

Paul N. Silverstein (admitted *pro hac vice*)
Jonathan I. Levine (admitted *pro hac vice*)
ANDREWS KURTH LLP
450 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Michelle V. Larson
Texas State Bar No. 00796928
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401

Counsel to Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
§
FIBERTOWER NETWORK SERVICES § Case No. 12-44027-DML-11
CORP., *et al.*, §
§ (Jointly Administered)
Debtors. §
§

NOTICE OF FILING OF PLAN SUPPLEMENT DOCUMENTS

PLEASE TAKE NOTICE that, on December 4, 2013, the above captioned debtors and debtors in possession (the “Debtors”)¹ filed their *Second Amended Joint Chapter 11 Plan* [Docket No. 1007] (as it may be amended, modified, or supplemented from time to time, the “Plan”).² A hearing with respect to confirmation of the Plan is scheduled to be held before the Honorable D. Michael Lynn, United States Bankruptcy Judge, in the U.S. Bankruptcy Court for the Northern District of Texas, 501 W. 10th Street, Fort Worth, Texas 76102, on January 15, 2014 at 1:30 p.m. (prevailing U.S. Central Time).

¹ The Debtors in these Chapter 11 cases are: (i) FiberTower Network Services Corp.; (ii) FiberTower Corporation; (iii) FiberTower Licensing Corp.; and (iv) FiberTower Spectrum Holdings, LLC.

² All capitalized terms used herein that are not otherwise defined in this notice have the meaning set forth in the Plan.

PLEASE TAKE FURTHER NOTICE that, pursuant to section 13.2 of the Plan, the Debtors hereby file the following Plan Supplement documents:

1. Certificate of Incorporation of Reorganized FiberTower Corporation, attached hereto as Exhibit A;
2. Bylaws of Reorganized FiberTower Corporation, attached hereto as Exhibit B;
3. Organizational Documents for the Reorganized FiberTower Subsidiaries, attached hereto as Exhibit C;
4. Composition of the Initial Board of Directors and the Initial Senior Executive Officers of the Reorganized Debtors and Related Compensation Disclosure, attached hereto as Exhibit D;
5. Stockholders Agreement, attached hereto as Exhibit E;
6. Form of Litigation Trust Agreement, attached hereto as Exhibit F; and
7. Notice of Filing of Schedules 9.1(a) and 11.4(a) to the Plan, attached hereto as Exhibit G.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to make final and conforming changes to each of the documents contained in the Plan Supplement.

[Remainder of Page Intentionally Left Blank]

Dated: January 3, 2014
Fort Worth, Texas

ANDREWS KURTH LLP

By: /s/ Paul N. Silverstein
Paul N. Silverstein (admitted *pro hac vice*)
Jonathan I. Levine (admitted *pro hac vice*)
40 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929
Email: paulsilverstein@andrewskurth.com
Email: jonathanlevine@andrewskurth.com

-and-

Michelle V. Larson
Texas State Bar No. 00796928
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401
Email: michellelarson@andrewskurth.com

Counsel to the Debtors

EXHIBIT A

Certificate of Incorporation for Reorganized FiberTower Corporation

**SECOND AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
FIBERTOWER CORPORATION**

FIBERTOWER CORPORATION, a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

The name of the corporation is FIBERTOWER CORPORATION (the "Corporation"). The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on August 23, 1993, under the name of ADVANCED RADIO TECHNOLOGIES CORPORATION (as the same was amended and restated on August 29, 2006, and further amended on December 18, 2009 and July 23, 2010, the "Original Certificate of Incorporation"). This Second Amended and Restated Certificate of Incorporation was duly adopted, without the need for approval of the Board of Directors or the stockholders, in accordance with §§ 242, 245 and 303 of the Delaware General Corporation Law and in accordance with that certain *Debtors' Second Amended Joint Chapter 11 Plan* (the "Plan") approved by order of the United States Bankruptcy Court for the Northern District of Texas Fort Worth Division in *In re: FiberTower Network Services Corp., et al.*, under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 101-1330), as amended, which Plan became effective on [January __], 2014.

The Original Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as follows:

ARTICLE I

The name of this Corporation is FiberTower Corporation (the "Corporation").

ARTICLE II

The registered office of this Corporation in the State of Delaware is located at 1209 Orange Street, County of New Castle, City of Wilmington, DE 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The purpose of this Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV

The total number of shares of stock that this Corporation shall have authority to issue is [two million (2,000,000)] shares of Common Stock, \$.01 par value per share ("Common Stock"). The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding) by the affirmative vote of the holders of a majority of the outstanding capital stock of the Corporation entitled to vote, irrespective of the provisions

of Section 242(b)(2) of the DGCL. The holders of the shares of Common Stock shall be entitled to one (1) vote per share on all issues submitted to stockholders entitled to vote thereon.

ARTICLE V

The Corporation shall not issue any nonvoting equity securities to the extent prohibited by section 1123 of title 11 of the United States Code (the "Bankruptcy Code"); *provided, however*, that this Article V (a) will have no further force and effect beyond that required under section 1123 of the Bankruptcy Code, (b) will have such force and effect, if any, only for so long as such section of the Bankruptcy Code is in effect and applicable to the Corporation, and (c) in all events may be amended or eliminated in accordance with such applicable law as from time-to-time may be in effect.

ARTICLE VI

This Corporation shall have a perpetual existence.

ARTICLE VII

In furtherance of, and not in limitation of, the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal from time to time the Bylaws of this Corporation, subject to the right of the stockholders entitled to vote with respect thereto to alter and repeal the Bylaws adopted or amended by the Board of Directors.

ARTICLE VIII

Except to the extent that the DGCL prohibits the elimination of or any limitation on, the liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to, or repeal of, this Article or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Article (except to the extent that such amendment or provision permits the Corporation to further limit or eliminate the liability of directors) shall apply to, or have any effect on, the liability or alleged liability of any director of the Corporation or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the DGCL is amended after approval by the stockholders of this Article VIII to authorize corporate action further eliminating or limiting the personal liability of directors of the Corporation, then the liability of a director of the Corporation shall be, without further action, eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

ARTICLE IX

1. Indemnification. The Corporation shall, to the maximum extent permitted under the DGCL, and, except as set forth below, indemnify and, upon request, advance expenses to, each person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was, or has agreed to become, a director or officer of the Corporation or is or was serving, or has agreed to serve, at the request of the Corporation, as a

director, officer or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise, including any employee benefit plan (all such persons being referred to hereafter as an “Indemnitee”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including attorneys’ fees), judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by him, or on his behalf, in connection with such action, suit or proceeding and any appeal therefrom, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Notwithstanding anything to the contrary in this Article, the Corporation shall not indemnify an Indemnitee seeking indemnification in connection with any action, suit, proceeding, claim or counterclaim, or part thereof, initiated by the Indemnitee unless the initiation thereof was approved by the Board of Directors of the Corporation.

2. Determination of Entitlement to Indemnification. Any indemnification under paragraph 1 of the Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper under the circumstances because such person has either met the applicable standard of conduct set forth in this Article and that the amount requested has been actually and reasonable incurred. Such determination shall be made:

A. by the Board of Directors of the Corporation by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding; or

B. if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested directors so directs, by independent legal counsel in a written opinion; or

C. by the majority holders of the Common Stock.

3. Advance of Expenses. Notwithstanding any other provisions, this Certificate of Incorporation, the Bylaws of the Corporation, or any agreement, vote of stockholders or disinterested directors, or arrangement to the contrary, the Corporation shall advance payment of expenses incurred by an Indemnitee in advance of the final disposition of any matter only upon receipt of an undertaking by or on behalf of the Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article. Such undertaking may be accepted without reference to the financial ability of the Indemnitee to make such repayment.

4. Subsequent Amendment. No amendment, termination or repeal of this Article or of the relevant provisions of the DGCL or any other applicable laws shall affect or diminish in any way the rights of any Indemnitee to indemnification under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

5. Indemnification of Other Persons. This Corporation may, to the extent authorized from time to time by its board of directors, grant indemnification rights to other employees or

agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article.

6. Merger or Consolidation. If this Corporation is merged into, or consolidated with, another corporation and the Corporation is not the surviving corporation, the surviving corporation shall assume the obligations of the Corporation under this Article with respect to any action, suit, proceeding or investigation arising out of, or relating to, any actions, transactions or facts occurring prior to the date of such merger or consolidation.

7. Savings Clause. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including an action by, or in the right of, the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

8. Scope of Article. Indemnification and advancement of expenses, as authorized by the preceding provisions of this Article, shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any agreement, vote of stockholders or disinterested directors or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an authorized representative and shall inure to the benefits of the heirs, executors and administrators of such a person.

9. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, trustee, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article.

ARTICLE X

Subject to the limitations contained in Articles VIII and IX, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

ARTICLE XI

Elections of directors need not be by written ballot except as, and to the extent, provided in the Bylaws of the Corporation.

ARTICLE XII

The books of this Corporation may, subject to any stationary requirements, be kept outside the State of Delaware as may be designated by the Board of Directors or in the Bylaws of this Corporation.

ARTICLE XIII

No shares of Common Stock of any class shall be sold or otherwise Transferred by any holder, or group of holders, thereof (regardless of the manner in which the transferor initially acquired such shares of Common Stock), if (A) the Corporation is not, at the time of such transfer, a reporting company under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and (B) after giving effect to such sale or transfer, the Corporation would be, or would be obligated to become, a reporting company under the Exchange Act (including becoming subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act). In the event of any purported sale or Transfer in violation of the provisions of this Article, such purported transfer shall be void *ab initio*, and the Corporation shall not give effect to such transfer.

As used in this Certificate of Incorporation:

"Transfer" means: (a) any direct or indirect sale, transfer, gift, hypothecation, pledge, assignment, devise or other disposition of Common Stock (including (x) the granting of any option or entering into any agreement for the future sale, transfer or other disposition of Common Stock, or (y) the sale, transfer, assignment or other disposition of any securities or rights convertible into or exchangeable for Common Stock), whether voluntary or involuntary, whether of record, constructively or beneficially and whether by operation of law or otherwise, and (b) any other transaction or event, including without limitation a merger, consolidation, or acquisition of any Person, or the aggregation of the Common Stock beneficially owned by one Person with the Common Stock beneficially owned by any other Person, which would affect the beneficial ownership of Common Stock.

"Person" means an individual, partnership, corporation, unincorporated organization, joint stock company, limited liability company, association, trust or joint venture, or a governmental agency or political subdivision thereof.

EXHIBIT B

Bylaws for Reorganized FiberTower Corporation

AMENDED AND RESTATED BYLAWS

OF

FIBERTOWER CORPORATION

(As adopted on [January __], 2014)

ARTICLE I

Offices

Section 1.01 *Registered Office.* The registered office of FiberTower Corporation (the "Corporation") in the State of Delaware shall be located in the City of Wilmington, County of New Castle, and the name and address of its registered agent is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware, and the address of the registered office may be changed from time to time by the Board of Directors.

Section 1.02 *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the "Board of Directors") may from time to time determine or the business of the Corporation may require.

ARTICLE II

Stockholders' Meetings

Section 2.01 *Annual Meeting.* The annual meeting of the holders of shares of each class or series of stock as are entitled to notice thereof and to vote thereat pursuant to applicable law and the Corporation's certificate of incorporation (the "Certificate of Incorporation") for the purpose of electing directors and transacting such other proper business as may come before it shall be held in each year, at such time, on such day and at such place, within or without the State of Delaware, as may be designated by the Board of Directors.

Section 2.02 *Special Meetings.* In addition to such special meetings as are provided by law or the Certificate of Incorporation, special meetings of the holders of any class or series or of all classes or series of the Corporation's stock for any purpose or purposes, may be called at any time only by the chairman of the Board of Directors (the "Chairman of the Board"), if any, or by the chief executive officer of the Corporation (the "Chief Executive Officer") and shall be called by the Chairman of the Board, if any, or the Chief Executive Officer or the secretary of the Corporation (the "Secretary") when directed to do so by resolution of the Board of Directors or at the written request of directors representing a majority of the total number of directors which the Corporation would at the time have if there were no vacancies (the "Whole Board") or at the written request of the holders of shares of common stock of the Corporation representing not less than 20% of the total voting power of all shares of common stock entitled to vote on any issue proposed to be considered at the meeting. The Board of Directors may designate the place for any special meeting of stockholders, within or without the State of Delaware, and if no such designation is made, the place of meeting shall be the principal executive offices of the Corporation. Additionally, in the event that a stockholder or group of stockholders of the

Corporation is entitled to designate or nominate a director pursuant to that certain Stockholders Agreement, by and among the Corporation and certain stockholders, dated as of [January ___], 2014, as the same may be amended and/or restated from time to time (the "Stockholders Agreement"), then such stockholder or group of stockholders may call a special meeting of the stockholders for the sole purpose of nominating and electing such director.

If a special meeting is called by any person or persons other than the Board of Directors, the request shall be in writing, or by electronic transmission or transmissions, specifying the time of such meeting and the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other form of electronic transmission to the Chief Executive Officer, if one is elected, or, if there is no Chief Executive Officer, the president of the Corporation (the "President"), or the Secretary.

For purposes of these bylaws (the "Bylaws"), "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

Section 2.03 *Notice of Meetings and Adjourned Meetings.* Except as otherwise provided by law, written notice of any meeting of stockholders (i) shall be given either by personal delivery or by mail to each stockholder of record entitled to vote thereat, (ii) shall be in such form as is approved by the Board of Directors, and (iii) shall state the date, place and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, such written notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting. Except when a stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened, presence in person or by proxy of a stockholder shall constitute a waiver of notice of such meeting. Further, a written waiver of any notice required by law or by these Bylaws, signed by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Except as otherwise provided by law, the business that may be transacted at any such meeting shall be limited to and consist of the purpose or purposes stated in such notice. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 2.04 *Voting Lists.* The officer or agent having charge of the stock transfer books for shares of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at meetings or any adjournments thereof, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to examination of any stockholder during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the

place where the meeting is to be held. This list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. The Corporation's original stock transfer books shall be prima facie evidence as to who are the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders.

Section 2.05 *Quorum*. Except as otherwise provided by law or by the Corporation's Certificate of Incorporation, the holders of a majority of the Corporation's stock issued and outstanding and entitled to vote at a meeting, present in person or represented by proxy, without regard to class or series, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the holders of a majority of such shares of stock, present in person or represented by proxy, may adjourn any meeting from time to time without notice other than announcement at the meeting, except as otherwise required by these Bylaws, until a quorum shall be present or represented. At any such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally called.

Section 2.06 *Organization*. Meetings of the stockholders shall be presided over by the Chairman of the Board of Directors, if one shall be elected, or in his absence, by the President or by any Vice President, or, in the absence of any of such officers, by a chairman to be chosen by a majority of the stockholders entitled to vote at the meeting who are present in person or by proxy. The Secretary, or, in his absence, any Assistant Secretary or any person appointed by the individual presiding over the meeting, shall act as secretary at meetings of the stockholders.

Section 2.07 *Voting*. Each stockholder of record, as determined pursuant to Section 2.08, who is entitled to vote in accordance with the terms of the Corporation's Certificate of Incorporation and in accordance with the provisions of these Bylaws, shall be entitled to one vote, in person or by proxy, for each share of stock registered in his name on the books of the Corporation.

Every stockholder entitled to vote at any stockholders' meeting may authorize another person or persons to act for him by proxy, provided that no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder's attendance at any meeting shall not have the effect of revoking a previously granted proxy unless such stockholder shall in writing so notify the Secretary of the meeting prior to the voting of the proxy.

Unless otherwise provided by law, no vote on the election of directors or any question brought before the meeting need be by ballot unless the chairman of the meeting shall determine that it shall be by ballot or the holders of a majority of the shares of stock present in person or by proxy and entitled to participate in such vote shall so demand. In a vote by ballot, each ballot shall state the number of shares voted and the name of the stockholder or proxy voting.

Whenever directors are to be elected at a meeting, the directors to be elected at such meeting shall be elected by a plurality of the votes cast at the meeting by the holders of stock entitled to vote. Whenever any corporate action, other than the election of directors, is to be taken by vote of stockholders at a meeting, it shall, except as otherwise required by law or by the Certificate of Incorporation or by these Bylaws, be authorized by a majority of the votes cast with respect thereto at the meeting (including abstentions) by the holders of stock entitled to vote thereon. In the election of directors, votes may not be cumulated.

Section 2.08 *Stockholders Entitled to Vote.* The Board of Directors may fix a date not more than sixty (60) days nor less than ten (10) days prior to the date of any meeting of stockholders, or, in the case of corporate action by written consent in accordance with the terms of Section 2.10, not prior to the date upon which the resolution of the Board of Directors fixing the record date is adopted and not more than ten (10) days after the date upon which the resolution of the Board of Directors fixing the record date is adopted, as a record date for the determination of the stockholders entitled to notice of and to vote at such meeting and any adjournment thereof, or to act by written consent, and in each case such stockholders and only such stockholders as shall be stockholders of record on the date so fixed shall be entitled to notice of and to vote at such meeting and any adjournment thereof, or to act by written consent, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after such record date fixed as aforesaid.

Section 2.09 *Order of Business.* The order of business at all meetings of stockholders shall be as determined by the chairman of the meeting or as is otherwise determined by the vote of the holders of a majority of the shares of stock present in person or by proxy and entitled to vote without regard to class or series at the meeting.

Section 2.10 *Action by Written Consent.* Unless otherwise provided by law or the Corporation's Certificate of Incorporation, any action required or permitted to be taken by the stockholders of the Corporation may be taken without prior notice and an actual meeting if a consent in writing setting forth the action so taken shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Except as provided above, no action shall be taken by the stockholders by written consent. Prompt notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing.

Section 2.11 *Authorization of Proxies.* Without limiting the manner in which a stockholder may authorize another person or persons to act for him as proxy, the following are valid means of granting such authority. A stockholder may execute a writing authorizing another person or persons to act for him as proxy. Execution may be accomplished by the stockholder or his authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature. A stockholder may also authorize another person or persons to act for him as proxy by transmitting or authorizing the transmission of a telegram, cablegram, or other means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such

telegram, cablegram or other means of electronic transmission must either set forth or be submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. If it is determined that such telegrams, cablegrams or other electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied. Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to this section may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

ARTICLE III **Directors**

Section 3.01 *Management.* The property, affairs and business of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all powers of the Corporation and do all lawful acts and things as are not by law, by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

Section 3.02 *Number and Term.* The initial Board of Directors shall consist of three (3) directors. The number of directors constituting the Board of Directors shall be not less than one nor more than eleven, as determined from time to time by the majority vote of stockholders. Directors need not be stockholders. No decrease in the number of directors shall have the effect of shortening the term of office of any incumbent director.

Section 3.03 *Quorum and Manner of Action.* At all meetings of the Board of Directors, a majority of the number of directors then in office shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, by the Certificate of Incorporation or these Bylaws. If at any meeting of the Board of Directors there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum is obtained, and no further notice thereof need be given other than by announcement at such adjourned meeting. Attendance by a director at a meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 3.04 *Vacancies.* Except as otherwise provided by law, the Certificate of Incorporation or the Stockholders Agreement, in the case of any increase in the authorized number of directors or of any newly created directorship or any vacancy in the Board of Directors, however created, the additional director or directors may be elected, or, as the case may be, the vacancy or vacancies may be filled by majority vote of the directors remaining on the whole Board of Directors, or by the sole remaining director, although less than a quorum. In the event one or more directors shall resign, effective at a future date, such vacancy or vacancies shall be filled by a majority of the directors who will remain on the whole Board of Directors, although less than a quorum. Any director elected or chosen as provided herein shall serve until

the earlier of: (i) the expiration of the term of the directorship to which he is elected and his successor has been elected and qualified; or (ii) his resignation or removal in accordance with Section 3.06 below.

Section 3.05 *Resignations*. A director may resign at any time upon written notice of resignation to the Corporation. Any resignation shall be effective immediately unless a certain effective date is specified therein, in which event it will be effective upon such date and acceptance of any resignation shall not be necessary to make it effective.

Section 3.06 *Removals*. Except as otherwise provided in the Stockholders Agreement, any director or the entire Board of Directors may be removed, with or without cause, and another person or persons may be elected to serve for the remainder of his or their term, by the holders of a majority of the shares of the Corporation entitled to vote in the election of directors. In case any vacancy so created shall not be filled by the stockholders at such meeting, such vacancy may be filled by the directors as provided in Section 3.04.

Section 3.07 *Annual Meetings*. The annual meeting of the Board of Directors shall be held, if a quorum be present, immediately following each annual meeting of the stockholders at the place such meeting of stockholders took place, for the purpose of organization and transaction of any other business that might be transacted at a regular meeting thereof, and no notice of such meeting shall be necessary. If a quorum is not present, such annual meeting may be held at any other time or place that may be specified in a notice given in the manner provided in Section 3.09 for special meetings of the Board of Directors or in a waiver of notice thereof.

Section 3.08 *Regular Meetings*. Regular meetings of the Board of Directors may be held without notice at such places and times as shall be determined from time to time by resolution of the Board of Directors. Except as otherwise provided by law, any business may be transacted at any regular meeting of the Board of Directors.

Section 3.09 *Special Meetings*. Special meetings of the Board of Directors may be called by the Chairman of the Board, if any, or by the Chief Executive Officer or by the Secretary on the written request of a majority of the members of the Whole Board stating the purpose or purposes of such meeting. Notices of special meetings, if mailed, shall be mailed to each director not later than two (2) days before the day the meeting is to be held or if otherwise given in the manner permitted by these Bylaws, not later than the day before such meeting. Neither the business to be transacted at, nor the purpose of, any special meeting need be specified in any notice or written waiver of notice unless so required by the Certificate of Incorporation or by these Bylaws. Any and all business may be transacted at a special meeting, unless limited by law, the Certificate of Incorporation or by these Bylaws.

Section 3.10 *Organization of Meetings*. At any meeting of the Board of Directors, business shall be transacted in such order and manner as such Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present at any meeting at which there is a quorum, except as otherwise provided by these Bylaws or required by law.

Section 3.11 *Place of Meetings.* The Board of Directors may hold their meetings and have one or more offices, and keep the books of the Corporation, within or without the State of Delaware, at any office or offices of the Corporation, or at any other place as they may from time to time by resolution determine.

