDERATION

2.1 Purchase Price. The aggregate amount to be paid to Seller for the Station Assets (the "Purchase Price") shall be Eighty Three Thousand Dollars (\$83,000.00). The Purchase Price shall be delivered to Seller as follows:

2.1.1 Upon the execution of this Agreement, Buyer shall pay a Deposit ("Deposit") of Ten Thousand Dollars (\$10,000.00) This Deposit shall include:

(a) Non-refundable Earnest Money ("Earnest Money") in the amount of One Thousand Five Hundred Dollars (\$1,500.00) . The Earnest Money shall be payable by wire transfer to an account specified in writing by Seller and delivered to Buyer simultaneous with the execution of this agreement, and

(b) An Escrow Deposit (the "Escrow Deposit") equivalent to the Deposit balance of Eighty-Five Hundred Dollars (\$8,500.00), payable by wire transfer to an account specified pursuant to an Escrow Agreement of even date herewith by and among, Buyer, Seller and Fletcher, Heald & Hildreth, PLC, as "Escrow Agent."

2.1.2 At Closing, the balance of the Purchase Price, as adjusted pursuant to Section 2.2 below, shall be paid to Seller by Buyer by (i) release to Seller, pursuant to joint instructions of Buyer and Seller to Escrow Agent, of the Escrow Deposit; and (ii) wire transfer of immediately available funds. Seller shall provide wire instructions in writing to Buyer at least two (2) business days prior to the Closing Date

2.2 Prorations and Adjustments. The Purchase Price shall be subject to the following adjustments, which shall be reflected in a closing statement to be executed and delivered by Buyer and Seller at Closing:

(a) Prorations. Any rents, prepaid items and other applicable items with respect to the Assumed Liabilities shall be prorated as of 11:59 p.m. local time on date prior to the Closing Date. Seller shall assign to Buyer all unused deposits with respect to the Assumed Liabilities.

(b) Ad Valorem Taxes. Ad Valorem tangible personal property taxes with respect to the Station Assets for the calendar year in which the Closing occurs shall be prorated between Seller and Buyer as of the Closing Date on the basis of no applicable discount. If the amount of such taxes with respect to any of the Station Assets for the calendar year in which the Closing occurs has not been determined as of the Closing Date, then the taxes with respect to such Station Assets for the preceding calendar year, on the basis of no applicable discount, shall be used to calculate such prorations, with known changes in valuation or

millage applied. The prorated taxes shall be an adjustment to the amount of cash due from Buyer at closing. If the actual amount of any such taxes varies by more than Five Hundred Dollars (\$500.00) from estimates used at Closing to prorate such taxes, then the parties shall re-prorate such taxes within ten (10) days following request by either party based on the actual amount of the tax bill.

(c) FCC Annual Regulatory Fees. Buyer and Seller shall prorate the annual regulatory fees based on the most recent publicly available information about the cost of such regulatory fees for the Stations.

2.3 Allocation of Purchase Price. After the Closing, the parties shall make consistent use of the allocation, fair market value and useful lives of the Station Assets for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer shall prepare and deliver IRS Form 8594 to Seller within forty-five (45) days after the Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller or members shall contend or represent that such allocation is not a correct allocation.

ARTICLE 3 **CLOSING**

3.1 Closing.

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel at 112 E. Pecan St., Ste. 450, San Antonio, Texas 78205, or by electronic signatures and document exchange upon the agreement of Buyer and Seller, on a date not more than five (5) business days after the date on which the FCC Consent becomes Final; provided, however, that Buyer may elect, in its sole discretion, to waive this requirement and specify a closing date not earlier than five (5) business days after the FCC Consent has been granted. "Final" means an order (i) which is effective, (ii) with respect to which no appeal, request for stay, request for reconsideration or other request for review is pending, (iii) with respect to which the time for appeal, requesting a stay, requesting reconsideration or requesting other review has expired, and (iv) which cannot be set aside on the FCC's own motion. The date the Closing occurs shall be referred to herein as the "Closing Date." Subject to the provisions of Article 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 3.1 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement. In such a situation, the Closing will occur as soon as practicable, subject to Article 9.

ARTICLE 4 **GOVERNMENTAL CONSENTS**

4.1 FCC Consent. It is specifically understood and agreed by Buyer and Seller that the assignment of the FCC Licenses is expressly conditioned on and is subject to the prior consent and approval of the FCC, including the Media Bureau pursuant to delegated authority, without the imposition of any conditions materially adverse to Seller or Buyer with respect to the assignment of the FCC Licenses from Seller to Buyer (the "FCC Consent").

