U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
ENTERED
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET
TAWANA C. MARSHALL, CLERK

DEC 19 2012

D. Michael Lynn
U.S. Bankruptcy Judge

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

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

ORDER GRANTING DEBTORS' MOTION TO ASSUME LEASE FOR SAN FRANCISCO OFFICE, AS AMENDED

Upon the Motion to Assume Lease for San Francisco Office, As Amended (the "Motion") filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors");[1] and the Court being satisfied that the relief requested in the Motion is necessary and is in the best interests of the Debtors and their respective estates and creditors; and it appearing that sufficient notice of the Motion has been given, and that no other or further notice is required; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is[2]

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

[2]Capitalized terms not otherwise defined herein shall have the same meaning as ascribed to them in the Motion

ORDERED AS FOLLOWS:

1. The Motion is hereby granted, to the extent provided herein.

2. The Fourth Amendment To Office Lease ("Fourth Amendment") attached to the Supplement to Motion and hereto as Exhibit "A" is hereby approved.

3. The Debtors and the Landlord are hereby authorized and directed to enter into the Fourth Amendment, substantially in the form attached hereto, and perform their respective obligations thereunder.

4. Upon execution of the Fourth Amendment, the Lease, as amended, is hereby deemed assumed by the Debtors.

5. This Order shall not be stayed by any Rule of the Federal Rules of Bankruptcy Procedure

6. The Court retains exclusive jurisdiction over the terms of this Order and the matters subject hereto.

END OF ORDER # #

EXHIBIT A

FOURTH AMENDMENT TO OFFICE LEASE

FOURTH AMENDMENT TO OFFICE LEASE

This FOURTH AMENDMENT TO OFFICE LEASE ("**Fourth Amendment**") is made and entered into as of the 18th day of December 2012, by and between SPF CHINA BASIN HOLDINGS, LLC, a Delaware limited liability company ("**Landlord**"), and FIBERTOWER NETWORK SERVICES CORP., a Delaware corporation (formerly known as FiberTower Corporation, a Delaware corporation) ("**Tenant**")

RECITALS:

A. Stockbridge/MCC-China Basin L L.C, a Delaware limited liability company (predecessor-in-interest to Landlord), and Tenant entered into that certain Office Lease dated June 30, 2004 (the "**Office Lease**"), as amended by that certain First Amendment to Office Lease dated as of January 19, 2006 (the "**First Amendment**"), that certain Second Amendment to Office Lease dated as of August 10, 2006 (the "**Second Amendment**"), and that certain Third Amendment to Office Lease dated as of May 22, 2009 (the "**Third Amendment**"), whereby Landlord leased to Tenant and Tenant leased from Landlord approximately 15,636 rentable square feet of space commonly known as Suites 4800 and 4811 (collectively, the "**Original Premises**") on the fourth (4th) floor of that certain building known as the "Wharfside Building" and located at 185 Berry Street, San Francisco, California 94107 (the "**Building**"). The Office Lease, the First Amendment, the Second Amendment and the Third Amendment are, collectively, the "**Lease**."

B. On or about July 17, 2012 , Tenant filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code before the United States Bankruptcy Court for the Northern District of Texas (Fort Worth Division) (the "**Bankruptcy Court**"), Case No. 12-44027-DML-11 (the "**Bankruptcy Case**") Tenant is operating its business and managing its properties as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code

C Subject to Bankruptcy Court approval pursuant to Section 13 hereof, Landlord and Tenant desire (i) to substitute the Original Premises with that certain space consisting of approximately 5,110 rentable square feet of space commonly known as Suite 3500 (the "**Relocation Premises**") and located on the third (3rd) floor of the Building, as delineated on **Exhibit A** attached hereto and made a part hereof, (ii) to modify the length of the Lease Term, and (iii) to make other modifications to the Lease, and in connection therewith, Landlord and Tenant desire to amend the Lease as hereinafter provided.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Capitalized Terms**. All capitalized terms when used herein shall have the same respective meanings as are given such terms in the Lease, unless expressly provided otherwise in this Fourth Amendment

