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**UNITED STATES BANKRUPTCY COURT  
DISTRICT ARIZONA**

In re

ACCIPITER COMMUNICATIONS, INC., d/b/a  
ZONA COMMUNICATIONS,

Debtor.

Chapter 11  
Case No. 2:14-bk-04372-GBN

**CHAPTER 11 PLAN OF  
REORGANIZATION**

Accipiter Communications, Inc., d/b/a Zona Communications, debtor-in-possession in the above-captioned chapter 11 case, proposes this plan for the resolution of all outstanding claims and equity interests.

**All holders of Claims against, and Equity Interests in, the Debtor are encouraged to read the Plan, the Disclosure Statement, and the related materials in their entirety.**

Subject to the restrictions on modifications set forth in Bankruptcy Code § 1127, Bankruptcy Rule 3019, and Section 11.01 of the Plan, the Debtor may amend the Plan one or more times before its substantial consummation.

**ARTICLE 1.**  
**DEFINITIONS AND RULES OF INTERPRETATION**

All capitalized terms used in the Plan are defined in this Article 1, the Bankruptcy Code, or the Bankruptcy Rules. “Including” means “including without limitation.”

As used in the Plan, the following terms have the following meanings:

**1.01. Above-Ratio Cash.** Reorganized Accipiter’s on-hand cash exceeding the cash amount required to conform to a ratio of cash balance to total asset balance, determined at the end of every three-month period in accordance with GAAP, of 9.2%.

**1.02. Administrative Claim.** A Claim for any expense Allowed under Bankruptcy Code §§ 503(b), 507(b), or 546(c)(2) and entitled to priority under Bankruptcy Code § 507(a)(2), including: (a) fees payable under 28 U.S.C. § 1930; (b) actual and necessary costs and expenses incurred in the ordinary course of the Debtor’s business; (c) actual and necessary costs and expenses of preserving the Estate or administering the Chapter 11 Case; and (d) all Professional Fee Claims to the extent Allowed by Final Order under Bankruptcy Code § 330.

**1.03. Administrative Claims Bar Date.** The first Business Day 30 days after the Confirmation Date.

**1.04. Allowed.** With respect to any Claim against, or Equity Interest in, the Debtor:

**a.** allowed by Final Order, whether or not following an objection to its allowance, a motion to estimate for purposes of allowance, or a request to subordinate filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court; or

**b.** proof of which, request for payment of which, or application for allowance of which was filed or deemed filed with the Bankruptcy Court on or before the Bar Date, the Administrative Claims Bar Date, the Professional Fee Bar Date, or the Rejection Damages Bar Date, as applicable, for filing proofs of claim or equity interest or requests for payment for Claims of that type against the Debtor or other applicable date established by order of the Bankruptcy Court, even if that date is after the Bar Date, the Administrative Claims Bar Date, the Professional Fee Bar Date, or the Rejection Damages Bar Date, as applicable; or

**c.** listed as undisputed, liquidated, and non-contingent in the Schedules and no objection to its allowance, motion to estimate for purposes of allowance, or request to subordinate has been filed within the applicable period of limitation fixed by the Plan, the Bankruptcy Code, the Bankruptcy Rules, or the Bankruptcy Court.

**1.05. Avoidance Actions.** All statutory causes of action preserved for the Estate under Bankruptcy Code §§ 510, 542, 543, 544, 545, 547, 548, 549, 550, and 553 that the Estate may have against any Person, including those listed in Exhibit A to the Plan. Failure to list an Avoidance Action in the Plan does not constitute a waiver or release of that Avoidance Action.

**1.06. Bankruptcy Code.** Title 11 of the United States Code as of the Petition Date.

**1.07. Bankruptcy Court.** The United States District Court for the District of Arizona and, to the extent of any reference under 28 U.S.C. § 157, the bankruptcy unit of the District Court under 28 U.S.C. § 151.

**1.08. Bankruptcy Rules.** Collectively, the Federal Rules of Bankruptcy Procedure as promulgated under 28 U.S.C. § 2075 and any Local Rules of the Bankruptcy Court applicable to the Chapter 11 Case.