4.2 FCC Application. Buyer and Seller agree to file an application with the FCC for the FCC Consent (the “FCC Application”) within five (5) business days of the date of execution of this Agreement and the placement of the Escrow Deposit in escrow. Buyer and Seller shall prosecute the FCC Application with all reasonable diligence and otherwise use their commercially reasonable efforts to (a) obtain the FCC Consent as expeditiously as practicable (but neither Buyer nor Seller shall have any obligation to satisfy complainants or the FCC by taking any steps which would have a material adverse effect upon Buyer or Seller) and (b) obtain any necessary extensions of the FCC Consent until the Closing Date. If the FCC Consent imposes any condition on Buyer or Seller, such party shall use its commercially reasonable efforts to comply with such condition; provided, however, that neither Buyer nor Seller shall be required hereunder to comply with any condition that would have a material adverse effect upon it. If reconsideration or judicial review is sought with respect to the FCC Consent, the party affected shall vigorously oppose such efforts for reconsideration or judicial review; provided, however, that nothing herein shall be construed to limit any party’s right to terminate this Agreement pursuant to ARTICLE 15.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in ARTICLE 14.

5.1 Organization and Standing. Buyer is a limited liability company and is duly organized, validly existing and in good standing under the laws of the State of Texas.

5.2 Authorization and Binding Obligation. Buyer has all necessary power and authority required to enter into and perform this Agreement and the transactions contemplated hereby, to hold the Station Assets and to carry on the business of the Station upon the consummation of the transactions contemplated by this Agreement. Buyer’s execution, delivery and performance of this Agreement and the transactions contemplated hereby have been or will have been, at Closing, duly and validly authorized by all necessary action on its part. Assuming the due authorization, execution and delivery of this Agreement by Seller, this Agreement does and will constitute the valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as limited by laws affecting creditors' rights.

5.3 Qualification. To the best of Buyer’s knowledge, there are no facts which, under the Communications Act of 1934, as amended to date, or the existing rules and regulations of the FCC, would disqualify Buyer as assignee of the FCC Licenses.

5.4 Absence of Conflicting Agreements or Required Consents. Except as set forth in ARTICLE 4 with respect to governmental consents, the execution, delivery and performance of this Agreement by Buyer: (a) do not conflict with the provisions of the operating agreement (or other organization documents) of Buyer; (b) do not require the consent of any third party which has not already been obtained by Buyer; (c) do not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Buyer is bound; and (d) do 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, license or permit to which Buyer is now subject.

5.5 Litigation. There is no claim, litigation, proceeding or investigation pending or, to the best of Buyer's knowledge, threatened against Buyer, that could have a material adverse effect on Buyer's ability to perform its obligations pursuant to this Agreement. Buyer is not in violation of any law, regulation, or ordinance or any other requirement of any governmental body or court which could have a material adverse effect on Buyer's ability to perform its obligations pursuant to this Agreement.

5.6 Commissions or Finder's Fees. Neither Buyer nor any person or entity acting on behalf of Buyer has agreed to pay a commission, finder's fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to Buyer, each of which is true and correct on the date hereof and shall remain true through to and survive the Closing as provided in ARTICLE 14:

6.1 Organization and Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas.

6.2 Authorization and Binding Obligation. Seller has all necessary power and authority required to enter into and perform this Agreement and the transactions contemplated hereby. Seller's execution, delivery and performance of this Agreement and the transactions contemplated hereby have been or will have been, at Closing, duly and validly authorized by all necessary action on its part. Assuming the due authorization, execution and delivery of this Agreement by Buyer, this Agreement constitutes the valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as limited by laws affecting creditors' rights.

6.3 Absence of Conflicting Agreements or Required Consents. Except as set forth in ARTICLE 4 with respect to governmental consents, the execution, delivery and performance of this Agreement by Seller: (a) do not conflict with the provisions of the operating agreement (or other organization documents) of Seller; (b) do not require the consent of any third party which has not already been obtained or will be obtained prior to Closing by Seller and provided to Buyer at Closing; (c) do not violate any applicable law, judgment, order, injunction, decree, rule, regulation or ruling of any governmental authority to which Seller is bound; and (d) do 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, license or permit to which Seller is now subject.

6.4 FCC Licenses. Seller is the authorized legal holder of the FCC Licenses. The FCC Licenses are in full force and effect and have not been revoked, suspended, canceled, rescinded or terminated and have not expired. To the best of Seller's knowledge, there is not

pending any action by or before the FCC to revoke, suspend, cancel, rescind or materially adversely modify any of the FCC Licenses (other than proceedings to amend FCC rules of general applicability), and, to the best of Seller's knowledge, there is not now issued or outstanding, by or before the FCC, any order to show cause, notice of violation, notice of apparent liability, or notice of forfeiture against Seller with respect to the Station. The Station is, and shall be on the Closing Date, operating in compliance in all material respects with its FCC Licenses, the Communications Act of 1934, as amended, and the rules, regulations and policies of the FCC.