2. **Substitution of Relocation Premises for Original Premises** Effective as of January 2, 2013 (the "**Relocation Premises Commencement Date**"), the Lease shall (subject to the terms of this Section 2 and Section 3, below) terminate and be of no further force or effect with respect to the Original Premises, and Tenant shall lease from Landlord and Landlord shall lease to Tenant the Relocation Premises on the terms and conditions set forth in the Lease, as hereby amended. Consequently, effective upon the Relocation Premises Commencement Date, the Relocation Premises shall be substituted for the Original Premises and all references in the Lease, as hereby amended, to the "Premises" shall mean and refer to the Relocation Premises. In the event that Landlord delivers possession of the Relocation Premises to Tenant prior to the Relocation Premises Commencement Date, then Tenant shall be permitted to immediately occupy the Relocation Premises and upon taking possession of the Relocation Premises, all of the terms and conditions of the Lease (as hereby amended) shall apply to such occupancy, other than Tenant's obligation to pay Base Rent with respect to the Relocation Premises, which obligation shall not commence until the Relocation Premises Commencement Date In addition, in the event that Tenant

occupies the Relocation Premises and/or surrenders the Original Premises to Landlord prior to the Relocation Premises Commencement Date, Tenant acknowledges and agrees that Tenant shall not have any right to any refund or deduction of the amount of Rent previously paid by Tenant to Landlord in connection with the Original Premises for the month of December 2012. In the event that Landlord tenders possession of the Relocation Premises to Tenant on or before the Relocation Premises Commencement Date, but Tenant does not take possession of the Relocation Premises until after such date, then (i) the Lease shall continue to apply to the Original Premises, and Tenant shall continue paying Rent for the Original Premises, until such time as Tenant surrenders and delivers exclusive possession of the Original Premises to Landlord, and (ii) Tenant shall commence paying Base Rent for the Relocation Premises on the date that Tenant takes possession of the Relocation Premises (provided, however, to the extent that Landlord has tendered possession of the Relocation Premises to Tenant, Tenant shall commence paying Base Rent for the Relocation Premises on February 1, 2013, whether or not Tenant has taken possession of the Relocation Premises). In such event, Rent for the Original Premises and the Relocation Premises shall be pro-rated, based on a thirty (30)-day month utilizing the actual days of occupancy. In the event, however, that Landlord does not tender possession of the Relocation Premises to Tenant until after the Relocation Premises Commencement Date, then Tenant's monthly Base Rent obligation with respect to the Original Premises after January 2, 2013 shall be reduced to $23,000.00 per month (i.e , the same monthly amount Tenant would otherwise be obligated to pay with respect to the Relocation Premises)

3. **Surrender of Original Premises**. Tenant hereby agrees to vacate the Original Premises and surrender and deliver exclusive possession of the Original Premises to Landlord on or before the Relocation Premises Commencement Date in accordance with the provisions of Article 15 of the Office Lease, *provided, however,* that Tenant shall have no obligation to repair any damage made to the Original Premises (as opposed to damage made to the Building or Project, which damage shall continue to be Tenant's obligation to repair as set forth in the Lease) due to the removal of any improvements or personal property. Unless otherwise agreed to in writing by Landlord and Tenant prior to the Relocation Premises Commencement Date, in the event that Tenant fails to vacate the Original Premises and surrender and deliver exclusive possession of the Original Premises to Landlord on or before the Relocation Premises Commencement Date, then Tenant shall continue to pay Rent for the Original Premises, pro rated as set forth in Section 2, above.

4. **Representations of Tenant** Tenant represents and warrants to Landlord that (a) Tenant has not heretofore assigned or sublet all or any portion of its interest in the Lease or in the Original Premises, (b) no other person, firm or entity has any right, title or interest in the Lease or in the Original Premises through Tenant; (c) Tenant has the full right, legal power and actual authority to enter into this Fourth Amendment and to terminate Tenant's lease with respect to the Original Premises without the consent of any person, firm or entity; and (d) Tenant has the full right, legal power and actual authority to bind Tenant to the terms and conditions hereof. Tenant further represents and warrants to Landlord that as of the date hereof there are no, and as of the Relocation Premises Commencement Date there shall not be any, mechanic's liens or other liens encumbering all or any portion of the Original Premises, by virtue of any act or omission on the part of Tenant, its predecessors, contractors, agents, employees, successors or assigns. Notwithstanding the termination of the Lease with respect to the Original Premises, the representations and warranties set forth in this Section 4 shall survive the Relocation Premises Commencement Date and Tenant shall be liable to Landlord for any inaccuracy or any breach thereof

5. **Reduction of the Lease Term**.