**1.09. Bar Date.** The date fixed by the Bankruptcy Court by which Persons asserting a Claim against the Debtor (except Administrative Claims, Professional Fee Claims, and Rejection Damages Claims) are required to file a proof of claim or be forever barred from asserting a Claim against the Debtor or its property, from voting on the Plan, and from sharing in distributions under the Plan.

**1.10. Benefit Plans.** All benefit plans of whatever type that the Debtor provided to its employees, whether now in existence or previously terminated, and any rights of employees to extended coverage arising from any benefit plan, whether under the terms of that benefit plan or under applicable law.

**1.11. Business Day.** Any day other than a Saturday, Sunday, or legal holiday (as defined in Bankruptcy Rule 9006).

**1.12. Cash.** Currency, checks drawn on a bank insured by the Federal Deposit Insurance Corporation, certified checks, money orders, negotiable instruments, and wire transfers of immediately-available funds.

**1.13. Chapter 11 Case.** The case under chapter 11 of the Bankruptcy Code for the Debtor pending before the Bankruptcy Court under Case No. 2:14-bk-04372-GBN.

**1.14. Claim.** A claim against the Debtor or its property as defined in Bankruptcy Code § 101(5), including: (a) any right to payment, whether or not the right is reduced to judgment, liquidated, fixed, contingent, matured, disputed, legal, equitable, secured, or unsecured arising at any time before the Effective Date; or (b) any right to an equitable remedy for breach of performance if the breach gives rise to a right to payment, whether or not the right to an equitable remedy is reduced to judgment, fixed, contingent, matured, disputed, secured, or unsecured.

**1.15. Class.** A category consisting of holders of Claims or Equity Interests substantially similar in nature to the Claims or Equity Interests of other holders placed in that category, as designated in Article 3 of the Plan.

**1.16. Collateral.** Any property or interest in property of the Estate subject to a Lien to secure the payment or performance of a Claim, the Lien not avoidable or invalid under the Bankruptcy Code or applicable state law.

**1.17. Committee.** The official committee of unsecured creditors appointed in the Chapter 11 Case under Bankruptcy Code § 1102.

**1.18. Confirmation Date.** The date the Bankruptcy Court enters the Confirmation Order.

**1.19. Confirmation Order.** The order of the Bankruptcy Court confirming the Plan under the Bankruptcy Code. The Confirmation Order need not necessarily be a Final Order.

**1.20. Contingent Claim.** Any Claim for which a proof of claim has been filed with the Bankruptcy Court that: (a) was not filed in a fixed amount, or has not accrued and depends on a future event that has not occurred and may never occur; and (b) has not been Allowed on or before the Confirmation Date.

**1.21. Cure.** The payment on the Effective Date of Cash or other property as a condition to the assumption or assumption and assignment by the Debtor of an executory contract or unexpired lease of nonresidential real property, in accordance with Bankruptcy Code § 365(b).

**1.22. D&O Policy.** Any directors and officers liability insurance policy or any applicable errors and omissions policy applicable to the Debtor's directors, officers, and managers.

**1.23. Debtor.** Accipiter Communications, Inc., d/b/a Zona Communications, a Nevada corporation with its principal place of business in Phoenix, Arizona.

**1.24. Disallowed.** In reference to a Claim, a Claim or any portion of a Claim that: (a) has been disallowed or withdrawn by Final Order; or (b) with respect to a Claim other than an Administrative Claim, a Professional Fee Claim, or a Rejection Claim, was listed as disputed, unliquidated, or contingent in the Schedules and no proof of which was filed before the applicable Bar Date.

**1.25. Disclosure Statement.** The written disclosure statement relating to the Plan (including all exhibits and schedules) in the form approved by the Bankruptcy Court under Bankruptcy Code § 1125 and Bankruptcy Rule 3017.

**1.26. Disputed.** With respect to a Claim or Equity Interest, any Claim or Equity Interest: (a) listed in the Schedules as unliquidated, disputed, or contingent, or as to which the Debtor or any other party-in-interest has (i) interposed a timely objection or request for estimation, or (ii) sought to equitably subordinate or otherwise limit recovery in accordance with the Bankruptcy Code and the Bankruptcy Rules, in each instance where such listing, objection, request for estimation, or action to limit recovery has not been withdrawn or determined by a Final Order; or (b) that is a Contingent Claim.