6.5 Intangible Property. *Schedule 1.1.2* contains a description of the Intangible Property included in the Assets. Seller has received no notice of any claim that its use of the Intangible Property infringes upon any third party rights. Seller (i) is the lawful owner of all of the Intangible Property it purports to own and (ii) has valid license rights (whether as a licensor or licensee) in the Intangible Property it purports to license, in all cases free and clear of any Liens except Permitted Liens.

6.6 Tangible Property. *Schedule 1.1.3* contains a list of material items of Tangible Personal Property included in the Station Assets. Seller has good and marketable title to the Tangible Personal Property free and clear of Liens other than Permitted Liens. Except as set forth on *Schedule 1.1.3*, all material items of Tangible Personal Property are in operating condition and repair, ordinary wear and tear excepted.

6.7 Litigation. There is no claim, litigation, proceeding or investigation pending or, to the best of Seller's knowledge, threatened against Seller, that could have a material adverse effect on Seller's ability to perform its obligations pursuant to this Agreement. Seller is not in violation of any law, regulation, or ordinance or any other requirement of any governmental body or court which could have a material adverse effect on Seller's ability to perform its obligations pursuant to this Agreement.

6.8 Compliance With Laws. To the best of Seller's knowledge, Seller has complied in all material respects with all laws, regulations, rules, writs, injunctions, ordinances, franchises, decrees or orders of any court or of any foreign, federal, state, municipal or other governmental authority which are applicable to the operation of the Station. There is no action, suit or proceeding pending or, to Seller's knowledge, threatened against Seller in respect of the Station that will subject Buyer to liability or which questions the legality or propriety of the transactions contemplated by this Agreement. To the best of Seller's knowledge, there are no governmental claims or investigations pending or threatened against Seller in respect of the Station and/or Station Assets (except those affecting the industry generally).

6.8 Commissions or Finder's Fees. Neither Seller nor any person or entity acting on behalf of Seller has agreed to pay a commission, brokerage fee or similar payment in connection with this Agreement or any matter related hereto to any person or entity.

6.9 Undisclosed Liabilities. To the best of Seller's knowledge, no liability or obligation of any nature, whether accrued, absolute, contingent or otherwise, relating to Seller or the Station exists which could, after the Closing, result in any form of transferee liability against Buyer or subject the Station Assets to any Liens or otherwise affect the full, free and unencumbered use of the Station Assets by Buyer.

6.10 Antennae Site Lease. Seller is, and at all times has been in compliance with all applicable terms and requirements of the Antennae Site Lease which is being assumed by Buyer, and each other Person that has or had any obligation or liability under the Antennae Site Lease which is being assigned to Buyer is, and at all times during its Term has been, in full compliance with all applicable terms and requirements of such Antennae Site Lease.

ARTICLE 7
COVENANTS OF BUYER

7.1 Closing. Subject to ARTICLE 10, on the Closing Date, Buyer shall purchase the Station Assets from Seller as provided in ARTICLE 1.

7.2 Notification. Buyer shall provide Seller prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in ARTICLE 5 of which it becomes aware; and (b) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Buyer which challenges the transactions contemplated hereby.

7.3 No Inconsistent Action. Buyer shall not take any action which: (a) is materially inconsistent with or which breaches its obligations under this Agreement; or (b) would cause any representation or warranty of Buyer contained herein to be or become false or invalid.

ARTICLE 8
COVENANTS OF SELLER

8.1 Closing. Subject to ARTICLE 11, on the Closing Date, Seller shall sell to Buyer the Station Assets as provided in ARTICLE 1.

8.2 Notification. Seller shall provide Buyer prompt written notice of: (a) any change in any of the information contained in the representations and warranties made in ARTICLE 6 of which it becomes aware; and (b) any litigation, arbitration or administrative proceeding pending or, to its knowledge, threatened against Seller which challenges the transactions contemplated hereby.

8.3 No Inconsistent Action. Seller shall not take any action which: (a) is materially inconsistent with or which breaches its obligations under this Agreement; or (b) would cause any representation or warranty of Seller contained herein to be or become false or invalid.

ARTICLE 9
JOINT COVENANTS

Buyer and Seller each hereby covenant and agree that between the date hereof and the Closing Date it shall act in accordance with the following:

9.1 Cooperation. Subject to express limitations contained elsewhere herein, Buyer and Seller agree to cooperate fully with one another in taking any reasonable actions (including without limitation, reasonable actions to obtain the required consent of any governmental instrumentality or any third party) necessary or helpful to accomplish the

transactions contemplated by this Agreement, including but not limited to the satisfaction of any condition to closing set forth herein; provided, however, that nothing herein shall be construed to limit either party's right to terminate this Agreement pursuant to ARTICLE 15.