5.1 **Relocation Premises Term** Notwithstanding any provision to the contrary set forth in the Lease (including, without limitation, the provisions relating to the Third Amendment Extended Term set forth in the Third Amendment), Landlord and Tenant hereby agree that the Lease Term shall, subject to the terms set forth in Section 5 2, below, expire on May 31, 2013. The period of time beginning on the Relocation Premises Commencement Date and ending on May 31, 2013, shall be referred to herein as the "**Relocation Premises Term** "

5.2 **Option to Extend the Relocation Premises Term**. Landlord hereby grants the Tenant originally named herein (the "**Original Tenant**"), one (1) option to extend the Relocation Premises Term for a period of thirty (30), sixty (60), or ninety (90) days (as applicable, the "**Option Term**"), which option shall be exercisable only by written notice delivered by Tenant to Landlord on or before March 15, 2013 (the "**Option Exercise Notice**"), and provided that, as of the date of delivery of such notice, Tenant is not then in default under the Lease, as amended hereby The Option Exercise Notice shall state Tenant's irrevocable election to exercise the Option Term and

whether such Option Term shall be thirty (30), sixty (60), or ninety (90) days. Upon the proper exercise of such option to extend, and provided that, as of the end of the Relocation Premises Term, Tenant is not then in default under the Lease, as amended hereby, the Relocation Premises Term shall be extended for a period of thirty (30), sixty (60), or ninety (90) days, as applicable. The Base Rent payable by Tenant during the Option Term shall be as set forth in Section 6, below Tenant shall continue to be obligated to pay Additional Rent for the Relocation Premises during the Option Term as set forth in the Lease (as hereby amended). The rights contained in this Section 5.2 shall be personal to the Original Tenant and may only be exercised by the Original Tenant (and not any other assignee, or any sublessee or other transferee of the Original Tenant's interest in the Lease, as hereby amended) if the Original Tenant occupies the entire Relocation Premises.

5.3 **Month to Month Term**. In the event that Tenant elects to further extend the Relocation Premises Term beyond the Option Term provided in Section 5.2, above, Tenant shall give Landlord written notice of Tenant's election to do so no later than thirty (30) days prior to the expiration of the Option Term, and such further extension of the Relocation Premises Term shall be on an month-to-month basis only (the "**Month-to-Month Term**"), terminable by either party upon not less than sixty (60) days' prior written notice to the non-terminating party. The Base Rent payable by Tenant during the Month-to-Month Term shall be as set forth in Section 6, below. Tenant shall continue to be obligated to pay Additional Rent for the Relocation Premises during the Month-to-Month Term as set forth in the Lease (as hereby amended).

5 4 **No Other Options to Extend the Lease Term**. Effective as of the date of this Fourth Amendment, Section 4.4 of the Third Amendment is hereby deleted and is of no further force or effect. Except as expressly set forth in Sections 5.2 and 5.3 above, Tenant shall have no right to extend the Lease Term.

6. **Base Rent**. Prior to the Relocation Premises Commencement Date, Tenant shall continue to pay Base Rent for the Original Premises in accordance with the terms of the Lease. Commencing on the Relocation Premises Commencement Date and continuing throughout the Relocation Premises Term, Tenant shall pay to Landlord monthly installments of Base Rent for the Relocation Premises as follows·

Period During Relocation Premises Term	Monthly Installment of Base Rent
Relocation Premises Commencement Date through May 31, 2013	$23,000.00
Option Term	$23,000.00
Month-to-Month Term	$23,000.00

In the event that the Month-to-Month Term extends beyond January 2, 2014, then the monthly Base Rent payable thereafter shall increase by three percent (3%) (on a cumulative, compounded basis) on (i) January 2, 2014, and (ii) each January 2nd thereafter

In addition, the Base Rent payable by Tenant under the terms of this Section 6 shall be net of electricity and Tenant shall separately pay for the cost of electricity consumed in the Premises pursuant to the terms set forth in Section 7.2, below.

7. **Additional Rent** Tenant shall continue to be obligated to make all payments of Additional Rent as set forth in the Lease, except as otherwise set forth herein.

7.1 **Tenant's Share of Direct Expenses**. Tenant shall continue to be obligated to pay Tenant's Share of Direct Expenses in connection with the Original Premises which arise or accrue prior to the Relocation Premises Commencement Date in accordance with the terms of Article 4 of the Office Lease (as amended) Subject to the terms of Section 3, above, Tenant shall not be obligated to pay Tenant's Share of Building Direct Expenses in connection with the Original Premises attributable to any period of time on after the Relocation Premises Commencement Date. Commencing on the Relocation Premises Commencement Date, Tenant's obligation to pay Tenant's Share of Direct Expenses which arise or accrue on and after the Relocation Premises Commencement Date in connection with the Relocation Premises shall be as set forth in the Lease, provided that the following shall apply:

7.1 1 Tenant's Share shall equal 0.5578%; and

7.1 2 The Base Year shall be the calendar year 2013.