Section 3.12 *Compensation of Directors.* Directors shall not receive any stated salary for their services as directors, but by resolution of the Board of Directors a fixed honorarium or fees and expenses, if any, for attendance may be allowed for attendance at each meeting. In addition, directors shall be entitled to compensation under and pursuant to the terms of any Stock Option Plan, Stock Incentive Plan or other equity compensation plan adopted by the Corporation. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation.

Section 3.13 *Action by Unanimous Written Consent.* Unless otherwise restricted by law, the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all of the directors or the members of such committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of proceedings of the Board of Directors or the committee.

Section 3.14 *Participation in Meetings by Telephone.* Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, directors or members of any committee may participate in a meeting of such Board of Directors or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting in such manner shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the grounds that the meeting is not lawfully called or convened.

Section 3.15 *Non-Voting Board Members.* Notwithstanding anything to the contrary contained herein, the directors of the Company may appoint non-voting members of the Board of Directors ("Non-voting Board Members"). Accordingly, the members of the Board of Directors of the Company shall be comprised of the directors and the Non-voting Board Members, if any, of the Company. Non-voting Board Members shall have the right to receive notice of any meeting of the Board of Directors and to participate in, but not to vote at, all such meetings, and shall be entitled to indemnification and exculpation to the same extent directors of the Corporation are entitled thereto. If appointed, Non-voting Board Members will not be counted in determining whether a quorum is present.

ARTICLE IV

Committees of the Board

Section 4.01 *Membership and Authorities.* The Board of Directors may, by resolution or resolutions passed by a majority of the Whole Board, designate one (1) or more directors to constitute an Executive Committee and such other committees as the Board of Directors may determine, each of which committees to the extent provided in said resolution or resolutions or in

these Bylaws, shall have and may exercise all the powers of the Board of Directors in the management of the business and affairs of the Corporation, except in those cases where the authority of the Board of Directors is specifically denied to the Executive Committee or such other committee or committees by law, the Certificate of Incorporation, the Stockholders Agreement or these Bylaws, and may authorize the seal of the Corporation to be affixed to all papers that may require it. The designation of an Executive Committee or other committee and the delegation thereto of authority shall not operate to relieve the Board of Directors, or any member thereof, of any responsibility imposed upon it or him by law.

Section 4.02 *Minutes*. Each committee designated by the Board of Directors shall keep regular minutes of its proceedings and report the same to the Board of Directors when required.

Section 4.03 *Vacancies*. The Board of Directors may designate one (1) or more of its members as alternate members of any committee who may replace any absent or disqualified member at any meeting of such committee. If no alternate members have been appointed, the committee member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. The Board of Directors shall have the power at any time to fill vacancies in, to change the membership of, and to dissolve, any committee.

Section 4.04 *Telephone Meetings*. Members of any committee designated by the Board of Directors may participate in or hold a meeting by use of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section 4.04 shall constitute presence in person at such meeting, except where a person participates in the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 4.05 *Action Without Meeting*. Any action required or permitted to be taken at a meeting of any committee designated by the Board of Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the committee and filed with the minutes of the committee proceedings. Such consent shall have the same force and effect as a unanimous vote at a meeting.

ARTICLE V

Officers

Section 5.01 *Number and Title*. The elected officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Vice President, a Secretary and a Treasurer. The Board of Directors may also choose a Chairman of the Board, who must be a Board member of the Board of Directors, and additional Vice Presidents, Assistant Secretaries and/or Assistant Treasurers. One person may hold any two or more of these offices and any one or more of the Vice Presidents may be designated as an Executive Vice President or Senior Vice President.

Section 5.02 *Term of Office; Vacancies*. So far as is practicable, all elected officers shall be elected by the Board of Directors at the annual meeting of the Board of Directors in each

year, and except as otherwise provided in this Article V, shall hold office until the next such meeting of the Board of Directors in the subsequent year and until their respective successors are elected and qualified or until their earlier resignation or removal. All appointed officers shall hold office at the pleasure of the Board of Directors. If any vacancy shall occur in any office, the Board of Directors may elect or appoint a successor to fill such vacancy for the remainder of the term.

Section 5.03 *Removal of Elected Officers.* Any elected officer may be removed at any time, with or without cause, by affirmative vote of a majority of the Whole Board, at any regular meeting or at any special meeting called for such purpose.

Section 5.04 *Resignations.* Any officer may resign at any time upon written notice of resignation to the President, Secretary or Board of Directors of the Corporation. Any resignation shall be effective immediately unless a date certain is specified for it to take effect, in which event it shall be effective upon such date, and acceptance of any resignation shall not be necessary to make it effective, irrespective of whether the resignation is tendered subject to such acceptance.

Section 5.05 *The Chairman of the Board.* The Chairman of the Board, if one shall be elected, shall preside at all meetings of the stockholders and Board of Directors. In addition, the Chairman of the Board shall perform whatever duties and shall exercise all powers that are given to him by the Board of Directors.

Section 5.06 *President.* The President shall be the chief executive officer of the Corporation; shall (in the absence of the Chairman of the Board, if one is elected) preside meetings of the stockholders and Board of Directors; shall be an ex officio member of all standing committees; shall have general and active management of business of the corporation; shall implement the general directives, plans and policies formulated by the Board of Directors; and shall further have such duties, responsibilities and authorities as may be assigned to him by the Board of Directors. He may sign, with any other proper officer, certificates for shares of the Corporation and any deeds, bonds, mortgages, contracts and other documents which the Board of Directors has authorized to be executed, except where required by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors or these Bylaws, to some other officer or agent of the Corporation. In the absence of the President, his duties shall be performed and his authority may be exercised by a Vice President of the Corporation as may have been designated by the President with the right reserved to the Board of Directors to designate or supersede any designation so made.

Section 5.07 *Vice Presidents.* The several Vice Presidents shall have such powers and duties as may be assigned to them by these Bylaws and as may from time to time be assigned to them by the Board of Directors and may sign, with any other proper officer, certificates for shares of the Corporation.

Section 5.08 *Secretary.* The Secretary, if available, shall attend all meetings of the Board of Directors and all meetings of the stockholders and record the proceedings of the meetings in a book to be kept for that purpose and shall perform like duties for any committee of the Board of Directors as shall designate him to serve. He shall give, or cause to be given, notice

of all meetings of the stockholders and meetings of the Board of Directors and committees thereof and shall perform such other duties incident to the office of secretary or as may be prescribed by the Board of Directors or the President, under whose supervision he shall be. He shall have custody of the corporate seal of the Corporation and he, or any Assistant Secretary, or any other person whom the Board of Directors may designate, shall have authority to affix the same to any instrument requiring it, and when so affixed it may be attested by his signature or by the signature of any Assistant Secretary or by the signature of such other person so affixing such seal.

Section 5.09 *Assistant Secretaries.* Each Assistant Secretary shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the Board of Directors, the President or the Secretary. The Assistant Secretary or such other person as may be designated by the President shall exercise the powers of the Secretary during that officer's absence or inability to act.

Section 5.10 *Treasurer.* The Treasurer shall have the custody of and be responsible for the corporate funds and securities, shall keep full and accurate accounts of receipts and disbursements in the books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. He shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his transactions as Treasurer and of the financial condition of the Corporation and he shall perform all other duties incident to the position of Treasurer, or as may be prescribed by the Board of Directors or the President. If required by the Board of Directors, he shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his office and for the restoration to the Corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the Corporation.

Section 5.11 *Assistant Treasurers.* Each Assistant Treasurer shall have the usual powers and duties pertaining to his office, together with such other powers and duties as may be assigned to him by the Board of Directors, the President or the Treasurer. The Assistant Treasurer or such other person designated by the President shall exercise the power of the Treasurer during that officer's absence or inability to act.

Section 5.12 *Subordinate Officers.* The Board of Directors may (i) appoint such other subordinate officers and agents as it shall deem necessary who shall hold their offices for such terms, have such authority and perform such duties as the Board of Directors may from time to time determine, or (ii) delegate to any committee or officer the power to appoint any such subordinate officers or agents.

Section 5.13 *Salaries and Compensation.* The salary or other compensation of officers shall be fixed from time to time by the Board of Directors. The Board of Directors may delegate to any committee or officer the power to fix from time to time the salary or other compensation of subordinate officers and agents appointed in accordance with the provisions of Section 5.12.

ARTICLE VI
Indemnification of Directors and Officers

Section 6.01 *Indemnification of Directors and Officers.*

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is or was, at any time prior to or during which this Article VI is in effect, a director, officer, employee or agent of the Corporation, or is or was, at any time prior to or during which this Article VI is in effect, serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against reasonable expenses (including attorneys' fees), judgments, fines, penalties, amounts paid in settlement and other liabilities actually and reasonably incurred by such person in connection with such action, suit or proceeding to the full extent permitted by the General Corporation Laws of the State of Delaware, upon such determination having been made as to such person's good faith and conduct.

(b) Expenses (including attorneys' fees) incurred by a person who is or was a director or officer of the Corporation in appearing at, participating in or defending any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, shall be paid by the Corporation at reasonable intervals in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized by this Article VI.

(c) It is the intention of the Corporation to indemnify the persons referred to in this Article VI to the fullest extent permitted by law and with respect to any action, suit or proceeding arising from events which occur at any time prior to or during which this Article VI is in effect. The indemnification and advancement of expenses provided by this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be or become entitled under any law, the Certificate of Incorporation, these Bylaws, agreement, the vote of stockholders or disinterested directors or otherwise, or under any policy or policies of insurance purchased and maintained by the Corporation on behalf of any such person, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

(d) The indemnification provided by this Article VI shall be subject to all valid and applicable laws, and, in the event this Article VI or any of the provisions hereof or the indemnification contemplated hereby are found to be inconsistent with or contrary to any such valid laws, the latter shall be deemed to control and this Article VI shall be regarded as modified accordingly, and, as so modified, to continue in full force and effect.

ARTICLE VII Capital Stock

Section 7.01 *Certificates of Stock.* Shares may but need not be represented by certificates. Certificates of stock may be issued to each stockholder certifying the number of shares owned by him in the Corporation, and shall be in a form not inconsistent with the Certificate of Incorporation and as approved by the Board of Directors. Any certificates shall be signed by the Chairman of the Board, the President or a Vice President and by the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer and may be sealed with the seal of the Corporation or a facsimile thereof. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

If the Corporation shall be authorized to issue more than one (1) class of stock or more than one (1) series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided by statute, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the Corporation shall send to the registered holder thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this paragraph or a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

Section 7.02 *Lost Certificates.* The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the owner of such certificate, or his legal representative. When authorizing the issuance of a new certificate, the Board of Directors may in its discretion, as a condition precedent to the issuance thereof, require the owner, or his legal representative, to give a bond in such form and substance with such surety as it may direct, to indemnify the Corporation against any claim that may be made on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 7.03 *Fixing Date for Determination of Stockholders of Record for Certain Purposes.*

(a) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise

any rights in respect of any change, conversion or exchange of capital stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days prior to the date of payment of such dividend or other distribution or allotment of such rights or the date when any such rights in respect of any change, conversion or exchange of stock may be exercised or the date of such other action. In such a case, only stockholders of record on the date so fixed shall be entitled to receive any such dividend or other distribution or allotment of rights or to exercise such rights or for any other purpose, as the case may be, notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as aforesaid.

(b) If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 7.04 *Dividends*. Subject to the provisions of the Certificate of Incorporation or any agreement entered into by the Company with any third party, if any, and except as otherwise provided by law, the directors may declare dividends upon the capital stock of the Corporation as and when they deem it to be expedient. Such dividends may be paid in cash, in property or in shares of the Corporation's capital stock. Before declaring any dividend there may be set apart out of the funds of the Corporation available for dividends, such sum or sums as the directors from time to time in their discretion think proper for working capital or as a reserve fund to meet contingencies or for equalizing dividends, or for such other purposes as the directors shall think conducive to the interests of the Corporation and the directors may modify or abolish any such reserve in the manner in which it was created.

Section 7.05 *Registered Stockholders*. Except as expressly provided by law, the Certificate of Incorporation or these Bylaws, the Corporation shall be entitled to treat registered stockholders as the only holders and owners in fact of the shares standing in their respective names and the Corporation shall not be bound to recognize any equitable or other claim to or interest in such shares on the part of any other person, regardless of whether it shall have express or other notice thereof.

Section 7.06 *Transfer of Stock*. Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the registered owners thereof, or by their legal representatives or their duly authorized attorneys. If the shares are certificated, upon any such transfers the old certificates shall be surrendered to the Corporation by the delivery thereof to the person in charge of the stock transfer books and ledgers, by whom they shall be cancelled and new certificates may thereupon be issued.

ARTICLE VIII

Miscellaneous Provisions

Section 8.01 *Corporate Seal*. If one be adopted, the corporate seal shall have inscribed thereon the name of the Corporation and shall be in such form as may be approved by the Board of Directors. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced.

Section 8.02 *Fiscal Year.* Except as determined by the Board of Directors, the fiscal year of the Corporation shall end on December 31 of each year.

Section 8.03 *Checks, Drafts, Notes.* All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, agent or agents of the Corporation, and in such manner as shall from time to time be determined by resolution (whether general or special) of the Board of Directors or may be prescribed by any officer or officers, or any officer and agent jointly, thereunto duly authorized by the Board of Directors.

Section 8.04 *Notice and Waiver of Notice.* Whenever notice is required to be given to any director or stockholder under the provisions of applicable law, the Certificate of Incorporation or these Bylaws, such notice shall be in writing and delivered either (i) personally, or (ii) by registered or certified mail, or (iii) by telegram, telecopy, or similar facsimile means (delivered during the recipient's regular business hours). Such notice shall be sent to such director or stockholder at the address or telecopy number as it appears on the records of the Corporation, unless prior to the sending of such notice he has designated, in a written request to the Secretary of the Corporation, another address or telecopy number to which notices are to be sent. Notices shall be deemed given when received, if sent by telegram, telex, telecopy or similar facsimile means (confirmation of such receipt by confirmed facsimile transmission being deemed receipt of communications sent by telex, telecopy or other facsimile means); and when delivered and receipted for (or upon the date of attempted delivery where delivery is refused), if hand-delivered, sent by express courier or delivery service, or sent by certified or registered mail. Whenever notice is required to be given under any provision of law, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing, by telegraph, cable or other form of recorded communication, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors, or members of a committee of directors need be specified in any written waiver of notice unless so required by the Certificate of Incorporation or these Bylaws.

Section 8.05 *Examination of Books and Records.* The Board of Directors shall determine from time to time whether, and if allowed, when and under what conditions and regulations the accounts and books of the Corporation (except such as may by statute be specifically opened to inspection) or any of them shall be open to inspection by the stockholders, and the stockholders' rights in this respect are and shall be restricted and limited accordingly.

Section 8.06 *Voting Upon Shares Held by the Corporation.* Unless otherwise provided by law or by the Board of Directors, the Chairman of the Board of Directors, if one shall be elected, or the President, if a Chairman of the Board of Directors shall not be elected, acting on behalf of the Corporation, shall have full power and authority to attend and to act and to vote at any meeting of stockholders of any corporation in which the Corporation may hold stock and, at any such meeting, shall possess and may exercise any and all of the rights and powers incident to the ownership of such stock which, as the owner thereof, the Corporation might have possessed

and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any person or persons.

Section 8.07 *Stockholders Agreement*. These Bylaws are in all respects subject to the Stockholders Agreement. If there is a conflict between any specific provision of these Bylaws and any specific provision of the Stockholders Agreement, the specific provision of the Stockholders Agreement (so long as it exists) shall govern the relevant matter.

ARTICLE IX

Amendments

Section 9.01 *Amendment*. Except as otherwise expressly provided in the Certificate of Incorporation, the directors, by the affirmative vote of a majority of the Whole Board and without the assent or vote of the stockholders, may at any meeting make, repeal, alter, amend or rescind any of these Bylaws. The stockholders shall not make, repeal, alter, amend or rescind any of the provisions of these Bylaws except by the holders of not less than a majority of the total voting power of all shares of stock of the Corporation entitled to vote in the election of directors, considered for purposes of this Article IX as one class.

EXHIBIT C

Organizational Documents for Reorganized FiberTower Subsidiaries

The Debtors do not currently intend to make any material amendments to the charter documents and bylaws (or other applicable organizational documents) for any Reorganized FiberTower Subsidiary in connection with the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 4, 2013, except as required by the Bankruptcy Code, including Bankruptcy Code section 1123(a)(6). Therefore, the organizational documents for the Reorganized FiberTower Subsidiaries are not included herein.

EXHIBIT D

Composition of Initial Board of Directors and the Initial Senior Executive Officers of the Reorganized Debtors and Related Compensation Disclosure

Composition of the Initial Board of Directors and the Initial Senior Executive Officers of the Reorganized Debtors and Related Compensation Disclosure³

Pursuant to Section 6.3(f) of the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 4, 2013 [Docket No. 1007] and section 1129(a)(5) of the Bankruptcy Code, and subject to confirmation of the Plan and occurrence of the Effective Date, this Plan Supplement sets forth the identities and affiliations of the initial boards members and the initial senior executive officers of each Reorganized Debtor as of the Effective Date.

Initial Members of the Boards of Directors of Reorganized FiberTower and the Reorganized FiberTower Subsidiaries

On the Effective Date, the boards of directors of Reorganized FiberTower and each of the Reorganized FiberTower Subsidiaries (the "Boards") shall initially be comprised of three (3) members, designated by the Ad Hoc 2016 Committee, and who shall include Craig Chobor, Neil Subin and one (1) additional individual to be determined.

1. Craig Chobor. Mr. Chobor joined Solus Alternative Asset Management LP at its inception in July 2007, and has been a member of the hedge fund investment team since the funds' inceptions under the management of Stanfield Capital Partners. Mr. Chobor joined Stanfield in 1999 as a Credit Analyst covering retail, cable, euro cable, printing, publishing, television, radio, media, wireless, and satellite telecommunication. Mr. Chobor began his career at Scudder Kemper Investments in 1997 as a Senior Associate/Portfolio Assistant in the Emerging Markets Group. He is a Chartered Financial Analyst and is a member of the New York Society of Securities Analysts and the Association of Investment Management and Research. Mr. Chobor received a B.S. in Economics and International Business from the Pennsylvania State University in 1995, and an M.B.A. in Finance from Pace University in 2001.
2. Neil Subin. Mr. Subin has been the Chairman of the Board of Broadbill Investment Partners, LP, a private investment fund, since 2011. Since its formation in 1991, Mr. Subin has served as managing director and president of Trendex Capital Management, a private investment fund focusing primarily on financially distressed companies. Mr. Subin has served as a director of Institutional Financial Markets, Inc. since 2011, Phospate Holdings, Inc. since November 2010, Hancock Fabrics, Inc. since August 2009 and Federal-Mogul Corporation since December 2007.

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 4, 2013.

3. The remaining member of the Boards is yet to be determined and shall be disclosed in a supplemental filing as soon as possible.

**Initial Senior Executive Officers of Reorganized FiberTower and the Reorganized
FiberTower Subsidiaries**

On the Effective Date, the initial senior executive officers of Reorganized FiberTower and the Reorganized FiberTower Subsidiaries shall be the individuals set forth below. It is anticipated that, on the Effective Date, such initial senior executive officers shall receive compensation and benefits that are substantially similar to those received by such officers prior to the Effective Date. The initial senior executive officers of Reorganized FiberTower shall be subject to terminations and resignations in the ordinary course of business.

<u>Name</u>	<u>Title</u>
Thomas Scott	President
Joseph Sandri	Senior Vice President Regulatory & Gov. Affairs

EXHIBIT E

Stockholders Agreement

STOCKHOLDERS AGREEMENT

among

FIBERTOWER CORPORATION

and

The Stockholders named herein

dated as of

[_____, 2014]

TABLE OF CONTENTS

ARTICLE I DEFINITIONS	4
ARTICLE II MANAGEMENT AND OPERATION OF THE COMPANY	8
Section 2.01 Board of Directors.....	8
Section 2.02 Subsidiaries.....	10
Section 2.03 Voting Arrangements.....	10
ARTICLE III TRANSFER OF INTERESTS	12
Section 3.01 General Restrictions on Transfer.....	12
Section 3.02 Right of First Offer.....	13
Section 3.03 Approved Sale.....	14
ARTICLE IV PRE-EMPTIVE RIGHTS	15
Section 4.01 Pre-emptive Right.....	15
ARTICLE V OTHER AGREEMENTS	17
Section 5.01 Corporate Opportunities.....	17
Section 5.02 Confidentiality.....	18
Section 5.03 Grant of Proxy; No Revocation.....	18
ARTICLE VI INSPECTION RIGHTS	19
Section 6.01 Inspection Rights.....	19
ARTICLE VII REPRESENTATIONS AND WARRANTIES	19
Section 7.01 Representations and Warranties.....	19
ARTICLE VIII TERM AND TERMINATION	20
Section 8.01 Termination.....	20
Section 8.02 Effect of Termination.....	20
ARTICLE IX MISCELLANEOUS	21
Section 9.01 Expenses.....	21
Section 9.02 Release of Liability.....	21
Section 9.03 Notices.....	21
Section 9.04 Interpretation.....	22
Section 9.05 Headings.....	22
Section 9.06 Severability.....	22
Section 9.07 Entire Agreement.....	22
Section 9.08 Successors and Assigns.....	23
Section 9.09 No Third-party Beneficiaries.....	23

Section 9.10	Amendment and Modification; Waiver	23
Section 9.11	Governing Law; Consent to Jurisdiction and Service of Process	23
Section 9.12	Equitable Remedies	23
Section 9.13	Counterparts	24

Stockholders Agreement

This Stockholders Agreement (this “**Agreement**”), dated as of [_____, 2014], is entered into among FiberTower Corporation, a Delaware corporation (the “**Company**”), Solus Alternative Asset Management LP, a Delaware limited partnership, on behalf of certain funds or managed accounts (the “**Solus Investors**”), Broadbill Investment Partners, LP, a Delaware limited partnership, on behalf of certain funds or managed accounts (the “**Broadbill Investors**”), and each other Person who holds Common Stock of the Company (such Persons, collectively, the “**Stockholders**”).