9.2 Control of FCC License. Buyer shall not, directly or indirectly, control, supervise or direct the operations of the Seller or assume any control of the FCC License or the Station prior to the Closing. Such operations, including complete control and supervision of the FCC Licenses and the Station shall be the sole responsibility of Seller.

9.3 Announcements. No party shall, without the prior written consent of the other, issue any press release or make any other public announcement or public filing concerning the transactions contemplated by this Agreement, except to the extent that such party is so obligated by law.

ARTICLE 10

CONDITIONS OF CLOSING BY BUYER

The obligations of Buyer hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

10.1 Representations, Warranties and Covenants.

10.1.1 All representations and warranties of Seller made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

10.1.2 All 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.

10.1.3 Buyer shall have received a certificate, dated as of the Closing Date, executed by a member of Seller, to the effect that: (a) the representations and warranties of Seller contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that Seller has complied with and performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

10.2 Governmental Consents. The FCC Consent shall have been obtained and the FCC Application shall have been granted by the FCC, including the Media Bureau pursuant to delegated authority, without the imposition of any conditions materially adverse to Buyer.

10.3 Governmental Authorizations. Seller shall be the holder of the FCC Licenses and there shall not have been any modification of the FCC Licenses which has a material adverse effect on the FCC Licenses. No proceeding shall be pending which seeks or the effect of which reasonably could be to revoke, cancel, suspend or adversely modify the FCC Licenses.

10.4 Adverse Proceedings. No suit, action, claim or governmental proceeding shall be pending against, and no other decree or judgment of any court, agency or other governmental authority shall have been rendered (and remain in effect) against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

10.5 Closing Documents. Seller shall have delivered or caused to be delivered to Buyer, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 13.1.

ARTICLE 11

CONDITIONS OF CLOSING BY SELLER

The obligations of Seller hereunder are, at its option, subject to satisfaction, at or prior to the Closing Date, of each of the following conditions:

11.1 Representations, Warranties and Covenants.

11.1.1 All representations and warranties of Buyer made in this Agreement or in any Exhibit, Schedule or document delivered pursuant hereto, shall be true and complete in all material respects as of the date hereof and on and as of the Closing Date as if made on and as of that date, except for changes expressly permitted or contemplated by the terms of this Agreement.

11.1.2 All 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.

11.1.3 Seller shall have received a certificate, dated as of the Closing Date, executed by a member of Buyer, to the effect that: (a) the representations and warranties of Buyer contained in this Agreement are true and complete in all material respects on and as of the Closing Date as if made on and as of that date; and (b) that Buyer has complied with and performed in all material respects all terms, covenants and conditions to be complied with or performed by it on or prior to the Closing Date.

11.2 Adverse Proceedings. No suit, action, claim or governmental proceeding shall be pending against, and no other decree or judgment of any court, agency or other governmental authority shall have been rendered (and remain in effect) against, any party hereto which would render it unlawful, as of the Closing Date, to effect the transactions contemplated by this Agreement in accordance with its terms.

11.3 Closing Documents and Payment. Buyer shall have delivered or caused

to be delivered to Seller, on the Closing Date, each of the documents required to be delivered by it pursuant to Section 13.2, and Buyer shall have paid Seller the Purchase Price, as contemplated by ARTICLE 2.

ARTICLE 12
FEES AND EXPENSES

12.1 **Transfer Taxes and Expenses.** Except as otherwise expressly set forth in this Agreement, each party hereto 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. Buyer shall be solely responsible for payment of the FCC filing fee for the FCC Application. Seller shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Station Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

ARTICLE 13
DOCUMENTS TO BE DELIVERED AT CLOSING

13.1 **Seller's Documents.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following:

13.1.1 A certificate of the Seller, dated the Closing Date, in the form described in Section 10.1.3;

13.1.2 Such bills of sale, assignments (including third-party consents, if required) and other good and sufficient instruments of sale, conveyance, transfer and assignment, in form and substance reasonably satisfactory to Buyer and Buyer's counsel, as shall be effective to vest in Buyer all of Seller's right, title and interest in the Station Assets, free, clear and unencumbered, including: a bill of sale to convey the Tangible Personal Property; an assignment and assumption of the Intangible Property; an assignment and assumption of the FCC Licenses; and an assignment and assumption of the Antenna Site Lease.

13.1.3 Joint instructions to the Escrow Agent to distribute the Escrow Deposit to Seller;

13.1.4 Such additional information, materials, agreements, documents and instruments as Buyer and its counsel may reasonably request in order to consummate the Closing.

