

FIBERTOWER LITIGATION TRUST AGREEMENT

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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’ Third Amended Joint Chapter 11 Plan*, dated January 13, 2014 [Docket No. 1042] (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; *provided, however*, that the Litigation Trust and the Litigation Trustee, with the unanimous consent of the Trust Advisory Board, may take such actions as may be required to prevent the expiration of any statutes of limitations applicable to the Estate D&O Claims, or to otherwise preserve the Estate D&O Claims until such claims may be pursued by the Litigation Trust in accordance with the terms of this Agreement.

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]