**1.27. Effective Date.** The first Business Day 15 days after the Confirmation Date on which (a) no stay of the Confirmation Order is in effect and (b) all conditions to the Effective Date set forth in Section 8.02 of the Plan have been satisfied or waived in accordance with the Plan.

**1.28. Equity Interest.** Any equity interest in the Debtor represented by any certificated or uncertificated shares or membership interest issued to any Person before the Effective Date, and any warrants, options, or rights to purchase any equity interest.

**1.29. Equity Related Claim.** Any Claim by any Person other than the Debtor or Reorganized Accipiter: (a) arising from the rescission of a purchase or sale of an Equity Interest; or (b) for damages arising from the purchase or sale of an Equity Interest; or (c) that asserts equitable or contractual rights of reimbursement, contribution, or indemnification arising from such a Claim;

including any Claim that has been or may be asserted by any Person other than the Debtor or Reorganized Accipiter against the Debtor on one or more of its officers or directors, asserting violations of federal securities laws or any applicable non-federal securities law.

**1.30. Estate.** The estate consisting of the Debtor's interests in property created under Bankruptcy Code § 541.

**1.31. Final Order.** An order or judgment of the Bankruptcy Court: (a) as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired, or as to which any right to appeal, petition for certiorari, reargue, or rehear has been waived in writing in form and substance satisfactory to the Debtor; and (b) if an appeal, writ of certiorari, or reargument or rehearing has been sought, as to which the highest court to which the order was appealed, or certiorari, reargument or rehearing was sought, has determined or denied the appeal, writ of certiorari, reargument, or rehearing, and the time to take any further appeal, petition for writ of certiorari, or move for reargument or rehearing has expired; but the filing of a motion under Rule 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, with respect to the order does not prevent the order from being a Final Order.

**1.32. GAAP.** Generally-accepted accounting principles, a framework of accounting standards, rules, and procedures defined by the professional accounting industry adopted by nearly all publicly-traded companies in the United States.

**1.33. General Unsecured Claim.** Any Claim against the Debtor existing as of the Petition Date including a Rejection Claim but excluding a Secured Claim, an Administrative Claim, a Priority Tax Claim, a Priority Claim, an Equity Related Claim, or the RUS Claim.

**1.34. IRS.** The Internal Revenue Service.

**1.35. Litigation Claims.** All claims and causes of action in law or in equity, whether known or unknown, contingent or otherwise, that the Estate has brought or may have against any Person, including those listed in Exhibit A to the Plan, other than Avoidance Actions. Failure to list a Litigation Claim in the Plan does not constitute a waiver or release of that Litigation Claim.

**1.36. Management Restricted Stock Agreements.** Collectively: (a) the *Restricted Stock Award Agreement* dated as of January 16, 2013, between the Debtor and Patrick Sherrill for the award and delayed vesting of restricted common shares in the Debtor; and (b) the *Restricted Stock Award Agreement* dated as of January 16, 2013, between the Debtor and Jenifer Vellucci for the award and delayed vesting of restricted common shares in the Debtor.

**1.37. Maximum Amount.** With respect to any Claim that is not an Allowed Claim: (a) the amount to which the Debtor and the holder of the Claim agree; or (b) any amount the Bankruptcy Court estimates or determines under Bankruptcy Code § 502(c); or (c) absent any agreement, estimation, or determination, the amount set forth in the proof of claim or application for payment filed by the holder of the Claim, or, if none, the amount set forth in the Schedules for the Claim, or, if none, the amount the Debtor estimates in its good faith discretion.

**1.38. Miscellaneous Secured Claim.** Any Secured Claim, other than a Secured Claim held by RUS, that is: (a) listed in the Schedules as a liquidated, non-contingent, and undisputed secured

claim, or (b) reflected in a proof of claim as a secured claim secured by a Lien on Collateral to the extent of the value of the collateral, as determined in accordance with Bankruptcy Code § 506(a), or, if the claim is subject to setoff under Bankruptcy Code § 553, net of setoff.