RECITALS

WHEREAS, the Corporation and certain of its Subsidiaries (as defined below) have filed a joint plan of reorganization (the “**Plan**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”);

WHEREAS, as of the date hereof, (i) the Effective Date as provided for in the Plan and the Confirmation Order (the “**Effective Date**”) occurred, and (ii) a total of [_____] shares of the Corporation’s Common Stock were issued pursuant to the Plan;

WHEREAS, pursuant to the Plan, as of the Effective Date the Stockholders have executed, or pursuant to the Plan are deemed to have entered into, this Agreement to govern certain rights of the Stockholders and to provide certain other rights and obligations among them; and

WHEREAS, other parties acquiring shares of the Corporation’s Common Stock after the Effective Date shall enter into, and become bound by, this Agreement by execution of the Joinder Agreement (as defined below) as provided herein or in the Certificate of Incorporation (as defined below);

NOW THEREFORE, in consideration of the premises and the mutual agreements, covenants and provisions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I DEFINITIONS

Capitalized terms used herein and not otherwise defined shall have the meanings set forth in this Article I.

“**Affiliate**” means with respect to any Person, any other Person who, directly or indirectly (including through one or more intermediaries), controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control,” when used with respect to any specified Person, shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or

partnership or other ownership interests, by contract or otherwise; and the terms “controlling” and “controlled” shall have correlative meanings.

“**Agreement**” has the meaning set forth in the preamble.

“**Applicable Law**” means all applicable provisions of (a) constitutions, treaties, statutes, laws (including the common law), rules, regulations, decrees, ordinances, codes, proclamations, declarations or orders of any Governmental Authority, (b) any consents or approvals of any Governmental Authority and (c) any orders, decisions, advisory or interpretative opinions, injunctions, judgments, awards, decrees of, or agreements with, any Governmental Authority.

“**Approved Sale**” has the meaning set forth in **Section 3.03(a)**.

“**Board**” has the meaning set forth in **Section 2.01(a)**.

“**Broadbill Investors**” has the meaning set forth in the preamble.

“**Business**” means the business of holding and maximizing value of certain rights to wireless spectrum assets.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in the City of New York are authorized or required to close.

“**By-laws**” means the by-laws of the Company, as amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

“**Certificate of Incorporation**” means the certificate of incorporation of the Company, [as filed on [____, 2013]] with the Secretary of State of the State of Delaware and as amended, modified, supplemented or restated from time to time in accordance with the terms of this Agreement.

“**Change of Control**” means any transaction or series of related transactions (as a result of a tender offer, merger, consolidation or otherwise) that results in, or that is in connection with, (a) any Third Party Purchaser or “group” (within the meaning of Section 13(d)(3) of the Exchange Act) of Third Party Purchasers acquiring beneficial ownership, directly or indirectly, of a majority of the then issued and outstanding Common Stock or (b) the sale, lease, exchange, conveyance, transfer or other disposition (for cash, shares of stock, securities or other consideration) of all or substantially all of the property and assets of the Company and its Subsidiaries (if any), on a consolidated basis, to any Third Party Purchaser or “group” (within the meaning of Section 13(d)(3) of the Exchange Act) of Third Party Purchasers (including any liquidation, dissolution or winding up of the affairs of the Company, or any other distribution made, in connection therewith).

“**Common Stock**” means the common stock, par value [\$0.01] per share, of the Company and any securities issued in respect thereof, or in substitution therefor, in connection with any stock split, dividend or combination, or any reclassification, recapitalization, merger, consolidation, exchange or similar reorganization.

“Company” has the meaning set forth in the preamble.

“Corporate Opportunity” has the meaning set forth in **Section 5.01**.

“Director” has the meaning set forth in **Section 2.01(a)**.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“Excluded Securities” means any Common Stock or other equity securities issued in connection with: (a) a grant to any existing or prospective consultants, employees, officers or Directors pursuant to any stock option, employee stock purchase or similar equity-based plans or other compensation agreement; (b) the exercise or conversion of options to purchase shares of Common Stock, or shares of Common Stock issued to any existing or prospective consultants, employees, officers or Directors pursuant to any stock option, employee stock purchase or similar equity-based plans or any other compensation agreement; (c) any acquisition by the Company of the stock, assets, properties or business of any Person; (d) any merger, consolidation or other business combination involving the Company; (e) the commencement of any Initial Public Offering or any transaction or series of related transactions involving a Change of Control; (f) a stock split, stock dividend or any similar recapitalization; or (g) any issuance of Financing Equity where such Financing Equity, together with all then outstanding Financing Equity, is not equal to, and is not convertible into, an aggregate of more than 5% of the outstanding Common Stock on a fully diluted basis at the time of the issuance of such Financing Equity, in each case, approved by the Board.

“Exercise Period” has the meaning set forth in **Section 4.01(c)**.

“Exercising Stockholder” has the meaning set forth in **Section 4.01(d)**.

“Financing Equity” means any Common Stock, warrants or other similar rights to purchase Common Stock issued to lenders or other institutional investors (excluding the Stockholders) in any arm’s length transaction providing debt financing to the Company.

“Government Approval” means any authorization, consent, approval, waiver, exception, variance, order, exemption, publication, filing, declaration, concession, grant, franchise, agreement, permission, permit, or license of, from or with any Governmental Authority, the giving notice to, or registration with, any Governmental Authority or any other action in respect of any Governmental Authority.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Initial Public Offering” means any offering of Common Stock pursuant to a registration statement filed in accordance with the Securities Act.

“Information” has the meaning set forth in **Section 5.02(a)**.

“Issuance Notice” has the meaning set forth in **Section 4.01(b)**.

“Joinder Agreement” means the joinder agreement in form and substance of Exhibit A attached hereto.

“Lien” means any lien, claim, charge, mortgage, pledge, security interest, option, preferential arrangement, right of first offer, encumbrance or other restriction or limitation of any nature whatsoever.

“New Securities” has the meaning set forth in **Section 4.01(a)**.

“Non-Exercising Stockholder” has the meaning set forth in **Section 4.01(d)**.

“Offered Shares” has the meaning set forth in **Section 3.02(a)**.

“Offering Stockholder” has the meaning set forth in **Section 3.02(a)**.

“Offering Stockholder Notice” has the meaning set forth in **Section 3.02(b)**.

“Organizational Documents” means the By-laws and the Certificate of Incorporation.

“Over-allotment Exercise Period” has the meaning set forth in **Section 4.01(d)**.

“Over-allotment New Securities” has the meaning set forth in **Section 4.01(d)**.

“Over-allotment Notice” has the meaning set forth in **Section 4.01(d)**.

“Permitted Transferee” means (i) with respect to any Stockholder, any Affiliate of such Stockholder, and (ii) with respect to any Stockholder that is an individual, (a) any member of such Stockholder’s family, (b) any trust for the benefit of such Stockholder or any family member of such Stockholder, which trust is revocable solely by such Stockholder, (c) any guardian or conservator of such Stockholder and/or (d) in the event of such Stockholder’s death, such Stockholder’s executor(s) or administrator(s) or to trustee(s) under such Stockholder’s will or the laws of descent and distribution.

“Person” means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

“Pre-emptive Pro Rata Portion” has the meaning set forth in **Section 4.01(c)**.

“Pre-emptive Stockholder” has the meaning set forth in **Section 4.01(a)**.

“Purchasing Stockholder” has the meaning set forth in **Section 3.02(d)**.

“Related Party Agreement” means any agreement, arrangement or understanding between the Company and any Stockholder or any Affiliate of a Stockholder or any Director, officer or employee of the Company, as such agreement may be amended, modified, supplemented or restated in accordance with the terms of this Agreement.

“Representative” means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“ROFO Investors” has the meaning set forth in **Section 3.02(a)**.

“ROFO Notice” has the meaning set forth in **Section 3.02(d)**.

“ROFO Notice Period” has the meaning set forth in **Section 3.02(b)**.

“Sale of the Company” has the meaning set forth in **Section 3.03(a)**.

“Securities Act” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“Solus Investors” has the meaning set forth in the preamble.

“Stockholders” has the meaning set forth in the preamble.

“Subsidiary” means with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

“Third Party Purchaser” means any Person who, immediately prior to the contemplated transaction, (a) does not directly or indirectly own or have the right to acquire any outstanding Common Stock or (b) is not a Permitted Transferee of any Person who directly or indirectly owns or has the right to acquire any Common Stock.

“Transfer” means to, directly or indirectly, sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any Common Stock owned by a Person or any interest (including a beneficial interest) in any Common Stock owned by a Person.

“Waived ROFO Transfer Period” has the meaning set forth in **Section 3.02(f)**.

ARTICLE II MANAGEMENT AND OPERATION OF THE COMPANY

Section 2.01 Board of Directors.

(a) The Stockholders agree that the business and affairs of the Company shall be managed through a board of directors (the **“Board”**) consisting of three (3) members (each, a

“Director”). The Directors shall be elected to the Board in accordance with the following procedures:

(i) The Solus Investors shall have the right to designate two (2) Directors, who shall initially be Craig Chobor and [_____]; and

(ii) The Broadbill Investors shall have the right to designate one (1) Director, who shall initially be Neil Subin.

(b) In the event the Solus Investors and their Permitted Transferees cease to own at least (i) 40% of the issued and outstanding Common Stock, but continue to own at least 20% of the issued and outstanding Common Stock, then (x) the number of Directors the Solus Investors shall have the right to designate pursuant to **Section 2.01(a)** shall be reduced by one, (y) the Solus Investors shall cause one of their Directors to resign, and (z) the vacancy created by such event shall be filled by a director elected by the affirmative vote of a majority of the Board or (ii) 20% of the issued and outstanding Common Stock, then (x) the Solus Investors shall cease to have the right to designate any Directors pursuant to **Section 2.01(a)**, (y) the Solus Investors shall cause all of their Directors to resign, and (z) the vacancy created by such event shall be filled by the remaining directors of the Board.

(c) In the event the Broadbill Investors and their Permitted Transferees cease to own at least 20% of the issued and outstanding Common Stock, then (i) the Broadbill Investors shall cease to have the right to designate any Directors pursuant to **Section 2.01(a)**, (ii) the Broadbill Investors shall cause their Director to resign, and (iii) the vacancy created by such event shall be filled by a director elected by the affirmative vote of a majority of the Board.

(d) In the event the Solus Investors cease to have the right to appoint any Directors pursuant to **Section 2.01(a)** and the Broadbill Investors cease to have the right to appoint a Director pursuant to **Section 2.01(a)**, the Directors shall be elected to the Board by the Stockholders in accordance with the By-laws.

(e) Directors shall be elected each year at the annual meeting of stockholders. Each Director shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal in accordance with this Agreement and the By-laws. Each Stockholder shall vote all shares of Common Stock over which such Stockholder has voting control and shall take all other necessary or desirable actions within such Stockholder’s control (including in its capacity as stockholder, director, member of a board committee or officer of the Company or otherwise, and whether at an annual meeting of stockholders or a special meeting of the stockholders or by written consent in lieu of a meeting) to elect to the Board any individual designated by a Stockholder pursuant to **Section 2.01(a)** or **Section 2.01(b)**.

(f) Each Stockholder entitled to appoint a Director pursuant to **Section 2.01(a)** or **Section 2.01(b)** shall have the right at any time to remove (with or without cause) any Director designated by such Stockholder for election to the Board and each other Stockholder shall vote all shares of Common Stock over which such Stockholder has voting control and shall take all other necessary or desirable actions within such Stockholder’s control (including in its capacity as stockholder, director, member of a board committee or officer of the Company or otherwise,

and whether at a regular or special meeting of the Stockholders or by written consent in lieu of a meeting) to remove from the Board any individual designated by such Stockholder that such Stockholder desires to remove pursuant to this **Section 2.01**. Except as provided in the preceding sentence, unless a Stockholder entitled to appoint a Director pursuant to **Section 2.01(a)** or **Section 2.01(b)** shall otherwise consent in writing, no other Stockholder shall take any action to cause the removal of any Directors designated by such Stockholder.

(g) In the event a vacancy is created on the Board, other than as set forth in **Section 2.01(b)** or **Section 2.01(c)**, at any time and for any reason (whether as a result of death, resignation or removal pursuant to **Section 2.01(e)**), the Stockholder who designated such individual pursuant to **Section 2.01(a)** or **Section 2.01(b)** shall have the right to designate a different individual to replace such Director and each other Stockholder shall vote all shares of Common Stock over which such Stockholder has voting control and shall take all other necessary or desirable actions within such Stockholder's control (including in its capacity as stockholder, director, member of a board committee or officer of the Company or otherwise, and whether at a regular or special meeting of the Stockholders or by written consent in lieu of a meeting) to elect to the Board any individual designated by such Stockholder entitled to appoint a Director pursuant to **Section 2.01(a)** or **Section 2.01(b)**.

(h) The Board shall have the right to establish any committee of Directors as the Board shall deem appropriate from time to time. Subject to this Agreement, the Organizational Documents and Applicable Law, committees of the Board shall have the rights, powers and privileges granted to such committee by the Board from time to time. Any delegation of authority to a committee of Directors to take any action must be approved in the same manner as would be required for the Board to approve such action directly. Each party or group of parties with the right to designate a director pursuant to **Section 2.01** shall have the right to designate one of its Director designees to serve on each committee of Directors established by the Board.

Section 2.02 Subsidiaries. With respect to any Subsidiary of the Company, the Stockholders shall have the same board of director representation rights with respect to such Subsidiary as the Stockholders have with respect to the Company. The Stockholders shall, and shall cause their Director designees to, take all such actions as may be necessary or desirable to give effect to this provision.

Section 2.03 Voting Arrangements. In addition to any vote or consent of the Board or the Stockholders of the Company required by Applicable Law, without the approval of the Solus Investors and the Broadbill Investors, in each case for so long as the Solus Investors and the Broadbill Investors, respectively, have the right to appoint a Board designee pursuant to **Section 2.01(a)** or **Section 2.01(b)**, the Company shall not, and shall not enter into any commitment to:

(a) amend, modify or waive the Certificate of Incorporation, the By-laws or this Agreement;

(b) (i) make any material change to the nature of the Business conducted by the Company or (ii) enter into any business other than the Business;

(c) redeem or repurchase any shares of Common Stock (other than any Excluded Securities approved in accordance with the terms of this Agreement) unless each holder of Common Stock may participate on a *pro rata* basis;

(d) pay a dividend or distribution on the Common Stock unless such dividend or distribution is paid to all holders of Common Stock on a *pro rata* basis;

(e) incur any indebtedness for borrowed money, pledge or grant Liens on any assets or guarantee, assume, endorse or otherwise become responsible for the debt obligations of any other Person;

(f) make any loan, advance or capital contribution to any Person;

(g) enter into, amend in any material respect, waive or terminate any Related Party Agreement;

(h) enter into or effect any transaction or series of related transactions involving the purchase, lease, license, exchange or other acquisition (including by merger, consolidation, joint venture, acquisition of stock or acquisition of assets) by the Company of any assets and/or equity interests of any Person;

(i) enter into or effect any transaction or series of related transactions that would result in a Change of Control;

(j) settle any lawsuit, action, dispute or other proceeding pursuant to which the Company agrees to make any payments or otherwise assume any liability or agrees to the provision of any equitable relief by the Company;

(k) make any investments in any other Person;

(l) dissolve, wind-up or liquidate the Company or initiate a bankruptcy proceeding involving the Company;

(m) issue any Common Stock;

(n) adopt an annual operating budget for the Company;

(o) sell material assets; or

(p) commence an Initial Public Offering.

**ARTICLE III
TRANSFER OF INTERESTS**

Section 3.01 General Restrictions on Transfer.

(a) Except as permitted pursuant to **Section 3.01(b)** or in accordance with the procedures described in **Section 3.02** or **Section 3.03**, each Stockholder agrees that such Stockholder will not, directly or indirectly, voluntarily or involuntarily Transfer any of its Common Stock.

(b) The provisions of **Section 3.01(a)**, **Section 3.02** and **Section 3.03** shall not apply to Transfers by any Stockholder of any of its Common Stock to a Permitted Transferee.

(c) In addition to any legends required by Applicable Law, each certificate representing the Common Stock of the Company shall bear a legend substantially in the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO A STOCKHOLDERS AGREEMENT (A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY). NO TRANSFER, SALE, ASSIGNMENT, PLEDGE, HYPOTHECATION OR OTHER DISPOSITION OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY BE MADE EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT AND (A) PURSUANT TO A REGISTRATION STATEMENT EFFECTIVE UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM REGISTRATION THEREUNDER. THE HOLDER OF THIS CERTIFICATE, BY ACCEPTANCE OF THIS CERTIFICATE, AGREES TO BE BOUND BY ALL OF THE PROVISIONS OF SUCH STOCKHOLDERS AGREEMENT.”

(d) Prior notice shall be given to the Company by the transferor of any Transfer (whether or not to a Permitted Transferee) of any Common Stock. Prior to consummation of any Transfer by any Stockholder of any of its Common Stock, such party shall cause the transferee thereof to execute and deliver to the Company a Joinder Agreement and agree to be bound by the terms and conditions of this Agreement. Upon any Transfer by any Stockholder of any of its Common Stock, in accordance with the terms of this Agreement, the transferee thereof shall be substituted for, and shall assume all the rights and obligations under this Agreement of, the transferor thereof.

(e) Notwithstanding any other provision of this Agreement, each Stockholder agrees that it will not, directly or indirectly, Transfer any of its Common Stock (i) except as permitted under the Securities Act and other applicable federal or state securities laws, and then, if requested by the Company, only upon delivery to the Company of an opinion of counsel in form and substance satisfactory to the Company to the effect that such Transfer may be effected without registration under the Securities Act, (ii) if it would cause the Company or any of its Subsidiaries to be required to register as an investment company under the Investment Company Act of 1940, as amended, (iii) if, with respect to a Transfer (a) the Company is not, at the time of such Transfer, a reporting company under the Exchange Act and (b) after giving effect to such

Transfer, the Company would be, or would be obligated to become, a reporting company under the Exchange Act (including becoming subject to the periodic reporting requirements of Section 13 or 15(d) of the Exchange Act); or (iii) if it would cause the assets of the Company or any of its Subsidiaries to be deemed plan assets as defined under the Employee Retirement Income Security Act of 1974 or its accompanying regulations or result in any “prohibited transaction” thereunder involving the Company. In any event, the Board may refuse the Transfer to any Person if such Transfer would have a material adverse effect on the Company as a result of any regulatory or other restrictions imposed by any Governmental Authority.

(f) Any Transfer or attempted Transfer of any Common Stock in violation of this Agreement shall be null and void, no such Transfer shall be recorded on the Company’s books and the purported transferee in any such Transfer shall not be treated (and the purported transferor shall continue be treated) as the owner of such Common Stock for all purposes of this Agreement.

Section 3.02 Right of First Offer.

(a) At any time, and subject to the terms and conditions specified in this **Section 3.02**, each Stockholder that owns 5% or more of the then-issued and outstanding Common Stock (the “**ROFO Investors**”) shall have a right of first offer if any other Stockholder (the “**Offering Stockholder**”) proposes to Transfer Common Stock equal to or exceeding 5% of the then-outstanding Common Stock (the “**Offered Shares**”) owned by it to any Third Party Purchaser. Each time the Offering Stockholder proposes to Transfer any Offered Shares (other than Transfers that are permitted by **Section 3.01(b)** or Transfers made pursuant to **Section 3.03**), the Offering Stockholder shall first make an offering of the Offered Shares to the ROFO Investors in accordance with the provisions of this **Section 3.02**.

(b) The Offering Stockholder shall give written notice (the “**Offering Stockholder Notice**”) to the Company and the ROFO Investors stating its bona fide intention to Transfer the Offered Shares and specifying the number of Offered Shares and the material terms and conditions, including the price, pursuant to which the Offering Stockholder proposes to Transfer the Offered Shares. The Offering Stockholder Notice shall constitute the Offering Stockholder’s offer to Transfer the Offered Shares to the ROFO Investors, which offer shall be irrevocable for a period of ten (10) Business Days (the “**ROFO Notice Period**”).

(c) By delivering the Offering Stockholder Notice, the Offering Stockholder represents and warrants to the Company and to each ROFO Investor that: (i) the Offering Stockholder has full right, title and interest in and to the Offered Shares; (ii) the Offering Stockholder has all the necessary power and authority and has taken all necessary action to Transfer such Offered Shares as contemplated by this **Section 3.02**; and (iii) the Offered Shares are free and clear of any and all Liens other than those arising as a result of or under the terms of this Agreement.

(d) Upon receipt of the Offering Stockholder Notice, each ROFO Investor shall have until the end of the ROFO Notice Period to elect to purchase all (and not less than all) of the Offered Shares by delivering a written notice (a “**ROFO Notice**”) to the Offering Stockholder and the Company stating that it offers to purchase such Offered Shares on the terms specified in

the Offering Stockholder Notice. Any ROFO Notice so delivered shall be binding upon delivery and irrevocable by the ROFO Investor. If more than one ROFO Investor delivers a ROFO Notice, each such ROFO Investor (the "**Purchasing Stockholder**") shall be allocated the number of shares equal to the product of (x) the total number of Offered Shares and (y) a fraction determined by dividing (A) the number of shares of Common Stock owned by such Purchasing Stockholder as of the date of the Offering Stockholder Notice, by (B) the total number of shares of Common Stock owned by all of the Purchasing Stockholders as of such date, unless otherwise agreed by such Purchasing Stockholders.

(e) Each ROFO Investor that does not deliver a ROFO Notice during the ROFO Notice Period shall be deemed to have waived all of such ROFO Investor's rights to purchase the Offered Shares under this **Section 3.02**.

(f) If no ROFO Investor delivers a ROFO Notice in accordance with **Section 3.02(d)**, the Offering Stockholder may, during the ninety (90) day period immediately following the expiration of the ROFO Notice Period, which period may be extended for a reasonable time not to exceed one hundred and twenty (120) days to the extent reasonably necessary to obtain any required Government Approvals (the "**Waived ROFO Transfer Period**"), Transfer all of the Offered Shares to a Third Party Purchaser on terms and conditions no more favorable to a Third Party Purchaser than those set forth in the Offering Stockholder Notice. If the Offering Stockholder does not Transfer the Offered Shares within such period or, if such Transfer is not consummated within the Waived ROFO Transfer Period, the rights provided hereunder shall be deemed to be revived and the Offered Shares shall not be offered to any Person unless first re-offered to the ROFO Investors in accordance with this **Section 3.02**.