13.2 **Buyer's Documents.** At the Closing, Buyer shall deliver or cause to be delivered to Seller the following:

13.2.1 A certificate of Buyer, dated the Closing Date, in the form described in Section 11.1.3.

13.2.2 The Purchase Price as described in Section 2.1.

13.2.3 Buyer's counterpart to the joint instructions to the Escrow Agent.

13.2.4 Buyer's signatures to assignment and assumption instruments as described in 13.1.2.

13.2.5 Such additional information, materials, agreement, documents and instruments as Seller and its counsel may reasonably request in order to consummate the Closing.

ARTICLE 14

SURVIVAL; INDEMNIFICATION; RISK OF LOSS

14.1 **Survival of Representations, Etc.** All representations and warranties contained in this Agreement, or in any Exhibit, Schedule, certificate, agreement or statement delivered pursuant hereto, shall survive for twenty-four (24) months after the Closing Date. One party's knowledge of a false representation or a breach of warranty on the part of the other at the time of Closing shall not be deemed to constitute a waiver of such representation or warranty. If a Deficiency is asserted by either party, before the expiration of the survival or limitations period, such asserted Deficiency shall survive until the existence of such Deficiency has been finally established and the Deficiency is resolved as provided below.

14.2 **Basic Provision.**

14.2.1 **Buyer Indemnitees.** Seller (an "Indemnifying Party") hereby agrees to indemnify and hold harmless Buyer, its officers, directors and members (collectively, the "Buyer Indemnitees") from, against and in respect of, and to reimburse the Buyer Indemnitees for the amount of any and all Deficiencies.

14.2.2 **Seller Indemnitees.** Buyer (an "Indemnifying Party"), hereby agrees to indemnify and hold harmless Seller and its officers, directors, and members (collectively, the "Seller Indemnitees") from, against and in respect of, and to reimburse Seller Indemnitees for the amount of any and all Deficiencies.

14.3 **Definition of "Deficiencies".**

14.3.1 **Deficiencies for Buyer.** As used in this Article 14, the term "Deficiencies" when asserted by the Buyer Indemnitees or arising out of a third party claim against the Buyer Indemnitees shall mean any and all losses, fines, damages, liabilities and claims sustained by the Buyer Indemnitees and arising out of, related to, in the nature of, caused by, based on or resulting from:

(i) Any misrepresentation, breach of warranty or any non-fulfillment of any representation, warranty, covenant, obligation or agreement on the part of Seller contained in or made in this Agreement or in an Exhibit, Schedule, certificate, agreement or statement delivered pursuant to this Agreement;

(ii) Any failure by Seller to pay or discharge any liability of Seller and the Seller Indemnitees, direct or contingent, that is not expressly assumed by Buyer pursuant to the provisions of this Agreement;

(iii) Any litigation, proceeding or claim by any third party to the extent relating to the businesses or operations of Seller, the Station Assets or the Station before the Closing Date;

(iv) Except for obligations or liabilities expressly assumed by Buyer herein, Seller's operation of the Station or the ownership of the Station Assets before the Closing Date (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Seller under any lease, contract, or agreement or under this Agreement before the Closing Date);

(v) Except for obligations or liabilities expressly assumed by Buyer herein, any transaction entered into by Seller or arising in connection with the Station or the operation of its business or any of the Station Assets before the Closing Date; or

(vi) Any and all acts, suits, proceedings, demands, assessments and judgments and all reasonable fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all reasonable fees, whether of attorneys, accountants or other professionals, costs and expenses of any kind reasonably incurred by any party identified herein and its counsel in investigating, preparing for, defending against, or providing evidence, producing documents or taking other action with respect to any threatened or asserted claim ("Legal Expenses")).

14.3.2 Deficiencies for Seller. As used in this Article 14, the term "Deficiencies" when asserted by the Seller Indemnitees or arising out of a third party claim against the Seller Indemnitees shall mean any and all losses, fines, damages, liabilities and claims sustained by the Seller Indemnitees and arising out of, related to, in the nature of, caused by, based on or resulting from:

(i) Any misrepresentation, breach of warranty or any non-fulfillment of any representation, warranty, covenant, obligation or agreement on the part of Buyer contained in or made in this Agreement or in an Exhibit, Schedule, certificate, statement or agreement delivered pursuant to this Agreement;

(ii) Any failure by Buyer to pay or discharge any liability arising after the Closing Date for any of the Assumed Obligations;

(iii) Any litigation, proceeding or claim by any third party to the extent relating to the business or operations of Buyer, the Station Assets or the Station after the Closing Date;

(iv) Buyer's operation of the Station or the ownership of the Station Assets after the Closing Date (including, but not limited to, any and all claims, liabilities, and obligations arising or required to be performed by Buyer under any lease, contract, or agreement or under this Agreement after the Closing Date);

(v) Any transaction entered into by Buyer or arising in connection with the Station or the operation of its business or any of the Station Assets after the Closing Date; or

(vi) Any and all acts, suits, proceedings, demands, assessments and judgments and all fees, costs and expenses of any kind, related or incident to any of the foregoing (including, without limitation, any and all reasonable Legal Expenses).