7 2 **Electrical Costs**. Notwithstanding the contrary terms set forth in Section 6.1.2 of the Office Lease, effective as of the Relocation Premises Commencement Date, Tenant shall pay for the cost of all electricity consumed in the Relocation Premises (including, without limitation, the electricity utilized by the existing exhaust fan in the Relocation Premises, but exclusive of electricity utilized in connection with the Building HVAC) directly to Landlord, and Tenant's usage of such electricity shall be reasonably determined by Landlord based upon the electrical submeter currently existing in the Relocation Premises.

7 3 **After Hours HVAC**. Effective as of the date of this Fourth Amendment, if Tenant desires to use HVAC during hours other than those for which Landlord is obligated to supply such HVAC pursuant to the terms of Section 6.1 of the Office Lease (i.e., "after hours" usage, which after hours usage shall not included the use of the existing exhaust fan in the Relocation Premises), Tenant shall give Landlord not less than twenty-four (24) hours prior notice or such prior notice, as Landlord shall from time to time establish as appropriate, and to the extent such additional HVAC can be made available, Landlord shall supply such HVAC to Tenant at such hourly cost to Tenant (which shall be treated as Additional Rent and which may include an administrative fee) as Landlord shall from time to time establish (and subject to a four (4) hour minimum). As of the date of this Lease, the current rate for after hours HVAC is $175 00 per hour, and the current rate for the afterhours use of air circulation fans only is $50 00 per hour

8. **Relocation Premises Improvements** Except as specifically set forth herein, Landlord shall not be obligated to provide or pay for any improvement work or services related to the improvement of the Relocation Premises, and Tenant shall accept the Relocation Premises in its presently existing, "as-is" condition Notwithstanding the foregoing, Landlord hereby agrees to (i) cause the currently existing exhaust fan in the "IT room" of the Relocation Premises to be in good working order as of the Relocation Premises Commencement Date, and (ii) install the following electrical outlets in the IT room in the locations reasonably determined by Landlord: six (6) 120V/30A outlets and two (2) 208V/30A outlets (collectively, the "**Tenant Improvements**"). All such Tenant Improvements shall be completed to Landlord's "Building standard" condition, using Building standard methods, materials and procedures. Tenant shall make no changes or modifications to the Tenant Improvements without the prior written consent of Landlord, which consent may be withheld in Landlord's sole discretion. In connection with such Tenant Improvements, concurrently with Tenant's execution of this Fourth Amendment, Tenant shall deliver the full amount of $3.610.00 to Landlord as Tenant's share of the cost of the Tenant Improvements

9. **Substitution of Other Premises**. Landlord shall have the right to move Tenant to other space in the Project comparable to the Relocation Premises, and all terms hereof shall apply to the new space with equal force. In such event, Landlord shall give Tenant not less than sixty (60) days' prior written notice, shall provide Tenant, at Landlord's sole cost and expense, with tenant improvements at least equal in quality to those in the Relocation Premises and shall move Tenant's effects to the new space at Landlord's sole cost and expense at such time and in such manner as to inconvenience Tenant as little as reasonably practicable. Simultaneously with such relocation of the Relocation Premises, the parties shall immediately execute an amendment to the Lease stating the relocation of the Relocation Premises.

10. **Security Deposit**. Landlord shall continue to retain the existing Security Deposit, in the amount of $94,404.78, as security for the faithful performance by Tenant of the terms, covenants and conditions of the Lease, as hereby amended, with respect to the Relocation Premises.

11 **Parking** Notwithstanding any parking rights or allocations to the contrary set forth in the Lease, commencing on the Relocation Premises Commencement Date and continuing throughout the Relocation Premises Term, Tenant shall only be entitled to rent one (1) unreserved parking pass on a monthly basis (the "**Fourth Amendment Parking Pass**"), the use of which shall remain subject to the terms and conditions set forth in this Article 28 of the Office Lease Subject to availability (as reasonably, but solely determined by Landlord), Tenant may rent, on a month-to-month basis, additional parking passes for unreserved parking spaces in the Project parking facility directly from the Project parking facility operator. Notwithstanding Tenant's renting of any such unreserved parking passes, Tenant acknowledges and agrees that, as of the date hereof, during peak

parking periods the Project parking facility operator operates the parking facility on a partial valet-parking-only basis, and to the extent such valet parking service is provided, Tenant and its employees shall comply with the same.