**1.39. New RUS Note A.** One of the two promissory notes made payable by Reorganized Accipiter to RUS in accordance with, and as described more fully in, Section 3.03.c(i) of the Plan.

**1.40. New RUS Note B.** One of the two promissory notes made payable by Reorganized Accipiter to RUS in accordance with, and as described more fully in, Section 3.03.c(ii) of the Plan.

**1.41. New RUS Notes.** Collectively, the New RUS Note A and the New RUS Note B.

**1.42. Petition Date.** March 28, 2014, the date on which the Debtor filed its voluntary chapter 11 petition in the Bankruptcy Court.

**1.43. Plan.** This chapter 11 plan, either in its present form or as it may be amended from time to time, including, except where the context otherwise requires, all its exhibits.

**1.44. Preserved Ordinary Course Administrative Claim.** Any Administrative Claim based on liabilities incurred by the Debtor in the purchase, lease, or use of goods and services in the ordinary course of its business, including Administrative Claims on account of services provided after the petition Date to the Debtor by its employees, and Claims for unpaid rent or contract payments arising under a rejected executory contract or unexpired lease of nonresidential real property after the Petition Date and before the effective date of the rejection of that contract or lease, but excluding Professional Fee Claims..

**1.45. Priority Claim.** Any Claim (or portion of a Claim) entitled to priority under Bankruptcy Code § 507(a) other than Priority Tax Claims and Administrative Claims.

**1.46. Priority Tax Claim.** Any Claim of a Governmental Unit entitled to priority under Bankruptcy Code § 507(a)(8).

**1.47. Professional.** A Person: (a) employed in the Chapter 11 Case in accordance with an order of the Bankruptcy Court under Bankruptcy Code §§ 327, 328, 363, or 1103 and compensated for services under Bankruptcy Code §§ 327, 328, 329, 330, and 331 or order of the Bankruptcy Court; or (b) for whom compensation and reimbursement has been Allowed by a Final Order under Bankruptcy Code § 503(b).

**1.48. Professional Fee Bar Date.** The first Business Day 30 days after the Confirmation Date.

**1.49. Professional Fee Claim.** An Administrative Claim for compensation and reimbursement of expenses of a Professional incurred before the Effective Date submitted in accordance with Bankruptcy Code §§ 328, 330, 331, or 503(b).

**1.50. Pro Rata.** A proportionate share, such that the ratio of the consideration distributed on account of an Allowed Claim in a Class to the amount of that Allowed Claim is the same as the

ratio of all consideration distributed on account of all Allowed Claims in that Class to the amount of all Allowed Claims in that Class.

**1.51. Rejection Claim.** A Claim arising from the Debtor's rejection of an executory contract or unexpired lease either during the Chapter 11 Case or under the Plan other than a Claim for unpaid rent or contract payments arising under a rejected executory contract or unexpired lease after the Petition Date and before the effective date of the rejection of that contract or lease.

**1.52. Rejection Claims Bar Date.** The first Business Day 30 days after the Confirmation Date.

**1.53. Reorganized Accipiter.** Accipiter Communications, Inc., on and after the Effective Date.

**1.54. Restated Governance Documents.** The Amended and Restated Articles of Incorporation of Reorganized Accipiter and the Amended and Restated Bylaws of Reorganized Accipiter, substantially in the forms included as Exhibit C to the Plan.

**1.55. RUS.** Rural Utilities Service of the United States Department of Agriculture.

**1.56. RUS Claim.** Any Claim held by RUS.

**1.57. Schedules.** The schedules of assets and liabilities, the list of holders of interests, and the statements of financial affairs filed by the Debtor under Bankruptcy Code § 521 and Bankruptcy Rule 1007, as the schedules, list, and statements may have been or may be supplemented or amended from time to time.

**1.58. Secured Claim.** Any Claim (a) listed in the Schedules as a liquidated, non-contingent, and undisputed secured Claim that has not otherwise been satisfied or waived prior to the Confirmation Date, or (b) reflected in a proof of claim as a secured Claim, secured by a Lien on Collateral to the extent of the value of the Collateral, as determined in accordance with Bankruptcy Code § 506(a), or, if the Claim is subject to setoff under Bankruptcy Code § 553, net of the setoff.