(g) Each Stockholder shall take all actions as may be reasonably necessary to consummate the Transfer contemplated by this **Section 3.02**, including, without limitation, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate.

(h) At the closing of any Transfer pursuant to this **Section 3.02**, the Offering Stockholder shall deliver to the Purchasing Stockholder(s) certificate or certificates representing the Offered Shares to be sold (if any), accompanied by stock powers and all necessary stock transfer taxes paid and stamps affixed, if necessary, against receipt of the purchase price therefor from such Purchasing Stockholder(s) by certified or official bank check or by wire transfer of immediately available funds.

Section 3.03 Approved Sale.

(a) The approval of (x) the Board and (y) the holders of 66 2/3% of the issued and outstanding Common Stock is required to approve a Sale of the Company. A "**Sale of the Company**" means any transaction or series of related transactions pursuant to which any Person or group of related Persons acquires the Common Stock or all or substantially all of the Company's assets (in either case, whether by merger, amalgamation, consolidation, or Transfer of the Common Stock, or Transfer of the Company's consolidated assets or otherwise). If the aforementioned approval of a Sale of the Company is obtained (such Sale of the Company, an "**Approved Sale**"), subject to **Section 3.03(b)**, each Stockholder will participate in such

Approved Sale and Transfer its shares of Common Stock free and clear of any and all liens, claims or encumbrances in accordance with the approved terms. For the avoidance of doubt, an Approved Sale is not subject to the transfer provisions set forth in **Section 3.02**.

(b) Each Stockholder agrees that he, she or it will consent to, raise no objection against, and have no dissenters' rights, appraisal rights or similar rights in connection with the Approved Sale and will Transfer its shares of Common Stock free and clear of any and all liens, claims or encumbrances in accordance with the approved terms, if and only if: (i) the purchaser in the Approved Sale is not an Affiliate, a Stockholder or an Affiliate of a Stockholder; (ii) all Stockholders receive the same form of consideration on the same terms; and (iii) in any Transfer that results in the Stockholder receiving anything other than cash or cash equivalents as consideration, such Stockholder will not be required to effect any Transfer pursuant to the provisions hereof to the extent such Stockholder receives a written opinion of counsel that such Transfer will be contrary to Applicable Law or subject the Stockholder or any of its Affiliates to any material (in relation to its investment in the Company) regulatory burden to which it is not subject prior to the Approved Sale in respect of its ownership of Common Stock, in which case such Stockholder consents to receiving cash at the equivalent price as consideration in such Approved Sale.

(c) The Stockholders agree that a breach of this **Section 3.03** may cause irreparable injury to the Company and the Stockholders for which monetary damages (or other remedy at Law) are inadequate. Accordingly, the Stockholders agree that this **Section 3.03** may be enforced by specific performance or other appropriate equitable remedy. Any Stockholder required to Transfer its shares of Common Stock in an Approved Sale will execute and deliver all agreements, make such representations and warranties, and be subject to all claims, set offs, escrows, indemnities, liabilities or other obligations of the Approved Sale, so long as the obligations of the Stockholders are several and proportionate to and limited by the total amount of proceeds to all Stockholders in such Transfer; *provided, that* no Stockholder will be required to make any representation or warranty regarding or bear any liability in respect of the Company or its operations.

ARTICLE IV PRE-EMPTIVE RIGHTS

Section 4.01 Pre-emptive Right.

(a) The Company hereby grants to each Stockholder that owns 5% or more of the then-issued and outstanding Common Stock (each, a "**Pre-emptive Stockholder**") the right to purchase its pro rata portion of any new Common Stock (other than any Excluded Securities) (the "**New Securities**") that the Company may from time to time propose to issue or sell to any party.

(b) The Company shall give written notice (an "**Issuance Notice**") of any proposed issuance or sale described in subsection (a) above to the Pre-emptive Stockholders within five (5) Business Days following any meeting of the Board at which any such issuance or sale is approved. The Issuance Notice shall set forth the material terms and conditions of the proposed issuance, including:

(i) the number of New Securities proposed to be issued and the percentage of the Company's outstanding Common Stock, on a fully diluted basis, that such issuance would represent;

(ii) the proposed issuance date, which shall be at least twenty (20) Business Days from the date of the Issuance Notice;

(iii) the proposed purchase price per share; and

(iv) all other material terms and conditions of such proposed issuance.

(c) Each Pre-emptive Stockholder shall for a period of fifteen (15) Business Days following the receipt of an Issuance Notice (the "**Exercise Period**") have the right to elect irrevocably to purchase, at the purchase price set forth in the Issuance Notice, the amount of New Securities equal to the product of (x) the total number of New Securities to be issued by the Company on the issuance date and (y) a fraction determined by dividing (A) the number of shares of Common Stock owned by such Pre-emptive Stockholder immediately prior to such issuance by (B) the total number of shares of Common Stock outstanding on such date immediately prior to such issuance (the "**Pre-emptive Pro Rata Portion**"), by delivering a written notice to the Company. Such Pre-emptive Stockholder's election to purchase New Securities shall be binding and irrevocable.

(d) No later than five (5) Business Days following the expiration of the Exercise Period, the Company shall notify each Pre-emptive Stockholder in writing of the number of New Securities that each Pre-emptive Stockholder has agreed to purchase (including, for the avoidance of doubt, where such number is zero) (the "**Over-allotment Notice**"). Each Pre-emptive Stockholder exercising its right to purchase its Pre-emptive Pro Rata Portion of the New Securities in full (an "**Exercising Stockholder**") shall have a right of over-allotment such that if any other Pre-emptive Stockholder fails to exercise its right under this **Section 4.01** to purchase its Pre-emptive Pro Rata Portion of the New Securities (each, a "**Non-Exercising Stockholder**"), such Exercising Stockholder may purchase all or any portion of such Non-Exercising Stockholder's allotment (the "**Over-allotment New Securities**") by giving written notice to the Company setting forth the number of Over-allotment New Securities that such Exercising Stockholder is willing to purchase within five (5) Business Days of receipt of the Over-allotment Notice (the "**Over-allotment Exercise Period**"). Such Exercising Stockholder's election to purchase Over-allotment New Securities shall be binding and irrevocable. If more than one Exercising Stockholder elects to exercise its right of over-allotment, each Exercising Stockholder shall have the right to purchase the number of Over-allotment New Securities it elected to purchase in its written notice; *provided, that* if the over-allotment New Securities are over-subscribed, each Exercising Stockholder shall purchase its pro rata portion of the available Over-allotment New Securities based upon the relative Pre-emptive Pro Rata Portions of the Exercising Stockholders.

(e) The Company shall be free to complete the proposed issuance or sale of New Securities described in the Issuance Notice with respect to any New Securities not elected to be purchased pursuant to **Section 4.01(c)** and **Section 4.01(d)** above in accordance with the terms and conditions set forth in the Issuance Notice (except that the amount of New Securities to be

issued or sold by the Company may be reduced) so long as such issuance or sale is closed within thirty (30) Business Days after the expiration of the Over-allotment Exercise Period (subject to the extension of such thirty (30) Business Day period for a reasonable time not to exceed sixty (60) Business Days to the extent reasonably necessary to obtain any Government Approvals). In the event the Company has not sold such New Securities within such time period, the Company shall not thereafter issue or sell any New Securities without first again offering such securities to the Stockholders in accordance with the procedures set forth in this **Section 4.01**.

(f) Upon the consummation of the issuance of any New Securities in accordance with this **Section 4.01**, the Company shall deliver to each Exercising Stockholder certificates (if any) evidencing the New Securities, which New Securities shall be issued free and clear of any Liens (other than those arising hereunder and those attributable to the actions of the purchasers thereof), and the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Securities shall be, upon issuance thereof to the Exercising Stockholders and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Exercising Stockholder shall deliver to the Company the purchase price for the New Securities purchased by it by certified or official bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Securities shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including entering into such additional agreements as may be necessary or appropriate.

ARTICLE V OTHER AGREEMENTS

Section 5.01 - Corporate Opportunities. Except as otherwise provided in the second sentence of this **Section 5.01**, (a) no Stockholder or any of its Permitted Transferees or any of their respective Representatives shall have any duty to communicate or present an investment or business opportunity or prospective economic advantage to the Company in which the Company may, but for the provisions of this **Section 5.01**, have an interest or expectancy (a "**Corporate Opportunity**"), and (b) no Stockholder or any of its Permitted Transferees or any of their respective Representatives (even if such Person is also an officer or Director of the Company) shall be deemed to have breached any fiduciary or other duty or obligation to the Company by reason of the fact that any such Person pursues or acquires a Corporate Opportunity for itself or its Permitted Transferees or directs, sells, assigns or transfers such Corporate Opportunity to another Person or does not communicate information regarding such Corporate Opportunity to the Company. The Company renounces any interest in a Corporate Opportunity and any expectancy that a Corporate Opportunity will be offered to the Company; *provided, that* the Company does not renounce any interest or expectancy it may have in any Corporate Opportunity that is offered to an officer or Director of the Company whether or not such individual is also a Director or officer of a Stockholder, if such opportunity is expressly offered to such Person in his or her capacity as an officer or Director of the Company. The Stockholders hereby recognize that the Company reserves such rights.

Section 5.02 Confidentiality.

(a) Each Stockholder shall and shall cause its Representatives to, keep confidential and not divulge any information (including all budgets, business plans and analyses) concerning the Company, including its assets, business, operations, financial condition or prospects (“**Information**”), and to use, and cause its Representatives to use, such Information only in connection with the operation of the Company; *provided, that* nothing herein shall prevent any Stockholder from disclosing such Information (i) upon the order of any court or administrative agency, (ii) upon the request or demand of any regulatory agency or authority having jurisdiction over such Stockholder, (iii) to the extent compelled by legal process or required or requested pursuant to subpoena, interrogatories or other discovery requests, (iv) to the extent necessary in connection with the exercise of any remedy hereunder, (v) to other Stockholders, (vi) to such Stockholder’s Representatives that in the reasonable judgment of such Stockholder need to know such Information or (vii) to any potential Permitted Transferee in connection with a proposed Transfer of Common Stock from such Stockholder as long as such transferee agrees to be bound by the provisions of this **Section 5.04** as if a Stockholder, *provided, further, that* in the case of clause (i), (ii) or (iii), such Stockholder shall notify the other parties hereto of the proposed disclosure as far in advance of such disclosure as practicable and use reasonable efforts to ensure that any Information so disclosed is accorded confidential treatment, when and if available.

(b) The restrictions of **Section 5.02(a)** shall not apply to information that (i) is or becomes generally available to the public other than as a result of a disclosure by a Stockholder or any of its Representatives in violation of this Agreement; (ii) is or becomes available to a Stockholder or any of its Representatives on a non-confidential basis prior to its disclosure to the receiving Stockholder and any of its Representatives, (iii) is or has been independently developed or conceived by such Stockholder without use of the Company’s Information or (iv) becomes available to the receiving Stockholder or any of its Representatives on a non-confidential basis from a source other than the Company, any other Stockholder or any of their respective Representatives, *provided, that* such source is not known by the recipient of the information to be bound by a confidentiality agreement with the disclosing Stockholder or any of its Representatives.

Section 5.03 Grant of Proxy; No Revocation. Each Stockholder hereby irrevocably appoints the chief executive officer of the Company, as such Stockholder’s proxy and true and lawful attorney-in-fact with power to sign its name to vote or consent in writing with respect to such Stockholder’s shares of Common Stock in accordance with such Stockholder’s agreements contained in this Agreement and to execute any documents or agreements which such attorney-in-fact deems reasonably necessary to effect any Drag-along Sale pursuant to **Section 3.03** (subject to compliance with **Section 3.03** by the Company and the Dragging Stockholder). The voting agreements, proxy and power of attorney contained herein are coupled with an interest and may not be revoked, except by an amendment, modification or termination effected in accordance with **Section 9.02**. Nothing in this **Section 5.03** shall be construed as limiting the provisions of **Section 9.02**.

ARTICLE VI INSPECTION RIGHTS

Section 6.01 Inspection Rights.

(a) The Company shall, and shall cause its officers, Directors and employees to, (i) afford each Stockholder and the Representatives of each such Stockholder, during normal business hours and upon reasonable notice, reasonable access at all reasonable times to its officers, employees, auditors, properties, offices, plants and other facilities and to all books and records, and (ii) afford such Stockholder the opportunity to consult with its officers from time to time regarding the Company's affairs, finances and accounts as each such Stockholder may reasonably request upon reasonable notice.

(b) The right set forth in **Section 6.01(a)** above shall not and is not intended to limit any rights which the Stockholders may have with respect to the books and records of the Company, or to inspect its properties or discuss its affairs, finances and accounts under the laws of the jurisdiction in which the Company is incorporated.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

Section 7.01 Representations and Warranties. Each Stockholder that has (i) executed this Agreement or a (ii) Joinder Agreement, as applicable, severally and not jointly, represents and warrants to the Company and each other Stockholder that:

(a) If such Stockholder is not an individual, such Stockholder is duly organized, validly existing and in good standing under the laws of its organization.

(b) Such Stockholder has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. If such Stockholder is not an individual, the execution and delivery of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action of such Stockholder. Such Stockholder has duly executed and delivered this Agreement.

(c) This Agreement constitutes the legal, valid and binding obligation of such Stockholder, enforceable against such Stockholder in accordance with its terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

(d) The execution, delivery and performance by such Stockholder of this Agreement and the consummation of the transactions contemplated hereby do not (i) conflict with or result in any violation or breach of any provision of any of the organizational documents of such Stockholder (if the Stockholder is not an individual), or (ii) require any consent or other action by any Person under any provision of any material agreement or other instrument to which the Stockholder is a party.

(e) Except for this Agreement, a Joinder Agreement and/or any other agreement to which the Board gave its prior consent (as applicable), such Stockholder has not entered into or agreed to be bound by any other agreements or arrangements of any kind with any other party with respect to the Common Stock, including agreements or arrangements with respect to the acquisition or disposition of the Common Stock or any interest therein or the voting of the Common Stock (whether or not such agreements and arrangements are with the Company or any other Stockholder).

ARTICLE VIII TERM AND TERMINATION

Section 8.01 Termination. This Agreement shall terminate upon the earliest of:

- (a) the consummation of an Initial Public Offering;
- (b) the consummation of a merger or other business combination involving the Company whereby the Common Stock becomes a security that is listed or admitted to trading on the NASDAQ Stock Market, the New York Stock Exchange or another national securities exchange;
- (c) the date on which none of the Stockholders holds any Common Stock;
- (d) the dissolution, liquidation, or winding up of the Company; or
- (e) upon the unanimous agreement of the Stockholders.

Section 8.02 Effect of Termination.

(a) The termination of this Agreement shall terminate all further rights and obligations of the Stockholders under this Agreement except that such termination shall not effect:

- (i) the existence of the Company;
- (ii) the obligation of any Party to pay any amounts arising on or prior to the date of termination, or as a result of or in connection with such termination;
- (iii) the liability of any Person for breach prior to termination;
- (iv) the rights which any Stockholder may have by operation of law as a stockholder of the Company; or
- (v) the rights contained herein which, but their terms are intended to survive termination of this Agreement.

(b) The following provisions shall survive the termination of this Agreement: this **Section 8.02** and **Section 5.02**, **Section 9.03**, **Section 9.11** and **Section 9.12**.

**ARTICLE IX
MISCELLANEOUS**

Section 9.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 9.02 Release of Liability. In the event any Stockholder shall Transfer all of the Common Stock held by such Stockholder in compliance with the provisions of this Agreement without retaining any interest therein, then such Stockholder shall cease to be a party to this Agreement and shall be relieved and have no further liability arising hereunder for events occurring from and after the date of such Transfer.

Section 9.03 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this **Section 9.03**):

(1) If to the Company:

FiberTower Corporation
P.O. Box 31564
San Francisco, CA 94131
Email: Tom.Scott@spidercloud.com
Attention: Thomas Scott

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

Andrews Kurth LLP
450 Lexington Avenue, 15th Floor
New York, New York 10017
Facsimile: (212) 850-2929
Email: paulsilverstein@andrewskurth.com
Attention: Paul N. Silverstein

(2)(a) If to the Solus Investors:

Solus Alternative Asset Management LP
410 Park Avenue, 11th Floor
New York, New York 10022
Facsimile: (212) 284-4320
Attention:
Stephen Blauner, Managing Director (sblauner@soluslp.com)
-and-
Craig Chobor, Managing Director (cchobor@soluslp.com)

(2)(b) If to the Broadbill Investors: Broadbill Investment Partners, LP
527 Madison Avenue, 15th Floor
New York, NY 10022
Facsimile: (646) 792-7264
Email: nsubin@broadbillpartners.com
Attention: Neil Subin, Managing Member

with copies to (which shall not constitute notice):

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Facsimile: (212) 806-6006
Attention:
Kristopher M. Hansen, Esq. (khansen@stroock.com)
-and-
Sayan Bhattacharyya, Esq. (sbhattacharyya@stroock.com)

Section 9.04 Interpretation. For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. The definitions given for any defined terms in this Agreement shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. Unless the context otherwise requires, references herein: (x) to Articles, Sections, and Exhibits mean the Articles and Sections of, and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 9.05 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 9.06 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 9.07 Entire Agreement. This Agreement and the Organizational Documents constitute the sole and entire agreement of the parties with respect to the subject matter contained

herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency or conflict between this Agreement and any Organizational Document, the Stockholders and the Company shall, to the extent permitted by Applicable Law, amend such Organizational Document to comply with the terms of this Agreement.

Section 9.08 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

Section 9.09 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 9.10 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by the Company upon approval by a majority of the Board (subject to **Section 2.03**) and the Stockholders holding at least 66 2/3% of the issued and outstanding Common Stock. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 9.11 Governing Law; Consent to Jurisdiction and Service of Process. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York. Any claim, action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may be heard and determined in any New York state or federal court sitting in The City of New York, County of Manhattan, and each of the parties hereto hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom in any such claim, action, suit or proceeding) and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any such claim, action, suit or proceeding in any such court or that any such claim, action, suit or proceeding that is brought in any such court has been brought in an inconvenient forum. The Company and each Stockholder hereby consents to process being served in any such proceeding by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the address specified in **Section 9.03**, or in any other manner permitted by law. THE COMPANY AND EACH STOCKHOLDER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUCH ACTION OR PROCEEDING.

Section 9.12 Equitable Remedies. Each party hereto acknowledges that the other parties hereto would be irreparably damaged in the event of a breach or threatened breach by

such party of any of its obligations under this Agreement and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, each of the other parties hereto shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to an injunction from a court of competent jurisdiction (without any requirement to post bond) granting such parties specific performance by such party of its obligations under this Agreement. In the event that any party files a suit to enforce the covenants contained in this Agreement (or obtain any other remedy in respect of any breach thereof), the prevailing party in the suit shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, including reasonable attorney's fees and expenses.

Section 9.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

FiberTower Corporation

By _____

Name:

Title:

Solus Alternative Asset Management LP

By _____

Name:

Title:

Broadbill Investment Partners, LP

By _____

Name:

Title:

EXHIBIT A

Form of Joinder Agreement

The undersigned hereby agrees, effective as of the date hereof, to become a party to that certain Stockholders Agreement dated as of _____, 2014 (as amended, the "Agreement"), by and among FiberTower Corporation (the "Company") and the Stockholders (as defined in the Agreement), and for all purposes of the Agreement the undersigned shall, effective as of the date hereof, be bound by the terms and provisions of the Agreement applicable to Stockholders and be included within the term "Stockholder" (as defined in the Agreement).