14.4 Procedures for Establishment of Deficiencies.

14.4.1 Claim Asserted. In the event that any claim shall be asserted by any third party against the Buyer Indemnitees or the Seller Indemnitees (the Buyer Indemnitees or the Seller Indemnitees, as the case may be, hereinafter, the "Indemnitees"), which, if sustained, would result in a Deficiency, then the Indemnitees, promptly and in all events within fifteen (15) business days after learning of such claim, shall notify the Indemnifying Party of such claim and Indemnitees shall permit the Indemnifying Party to defend against such claim, at the Indemnifying Party's sole expense and through legal counsel reasonably acceptable to the Indemnitees, provided that the Indemnifying Party proceeds in good faith, expeditiously and diligently. The Indemnitees shall, at their option and expense, have the right to participate in any defense undertaken by the Indemnifying Party with legal counsel of their own selection and at their expense. The parties will cooperate fully in any such action and shall make available to each other any books or records useful for the defense of such claim. No settlement or compromise of any claim which may result in a Deficiency may be made by the Indemnifying Party without the prior written consent of the Indemnitees unless: (a) before such settlement or compromise, the Indemnifying Party acknowledges in writing its obligation to pay in full the amount of the settlement or compromise and all associated expenses and (b) the Indemnitees are furnished with security reasonably satisfactory to the Indemnitees that the Indemnifying Party will in fact pay such amount and expenses or the Indemnifying Party obtains a release of the Indemnitees from all liability in respect of such claim.

14.4.2 Notice. In the event that the Indemnitees assert the existence of any Deficiency against the Indemnifying Party, such Indemnitees shall give written notice to the Indemnifying Party of the nature and amount of the Deficiency asserted. If the Indemnifying Party within a period of thirty (30) days after the giving of the Indemnitees' notice, shall not give written notice to the Indemnitees announcing its intent to contest such assertion of the Indemnitees (such notice by the Indemnifying Party being hereinafter referred to as the "Contest Notice"), such assertion of the Indemnitees shall be deemed accepted and the amount of the Deficiency shall be deemed established. In the event, however, that a Contest Notice is given to the Indemnitees within such 30-day period, then the contested assertion of a Deficiency shall be resolved through binding arbitration.

14.4.3 Agreement. The Indemnitees and the Indemnifying Party may agree in writing, at any time, as to the existence and amount of a Deficiency, and, on the execution of such agreement such Deficiency shall be deemed established.

14.5 Payment of Deficiencies. The Indemnifying Party hereby agrees to pay the amount of established Deficiencies within thirty (30) days after the establishment thereof ("Due Date"). The amount of established Deficiencies shall be paid in cash. Any amounts not paid by the Indemnifying Party when due under this Section shall bear interest from and after the Due Date thereof until the date paid at a rate equal to the lesser of: (a) ten (10) percent per annum and (b) the highest legal rate permitted by applicable law. At the option of the Indemnitees, the Indemnitees may offset any Deficiency or any portion thereof that has not been paid by the Indemnifying Party to the Indemnitees against any obligation any of the Indemnitees may have to the Indemnifying Party arising out of a Deficiency established pursuant to Article 14.

14.6 Limitations. Notwithstanding any other provision of this ARTICLE 14, no claim or claims for Deficiencies that in the aggregate do not equal or exceed Eight Thousand Dollars (\$8,000) (the "Threshold") shall be considered a Deficiency or Deficiencies under this Article; provided, that once any claim or claims exceed the Threshold, the indemnified party shall be entitled to first dollar coverage. The maximum amount of permitted claims for Deficiencies under this ARTICLE 14 is Fifty Thousand Dollars (\$50,000.00).

ARTICLE 15 **TERMINATION RIGHTS**

15.1 Termination. This Agreement may be terminated at any time prior to Closing as follows:

15.1.1 Upon the mutual written agreement of Buyer and Seller, this Agreement may be terminated on such terms and conditions as so agreed; or

15.1.2 By written notice by Buyer to Seller if Seller breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within ten (10) business days of the date of notice of breach or default served by Buyer; or

15.1.3 By written notice of Seller to Buyer if Buyer breaches in any material respect any of its representations or warranties or defaults in any material respect in the observance or in the due and timely performance of any of its covenants or agreements contained in this Agreement and such breach or default is not cured within ten (10) business days of the date of notice of breach or default served by Seller; or