## **ARTICLE 2. TREATMENT OF UNCLASSIFIED CLAIMS**

**2.01. Unclassified Claims.** Under Bankruptcy Code § 1123(a)(1), Administrative Claims and Priority Tax Claims are not classified for purposes of voting on, or receiving distributions under, the Plan. Holders of Administrative Claims and Priority Tax Claims are not entitled to vote on the Plan but, rather, are treated separately in accordance with Sections 2.02 and 2.03 of the Plan and under Bankruptcy Code § 1129(a)(9)(A).

### **2.02. Allowed Administrative Claims.**

**a. Generally.** Each Allowed Administrative Claim (other than a Professional Fee Claim) is paid in full in Cash (or otherwise satisfied in accordance with its terms) on the latest of: (a) the Effective Date, or as soon after that date as feasible; (b) any date the Bankruptcy Court may fix, or as soon after that date as feasible; (c) 30 days after the Claim is Allowed; and (d) any date on which the holder of the Claim and the Debtor or Reorganized Accipiter agree.

**b. Requests for Payment.** All requests for payment of an Administrative Claim (other than a Professional Fee Claim) must be served on Reorganized Accipiter and filed with the Bankruptcy Court no later than the Administrative Claims Bar Date. Any holder of an Administrative Claim (other than a Professional Fee Claim) that fails to file and serve its request by the Administrative Claims Bar Date is forever barred from asserting its Administrative Claim against the Debtor or Reorganized Accipiter.

**2.03. Preserved Ordinary Course Administrative Claims.** Each Allowed Preserved Ordinary Course Administrative Claim will be paid in full in Cash at Reorganized Accipiter's election either: (a) in accordance with the terms and conditions under which the Claim arose; or (b) in the ordinary course of Reorganized Accipiter's business. Payments will be made without further action by the holder of the Preserved Ordinary Course Administrative Claim.

**2.04. Allowed Priority Tax Claims.**

**a. Generally.** Except as provided immediately below, all Allowed Priority Tax Claims are paid in full in Cash on the latest of: (a) the Effective Date (or as soon after that date as feasible); and (b) 30 days after the Claim is Allowed.

**b. Installments.** Reorganized Accipiter may elect to pay any Allowed Priority Tax Claim through regular installment payments in Cash of a total value, as of the Effective Date, equal to the Allowed amount of the Claim, over a period ending not later than five years after the Petition Date, and in a manner not less favorable than the most favored General Unsecured Claim provided for by the Plan. Accordingly, if Reorganized Accipiter so elects, the installment payments will be made in the same manner as the installment payments made on account of the Allowed General Unsecured Claims in Class 4, beginning on the latest of: (a) the Effective Date, or as soon after that date as feasible; (b) 30 days after the Claim is Allowed, or as soon after that date as feasible; and (c) another date on which the holder of the Claim and the Debtor or Reorganized Accipiter agree. Reorganized Accipiter retains the right to prepay any Allowed Priority Tax Claim, or any remaining balance of such a Claim, in full or in part, at any time on or after the Effective Date without premium or penalty.

**c. Secured Tax Claims.** If any Allowed Priority Tax Claim is secured by a Lien on any property of the Estate under applicable non-bankruptcy law, the holder of that claim retains the Lien it held as of the Petition Date securing the claim until the claim is paid in full. After satisfaction of the secured tax claim, the claimholder's Lien is released in accordance with applicable non-bankruptcy law.

**2.05. Professional Fee Claims.** Each Allowed Professional Fee Claim is paid in Cash, beginning three Business Days after the Professional Fee Claim is Allowed, in installment payments such that no less than 50% of each Allowed Professional Fee Claim is paid by the end of the first three full calendar months following Allowance and, in each of the following nine calendar months, the remaining balance of each Allowed Professional Fee Claim is paid in equal monthly installments. Reorganized Accipiter may prepay any portion of any Allowed Professional Fee Claim at any time on or after the Effective Date as long as prepayments are made ratably on account of all Allowed Professional Fee Claims. For purposes of Plan confirmation, all holders of Professional Fee Claims must agree to the treatment of those Claims set forth in this Section.