The address and facsimile number to which notices may be sent to the undersigned is as follows:

Facsimile No.:

Date:

Name:

EXHIBIT F

Form of Litigation Trust Agreement

FIBERTOWER LITIGATION TRUST AGREEMENT

TABLE OF CONTENTS

	<u>Page</u>
SECTION I DEFINITIONS	2
SECTION II ESTABLISHMENT OF THE LITIGATION TRUST	2
2.1. Establishment of Litigation Trust and Appointment of Original Trustee.	2
2.2. Transfer of Assets and Rights to the Litigation Trust.	2
2.3. Title to Litigation Trust Claims.	4
2.4. Nature and Purpose of Litigation Trust	5
2.5. Appointment as Representative.	5
2.6. Valuation of Assets.	6
2.7. Cooperation of Debtors.	6
SECTION III BENEFICIAL INTERESTS.....	6
3.1. Allocation of Litigation Trust Interests.....	6
3.2. Interests Beneficial Only.....	7
3.3. Exemption from Registration.....	7
3.4. No Certification.....	7
3.5. No Transfer or Exchange; Exceptions; Amendments.....	7
3.6. Absolute Owners.....	8
SECTION IV ADMINISTRATION OF THE LITIGATION TRUST	8
4.1. Litigation Trust Proceeds.....	8
4.2. Administrative Powers of the Litigation Trustee.....	8
4.3. Trust Administration Account; Payment of Expenses.....	10
4.4. Funding the Litigation Trust.	11
4.5. Objections to General Unsecured Claims and Resolutions of Disputed Claims. ...	11
4.6. Limitations on the Litigation Trust and the Litigation Trustee.....	11
4.7. Transferee Liabilities.	12
4.8. Fiscal Year.	12
4.9. Reports.	12
4.10. Periodic Evaluation.	13
4.11. No Implied Duties.....	13
SECTION V PAYMENTS AND DISTRIBUTIONS.....	14
5.1. Distributions; Withholding.	14
5.2. Means of Payment.....	14
5.3. Amount of Payment.	14

5.4.	Setoff Rights.	14
5.5.	Fractional and De Minimis Distributions.....	15
5.6.	Distributions Regarding Disputed General Unsecured Claims.....	15
5.7.	Delivery of Distributions; Undeliverable Distributions.....	15
5.8.	Final Distribution.	16
5.9.	Termination Date.	16
SECTION VI	TRUST ADVISORY BOARD AND RELATED MATTERS	16
6.1.	Composition and Role of Trust Advisory Board.	16
6.2.	Tenure of the Members of the Trust Advisory Board.....	17
6.3.	Compensation of the Members of the Trust Advisory Board.	17
6.4.	Resignation and Removal of Members of Trust Advisory Board and Related Matters.	17
SECTION VII	TAX MATTERS	19
7.1.	Tax Treatment of Transfer of Litigation Trust Assets to the Litigation Trust.....	19
7.2.	Tax and Other Reports.	19
7.3.	Allocations of Litigation Trust Taxable Income.....	20
SECTION VIII	CONCERNING THE LITIGATION TRUSTEE AND MEMBERS OF THE TRUST ADVISORY BOARD	20
8.1.	Acceptance by Litigation Trustee.	20
8.2.	Liability of the Litigation Trust, Litigation Trustee and Trust Advisory Board and Members.....	20
8.3.	Reliance by Litigation Trustee and Members of Trust Advisory Board.....	21
8.4.	Reliance on Litigation Trustee and Trust Advisory Board.	22
8.5.	Indemnification.	22
8.6.	[Compensation of the Litigation Trustee].....	22
8.7.	Resignation, Removal and Related Issues.	23
SECTION IX	[CONTINGENCY COUNSEL]	24
9.1.	[Designation of Contingency Counsel.	24
9.2.	Payment of Contingency Fee Counsel Fees and Expenses.....	25
SECTION X	SUPPLEMENTS AMENDMENTS AND WAIVERS	25
10.1.	Amendment; Waiver.	25
10.2.	Declining to Execute Documents.....	26
10.3.	Notice of Form of Supplement and Amendments.	26
10.4.	Notice and Effect of Executed Amendment.	26

SECTION XI MISCELLANEOUS.....	27
11.1. Sale or Abandonment of Litigation Trust Assets.....	27
11.2. Notices.....	27
11.3. Severability.....	28
11.4. Counterparts; Facsimile; PDF.....	28
11.5. Binding Agreement.....	29
11.6. No Personal Liability of Beneficiaries.....	29
11.7. Headings.....	29
11.8. Construction.....	29
11.9. Governing Law.....	29
11.10. Construction with the Plan.....	30
11.11. Jurisdiction.....	30
11.12. Intention of the Parties.....	30
11.13. Confidentiality.....	30

LITIGATION TRUST AGREEMENT

This Litigation Trust Agreement (the "Agreement"), dated as of [____], 2014, by and between FiberTower Corporation ("FiberTower"), FiberTower Licensing Corp., ("FiberTower Licensing"), FiberTower Network Services Corp. and FiberTower Spectrum Holdings, LLC (collectively, as reorganized under and pursuant to the Plan from and after the Effective Date, the "Reorganized Debtors")¹ and [____], as trustee (the "Original Trustee"), is made and executed in connection with the *Debtors' Second Amended Joint Chapter 11 Plan*, dated December 4, 2013 [Docket No. 1007] (as the same may be further amended, modified, or supplemented from time to time, the "Plan"), filed by the Debtors in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), which Plan was confirmed by Order of the Bankruptcy Court dated [____], 2014 [Docket No. ____] (the "Confirmation Order").

RECITALS

WHEREAS, on July 17, 2012 (the "Petition Date"), each of the Debtors filed a voluntary petition for protection under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code");

WHEREAS, the Debtors, thereafter, continued in the operation of their business and the management of their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on December 5, 2013, the Bankruptcy Court entered an order approving the *Disclosure Statement for Debtors' Second Amended Joint Chapter 11 Plan*, dated December 4, 2013 [Docket No. 1009] (as the same may be further amended, modified, or supplemented from time to time, the "Disclosure Statement");

WHEREAS, on [____], 2014 the Bankruptcy Court entered the Confirmation Order;

WHEREAS, the Plan provides for the creation of a litigation trust (the "Litigation Trust") to hold the Litigation Trust Assets (as defined in Section 2.1(b) hereof) in trust for the benefit of the holders of (a) Allowed 2016 Deficiency Claims, (b) Allowed 2016 Guaranty Deficiency Claims, (c) Allowed 2012 Claims, (d) Allowed 2012 Guaranty Claims, and (e) Allowed General Unsecured Claims, which shall receive beneficial interests in the Litigation Trust pursuant to the Plan (the "Beneficiaries");

WHEREAS, this Agreement is executed to establish the Litigation Trust and to facilitate implementation of the Plan;

WHEREAS, the primary purpose of the Litigation Trust is to liquidate the Litigation Trust Assets for the benefit of the Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d) and the Litigation Trust will not be operated with the objective

¹ Reference in this Agreement to "Debtors" relates to the Reorganized Debtors prior to the occurrence of the Effective Date.

of continuing or engaging in any trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust;

WHEREAS, the Litigation Trust is intended to qualify as one or more “grantor trusts” for federal income tax purposes and the Litigation Trustee shall operate and maintain the Litigation Trust in compliance with Internal Revenue Service Revenue Procedure 94-45, 1994-2 C.B. 684, and Treasury Regulation Sections 1.671-4(a) and 301.7701-4(d) and all subsequent guidelines regarding liquidating trusts issued by the Internal Revenue Service; and

WHEREAS, as contemplated by the Plan, the Beneficiaries shall receive beneficial interests in the Litigation Trust (“Litigation Trust Interests”) on account of their Allowed Claims under the Plan.

A G R E E M E N T S

NOW THEREFORE, for and in consideration of the mutual promises and agreements contained herein and in the Plan and the Confirmation Order, the receipt and sufficiency of which are hereby expressly acknowledged, the Reorganized Debtors and the Litigation Trustee hereby agree as follows:

SECTION I DEFINITIONS

Capitalized terms used in this Agreement without definition shall have the meanings assigned to them in the Plan. Terms defined in the Bankruptcy Code and not otherwise specifically defined in the Plan or herein shall, when used herein, have the meanings attributed to them in the Bankruptcy Code.

SECTION II ESTABLISHMENT OF THE LITIGATION TRUST

2.1. Establishment of Litigation Trust and Appointment of Original Trustee.

(a) Pursuant to Section 6.5 of the Plan, and effective as of the Effective Date of the Plan (the “Effective Date”), the Reorganized Debtors, on their own behalf and on behalf of the Beneficiaries, and the Original Trustee hereby create the Litigation Trust, to be formally known as the “FiberTower Litigation Trust,” for the benefit of the Beneficiaries.

(b) The Original Trustee is hereby appointed as trustee of the Litigation Trust effective as of the Effective Date and agrees to accept and hold the Litigation Trust Claims (as defined below) and the proceeds thereof (the “Litigation Trust Assets”), in trust for the Beneficiaries subject to the terms of the Plan, the Confirmation Order and this Agreement. The Original Trustee and each successor trustee serving from time to time hereunder (the “Litigation Trustee”) shall have all the rights, powers and duties set forth herein and pursuant to applicable law for accomplishing the purposes of the Litigation Trust.

2.2. Transfer of Assets and Rights to the Litigation Trust.

(a) As of the Effective Date, (i) Debtors or Reorganized Debtors, as applicable, hereby irrevocably transfer, assign and deliver to the Litigation Trust each of their

respective rights, title and interests in and to the Litigation Trust Assets, free and clear of any and all Liens, Claims, encumbrances or interests of any kind in such property of any other Person. The Litigation Trustee agrees to accept and hold the Litigation Trust Assets in trust for the Beneficiaries, subject to the terms of this Agreement. The transfer of the Litigation Trust Assets to the Litigation Trust shall be exempt from any stamp, transfer, recording, sales, use or similar tax. In no event shall any part of the Litigation Trust Assets revert to or be distributed to the Debtors or Reorganized Debtors, except as may be provided in Section 2.3 herein. None of the foregoing transfers to the Litigation Trust shall constitute a merger or consolidation of the Estates or any of the respective Litigation Trust Claims (as defined below), each of which shall retain its separateness following the transfer for all purposes relevant to the prosecution thereof.

In this Agreement, "Litigation Trust Claims" means (i) such claims against the Debtors' current and former directors and officers asserted by the Committee in the *Motion of the Official Committee of Unsecured Creditors for Authority to Commence Certain Actions On Behalf of and for the Benefit of the Debtors' Estates*, dated August 6, 2013 [Docket No. 875] (the "Estate D&O Claims") and (ii) any claims or Causes of Action arising under chapter 5 of the Bankruptcy Code (the "Avoidance Actions"); *provided, however*, that in no event shall such Litigation Trust Claims or the Litigation Trust Assets include:

- (i) any Claim or Cause of Action against a Released Party or any Claim or Cause of Action that is released pursuant to Section 11.4 of the Plan; or
- (ii) any Claim or Cause of Action preserved by the Debtors or the Reorganized Debtors pursuant to Sections 6.7 and 11.9 of the Plan, including, for the avoidance of doubt, all of the Debtors' interests in the pending appeal, and any future appeals, of the FCC Opinion (the "FCC Claims").

The Claims and Causes of Action in subparagraph (ii) above are being pursued by the Debtors and will continue to be pursued by the Reorganized Debtors after the Effective Date. To the extent there is factual overlap between such Claims and Causes of Action and the Litigation Trust Claims, the Reorganized Debtors and the Litigation Trustee shall coordinate with each other. To the extent there is overlap of legal theories and analyses between such Claims and Causes of Action and the Litigation Trust Claims, the Reorganized Debtors and the Litigation Trustee shall cooperate with each other pursuant to principles of common interest with respect to privileges. To the extent that settling or pursuing any of the Litigation Trust Claims will have a compromising effect on any of the Claims and Causes of Action in subparagraph (ii) above, then the Litigation Trustee shall proceed only with the consent of the Trust Advisory Board.

(b) In connection with Litigation Trust Claims, any attorney-client privilege, work-product privilege, joint interest privilege or other privilege or immunity (collectively, the "Privileges") attaching to any documents or communications (in any form, including, without limitation, written, electronic or oral) shall be transferred and shall vest in the Litigation Trustee and his representatives. The Litigation Trust's receipt of the Privileges associated with the Litigation Trust Claims shall not operate as a waiver of other privileges possessed or retained by the Debtors or Reorganized Debtors.

(c) After the Effective Date, the Reorganized Debtors shall (i) deliver or cause to be delivered to the Litigation Trust any and all of the Reorganized Debtors' documents reasonably requested by the Litigation Trustee and related to the Litigation Trust Claims (including those maintained in electronic format and original documents; *provided*, that with respect to original documents that are proprietary to the Reorganized Debtors and that the Reorganized Debtors require in the operation of their business, the Reorganized Debtors may provide copies in lieu of originals), whether held by the Debtors or the Reorganized Debtors, their respective employees, agents, advisors, attorneys, accountants, or any other professionals and (ii) provide reasonable access to such employees of the Debtors or the Reorganized Debtors, their agents, advisors, attorneys, accountants or any other professionals hired by the Debtors or the Reorganized Debtors with knowledge of matters relevant to the Litigation Trust Claims.

(d) As promptly as practicable after the Effective Date, the Reorganized Debtors agree (i) at the reasonable request of the Litigation Trustee to execute and/or deliver any instruments, documents, books, and records (including those maintained in electronic format and original documents as may be needed), (ii) to take, or cause to be taken, all such further actions as the Litigation Trustee may reasonably request in order to evidence or effectuate the transfer of the Litigation Trust Claims and the Privileges to the Litigation Trustee and the consummation of the transactions contemplated hereby and by the Plan and to otherwise carry out the intent of the parties hereunder and under the Plan, and (iii) to cooperate with the Litigation Trustee in the prosecution of the Litigation Trust Claims to the extent reasonable. Notwithstanding anything contained herein, without the express written consent of the Litigation Trustee, no Person or creditor of the Debtors or the Reorganized Debtors shall be permitted to assert, bring, institute, or commence any Claim or Cause of Action that is transferred to the Litigation Trust pursuant to the Plan and the Confirmation Order.

(e) Notwithstanding any term to the contrary herein, neither the Reorganized Debtors nor any other party shall be required to deliver any documents, communications or information to the Litigation Trustee to the extent delivery of such documents, communications or information to the extent that such delivery would effect a waiver of a privilege held by such party or would otherwise be contrary to applicable law or legal process.

(f) The Litigation Trust shall reimburse the Reorganized Debtors (and any other party that provides cooperation and/or delivers documents and/or information hereunder) for all fees and expenses incurred in connection with such party's compliance with its cooperation and/or delivery obligations in this Agreement.

2.3. Title to Litigation Trust Claims.

The transfer of the Litigation Trust Claims to the Litigation Trust shall be made, as provided in the Plan and this Agreement, for the benefit of the Beneficiaries. Upon the transfer of the Litigation Trust Claims, the Debtors or the Reorganized Debtors, as the case may be, shall have no interest in or claim to the Litigation Trust Claims or the Litigation Trust, and the Litigation Trust shall succeed to all of the Debtors' and the Reorganized Debtors', as the case may be, rights, title and interest in and to the Litigation Trust Claims. The Litigation Trustee shall have no authority to bind the Debtors or Reorganized Debtors in any manner except with respect to a Litigation Trust Claim. Notwithstanding anything in this Agreement to the contrary,

the transfer of the Litigation Trust Claims to the Litigation Trust does not diminish, and fully preserves, any defenses a defendant would have if such Litigation Trust Claims had been retained by the Debtors. To the extent that any Litigation Trust Claims cannot be transferred to the Litigation Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Litigation Trust Claims shall be deemed to have been retained by Reorganized Debtors, and the Litigation Trustee shall be deemed to have been designated as a representative of the Reorganized Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Litigation Trust Claims on behalf of the Reorganized Debtors, and all proceeds, income and recoveries on account of any such Litigation Trust Claims shall be assets of the Litigation Trust and paid over thereto immediately upon receipt by the Reorganized Debtors, or any other Person. Notwithstanding the foregoing, all net proceeds, income, and recoveries of or on account of such Litigation Trust Claims shall be transferred to the Litigation Trust to be distributed to the Beneficiaries consistent with the terms of the Plan and this Agreement.

2.4. Nature and Purpose of Litigation Trust.

(a) Purpose. The Litigation Trust is organized and established as a trust pursuant to which the Litigation Trustee, subject to the terms and conditions contained herein and in the Plan, is to (i) hold the Litigation Trust Assets and dispose of the same in accordance with this Agreement and the Plan in accordance with Treasury Regulation section 301.7701-4(d), and (ii) oversee and direct the expeditious but orderly liquidation of the Litigation Trust Assets. Accordingly, the sole purpose of the Litigation Trust is to liquidate the Litigation Trust Assets with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to preserve or enhance the liquidation value of the Litigation Trust Assets, and consistent with, the liquidating purpose of the Litigation Trust.

(b) Actions of the Litigation Trustee. Subject to the terms of this Agreement, the Litigation Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Litigation Trust Assets, which includes, without limitation, pursuing recovery on the Litigation Trust Claims, making timely distributions and not unduly prolonging the duration of the Litigation Trust. The liquidation of the Litigation Trust Assets may be accomplished either through the prosecution, compromise and settlement, abandonment or dismissal of any or all claims, rights or causes of action, or otherwise. Except as otherwise set forth in this Agreement, the Litigation Trustee, shall have the absolute right to pursue, settle and compromise or not pursue any and all Litigation Trust Claims as it determines is in the best interests of the Beneficiaries, and consistent with the purposes of the Litigation Trust. The Litigation Trustee shall have no liability for the outcome of any such decision except for any damages caused by gross negligence or willful misconduct.

2.5. Appointment as Representative.

Pursuant to sections 1123(a)(5)(B) and 1123(b)(3) of the Bankruptcy Code, the Plan provides for the appointment of a Litigation Trustee as the duly appointed representative of the Debtors with respect to the Litigation Trust Claims, and, as such, the Litigation Trustee succeeds to all of the rights and powers of a trustee in bankruptcy with respect to prosecution of

the Litigation Trust Claims for the benefit of the Beneficiaries in accordance with the terms of this Agreement, the Plan and the Confirmation Order.

2.6. Valuation of Assets.

As soon as possible after the Effective Date, the Litigation Trustee, based upon its good faith determination after consultation with its counsel, shall inform the Beneficiaries in writing solely as to its estimate of the value of the assets transferred to the Litigation Trust. The Litigation Trust shall bear all of the reasonable costs and expenses incurred in connection with determining such value, including the fees and expenses of any Persons retained by the Litigation Trustee in connection therewith. The valuation shall be used consistently by all parties (including, without limitation, the Litigation Trustee and the Beneficiaries) for all federal income tax purposes, and the parties shall file tax returns consistent with such valuation; *provided, however*, that such valuation shall not be binding on the Litigation Trustee or any other party for any other purposes, including without limitation in regard to the liquidation of the Litigation Trust Assets, whether by disposition, liquidation, litigation, settlement, or otherwise. Any such valuation shall be inadmissible in any proceeding concerning the Litigation Trust Claims.

2.7. Cooperation of Debtors.

The Debtors and the Reorganized Debtors, as applicable, shall provide to the Litigation Trustee reasonable access to books, records, employees, personnel, and other forms of information of the Debtors and the Reorganized Debtors to enable the Litigation Trustee to perform its tasks and duties under this Agreement and the Plan, including, but not limited to (a) information regarding the claims register for purposes of making distributions to Beneficiaries in accordance with this Agreement and the Plan; (b) information to enable the Litigation Trustee to evaluate General Unsecured Claims that may be subject to objection pursuant to Section 4.5 hereof; and (c) information to enable the Litigation Trustee to evaluate the Litigation Trust Claims and perform its duties pursuant to Section 4.2(viii) hereof. For purposes of distributions to Beneficiaries, sufficient information shall include the legal name of each Beneficiary, tax identification number (if available to the Debtors), current mailing address and amount of the Claim with respect to each Beneficiary and, if possible, an email address and telephone number for each Beneficiary. The Litigation Trustee may rely on this information for purposes of making distributions to and noticing Beneficiaries and shall be under no obligation to conduct an independent investigation of each Beneficiary in connection with its duties as set forth in this Agreement and in the Plan.

SECTION III BENEFICIAL INTERESTS

3.1. Allocation of Litigation Trust Interests.

The allocation and distribution of the Litigation Trust Interests shall be accomplished as set forth in the Plan and the Confirmation Order. The aggregate number and face value of Litigation Trust Interests to be distributed pursuant to the Plan shall be determined by the Litigation Trustee, consistent with the intent and purposes of the Plan, subject, however, to the approval of the Bankruptcy Court, upon notice to the Beneficiaries.

3.2. Interests Beneficial Only.

The ownership of a Litigation Trust Interest shall not entitle any Beneficiary to any title in the Litigation Trust Assets as such (which title shall be vested in the Litigation Trustee) or to any right to call for a partition or division of the Litigation Trust Assets or to require an accounting.

3.3. Exemption from Registration.

The parties hereto intend that the rights of the Beneficiaries arising under this Litigation Trust shall not be "securities" under applicable laws, but none of the parties hereto represents or warrants that such rights shall not be securities or shall be entitled to exemption from registration under applicable securities laws. If such rights constitute securities, the parties hereto intend for the exemption from registration provided by section 1145 of the Bankruptcy Code and under applicable securities laws to apply to their issuance under the Plan.

3.4. No Certification.

The Litigation Trust Interests will not be certificated and no security of any sort will be distributed to the Beneficiaries with respect to their interest in the Litigation Trust.

3.5. No Transfer or Exchange; Exceptions; Amendments.

(a) It is understood and agreed that the Litigation Trust Interests in the Litigation Trust shall be non-assignable during the term of this Agreement, except in the case a transfer is triggered by (i) operation of law, (ii) merger of the holder of the Litigation Trust Interest into another entity, (iii) sale of the holder of the Litigation Trust Interest to another Entity, or (iv) an event that causes an involuntary transfer of the Litigation Trust Interest.

(b) Any such transfer or sale shall not be effective until appropriate notification and proof thereof is submitted to the Litigation Trustee, and the Litigation Trustee may continue to pay all amounts to or for the benefit of the assigning Beneficiaries until it receives proper notification and proof of assignment. The notice shall be executed by the transferee (or appropriate representative) and the transferor (or appropriate representative), and the signatures of the parties shall be acknowledged before a notary public and as required by Bankruptcy Rule 3001(e). The notice must clearly describe the interest being transferred and must include the transferee's tax identification number, current mailing address, telephone number and email address. The Litigation Trustee may rely upon such notice and proof of assignment without the requirement of any further investigation. Unless the Litigation Trustee receives actual written notice of an assignment from the duly authorized transferee (or appropriate representative) not less than thirty (30) days prior to a distribution, the Litigation Trustee shall have no duty or obligation to make or direct any distributions or payments to such transferee.

(c) Notwithstanding anything to the contrary herein, the limitation on transferability as to all, but not less than all, of the Litigation Trust Interests may be removed by unanimous approval of the members of the Trust Advisory Board and the consent of the Litigation Trustee upon the Trust Advisory Board's satisfaction that the removal of such

limitation shall not affect the status of the Litigation Trust as set forth in Section 2.4 of this Agreement. Such removal shall constitute an amendment to this Agreement, which shall be governed by Section 10.1 below.

3.6. Absolute Owners.

The Litigation Trustee may deem and treat the Persons who are Beneficiaries (as determined in accordance with the Plan and Section 3.5 herein) as the absolute owners of the Litigation Trust Interests for the purpose of receiving distributions and payments thereon, or on account thereof, and for all other purposes whatsoever and the Litigation Trustee shall not be charged with having received notice of any claim or demand to such Litigation Trust Interests or the interest therein of any other Person.

SECTION IV ADMINISTRATION OF THE LITIGATION TRUST

4.1. Litigation Trust Proceeds.

Any and all proceeds, income and/or recoveries obtained on account of or from the Litigation Trust Claims, after payment of any and all expenses of the Litigation Trust, shall be added to the Litigation Trust Assets (the "Litigation Trust Proceeds"), held as a part thereof (and title therein shall be vested in the Litigation Trustee) and dealt with in accordance with the terms of this Agreement.