15.1.4 By written notice of Seller to Buyer, or by written notice of Buyer to Seller, if the FCC by staff action or action by the full FCC dismisses or denies the FCC Application and such dismissal or denial becomes final or if the FCC by staff action or action by the full FCC designates for hearing the FCC Application and the party providing notice is not materially responsible for the denial, dismissal or designation of the Application; or

15.1.5 By written notice of Seller to Buyer, or by written notice of Buyer to Seller, if the FCC has not granted the Application within NINE (9) months of filing and the party providing notice is not materially responsible for the lack of FCC action on the Application; or

15.1.6 By written notice of Seller to Buyer, or by written notice of Buyer to Seller, if any court of competent jurisdiction shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; or

Notwithstanding the foregoing, no party hereto may effect a termination hereof if such party is in material default or breach of this Agreement. The Escrow Deposit and all accrued interest will be returned to Buyer in the event of termination of this Agreement.

15.2 Monetary Damages, Specific Performance and Other Remedies. The parties recognize that if Seller refuses to perform under the provisions of this Agreement or Seller otherwise breaches such that the Closing has not occurred, monetary damages alone will not be adequate to compensate Buyer for its injury. Buyer (provided itself is not at such time in material breach hereof), at its election, shall be entitled to obtain specific performance of the terms of this Agreement in lieu of Buyer's right to recover damages or to pursue any other remedies available for breach. If any action is brought by Buyer to enforce this Agreement, Seller shall waive the defense that there is an adequate remedy at law. In the event Buyer fails or refuses to perform under the provisions of this Agreement or otherwise breaches this Agreement such that Closing does not occur, Seller's sole and exclusive remedy shall be the right to claim and keep the Earnest Money as liquidated damages. The parties acknowledge and agree that the liquidated damages provided in this Section bear a reasonable relationship to the anticipated harm that would be caused by such a breach and failure to close under the terms of this Agreement. The parties further acknowledge and agree that, in such case, the amount of actual loss caused by breach of this Agreement is incapable and difficult of precise estimation and that Seller would not have a convenient and adequate alternative to liquidated damages hereunder. Seller and Buyer hereby expressly acknowledge that this Section shall survive the termination of this Agreement.

ARTICLE 16 **MISCELLANEOUS PROVISIONS**

16.1 Certain Interpretive Matters and Definitions. Unless the context otherwise requires: (a) all references to Sections, Articles, Schedules or Exhibits are to Sections, Articles, Schedules or Exhibits of or to this Agreement; (b) each term defined in this Agreement has the meaning assigned to it; (c) "or" is disjunctive but not necessarily exclusive; (d) words in the singular include the plural and vice versa; and (e) all references to "\$" or dollar amounts will be to lawful currency of the United States of America.

16.2 Further Assurances. After the Closing, Seller shall from time to time, at the request of and without further cost or expense to Buyer, execute and deliver such other instruments of conveyance and transfer and take such other actions as may reasonably be requested in order more effectively to consummate the transactions contemplated hereby to vest in Buyer good and marketable title to the Assets being transferred hereunder, free, clear and unencumbered, and Buyer shall from time to time, at the request of and without further cost or expense to Seller, execute and deliver such other instruments and take such other actions as may reasonably be requested in order more effectively to relieve Seller of any obligations being assumed by Buyer hereunder.

16.3 Assignability; No Third Party Rights. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement without prior written consent of the other party, which such consent shall not be unreasonably withheld, postponed, or delayed, except Buyer may, without such consent, assign its rights and

obligations under this Agreement to an entity under common control with Buyer, *i.e.*, an entity to which Buyer could assign or transfer an FCC radio station authorization using FCC Form 316; provided, however, such assignment, whether before or after the Closing, shall not release Buyer from its liabilities hereunder. The covenants, conditions and provisions hereof are and shall be for the exclusive benefit of the parties hereto and their permitted assigns, and nothing herein, express or implied, is intended or shall be construed to confer upon or to give any person or entity other than the parties hereto and their permitted assigns any right, remedy or claim, legal or equitable, under or by reason of this Agreement.

16.4 **Modification and Waiver; Remedies Cumulative.** No modification of any provision of this Agreement shall be effective unless in writing and signed by all parties. No failure or delay on the part of Seller or Buyer in exercising any right or power under this Agreement shall operate as a waiver of such right or power, nor shall any single or partial exercise of any such right or power or the exercise of any other right or power. Except as otherwise provided in this Agreement, the rights and remedies provided in this Agreement are cumulative and are not exclusive of any other rights or remedies which a party may otherwise have.

16.5 **Headings.** The headings set forth in this Agreement are for convenience only and will not control or affect the meaning or construction of the provisions of this Agreement.