Each Person seeking an award by the Bankruptcy Court of Professional Fees must file with the Bankruptcy Court and serve on Reorganized Accipiter and the Committee its final application for allowance of compensation for services rendered and reimbursement of expenses incurred through the Effective Date by the Professional Fee Bar Date.

**2.06. Post-Effective Date Professional Fees.** All claims of Professionals for services rendered or expenses incurred after the Effective Date in connection with the Chapter 11 Case and the Plan including those relating to consummation of the Plan, any appeal of the Confirmation Order, the preparation, filing, and review of Professional Fee Claims, the prosecution of Avoidance Actions and Litigation Claims, and the resolution of Disputed Claims, are paid by Reorganized Accipiter on receipt of an invoice, or on other terms on which Reorganized Accipiter and the Professional agree, without the need for further Bankruptcy Court authorization or entry of a Final Order. The Debtor may dispute and not pay any Professional fees incurred after the Effective Date. The Bankruptcy Court retains jurisdiction to resolve any such disputes.

### **ARTICLE 3.**

#### **CLASSIFICATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**3.01. Class 1—Priority Claims.** Class 1 consists of all Priority Claims other than Priority Tax Claims.

**a. Impairment and Voting.** Class 1 is unimpaired. All holders of Allowed Priority Claims are deemed to have accepted the Plan and do not vote on the Plan.

**b. Treatment.** Each holder of an Allowed Priority Claim other than a Priority Tax Claim receives Cash in an amount equal to its Allowed Priority Claim on the later of: (i) the Effective Date, or as soon after that date as feasible; and (ii) 30 days after the Priority Claim is Allowed; unless, before the later of those two dates, the holder of the Claim and Reorganized Accipiter agree in writing to a different date.

**3.02. Class 2—Miscellaneous Secured Claims.** Class 2 consists of all Miscellaneous Secured Claims. Each holder of a Allowed Miscellaneous Secured Claim is considered to be in its own separate subclass within Class 2, and each such subclass is deemed to be a separate Class for purposes of this Plan.

**a. Impairment and Voting.** Class 2 is unimpaired. All holders of Allowed Miscellaneous Secured Claims in Class 2 are deemed to have accepted the Plan and do not vote on the Plan.

**b. Treatment.** Each holder of an Allowed Miscellaneous Secured Claim in Class 2 receives Cash in an amount equal to its Allowed Miscellaneous Secured Claim from the proceeds of the collateral to which the claim pertains on the later of: (i) the Effective Date, or as soon after that date as feasible; and (ii) the closing date of the sale of the collateral to which the claim pertains; unless, before the later of those two dates, the holder of the Claim and Reorganized Accipiter agree in writing to a different date. Each holder of an Allowed Miscellaneous Secured Claim retains all Liens on applicable property of the Estate arising under applicable law until that holder's Allowed Miscellaneous Secured Claim is paid in full under this Section of the Plan.

**3.03. Class 3—RUS Claim.** Class 3 consists of the RUS Claim.

**a. Allowance of Claim.** The RUS Claim is an Allowed Secured Claim in the amount of \$20,755,214.17.

**b. Impairment and Voting.** Class 3 is impaired. RUS is entitled to vote on the Plan.

**c. Treatment.** In full and final satisfaction of the RUS Claim, as of the Effective Date, Reorganized Accipiter makes the New RUS Notes payable to RUS.

(i) *New RUS Note A.* The New RUS Note A, in the principal amount of \$4,000,000, bears simple interest at 3.27% per year, for a term of 240 months. Reorganized Accipiter pays regularly-amortized principal and interest monthly, due on the last Business Day of each month, beginning with the first complete month following the Effective Date.

(ii) *New RUS Note B.* The New RUS Note B, in the principal amount of \$16,755,215, bears simple interest at 3.27% per year, for a term of 240 months. Reorganized Accipiter is not required to pay any principal during the New RUS Note B's term. All interest on the New RUS Note B's principal accrues and is added to the amount due under the New RUS Note B. All unpaid principal and accrued interest is due on the first day of the 241st full month following the Effective Date. Accruing interest under the New RUS Note B is not added to principal during the note's term—*i.e.*, no interest accrues on accrued and unpaid interest.