4.2. Administrative Powers of the Litigation Trustee.

During the Litigation Trustee's administration of the Litigation Trust, and subject to (i) all the other provisions of this Agreement (including, but not limited to, Section 4.6), and (ii) the Plan, the Litigation Trustee may exercise the power:

(i) To receive and hold all of the Litigation Trust Assets and to have exclusive possession and control thereof as permissible under applicable law;

(ii) To manage, sell and convert to Cash all or any portion of the Litigation Trust Assets and make distributions in accordance with the Plan and this Agreement;

(iii) With the prior approval of a majority of the Trust Advisory Board, to enter into, perform and exercise rights under contracts binding upon the Litigation Trust (but not upon the Litigation Trustee in its respective individual or corporate capacity) which are reasonably incidental to the administration of the Litigation Trust and which the Litigation Trustee, in the exercise of its best business judgment, reasonably believes to be in the best interests of the Litigation Trust;

(iv) To establish and maintain accounts at banks and other financial institutions, in a clearly specified fiduciary capacity, into which Cash and property of the Litigation Trust may be deposited, and draw checks or make withdrawals or wire transfers from such accounts, and to pay or distribute such amounts of the Litigation Trust Assets as permitted or required under the Plan and this Agreement;

(v) With the prior approval of a majority of the Trust Advisory Board, to employ attorneys, accountants, appraisers, insurance adjusters or other persons whose services may be reasonably necessary or advisable, in the sole judgment of the Litigation Trustee, to advise or assist it in the discharge of its duties as Litigation Trustee or otherwise in the exercise of any powers vested in the Litigation Trustee, and to pay the reasonable fees and out-of-pocket expenses of such attorneys, accountants, appraisers, insurance adjusters or other persons in accordance with Section 8.7 below;

(vi) To pay in accordance with Section 8.7 below any and all reasonable and necessary expenses attributable or relating to the management, maintenance, operation, preservation or liquidation of the Litigation Trust;

(vii) To pay Contingency Fee Counsel in accordance with Section 9.2 hereof;

(viii) To investigate, analyze, compromise, adjust, arbitrate, mediate, sue on or defend, pursue; prosecute, abandon, dismiss, exercise rights, powers, and privileges with respect to, or otherwise deal with and settle, in accordance with the terms set forth herein, all causes of action (including the Litigation Trust Claims) in favor of or against the Litigation Trust; *provided, however*, that any action taken by the Litigation Trustee in connection with the Estate D&O Claims shall be subject to unanimous approval by the Trust Advisory Board;

(ix) To object to General Unsecured Claims as more particularly described in Section 4.5 hereof;

(x) With the prior approval of a majority of the Trust Advisory Board, to sue in connection with any matter arising from or related to the Plan or this Agreement that affects in any way the rights or obligations of the Litigation Trust, the Litigation Trustee or the Beneficiaries;

(xi) To represent the interests of the Beneficiaries with respect to any matters relating to the Plan, this Agreement, or the Litigation Trust affecting the rights of such Beneficiaries;

(xii) If the Litigation Trust shall become subject to federal or state income tax, the Litigation Trustee shall have the power, exercisable at its reasonable discretion, to take any action reasonably necessary to minimize any adverse federal or state income tax consequences to the Beneficiaries resulting from any distribution made by the Litigation Trust to such Beneficiaries and to request any appropriate tax determination with respect to the Litigation Trust, including without limitation under section 505 of the Bankruptcy Code;

(xiii) With the prior unanimous approval of the Trust Advisory Board, to borrow money or raise capital on such terms as determined by the Litigation Trustee in order to fund the Trust Administration Account in accordance with Section 4.3 of this Agreement (with each loan or capital contribution constituting "LT Funding");

(xiv) To do and perform all such acts, to execute and deliver such deeds, bills of sale, instruments of conveyance, and other documents as it may deem reasonably necessary or advisable to carry out the purposes of the Litigation Trust;

(xv) protect and enforce the rights to the Litigation Trust Claims by any method deemed appropriate including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(xvi) In general, without in any manner limiting any of the foregoing or the following, to deal with the Litigation Trust Assets or any part or parts thereof in all other ways as would be lawful for any person owning the same to deal therewith; *provided, however*, that the investment powers of the Litigation Trustee, other than those reasonably necessary to maintain the value of the Litigation Trust Assets and to further the liquidating purpose of the Litigation Trust, are limited by the terms herein;

(xvii) To do any and all other things not in violation of any other terms of the Plan, the Confirmation Order and this Agreement that, in the reasonable business judgment of the Litigation Trustee, are necessary or appropriate for the proper liquidation, management, investment and distribution of the Litigation Trust Assets in accordance with the provisions of this Agreement and the Plan;

(xviii) To pay any taxes, charges or assessments that may be owed by and levied against the Litigation Trust or Litigation Trust Assets; and

(xix) When all Litigation Trust Assets contributed to the Litigation Trust have been liquidated and converted into Cash (other than those Litigation Trust Assets abandoned by the Litigation Trust), and such Cash has been distributed in accordance with this Agreement and the Plan, to seek authority from the Bankruptcy Court to close the Chapter 11 Cases in accordance with the Bankruptcy Code and the Bankruptcy Rules.

4.3. Trust Administration Account; Payment of Expenses.

(a) Pursuant to Section 4.2(xiii) herein and in accordance with Section 4.4 of this Agreement, the Litigation Trustee (with unanimous approval of the Trust Advisory Board) may borrow money or raise capital on such terms as determined by the Litigation Trustee in order to fund a trust administration account (the "Trust Administration Account"). Such Trust Administration Account shall be funded upon the first Business Day following the Litigation Trustee's receipt of LT Funding (as defined below). Any monies deposited in the Trust Administration Account pursuant to the terms of this Agreement shall be invested in interest-bearing deposits or investments specified in Section 4.6(b) of this Agreement, and the interest earned thereon shall be credited thereto.

(b) Subject to Section 4.2 of this Agreement and the obligations of the Litigation Trust (and/or the Litigation Trustee), Litigation Trustee shall maintain the Litigation Trust Assets, and expend such funds in the Trust Administration Account or the Litigation Trust Proceeds (i) as is reasonably necessary to meet contingent liabilities and to maintain the value of the Litigation Trust Assets during liquidation, (ii) to pay reasonable and necessary expenses (including but not limited to, the reasonable costs and expenses of the Litigation Trustee (including reasonable fees, costs, and expenses of professionals retained thereby), any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets or reasonable fees and expenses in connection with, arising out of, or related to, the Litigation Trust Assets and

litigations associated therewith), (iii) to pay the costs and expenses of the valuations of the Litigation Trust Assets incurred by the Litigation Trustee in accordance with Section 2.7 of this Agreement, (iv) to pay or reimburse amounts in accordance with Section 8.6 hereof and (v) to satisfy other liabilities incurred or assumed by the Litigation Trust (or to which the Litigation Trust Assets are otherwise subject) in accordance with the Plan, the Confirmation Order and this Agreement.

4.4. Funding the Litigation Trust.

Neither the Debtors nor the Reorganized Debtors, or their respective Affiliates, shall be liable for any contributions (in Cash or in kind) to the Litigation Trust.

In the event the Litigation Trustee obtains LT Funding as set forth in Section 4.2(xiii) of this Agreement, the Litigation Trustee shall keep appropriate records of all capital raised or money borrowed on behalf of, and for the benefit of, the Litigation Trust, including, without limitation, the identity of the funding source, the amount lent or otherwise provided by such party, and any material terms of such financing. A member of the Trust Advisory Board, or an Affiliate (as defined in the Bankruptcy Code) of each member, may provide financing to the Litigation Trust with the consent of the other two (2) members of the Trust Advisory Board.

4.5. Objections to General Unsecured Claims and Resolutions of Disputed Claims.

Following the Effective Date, with respect to General Unsecured Claims, only the Litigation Trustee shall be entitled to object to Claims not previously objected to and not previously Allowed. With respect to any objection to such Claims filed before the Effective Date and still pending, the Litigation Trustee shall be substituted for the Debtors as the objecting party. Notwithstanding the foregoing, the Litigation Trustee shall be authorized to allow all General Unsecured Claims and shall not be obligated to file any objections or to pursue any objections previously filed, but at its discretion may file objections or pursue any objections previously filed.

After the Effective Date, to the extent not resolved by the Debtors before the Effective Date, the Litigation Trustee shall have the exclusive authority to compromise, settle, otherwise resolve, or withdraw any objections to disputed General Unsecured Claims. After the Effective Date, the Litigation Trustee may compromise or settle any disputed General Unsecured Claim without approval of the Bankruptcy Court.

4.6. Limitations on the Litigation Trust and the Litigation Trustee.

(a) No Trade or Business. The Litigation Trustee shall carry out the purposes of the Litigation Trust and the directions contained herein and shall not at any time cause the Litigation Trust to enter into or engage in any trade or business (except as may be consistent with the limited purposes of the Litigation Trust), including, without limitation, the purchase of any assets. The Litigation Trustee is directed to take all reasonable and necessary actions to dispose of the Litigation Trust Assets in as prompt, efficient and orderly a fashion as possible, to make timely distributions, and to otherwise not unduly prolong the duration of the Litigation Trust. The Litigation Trustee shall not have the authority to take any action in contravention of this Agreement or the Plan.

(b) Investments. The Litigation Trustee shall invest any Cash held at any time as part of the Litigation Trust only in the form of cash, paper currency, demand deposits with banks, cashier checks, certified checks, bank drafts, money orders, travelers checks, or letters of credit, pending distributions thereof pursuant to Section 5 below. The Litigation Trustee shall be restricted to the collection and holding of such monies and any income earned on such monies and to the distribution thereof for the purposes set forth in the Plan and this Agreement, and to the conservation and protection of the Litigation Trust Assets in accordance with the provisions hereof.

(c) Debt. Except for the purpose of funding the Trust Administration Account, neither the Litigation Trust, nor the Litigation Trustee on behalf of the Litigation Trust, shall incur any debt.

(d) [Estate D&O Claims. The Litigation Trust and the Litigation Trustee shall not pursue the Estate D&O Claims during the pendency of any FCC Claims, and neither the Litigation Trust nor the Litigation Trustee may take any action in connection with the Estate D&O Claims until such time as (i) the FCC Claims have been fully and finally resolved with the FCC, or (ii) there is a final disposition of the FCC Claims.]

4.7. Transferee Liabilities.

If any liability shall be asserted against the Litigation Trust as transferee of the Litigation Trust Assets on account of any claimed liability of or through the Debtors, the Litigation Trustee may use such part of the Litigation Trust Assets as may be necessary in contesting any such claimed liability and in payment, compromise, settlement and discharge thereof on terms reasonably satisfactory to the Litigation Trustee. In no event shall the Litigation Trustee be required or obligated to use its own property, funds or assets for any such purposes.

4.8. Fiscal Year.

The Litigation Trust's fiscal year shall end on December 31 of each year, unless the Litigation Trustee deems it advisable to establish some other date on which the fiscal year of the Litigation Trust shall end.

4.9. Reports.

The Litigation Trustee shall:

(a) Prepare and file unaudited interim financial reports as may be required by regulatory authorities, applicable laws, rules or regulations or as the Litigation Trustee deems advisable during the fiscal year;

(b) Prepare, file and mail, within the time required by applicable law or regulation, necessary income tax information, tax returns or reports to the Beneficiaries who request copies thereof and the applicable taxing authorities, including, on an annual basis, the manner and calculation of the Litigation Trust's taxable gain or loss which the Litigation Trust would recognize if it were a separate taxable entity. The Litigation Trustee shall file returns for

the Litigation Trust as one or more grantor trusts pursuant to Treasury Regulation Section 1.671-4(a);

(c) File a report setting forth the amounts, recipients and dates of all such distributions made through each applicable reporting period, which report shall be filed not later than ten (10) Business Days after the end of the first full month following the date on which the Litigation Trustee commences to make distributions of Litigation Trust Proceeds from the Litigation Trust and on a quarterly basis thereafter; and

(d) On the anniversary date of the Effective Date, and as soon as practicable upon termination of the Litigation Trust, send, upon request, to each Beneficiary appearing on its records as of the end of such period or such date of termination for whom the Litigation Trustee has an email address on file, a written report including: (i) financial statements of the Litigation Trust for such period, and, if the end of a calendar year, a report (which may be prepared by an independent certified public accountant employed by the Litigation Trustee) reflecting the result of such agreed upon procedures relating to the financial accounting administration of the Litigation Trust as proposed by the Litigation Trustee; (ii) a description of any action taken by the Litigation Trustee in the performance of his duties which materially affects the Litigation Trust and of which notice has not previously been given to Beneficiaries; (iii) the status of the Litigation Trust Claims assigned to the Litigation Trust; and (iv) a description of the progress of converting Litigation Trust Assets to Cash and making distributions to Beneficiaries and any other material information relating to the Litigation Trust Assets and the administration of the Litigation Trust (the "Annual Trust Report"). The Litigation Trustee may also, but is not required to, electronically file Annual Trust Reports with the Bankruptcy Court. For the avoidance of doubt, the Litigation Trustee shall not be required to send Annual Trust Reports to Beneficiaries by any method other than by email and shall not be required to maintain a website for the Litigation Trust.

(e) Notwithstanding anything in this Agreement to the contrary, no reporting requirements contained in this Agreement shall be undertaken by the Litigation Trustee if they would result in a waiver of the Privileges.

4.10. Periodic Evaluation.

As soon as possible after the Effective Date, and no less than on an annual basis thereafter, the Litigation Trustee shall report to the Trust Advisory Board concerning the status of each Litigation Trust Claim and consult with the Trust Advisory Board concerning the litigation strategy with respect to each such claim or cause of action.

4.11. No Implied Duties.

The Litigation Trustee shall not manage, control, use, sell, dispose, collect or otherwise deal with the Litigation Trust or otherwise take any action hereunder except as expressly provided herein, and no implied duties or obligations whatsoever of the Litigation Trustee shall be read into this Agreement.

SECTION V PAYMENTS AND DISTRIBUTIONS

5.1. Distributions; Withholding.

Subject to Section 2.3 of this Agreement, the Litigation Trustee shall distribute, in accordance with this Section 5, to the Beneficiaries, all net Cash income plus all net Cash proceeds from the liquidation of Litigation Trust Assets (including as Cash, for this purpose, all Cash Equivalents); *provided, however, that*, the Litigation Trust may retain and not distribute to the Beneficiaries such amounts as determined by the Litigation Trustee (i) as are reasonably necessary to meet contingent liabilities of the Litigation Trust during liquidation, (ii) to pay reasonable and necessary expenses incurred in connection with liquidation and any taxes imposed on the Litigation Trust or in respect of the Litigation Trust Assets, and (iii) as are reasonably necessary to establish and maintain a separate reserve for the Litigation Trust Interests to be distributed to holders of unliquidated or disputed General Unsecured Claims. The Reorganized Debtors (or, as the case may be, the court-appointed claims agent) shall provide the Litigation Trustee with such information as may be reasonably requested by the Litigation Trustee regarding the claims register for purposes of maintaining and establishing the reserve set forth in clause (iii) of the preceding sentence. All distributions and/or payments to be made to the holders of Litigation Trust Interests pursuant to this Agreement shall be made to each holder of Litigation Trust Interests pro rata based on the amount of Litigation Trust Interests held by such holder of Litigation Trust Interests compared with the aggregate amount of the Litigation Trust Interests outstanding, subject, in each case, to the terms of the Confirmation Order, the Plan and this Agreement. The Litigation Trustee may withhold from amounts distributable to any Person any and all amounts, determined in the Litigation Trustee's reasonable sole discretion, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

5.2. Means of Payment.

Cash payable to Beneficiaries will be paid by checks drawn on a domestic bank account maintained by the Litigation Trust or by wire transfer from a domestic bank account maintained by the Litigation Trust at the sole option of the Litigation Trustee.

5.3. Amount of Payment.

The amount of Cash payments and distributions to Beneficiaries on account of Allowed Claims shall be made and calculated in accordance with the terms of this Agreement.

5.4. Setoff Rights.

The Litigation Trustee may, but shall not be required to, setoff against or recoup from the holder of any Allowed General Unsecured Claim on which payments or other distributions are to be made hereunder, claims of any nature that the Litigation Trust may have against the holder of such Allowed General Unsecured Claim. However, neither the failure to do so, nor the allowance of any Claim under the Plan, shall constitute a waiver or release of any such claim, right of setoff or right of recoupment against the holder of such Allowed General Unsecured Claim.

5.5. Fractional and De Minimis Distributions.

No distribution in fractions of cents shall be issued. If the distribution amount allocated to an Allowed Claim at the time of a distribution hereunder would include fractions of cents, the amount to be distributed shall be rounded down to the highest integral number of cents. The aggregate amount of the retained fractional distributions from the distribution amount shall be retained in the Litigation Trust by the Litigation Trustee and shall remain Litigation Trust Assets.

No payment of Cash in an amount of less than [\$100] shall be required to be made by the Litigation Trustee on account of any Allowed Claim. Any funds so withheld and not distributed shall be held in reserve and distributed in subsequent distributions. The foregoing shall not apply to the final distribution made to the Beneficiaries.

5.6. Distributions Regarding Disputed General Unsecured Claims.

In the event there are any disputed General Unsecured Claims at the time the Litigation Trustee makes any distribution from the Litigation Trust on account of Allowed General Unsecured Claims, the Litigation Trustee shall be required to set aside funds to ensure equivalent distributions on account of such disputed General Unsecured Claims in the event they are later determined to be Allowed General Unsecured Claims.

5.7. Delivery of Distributions; Undeliverable Distributions.

(a) All distributions to Beneficiaries (other than distributions made to Holders of Allowed 2016 Deficiency Claims and 2016 Guaranty Deficiency Claims) shall be made at the address of each Holder of an Allowed Claim as set forth in claims register of the Litigation Trustee, unless the Litigation Trustee has been notified in writing of a change of address. The Litigation Trustee shall make all distributions on account of Allowed 2016 Deficiency Claims and 2016 Guaranty Deficiency Claims at the direction and with the consent of the 2016 Agent, who shall direct the Litigation Trustee to deliver such distributions to the Holders of 2016 Deficiency Claims and 2016 Guaranty Deficiency Claims in accordance with the provisions of the Plan and the terms of the 2016 Indenture. Any distribution made by the Litigation Trustee for the Holders of 2016 Deficiency Claims and 2016 Guaranty Deficiency Claims shall be held for the benefit of the 2016 Agent and remain subject to any charging lien held by the 2016 Agent. . Any distribution made by the Litigation Trustee on account of Allowed 2012 Claims and 2012 Guaranty Claims shall be made to the 2012 Agent, which shall deliver, subject to any charging lien held by the 2012 Agent, such distributions to Holders of 2012 Claims and 2012 Guaranty Claims in accordance with the provisions of this Plan and the terms of the 2012 Indenture.

(b) If any distribution to a Beneficiary is returned as undeliverable, no distribution to such Beneficiary shall be made unless and until the Litigation Trustee is notified of such Beneficiary's then-current address, at which time all missed distributions shall be made to such Beneficiary without interest; *provided, however*, that such distributions shall be deemed unclaimed property under section 347(b) of the Bankruptcy Code at the expiration of the later of (a) one hundred eighty (180) days after the Effective Date; or (b) one hundred eighty (180) days

after the date of the undeliverable distribution. After such date, all unclaimed property or interest in property shall revert to the Litigation Trust, and the Claim of any Beneficiary with respect to such property or interest in property shall be discharged and forever barred. In such cases, any Cash held for distribution on account of such Claim shall be made part of the Litigation Trust Assets and redistributed in accordance with this Agreement.

Beneficiaries who change addresses (including email addresses) must notify the Litigation Trustee of such change of address in writing by any of the methods set forth in Section 11.2 below. The Litigation Trustee shall not be obligated to locate Beneficiaries.

5.8. Final Distribution.

Upon the final collection or liquidation of all of the Litigation Trust Assets, and in any event prior to the Termination Date (as defined in Section 5.9 hereof), the Litigation Trustee shall prepare a final accounting of any and all Cash remaining in any accounts maintained by the Litigation Trustee on behalf of the Litigation Trust or otherwise remaining in the Litigation Trust (the "Final Cash"). Once the amount of the Final Cash has been determined, the Litigation Trustee shall make the Final Distribution, in accordance with the terms of this Agreement.

5.9. Termination Date.

The Litigation Trust shall terminate and on such date when (a) a final decree has been entered closing all of or the last of the Chapter 11 Cases, (b) all Litigation Trust Assets have been distributed and (c) either (i) the Litigation Trustee and the Trust Advisory Board determine that the administration of the Litigation Trust is not likely to yield sufficient additional proceeds to justify the pursuit of the Litigation Trust Claims or (ii) all claims have been pursued or abandoned pursuant to, and in accordance with, this Agreement (the "Termination Date"). However, the term of the Litigation Trust shall not exceed five (5) years from the Effective Date; *provided, that*, upon a finding that an extension is necessary to the liquidating purpose of the Litigation Trust and upon approval by the Bankruptcy Court, the term may be extended for a finite term based on the particular facts and circumstances. Each such extension must be approved by the Bankruptcy Court within six (6) months of the beginning of the extended term. The Litigation Trustee shall be released of all liabilities and discharged from its obligations under the Plan or this Agreement once the Litigation Trust has terminated pursuant to this section.

SECTION VI TRUST ADVISORY BOARD AND RELATED MATTERS

6.1. Composition and Role of Trust Advisory Board.

(a) In accordance with Section 6.5(a) of the Plan, the Litigation Trust shall be subject to oversight by a three (3) member advisory board (the "Trust Advisory Board") initially consisting of (i) two (2) members designated by the Ad Hoc 2016 Committee, and (ii) one (1) selected by the Committee. The Trust Advisory Board shall have the authority to oversee, review, and guide the activities and performance of the Litigation Trustee and shall have the authority to remove and to appoint the Litigation Trustee for any reason, in accordance with the terms of this Agreement. As set forth in Section 4.2 of this Agreement, the Litigation Trustee is required to obtain the prior approval of the Trust Advisory Board with respect to [any action

taken in connection with the Estate D&O Claims], and, in the exercise of its oversight responsibilities, the Trust Advisory Board shall consider the impact on the Reorganized Debtors' interests in the FCC Claims in connection with pursuing the Estate D&O Claims. The Litigation Trustee shall consult with and provide information to the Trust Advisory Board in accordance with and pursuant to the terms of this Agreement and the Plan.