16.6 **Governing Law.** This Agreement will be governed by and construed under the laws of the State of Texas without regard to conflicts-of-laws principles that would require the application of any other law. Venue for any legal or equitable action between the Buyer and Seller which relates to this Agreement shall be in Bexar County.

16.7 **Notices.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing, and shall be deemed to have been duly delivered and received on the date of personal delivery, on the third day after deposit in the U.S. mail if mailed by registered or certified mail, postage prepaid and return receipt requested on the day after delivery to a nationally recognized overnight courier service if sent by an overnight delivery service for next morning delivery and shall be addressed to the following addresses, or to such other address as any party may request, in the case of Seller, by notifying Buyer, and in the case of Buyer, by notifying Seller:

To Seller:

35 Communications, LLC
P.O. Box 691841
San Antonio, TX 78269
Attention: Jose Aguilar

With copies (which shall not constitute notice) to:

Shainis & Peltzman, Chartered
1850 M Street, N.W.
Suite 240
Washington, D.C. 20036
Attention: Lee J. Peltzman, Esquire

To Buyer:

Xavier Entertainment, LLC
313 W. Village Blvd.
Ste. 104
Laredo, Texas 78041
Attention: Xavier Cantu

With copies (which shall not constitute notice) to:

Karina C. Cantu
Sheehy Ware & Pappas, PC
112 E. Pecan St.
Ste. 450
San Antonio, Texas 78205

16.8 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement. This Agreement may be executed and exchanged by electronic mail, with the same legal effect as if the signatures had appeared in original handwriting on the same physical document. No party hereto to any such agreement or instrument shall raise the use of electronic mail to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of electronic mail as a defense to the formation of a contract and each such party forever waives any such defense.

16.9 **Severability.** The parties agree that if one or more provisions contained in this Agreement shall be deemed or held to be invalid, illegal or unenforceable in any respect under any applicable law, this Agreement shall be construed with the invalid, illegal or unenforceable provision deleted, and the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

16.10 **Entire Agreement.** This Agreement embodies the entire agreement and understanding of the parties hereto and supersedes any and all prior agreements, arrangements and understandings relating to the matters provided for herein.

16.11 **Legal Fees.** In the event of a default by either party which results in a lawsuit or other proceeding for any remedy available under this Agreement, the prevailing party shall be entitled to reimbursement from the other party of its reasonable legal fees and expenses.

16.12 **Neutral Construction.** This Agreement was negotiated fairly between the parties at arms' length and the terms hereof are the product of the parties' negotiations. This Agreement shall be deemed to have been jointly and equally drafted by the parties, and the provisions of this Agreement shall not be construed against a party on the grounds that such party drafted or was more responsible for drafting such provisions.

SIGNATURE PAGE TO FOLLOW

(Remainder of page intentionally left blank)

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

BUYER:

XAVIER ENTERTAINMENT,LLC

By: _____

Name: Xavier Cantu

Title: Member

SELLER:

35 COMMUNICATIONS, LLC

By:  _____

Name: Jose A. Aguilar

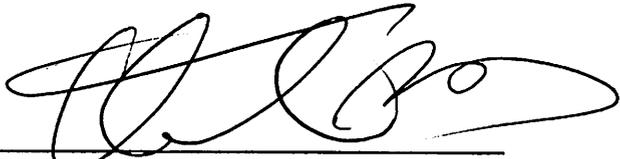
Title: Member

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

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

BUYER:

XAVIER ENTERTAINMENT,LLC

By: 
Name: Xavier Cantu
Title: Member

SELLER:

35 COMMUNICATIONS, LLC

By: _____
Name: Jose A. Aguilar
Title: Member

SCHEDULE 1.1.1

FCC Licenses

Current FCC Licenses and Authorizations

Type of Authorization	Call Sign	FCC File Number	Grant Date	Expiration Date
Broadcast License	KOTX	BLH-20150327AMM	4/08/2015	8/01/2021

SCHEDULE 1.1.2

Intangible Property

Call sign KOTX

Going concern value and good will related to Station KOTX

SCHEDULE 1.1.3

Tangible Personal Property

~~✓~~
100 Feet Guyed tower Rohn style 25 inch face
FM transmitter Elettronika MIZAR 300 Serial Number 150700095552
120 feet transmission line (Coax) LDF7-50A ½ inch with N connectors
2 Antennas OMB MP-2 FM tuned to 98.7 MHz.

SCHEDULE 1.1.5

Antenna Site Lease

Commercial Lease Agreement dated April 1, 2019 by and between Juan Carlos Guerra and Placido/Jo Ann Vasquez as Landord and Luis Gonzalez and Jose Aguilar as Tenant.

Property Address: 304 Marcos Hinojosa Avenue, Hebbbronville, Texas 78361

Legal Description: 356 NORIECITAS S DE YNOJOSA

Tax Parcel ID: 2814