(iii) *Mandatory Principal Pre-Payment.* Reorganized Accipiter must remit to RUS any Above-Ratio Cash existing at the end of each three-month period during the New RUS Note B's term, due on the last Business Day of the month following the end of that three-month period, which RUS must apply first to accrued interest, then to principal, owed under the New RUS Note B.

(iv) *Permitted Principal Pre-Payment.* Reorganized Accipiter may pay any amount toward the principal balance of either New RUS Note in addition to the principal owed in any month during the notes' term without any penalty and without creating any obligation to pay principal at any other time in a manner inconsistent with the notes' terms.

(v) *Retention of Lien.* As security for the repayment of the New RUS Notes, RUS retains all Liens RUS held in the Debtor's property on the Petition Date and limited by Bankruptcy Code § 552(a) and (b). In accordance with Bankruptcy Code § 552(a) and (b), RUS is granted no Liens in any other property of the Debtor or Reorganized Accipiter not existing on the Petition Date.

(vi) *Sale of Collateral.* In the exercise of its sole business judgment and without needing to obtain any consent of any other party, Reorganized Accipiter may sell any of its assets, including any asset subject to a Lien in RUS's favor, if:

(A) all sale proceeds reasonably attributed to an asset subject to RUS's Lien, net of fees and costs of the sale and up to the amount then owed under the New RUS Note B, must be remitted to RUS at the closing of that sale and applied to the outstanding balance of the New RUS Note B, first to accrued interest, then to principal; and

(B) RUS's right to credit bid any amount owed under the New RUS Note B at such a sale is preserved.

If the above conditions are met with respect to the sale of any asset subject to RUS's Lien, RUS must release its Lien on that asset contemporaneously with the closing of that sale.

**3.04. Class 4—General Unsecured Claims.** Class 4 consists of all Allowed General Unsecured Claims, including Rejection Claims.

**a. Impairment and Voting.** Class 4 is impaired. All holders of Allowed Class 4 Claims are entitled to vote on the Plan.

**b. Treatment.** Each holder of an Allowed General Unsecured Claim will receive, in full and final satisfaction of its Allowed General Unsecured Claim, installment payments of Cash totaling the amount of its Allowed General Unsecured Claim. The installment payments will be made beginning on the first Business Day of each full calendar month after the Effective Date such that no less than 50% of each Allowed General Unsecured Claim is paid by the end of the first three full calendar months following the Effective Date and, in each of the nine calendar months thereafter, the remaining balance of each Allowed General Unsecured Claim is paid in equal monthly installments. Reorganized Accipiter may prepay any Allowed General Unsecured Claim, or any remaining balance of such a Claim, in full or in part, at any time on or after the Effective Date without affecting the timing of payments on account of any other Allowed General Unsecured Claim.

**3.05. Class 5—Equity Interests and Equity Related Claims.** Class 5 consists of all Equity Interests and Equity Related Claims.

**a. Impairment and Voting.** Class 5 is impaired. All holders of Equity Interests and Equity Related Claims are entitled to vote on the Plan.

**b. Treatment.** All holders of Equity Interests in the Debtor retain their Equity Interests, which, as of the Effective Date, constitute 100% of the outstanding equity interests in Reorganized Accipiter. Holders of Equity Related Claims neither receive nor retain any rights, property, or distributions on account of their Equity Related Claims under this Plan.

#### **ARTICLE 4. IMPLEMENTATION**

**4.01. Effective Date Funding.** Cash payments on and after the Effective Date on account of Allowed Administrative Claims, Allowed Priority Tax Claims, and Allowed Priority Claims under the Plan, and any Cure required under Section 5.03 of the Plan, are made from the Debtor's Cash. The Debtor must reserve sufficient Cash on the Effective Date to pay all Administrative Claims, Priority Claims, and Cure amounts in the Maximum Amount. All Cash not so reserved vests in Reorganized Accipiter on the Effective Date. Any Cash remaining on reserve after all Administrative Claims, Priority Tax Claims, Priority Claims and Cure amounts have been either Disallowed or Allowed and paid in accordance with the Plan vests in Reorganized Accipiter.