(b) Any two (2) members of the Trust Advisory Board constitute a quorum for voting and approval purposes. The Trust Advisory Board shall be required to appoint one of its members as secretary, whose duties shall include keeping minutes of all meetings held and records of all actions taken by the Trust Advisory Board.

6.2. Tenure of the Members of the Trust Advisory Board.

The authority of the members of the Trust Advisory Board will be effective as of the Effective Date and will remain and continue in full force and effect until the Litigation Trust is terminated in accordance with the terms hereof. The members of the Trust Advisory Board will serve until death or resignation or removal pursuant to Section 6.4 below.

6.3. Compensation of the Members of the Trust Advisory Board.

The members of the Trust Advisory Board will not be entitled to compensation for their service hereunder, but will be entitled to reimbursement for reasonable out-of-pocket expenses incurred in connection with the performance of their duties under this Agreement. Reimbursement for such expenses shall be made by the Litigation Trustee from the Trust Administration Account within ten (10) Business Days of the Litigation Trustee's receipt of an invoice evidencing such expenses with reasonable supporting documentation related to same.

6.4. Resignation and Removal of Members of Trust Advisory Board and Related Matters.

(a) Resignation. Any member of the Trust Advisory Board may resign such position and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Litigation Trustee and the other members of the Trust Advisory Board at least thirty (30) days prior to the effective date of such resignation (such notice a "Notice of Resignation"). Subject to the expiration of such notice period, such resignation shall become effective on the day specified in such Notice of Resignation.

Upon the effective date of any such resignation, such resigned member of the Trust Advisory Board shall be entitled to any reimbursement set forth in this Agreement which remains due and owing to such member at the time of the effective date of such resignation. Notwithstanding anything herein, the Litigation Trustee may defer any such reimbursement in the event the Litigation Trustee determines such reimbursement will render the Litigation Trustee unable to administer the Litigation Trust. In the event the amount of funds in the Trust Administration Account is insufficient to satisfy any such reimbursement, the Bankruptcy Court may provide that such reimbursement shall be satisfied upon the recovery by the Litigation Trust of the Litigation Trust Proceeds or other funding not yet recovered or received by the Litigation Trust.

(b) Removal. Any member of the Trust Advisory Board may be removed for cause at any time by order of the Bankruptcy Court upon motion by (i) any Beneficiary or (ii) the Trust Advisory Board, after a unanimous vote of the other members, written resolution of which shall be delivered to the removed member. Upon any such removal, such removed member of the Trust Advisory Board shall be entitled to any reimbursement set forth in this Agreement which remains due and owing to such member at the time of such removal. Notwithstanding anything herein, the Litigation Trustee may defer any such reimbursement in the event the Litigation Trustee determines such reimbursement will render the Litigation Trustee unable to administer the Litigation Trust. In the event the amount of funds in the Trust Administration Account is insufficient to satisfy any such reimbursement, the Bankruptcy Court may provide that such reimbursement shall be satisfied upon the recovery by the Litigation Trust of the Litigation Trust Proceeds or other funding not yet recovered or received by the Litigation Trust.

(c) Appointment of a Successor Member of Trust Advisory Board. Within twenty (20) days of the mailing date of the Notice of Resignation (or within twenty (20) days of the effective date of a Bankruptcy Court Order authorizing the removal of a member of the Trust Advisory Board) (the "Successor Designation Deadline"), a successor shall be appointed to fill such position by the unanimous vote of the remaining members on the Trust Advisory Board. In designating a successor, the remaining members of the Trust Advisory Board will endeavor, through the reasonable exercise of their business judgment, to select a candidate with appropriate skills and experience to carry out the duties of a member of the Trust Advisory Board. In the event that the Trust Advisory Board has not appointed a successor by the Successor Designation Deadline, the Litigation Trustee shall appoint such successor. Until a successor member has been appointed, the Trust Advisory Board shall operate with two (2) members and two (2) members shall constitute a quorum for voting and approval purposes.

(d) Acceptance of Selection of Successor Member of Trust Advisory Board. Any successor member of the Trust Advisory Board appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Litigation Trustee, who shall immediately file the same with the Bankruptcy Court.

Thereupon, such successor member of the Trust Advisory Board shall, without any further act, become vested with all of the rights, powers, duties, authority and privileges of his predecessor hereunder.

(e) Trust Continuance. The death, resignation, incompetency or removal of any member of the Trust Advisory Board shall neither operate to terminate the Litigation Trust created by this Agreement or invalidate any action theretofore taken by such member of the Trust Advisory Board. In the event of the resignation or removal of a member of the Trust Advisory Board, such member shall (i) promptly execute and deliver any such documents, instruments, and other writing as may be necessary to effect the termination of such member's capacity under this Agreement; (ii) deliver to the Litigation Trustee all documents, instruments, records, and other writings relating to the Litigation Trust as may be in the possession of such member; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of his/her obligations and functions by the replacement member.

SECTION VII TAX MATTERS

7.1. Tax Treatment of Transfer of Litigation Trust Assets to the Litigation Trust.

For all federal income tax purposes, all parties (including, without limitation, the Debtors, the Litigation Trustee, and the Beneficiaries) shall treat the transfer of the Litigation Trust Assets to the Litigation Trust as a transfer by the Debtors of the Litigation Trust Assets to the Beneficiaries, followed by a transfer of such Litigation Trust Assets by the Beneficiaries to the Litigation Trust. Accordingly, for federal income tax purposes, the Litigation Trust shall be treated as one or more grantor trusts, and the Beneficiaries shall be treated as grantors and deemed owners of the Litigation Trust.

7.2. Tax and Other Reports.

(a) The Litigation Trustee shall (i) not less than annually, and no later than the time required by applicable law (taking into account any permitted extensions), send to each Beneficiary, a separate statement setting forth the Beneficiary's share of items of income, gain, loss, deduction, or credit, and shall instruct such Beneficiary to report such items on their federal income tax returns and (ii) cause to be prepared, either at such times as may be required by the Exchange Act, if applicable, or, not less than annually, financial statements of the Litigation Trust, to be delivered to the Beneficiaries. As soon as practicable after the end of the relevant report preparation period, the Litigation Trustee shall cause any information reported pursuant to this Section 7.1(a) to be mailed to the Beneficiaries.

(b) To the extent required by law, the financial statements prepared as of the end of the fiscal year shall be audited by nationally recognized independent accountants in accordance with U.S. generally accepted accounting principles. The materiality and scope of audit determinations shall be established between the Litigation Trustee (in consultation with the Trust Advisory Board) and the appointed auditors with a view toward safeguarding the value of the Litigation Trust Assets, but nothing relating to the mutually agreed scope of work shall result in any limitation of audit scope that would cause the auditors to qualify their opinion as to scope of work with respect to such financial statements.

(c) Subject to definitive guidance from the Internal Revenue Service or a court of competent jurisdiction to the contrary (including the issuance of applicable Treasury Regulations, the receipt by the Litigation Trustee of a private letter ruling if the Litigation Trustee requests one, or the receipt of an adverse determination by the Internal Revenue Service upon audit if not contested by the Litigation Trustee), the Litigation Trustee shall file returns for the Litigation Trust as a grantor trust pursuant to Treasury Regulation section 1.671-4(a).

(d) The Litigation Trustee may request an expedited determination of taxes of the Litigation Trust under section 505(b) of the Bankruptcy Code for all returns filed for, or on behalf of, the Litigation Trust for all taxable periods through the dissolution of the Litigation Trust.

(e) The Litigation Trustee shall be responsible for payments, out of the Litigation Trust Assets and Litigation Trust Proceeds, of any taxes imposed on the Litigation Trust or the Litigation Trust Assets.

(f) The Litigation Trustee may require any of the Beneficiaries to furnish to the Litigation Trustee its Employer or Taxpayer Identification Number as assigned by the IRS and the Litigation Trustee may condition any distribution or payment to any of them upon receipt of such identification number.

7.3. Allocations of Litigation Trust Taxable Income.

Allocations of Litigation Trust taxable income among the Beneficiaries shall be determined by reference to the manner in which an amount of Cash equal to such taxable income would be distributed (without regard to any restrictions on distributions described in the Plan or herein) if, immediately prior to such deemed distribution, the Litigation Trust had distributed all of its other assets (valued at their tax book value) to the Beneficiaries, in each case up to the tax book value of the assets treated as contributed by such holders, adjusted for prior taxable income and loss and taking into account all prior and concurrent distributions from the Litigation Trust (including all distributions held in escrow pending the resolution of disputed Claims). Similarly, taxable loss of the Litigation Trust shall be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Litigation Trust Assets. The tax book value of the Litigation Trust Assets for this purpose shall equal their fair market value on the Effective Date as determined under Section 2.7 hereof, adjusted in either case in accordance with tax accounting principles prescribed by the Tax Code, and applicable tax regulations, and other applicable administrative and judicial authorities and pronouncements.

SECTION VIII CONCERNING THE LITIGATION TRUSTEE AND MEMBERS OF THE TRUST ADVISORY BOARD

8.1. Acceptance by Litigation Trustee.

The Litigation Trustee accepts the Litigation Trust hereby created for the benefit of the Beneficiaries and agrees to act as Litigation Trustee of the Litigation Trust pursuant to the terms of this Agreement and the Plan. The Litigation Trustee shall have and exercise the rights and powers herein granted and shall be charged solely with the performance of the duties herein declared on the part of Litigation Trustee. The Litigation Trustee also agrees to receive and distribute all monies actually received by it constituting Litigation Trust Assets pursuant to the terms of this Agreement and the Plan.

8.2. Liability of the Litigation Trust, Litigation Trustee and Trust Advisory Board and Members.

(a) Limitation on Liability. Each of the Litigation Trust, Litigation Trustee and the Trust Advisory Board and each of its members shall not be liable for any action taken or omitted in good faith and reasonably believed by it/him/her to be authorized within the discretion or rights or powers conferred upon it/him/her in accordance with this Agreement. None of the provisions of this Agreement shall require the Litigation Trust, the Litigation Trustee or the Trust Advisory Board or each of its members to expend or risk its/his/her own funds or otherwise incur personal financial liability in the performance of any of its/his/her duties hereunder or in the exercise of any of its/his/her rights and powers. Each of the Litigation Trust, Litigation Trustee

and the Trust Advisory Board and each of its members may rely without inquiry upon writings delivered to it/him/her under the Plan which it/he/she reasonably believes in good faith to be genuine and to have been given by a proper Person. No provision of this Agreement shall be construed to impart any liability upon the Litigation Trust, the Litigation Trustee, the Trust Advisory Board or any of its members unless it shall be proven in a court of competent jurisdiction by a final, non-appealable order that the actions or omissions of the Litigation Trust, Litigation Trustee, Trust Advisory Board and/or each of its members constituted gross negligence or willful misconduct in the exercise of or failure to exercise any right or power vested in such party under this Agreement.

(b) Discretion of Litigation Trustee and Members of Trust Advisory Board.

The Litigation Trustee and each of the Trust Advisory Board members, within the limitations and restrictions expressed and imposed by this Agreement and the Plan, may act freely under all or any of the rights, powers and authority conferred hereby or thereby, in all matters concerning the Litigation Trust, after forming its/his/her business judgment as to the best course to pursue, without the necessity of obtaining the consent or permission or authorization of the Beneficiaries, the Bankruptcy Court, or any official or officer; and the rights, powers and authority conferred on the Litigation Trustee and each of the Trust Advisory Board members by this Agreement are conferred in contemplation of such freedom of business judgment and action within the limitations and restrictions so expressed and imposed; *provided, however*, that the Litigation Trustee and each of the Trust Advisory Board members shall not be liable for any error, omission or exercise of judgment, unless it shall be proved in a court of competent jurisdiction by a final, non-appealable order that such Litigation Trustee and/or Trust Advisory Board member, as applicable, was grossly negligent or acted in a manner that constituted willful misconduct.

8.3. Reliance by Litigation Trustee and Members of Trust Advisory Board.

(a) Genuineness of Documents. The Litigation Trustee and each of the Trust Advisory Board members may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, objection, order, judgment, decree, or other paper or document reasonably believed by it/him/her to be genuine and to have been signed, made, entered or presented by the proper party, parties, official, officials, entity or entities.

(b) Retention of Advisors. The Litigation Trustee and the Trust Advisory Board may retain and consult with legal counsel, independent public accountants and other experts. Neither the Litigation Trustee nor the Trust Advisory Board shall be liable for any action taken or suffered by it or omitted to be taken by it without gross negligence or willful misconduct (as determined by a court of competent jurisdiction by a final, non-appealable order) in reliance on any opinion or certification of such accountants or in accordance with the advice of such counsel or experts, provided that such accountants, counsel and experts were selected and retained with reasonable care.

8.4. Reliance on Litigation Trustee and Trust Advisory Board.

Except as otherwise expressly provided herein, the Litigation Trustee and members of the Trust Advisory Board shall have no personal, individual or corporate obligation to satisfy any liability incurred by the Litigation Trustee or Trust Advisory Board, as applicable, to any person in carrying out the terms of the Agreement.

8.5. Indemnification.

(a) Indemnification of Litigation Trustee and Trust Advisory Board Members. The Litigation Trust hereby agrees to the fullest extent permitted by applicable law to indemnify to the full extent of the Litigation Trust Assets any person or entity who was or is a party, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that such person or entity is or was a Litigation Trustee, a member of the Trust Advisory Board, or an employee, attorney or agent of the Litigation Trust, the Litigation Trustee or the Trust Advisory Board, from and against any and all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding, including appeals thereof, if such person or entity acted without gross negligence and willful misconduct (as determined by a court of competent jurisdiction by a final, non-appealable order) in the exercise and performance of any power or duties of such person or entity in accordance with this Agreement.

(b) Payment of Expenses. Expenses (including reasonable attorneys' fees) incurred in defending any action, suit or proceeding referred to in this Section 8.6 may be paid by the Litigation Trust from the Litigation Trust Assets in advance of the final disposition of such action, suit or proceeding, upon an undertaking by the Litigation Trustee, member of the Trust Advisory Board or an employee or agent of the Litigation Trust entitled to be indemnified to repay any expenses so advanced if it shall be determined that such person is not entitled to be indemnified hereunder.

(c) Insurance. The Litigation Trustee may use funds in the Litigation Trust to purchase and maintain insurance during its existence and after its termination to protect itself, the Litigation Trustee, members of the Trust Advisory Board, and employees or agents of the Litigation Trust and Trust Advisory Board from any liability, whether or not the Litigation Trust would have the legal power to directly indemnify the Litigation Trustee, members of the Trust Advisory Board, and employees or agents of the Litigation Trust against such liability. The terms "Litigation Trustee," "Trust Advisory Board," "employees" or "agents" as used herein, where applicable, include the heirs, successors, executors, administrators, personal representatives, or estates of such persons or entities.

8.6. [Compensation of the Litigation Trustee].

(a) [The Litigation Trustee and its employees shall be entitled to receive reasonable compensation approved by a majority of the Trust Advisory Board and paid by the Litigation Trust from the Trust Administration Account. The Litigation Trustee may pay his or her compensation and other costs and expenses of the Litigation Trust before approving or

making any distributions to the Beneficiaries. Costs and expenses of the Litigation Trust shall include, but shall not be limited to, (i) fees and expenses incurred in connection with the prosecution and settlement of any Litigation Trust Claims and (ii) actual reasonable out-of-pocket fees and expenses of the Litigation Trustee and his or her retained professionals.

(b) The Litigation Trustee shall make such payments and all other payments made pursuant to this Section 8.7 without application to or order of the Bankruptcy Court, except as otherwise herein provided.]

8.7. Resignation, Removal and Related Issues.

(a) Resignation. The Litigation Trustee (or any duly appointed successor) may resign and be discharged from any future obligations and liabilities hereunder by giving written notice thereof to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Subject to the expiration of such notice period, such resignation shall become effective on the later of (i) the day specified in such notice and (ii) the appointment of successor Litigation Trustee. Upon the effective date of any such resignation, such resigned Litigation Trustee shall be entitled to any fees, reimbursements and indemnification set forth in this Agreement which remains due and owing to such Litigation Trustee at the time of the effective date of such resignation. Notwithstanding anything herein, the Trust Advisory Board may defer payment of any such fees, reimbursements and indemnification expenses in the event the Trust Advisory Board determines that such fees, reimbursements, and indemnification expenses will render the Litigation Trustee unable to administer the Litigation Trust. In the event the amount of funds in the Trust Administration Account is insufficient to satisfy any such fees and reimbursements, the Bankruptcy Court may provide that such fees and reimbursement shall be satisfied upon the recovery by the Litigation Trust of the Litigation Trust Proceeds or other funding not yet recovered or received by the Litigation Trust.

(b) Removal. The Litigation Trustee (or any duly appointed successor) may be removed (i) by order of the Bankruptcy Court upon motion by the Trust Advisory Board with less than unanimous vote or (ii) upon unanimous vote of the Trust Advisory Board. Upon any such removal, such removed Litigation Trustee shall be entitled to any fees, reimbursements and indemnification set forth in this Agreement which remains due and owing to such Litigation Trustee at the time of such removal. Notwithstanding anything herein, the Litigation Trustee may defer payment of any such fees, reimbursements and indemnification expenses in the event the Litigation Trustee determines that such fees, reimbursements, and indemnification expenses will render the Litigation Trustee unable to administer the Litigation Trust. In the event the amount of funds in the Trust Administration Account is insufficient to satisfy any such fees and reimbursements, the Bankruptcy Court may provide that such fees and reimbursement shall be satisfied upon the recovery by the Litigation Trust of the Litigation Trust Proceeds or other funding not yet recovered or received by the Litigation Trust.

(c) Appointment of a Successor Trustee. If, at any time, the Litigation Trustee (or any duly appointed successor) shall give notice of its intent to resign pursuant to this Section 8.8 or be removed or shall become incapable of acting, the Litigation Trustee shall provide notice thereof to the Bankruptcy Court and, unless otherwise ordered by the Bankruptcy Court, a

successor Litigation Trustee shall be designated by the vote of [a majority] of the Trust Advisory Board to act under this Agreement.

(d) Acceptance of Appointment by Successor Litigation Trustee. Any successor Litigation Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall deliver counterparts thereof to the Bankruptcy Court. Thereupon, such successor Litigation Trustee shall, without any further act, become vested with all of the estates, properties, rights, powers, trusts and duties of its predecessor in the Litigation Trust hereunder with like effect as if originally named herein.

(e) Trust Continuance. The death, resignation, incompetency or removal of the Litigation Trustee (or any duly appointed successor) shall neither operate to terminate the Litigation Trust created by this Agreement nor to revoke any existing agency created pursuant to the terms of this Agreement or invalidate in any action theretofore taken by such Litigation Trustee. In the event of the resignation or removal of the Litigation Trustee (or any duly appointed successor), such Litigation Trustee shall (i) promptly execute and deliver any such documents, instruments, and other writing as may be necessary to effect the termination of such Litigation Trustee's capacity under this Agreement and the conveyance of the Litigation trust Assets then held by such Litigation Trustee to the temporary or successor trustee; (ii) deliver to the temporary or successor trustee all documents, instruments, records, and other writings relating to the Litigation Trust or Litigation Trust Assets as may be in the possession of such Litigation Trustee; and (iii) otherwise assist and cooperate in effecting the transfer and assumption of its obligations and functions by the temporary or successor trustee.

SECTION IX [CONTINGENCY COUNSEL]

9.1. [Designation of Contingency Counsel.]

(a) After the Effective Date, the Litigation Trustee, with the approval of a majority of the Trust Advisory Board, shall designate a firm to serve as counsel ("Contingency Counsel") to the Litigation Trustee in connection with the prosecution, settlement and/or abandonment of the Litigation Trust Claims.

(b) Contingency Counsel (or any duly appointed successor) may resign and be discharged from any future obligations and liabilities hereunder by complying with all applicable ethical and procedural rules and by additionally giving written notice of such resignation to the Litigation Trustee and to the Bankruptcy Court at least thirty (30) days prior to the effective date of such resignation. Provided that the Litigation Trustee furnishes a writing to such Contingency Counsel indicating that he reasonably believes that all ethical and procedural rules governing such resignation have been satisfied as of the date specified in such notice, such resignation shall become effective on the date specified in such notice. Upon any such resignation, such resigning Contingency Counsel shall be entitled to any fees and reimbursements which remain due and owing to such Contingency Counsel at the time of the effective date of such resignation. In the event Contingency Counsel is entitled to any fees and reimbursements from Litigation Trust Proceeds or other funding not yet recovered by the Litigation Trust, the Bankruptcy Court may provide that such fees and reimbursements shall be satisfied upon the recovery by the Litigation Trust of such Litigation Trust Proceeds or other funding.

(c) Contingency Counsel (or any duly appointed successor) may be removed for cause at any time by the Litigation Trustee, with approval of the Trust Advisory Board. Upon any such removal, such removed Contingency Counsel shall be entitled to any fees and reimbursements which remain due and owing to such Contingency Counsel at the time of the effective date of such removal. In the event Contingency Counsel is entitled to any fees and reimbursements from Litigation Trust Proceeds or other funding not yet recovered by the Litigation Trust, the Bankruptcy Court may provide that such fees and reimbursements shall be satisfied upon the recovery by the Litigation Trust of such Litigation Trust Proceeds or other funding.

(d) Appointment of a Successor Contingency Counsel. If, at any time, Contingency Counsel (or any duly appointed successor) shall give notice of its intent to resign pursuant to this Section 9.1 or be removed or shall become incapable of acting, the Litigation Trustee shall provide notice thereof to the Bankruptcy Court and, with the consent of the Trust Advisory Board, designate a successor Contingency Counsel to act under this Agreement.