12. **Broker**. Landlord and Tenant hereby warrant to each other that they have had no dealings with any real estate broker or agent in connection with the negotiation of this Fourth Amendment other than McCarthy Cook & Co. (the "**Broker**"), and that they know of no other real estate broker or agent who is entitled to a commission in connection with this Fourth Amendment. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation reasonable attorneys' fees) with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, other than the Broker, occurring by, through, or under the indemnifying party The terms of this Section 12 shall survive the expiration or earlier termination of the term of the Lease, as hereby amended.

13. **Bankruptcy Court Approval**. The parties expressly acknowledge and agree that the effectiveness of this Fourth Amendment is expressly conditioned upon the Bankruptcy Court entering an order in the Bankruptcy Case in a form and substance reasonably acceptable to Landlord (the "**Court Approval Order**"). (i) approving this Fourth Amendment, and each of the transactions contemplated herein; (ii) expressly authorizing and directs Tenant to execute and deliver this Fourth Amendment, and (iii) authorizing and directing Tenant to assume the Lease, as amended by this Fourth Amendment, in accordance with section 365 of the Bankruptcy Code In the event, for any reason, the Court Approval Order is not entered by the Bankruptcy Court on or before December 20, 2012 (the "**Approval Deadline**"), then the Lease shall not by modified or amended by this Fourth Amendment and shall remain in full force or effect as if this Fourth Amendment had never been executed unless Landlord, in its sole and absolute discretion, elects by written notice to Tenant (which notice may be sent by electronic mail) to extend the Approval Deadline

[*continued on the following page*]

14. **No Further Modification**. Except as specifically set forth in this Fourth Amendment, all of the terms and provisions of the Lease shall remain unmodified and in full force and effect. In the event of any conflict between the terms and conditions of the Lease, as amended, and the terms and conditions of this Fourth Amendment, the terms and conditions of this Fourth Amendment shall prevail.

IN WITNESS WHEREOF, this Fourth Amendment has been executed as of the day and year first above written.

"Landlord":

SPF CHINA BASIN HOLDINGS, LLC,
a Delaware limited liability company

By SPF China Basin Acquisition, LLC,
a Delaware limited liability company
Managing Member

By: Commingled Pension Trust Fund (Strategic Property) of JPMorgan Chase Bank, N.A., Sole Member

By. JPMorgan Chase Bank, N A ,
Trustee

By. _____
Lauren B. Graham,
Vice President

Date _____

"Tenant":

FIBERTOWER NETWORK SERVICES CORP.,
a Delaware corporation

By: _____
Name: _____
Its. _____

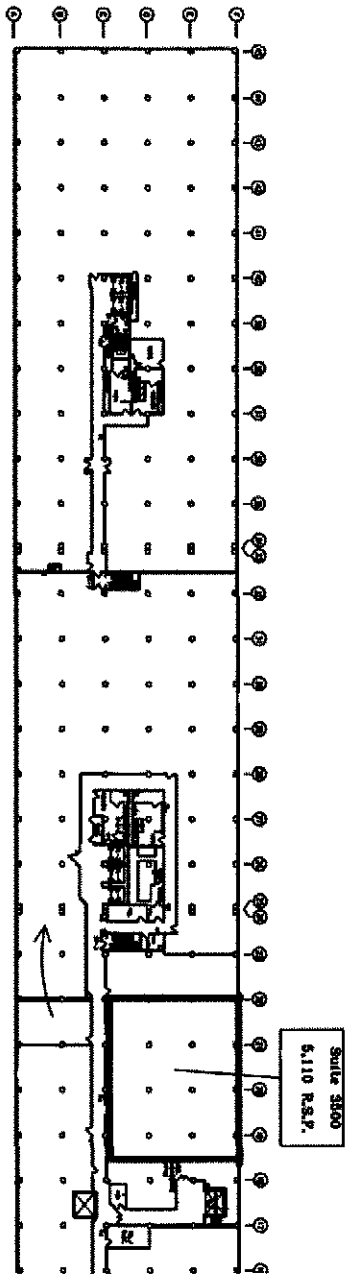
Date: _____

EXHIBIT A

CHINA BASIN

OUTLINE OF THE RELOCATION PREMISES [1]

This **Exhibit A** is referenced in Recital B of that certain Fourth Amendment To Office Lease made and entered into as of the 18th day of December 2012, by and between SPF China Basin Holdings, LLC, a Delaware limited liability company ("**Landlord**"), and Fibertower Network Services Corp., a Delaware corporation ("**Tenant**")



[1] **NOTE:** Suite 3500 depicted above contains approximately 5,110 rentable square feet of space.

Landlord's initials _____ Tenant's initials _____