9.2. Payment of Contingency Fee Counsel Fees and Expenses.

(a) The payment of fees incurred by Contingency Counsel in pursuing the Litigation Trust Claims, shall be (a) a percentage of any proceeds actually recovered by Contingency Counsel in connection with the Litigation Trust Claims, as shall be agreed by the Litigation Trustee, the Trust Advisory Board and Contingency Counsel, and (b) on such other terms and provisions acceptable to the Litigation Trustee with the advice and consent of the Trust Advisory Board. In no event will fees to be paid to Contingency Counsel in connection with pursuing the Litigation Trust Claims exceed the amounts set forth herein. Any Litigation Trust Claims Proceeds that constitute Contingency Fee Counsel Fees shall be paid directly to Contingency Counsel by the Debtors or the Litigation Trustee upon the Estate or Litigation Trust's receipt of the Litigation Trust Claims Proceeds and shall not be used for any other purpose. For the avoidance of doubt, Contingency Fee Counsel Fees shall not constitute Litigation Trust Assets.

(b) The payment of reasonable expenses incurred by Contingency Counsel in connection with the Litigation Trust Claims shall also be paid from Litigation Trust Claims Proceeds.]

SECTION X SUPPLEMENTS AMENDMENTS AND WAIVERS

10.1. Amendment; Waiver.

The Litigation Trustee, with the prior approval of a majority of the members of the Trust Advisory Board, may amend, supplement, or waive any provision of this Agreement, without notice to or the consent of any Beneficiary or the approval of the Bankruptcy Court, in order to: (i) cure any ambiguity, omission, defect, or inconsistency in this Agreement; *provided*, that such amendments, supplements or waivers shall not adversely affect the distributions to any of the Beneficiaries or adversely affect the U.S. federal income tax status of the Litigation Trust as a "liquidating trust"; (ii) comply with any requirements in connection with the U.S. Federal income tax status of the Litigation Trust as a "liquidating trust"; (iii) comply with any

requirements in connection with maintaining that the Litigation Trust is not subject to registration or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act, or the Investment Company Act; and (iv) make the Litigation Trust a reporting entity and, in such event, to comply with or seek relief from any requirements in connection with satisfying the registration or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act, or the Investment Company Act. Any substantive provision of this Agreement may be amended, supplemented or waived by the Litigation Trustee, subject to the prior unanimous approval of the members of the Trust Advisory Board, with the approval of the Bankruptcy Court (upon notice and an opportunity for a hearing); *provided, however*, that no change may be made to this Agreement that would (a) adversely affect (i) the Debtors or the Reorganized Debtors in any respect (unless the Litigation Trustee receives prior written consent to such change from the Debtors or Reorganized Debtors, as applicable), (ii) the distributions to any of the Beneficiaries, or (iii) the U.S. Federal income tax status of the Litigation Trust as a "liquidating trust," (b) require any Beneficiary to furnish or advance funds to the Litigation Trustee or entail any personal liability or the surrender of any individual right on the part of any Beneficiary except with the written consent of such Beneficiary, (c) expand, add to, or modify the original stated purpose of the Litigation Trust (as described in the Plan and Section 2.4 of this Agreement), or (d) otherwise be in contravention of the Plan. Notwithstanding this Section 10.1, any amendments to this Agreement shall not be inconsistent with the purpose and intention of the Litigation Trust to liquidate in an expeditious but orderly manner the Litigation Trust Assets in accordance with Treasury Regulation section 301.7701-4(d).

10.2. Declining to Execute Documents.

If, in the reasonable opinion of the Litigation Trustee and the Trust Advisory Board, any document required to be executed pursuant to the terms of Section 10.1 hereof materially and adversely affects any immunity or indemnity in favor of the Litigation Trustee or the Trust Advisory Board under this Agreement, the Litigation Trustee and the Trust Advisory Board, as applicable, may in their discretion decline to execute such document.

10.3. Notice of Form of Supplement and Amendments.

A copy of each amendment or supplement (or a fair summary thereof) shall be furnished to the Beneficiaries, by email or otherwise, promptly after the execution thereof.

10.4. Notice and Effect of Executed Amendment.

Upon the execution of any declaration of amendment or supplement, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Litigation Trustee, the Trust Advisory Board, and the Beneficiaries thereafter shall be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such amendment or supplement shall be thereby deemed to be part of the terms and conditions of this Agreement for any and all purposes.

SECTION XI MISCELLANEOUS

11.1. Sale or Abandonment of Litigation Trust Assets.

Any sale or other conveyance, or any abandonment, of any Litigation Trust Assets, or part thereof, by the Litigation Trustee made in accordance with the terms of this Agreement shall bind the Beneficiaries and shall be effective to transfer or convey, or to abandon, all right, title and interest of the Litigation Trustee and the Beneficiaries in and to such Litigation Trust Assets.

11.2. Notices.

All notices, requests or other communications to the parties hereto shall be in writing and shall be sufficiently given only if (i) delivered in person; (ii) sent by electronic mail or facsimile communication (as evidenced by a confirmed fax transmission report); (iii) sent by registered or certified mail, return receipt requested; or (iv) sent by commercial delivery service or courier. Until a change of address is communicated, as provided below, all notices, requests and other communications shall be sent to the parties at the following addresses or facsimile numbers:

If to the Litigation Trustee:	COMPANY ADDRESS [_____] [_____] Facsimile: [(XXX) XXX-XXXX] Email: [EMAIL] Attention: [NAME]
with a copy to:	COMPANY ADDRESS [_____] [_____] Facsimile: [(XXX) XXX-XXXX] Email: [EMAIL] Attention: [NAME]
If to the Debtors or the Reorganized Debtors:	FiberTower Corporation P.O. Box 31564 San Francisco, California 94131 [Tom.Scott@spidercloud.com (email)] Attention: [Thomas Scott]
With a copy to:	Andrews Kurth LLP 450 Lexington Avenue, 15th Floor New York, New York 10017 Facsimile: (212) 850-2929 Email: paulsilverstein@andrewskurth.com Attention: Paul N. Silverstein

<p>If to the Trust Advisory Board:</p>	<p>COMPANY ADDRESS [] [] Facsimile: [(XXX) XXX-XXXX] Email: [EMAIL] Attention: [NAME] and COMPANY ADDRESS [] [] Facsimile: [(XXX) XXX-XXXX] Email: [EMAIL] Attention: [NAME] and COMPANY ADDRESS [] [] Facsimile: [(XXX) XXX-XXXX] Email: [EMAIL] Attention: [NAME]</p>
<p>If to the Beneficiaries:</p>	<p>To the name and address set forth on the registry maintained by the Litigation Trustee.</p>

11.3. Severability.

If any provision of this Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.4. Counterparts; Facsimile; PDF.

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. Any facsimile or portable document format copies hereof or signature hereon shall, for all purposes, be deemed originals.

11.5. Binding Agreement.

All covenants and agreements contained herein shall be binding upon, and inure to the benefit of (i) the Litigation Trustee, the members of the Trust Advisory Board and their respective representatives, successors and assigns, (ii) any successor Litigation Trustee provided for in Section 8 and successor Trust Advisory Board member provided for in Section 6 and their respective representatives, successors and assigns, and (iii) the Beneficiaries and their respective personal representatives, successors and assigns. Any request, notice, direction, consent, waiver or other instrument or action by any party hereto or any Beneficiary shall bind their respective personal representatives, successors and assigns.

11.6. No Personal Liability of Beneficiaries.

The Beneficiaries will not incur any personal liability through their ownership or possession of their Litigation Trust Interests, except for taxes, if any, imposed on the Beneficiaries pursuant to applicable provisions of federal, state or local law with respect to the receipt of such Litigation Trust Interests or distributions from the Litigation Trust. Liabilities of the Litigation Trust shall not attach to or be paid from any amounts distributed to the Beneficiaries, regardless of the time at which such distribution took place, or from the assets of the Beneficiaries.

11.7. Headings.

The headings of the various Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

11.8. Construction.

Except where the context otherwise requires, words importing the masculine gender shall include the feminine and the neuter, if appropriate; words importing the singular number shall include the plural number and vice versa; and words importing persons shall include partnerships, associations, and corporations. All references herein to Sections and other subdivisions, unless referring specifically to the Plan or provisions of the Bankruptcy Code, the Bankruptcy Rules, or other law, statute or regulation, refer to the corresponding Sections and other subdivisions of this Agreement, and the words "hereof," "hereunder" "herein" and words of similar import refer to this Agreement as a whole and not to any particular Section or subdivision of this Agreement. The use in this Agreement of the word "include" or "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

11.9. Governing Law.

This Agreement, including all matters of construction, validity and performance hereof, shall in all respects be governed by, and construed and interpreted in accordance with, the

internal laws of the State of New York without giving effect to the principles of conflict of laws thereof.

11.10. Construction with the Plan.

The Plan and the Confirmation Order are each hereby incorporated fully by reference and made a part hereof for all purposes. In the event of any inconsistency or conflict between the terms, conditions and provisions of this Agreement and the terms, conditions and provisions of the Plan and/or the Confirmation Order, each such document shall have controlling effect in the following rank order: (1) the Confirmation Order; (2) the Plan; and (3) this Agreement.

11.11. Jurisdiction.

The Bankruptcy Court shall retain jurisdiction over this Litigation Trust, the Litigation Trust Assets, the Litigation Trustee, the members of the Trust Advisory Board, the Debtors and the Reorganized Debtors to issue any and all orders and to take other actions necessary to the implementation of this Agreement, such jurisdiction to include, without limitation, the jurisdiction contemplated by Section 1142 of the Bankruptcy Code. Nothing in this Agreement shall preclude the Litigation Trustee from prosecuting any of the Litigation Trust Claims in any court of competent jurisdiction.

11.12. Intention of the Parties.

The Reorganized Debtors, the Beneficiaries, the Litigation Trustee and the Trust Advisory Board hereby express their intent to create and maintain the Litigation Trust as a liquidating trust for Federal income tax purposes in accordance with Treasury Regulation §301.7701-4(d) and as one or more “grantor trusts” subject to the provisions of Subchapter J, Subpart E of the IRC, and the Litigation Trustee further represents that the Litigation Trust shall not receive transfers of listed stocks or securities, any readily-marketable assets (other than those constituting the Litigation Trust Assets), or any assets of a going concern business.

11.13. Confidentiality

The Litigation Trustee (including any successor litigation trustee) and representative of the Litigation Trust (each a “Covered Person”) shall, during the period that they serve in such capacity under this Agreement and following either the termination of this Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any person or entity to which any of the Litigation Trust Assets relate or of which it has become aware in its capacity (the “Information”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Reorganized Debtors promptly (unless prohibited by law) so that the Reorganized Debtors may seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section 11.13 (and if the Reorganized Debtors seek such an order, the relevant Covered Person will provide cooperation

as Reorganized Debtors shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Reorganized Debtors waive compliance with the terms of this Section 11.13 and any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Reorganized Debtors written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

[signature page follows]

Dated: [_____]

FiberTower Corporation

By: _____
Name:
Title:

FiberTower Network Services Corp.

By: _____
Name:
Title:

FiberTower Licensing Corp.

By: _____
Name:
Title:

FiberTower Spectrum Holdings, LLC

By: _____
Name:
Title:

Original Trustee

By: _____
Name: [NAME]

EXHIBIT G

Notice of Filing of Schedules 9.1(a) and 11.4(a) to the Plan

Paul N. Silverstein (admitted *pro hac vice*)
Jonathan I. Levine (admitted *pro hac vice*)
ANDREWS KURTH LLP
450 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929

Michelle V. Larson
Texas State Bar No. 00796928
ANDREWS KURTH LLP
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401

Counsel to Debtors

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
§
FIBERTOWER NETWORK SERVICES § Case No. 12-44027-DML-11
CORP., *et al.*, §
§ (Jointly Administered)
Debtors. §
§

NOTICE OF FILING OF SCHEDULES 9.1(a) AND 11.4(a) TO THE PLAN

PLEASE TAKE NOTICE that, on December 4, 2013, the above captioned debtors and debtors in possession (the “Debtors”)¹ filed their *Second Amended Joint Chapter 11 Plan* [Docket No. 1007] (as it may be amended, modified, or supplemented from time to time, the “Plan”)² and the *Disclosure Statement for Debtors’ Second Amended Joint Chapter 11 Plan* [Docket No. 1009] (the “Disclosure Statement”).

PLEASE TAKE FURTHER NOTICE that on December 5, 2013, the United States Bankruptcy Court for the Northern District of Texas, Fort Worth Division (the “Bankruptcy Court”) entered the *Order (i) Approving Disclosure Statement; (ii) Approving Proposed Solicitation Procedures; (iii) Setting a Hearing and Establishing Notice and Objection Procedures for Confirmation of the Plan; and (iv) Granting Related Relief* [Docket No. 1013] (the “Disclosure Statement Order”). Pursuant to the Disclosure Statement Order, a hearing to consider confirmation of the Plan is scheduled for January 15, 2014 at 1:30 p.m. (prevailing Central Time) (the “Confirmation Hearing”).

¹ The Debtors in these Chapter 11 cases are: (i) FiberTower Network Services Corp.; (ii) FiberTower Corporation; (iii) FiberTower Licensing Corp.; and (iv) FiberTower Spectrum Holdings, LLC.

² All capitalized terms used herein that are not otherwise defined in this notice have the meaning set forth in the Plan.

PLEASE TAKE FURTHER NOTICE that Section 9.01(b) of the Plan provides for the (i) fixing of the cure amounts (in each instance, the “Cure Amount”) that the Debtors believe must be paid to cure certain executory contracts and unexpired leases that shall be assumed pursuant to Section 9.01(a) of the Plan (collectively, the “Contracts”) and (ii) the deadline to object to such Cure Amounts.

PLEASE TAKE FURTHER NOTICE that, in accordance with section 9.01(b) of the Plan, the Debtors have indicated on the schedule attached hereto as Exhibit A the proposed Cure Amounts that they believe must be paid to the counterparties to the Contracts parties listed on Exhibit A.

PLEASE TAKE FURTHER NOTICE that any counterparty to a Contract objecting to a proposed Cure Amount shall be required, whether or not such party has previously filed a proof of claim with respect to amounts due under the applicable Contract, to file and serve an objection (the “Cure Objection”), in writing, proposing an alternative Cure Amount and setting forth with specificity any and all cure obligations that the objecting party asserts must be cured or satisfied in respect of the Contract together with all documentation supporting such Cure Objection. Any Cure Objection must be filed with the Clerk of the Bankruptcy Court, 510 W. Tenth Street, Fort Worth, Texas 76102-3643, and served upon each of the following notice parties so that the Cure Objection is received no later than **MONDAY, JANUARY 13, 2014 AT 4:00 P.M. (PREVAILING CENTRAL TIME)** (the “Cure Objection Deadline”): (a) counsel to the Debtors, Andrews Kurth LLP, 450 Lexington Avenue, 15th Floor, New York, NY 10017 (Attn: Paul N. Silverstein and Jonathan I. Levine) and 1717 Main Street, Suite 3700, Dallas, Texas 75201 (Attn: Michelle V. Larson); (b) counsel to the Ad Hoc 2016 Committee, Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, NY 10038 (Attn: Kristopher M. Hansen and Sayan Bhattacharyya) and Haynes & Boone, LLP, 201 Main Street, Suite 2200, Fort Worth, Texas 76102 (Attn: Stephen Pezanosky); (c) counsel to the Committee, Otterbourg, Steindler, Houston & Rosen, P.C., 230 Park Avenue, New York, NY 10169-0075 (Attn: David M. Posner) and Cole, Schotz, Meisel, Forman & Leonard, P.A., 310 Commerce Street, Suite 1700, Fort Worth, Texas 76102 (Attn: Michael D. Warner); and (d) Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, Texas 75242 (Attn: Elizabeth Ziegler).

PLEASE TAKE FURTHER NOTICE that, if a Cure Objection is timely filed with respect to the proposed Cure Amount for a Contract, a hearing will be held before the Honorable D. Michael Lynn in the Bankruptcy Court, at the time of the Confirmation Hearing, or as otherwise agreed to by the parties or scheduled by the Bankruptcy Court, to determine the amount of any disputed Cure Amount not settled by the parties.

PLEASE TAKE FURTHER NOTICE that, in the event that a Cure Objection is not filed by the Cure Objection Deadline with respect to a Contract, the counterparty to such Contract shall be deemed to have consented to the Cure Amount proposed by the Debtors and shall be forever enjoined and barred from seeking any additional amount on account of the Debtors’ cure obligations under section 365 of the Bankruptcy Code from the Debtors or the Reorganized Debtors.

PLEASE TAKE FURTHER NOTICE that if you agree with the Cure Amount indicated on Exhibit A, you need not take any further action.

PLEASE TAKE FURTHER NOTICE that the inclusion of a Contract on Exhibit A herein shall not constitute or be deemed to be a determination or admission by the Debtors that such Contract is, in fact, an executory contract or unexpired lease within the meaning of section 356 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that Section 11.4(a) of the Plan provides for certain releases of claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action and liabilities by the Debtors and the Reorganized Debtors. As set forth in the Plan, however, Section 11.4(a) shall not provide for a release of the Estate D&O Claims, any claims or Causes of Action arising under chapter 5 of the Bankruptcy Code or any claims or Causes of Action set forth on Schedule 11.4(a) to the Plan. Attached hereto as Exhibit B is Schedule 11.4(a) to the Plan.

Dated: January 3, 2014
Fort Worth, Texas

ANDREWS KURTH LLP

By: /s/ Paul N. Silverstein
Paul N. Silverstein (admitted *pro hac vice*)
Jonathan I. Levine (admitted *pro hac vice*)
450 Lexington Avenue, 15th Floor
New York, New York 10017
Telephone: (212) 850-2800
Facsimile: (212) 850-2929
Email: paulsilverstein@andrewskurth.com
Email: jonathanlevine@andrewskurth.com

-and-

Michelle V. Larson
Texas State Bar No. 00796928
1717 Main Street, Suite 3700
Dallas, Texas 75201
Telephone: (214) 659-4400
Facsimile: (214) 659-4401
Email: michellelarson@andrewskurth.com

Counsel to the Debtors

EXHIBIT A

Schedule 9.1(a) to the Plan

Contract Counterparty	Executory Contract or Unexpired Lease	Proposed Cure Amount
Vivint Wireless, Inc. 4931 N 300 W Provo, Utah 84604	Master Spectrum Lease Agreement, dated as of September 23, 2013 (as amended and/or supplemented)	\$0.00
Rainbow Broadband Inc. 14 Penn Plaza, Suite 2100 New York, NY 10122	Long Term Spectrum Lease (WMT307) (as amended and/or supplemented)	\$0.00
Strategic Technology Communications, Inc. 13828 N. 41st Place Phoenix, AZ 85032	Spectrum Manager Lease (WPNH290) (as amended and/or supplemented)	\$0.00
MCI Communications Services, Inc. 22001 Loudoun County Parkway, E1-2-532 Ashburn, Virginia 20147	Spectrum Manager Lease (WMT338) (as amended and/or supplemented)	\$0.00
Silver Star Telephone Company 104101 Highway 89 Freedom, WY 83120	Spectrum Manager Lease (WPQV578) (as amended and/or supplemented)	\$0.00
Internet Consulting Services 235 Alexander Avenue Ames, IA 50010	Spectrum Manager Lease (WPQV681) (as amended and/or supplemented)	\$0.00
Montana Internet Corporation P.O. Box 1420 Helena, MT 59624	Spectrum Manager Lease (WPQV865) (as amended and/or supplemented)	\$0.00
Montana Internet Corporation P.O. Box 1420 Helena, MT 59624	Spectrum Manager Lease (WPQV636) (as amended and/or supplemented)	\$0.00
Montana Internet Corporation P.O. Box 1420	Spectrum Manager Lease (WPQV662) (as amended and/or supplemented)	\$0.00

<p>Helena, MT 59624</p> <p>-and-</p> <p>Lewis and Clark Co. 316 North Park Room 211 Helena, MT 59601</p>		
<p>Dysart School District 15802 North Parkview Place Surprise, AZ 85374</p> <p>-and-</p> <p>Western Wimax LLC 515 E Carefree Hwy #334 Phoenix, AZ 85085</p>	<p>Spectrum Manager Lease (WPNE708) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Dysart School District 15802 North Parkview Place Surprise, AZ 85374</p>	<p>Spectrum Manager Lease (WPQV580) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>MegaBroadband 315 Pleasant Street Fall River, MA 02721</p>	<p>Spectrum Manager Lease (WPNA623) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Pocketinet Communications, Inc. 45 Terminal Loop Dr, Suite 10 Walla Walla, WA 99362</p>	<p>Spectrum Lease (WPNG953) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Cortland Electronics Corp P.O. Box 9785 Seattle, WA 98109</p>	<p>Spectrum Manager Lease (WPNH527) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Pass Word, Inc. 1303 West First Ave. Spokane, WA 99201-4190</p>	<p>Spectrum Manager Lease (WPNE715) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Simply Bits LLC 5225 N Sabino Canyon Rd Tucson, AZ 85750</p>	<p>Spectrum Manager Lease (WPNE373) (as amended and/or supplemented)</p>	<p>\$0.00</p>
<p>Simply Bits LLC 5225 N Sabino Canyon Rd Tucson, AZ 85750</p> <p>-and-</p>	<p>Spectrum Manager Lease (WPND676) (as amended and/or supplemented)</p>	<p>\$0.00</p>

Buffalo Exchange LTD 1214 N 6th Ave Tucson, AZ 85705-6640		
NAL Worldwide LLC 1200 Green Briar Dr., Unit A Addison, IL 60101	Storage Agreement, dated as of August 14, 2006 (as amended and/or supplemented)	\$0.00
Thomas Scott c/o FiberTower Corporation P.O. Box 31564 San Francisco, CA 94131	Amended and Restated Consulting Agreement, dated as of December 6, 2012 (as amended and/or supplemented)	\$0.00
Joseph Sandri c/o FiberTower Corporation P.O. Box 31564 San Francisco, CA 94131	Consulting Agreement, dated as of July 1, 2013 (as amended and/or supplemented)	\$0.00
Ornella Napolitano c/o FiberTower Corporation P.O. Box 31564 San Francisco, CA 94131	Consulting Agreement, dated as of July 1, 2013 (as amended and/or supplemented)	\$0.00
John Lipscomb c/o FiberTower Corporation P.O. Box 31564 San Francisco, CA 94131	Consulting Agreement, dated as of July 1, 2013 (as amended and/or supplemented)	\$0.00

EXHIBIT B

Schedule 11.4(a) to the Plan

None.