**4.02. Disputed Claims.** Reorganized Accipiter must manage Cash distributions to holders of Allowed General Unsecured Claims so as to reserve sufficient Cash to make appropriate distribution on account of any Disputed General Unsecured Claim as if that Disputed General Unsecured Claim were an Allowed General Unsecured Claim on the Effective Date in the Maximum Amount. If and when any Disputed General Unsecured Claim becomes an Allowed General Unsecured Claim, Cash sufficient to make appropriate distribution to the holder that Claim must be made from such reserves. If a Disputed General Unsecured Claim becomes a Disallowed General Unsecured Claim, all reserved distributions attributable to the holder of that Disputed General Unsecured Claim become available for Pro Rata distribution to all holders of Allowed General Unsecured Claims.

**4.03. Restated Governance Documents.** As of the Effective Date and without any further action by the directors of the Debtor or Reorganized Accipiter, the Debtor's corporate governance documents are amended and restated substantially in the forms of the Restated Governance Documents. The Restated Governance Documents prohibit (to the extent required by Bankruptcy Code § 1123(a) and (b)) the issuance of non-voting equity securities. After the Effective Date, Reorganized Accipiter may amend its corporate governance documents as permitted by applicable law.

**4.04. Section 1145 Exemption.** In accordance with Bankruptcy Code § 1145, the retention of the Equity Interests under the Plan is exempt from all federal, state, or local law requiring registration for offer or sale of a security or registration or licensing of an issuer of, underwriter of, or broker dealer in such securities and is deemed to be a public offer of such securities.

**4.05. Necessary Documents.** Reorganized Accipiter is authorized and empowered to sign any documents reasonably necessary to effect any provision of the Plan.

**4.06. Cancellation of Instruments and Agreements.** On the Effective Date, all agreements, instruments, and other documents relating to any Equity Interests, other than the Equity Interests themselves and the Management Restricted Stock Agreements, automatically terminate such that all obligations under all such agreements, instruments, and other documents are deemed fully and finally waived, released, canceled, extinguished, and discharged.

**4.07. Effectiveness of Instruments and Agreements.** On the Effective Date, all instruments, agreements, and documents issued, entered into, delivered, or filed under the Plan are effective, binding, and enforceable in accordance with their respective terms.

**4.08. No Corporate Action Required.** As of the Effective Date, (a) the adoption, execution, delivery, and implementation of all contracts, leases, instruments, releases, and other agreements related to or contemplated by the Plan, and (b) the other matters provided for under, or in furtherance of, the Plan involving corporate action required of the Debtor, are deemed to have occurred, are effective as provided in the Plan, and are deemed authorized and approved in all respects without further order of the Bankruptcy Court or any further action by the Debtor's officers, directors, or shareholders.

#### **4.09. Post-Confirmation Management, Indemnification, and Insurance.**

**a. Initial Board of Directors.** The initial board of directors of Reorganized Accipiter as of the Effective Date comprise three directors: (1) Lewis van Amerongen; (2) David Sharbutt; and (3) Patrick Sherrill.

**b. Initial Officers.** The initial officers of Reorganized Accipiter as of the Effective Date are: (1) Patrick Sherrill, President and Chief Executive Officer; (2) Jenifer Vellucci, Vice President and Chief Financial Officer.

**c. Indemnification and Insurance.** Reorganized Accipiter must provide its directors and officers with indemnification rights and a D&O Policy, and must compensate its directors and officers consistently with compensation provided before the Chapter 11 Case. Reorganized Accipiter assumes any pre-Petition Date indemnification obligations to any directors and officers employed with the Debtor as of the Petition Date.

### **ARTICLE 5. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**5.01. Assumption of Executory Contracts and Unexpired Leases.** All executory contracts and unexpired leases designated on Exhibit B to the Plan as assumed are assumed as of the Effective Date, except for any executory contract or unexpired lease: (i) that has been rejected in accordance with a Final Order entered before the Confirmation Date; or (ii) as to which a motion to reject has been filed with the Bankruptcy Court before the Confirmation Date.

**5.02. Rejection of Executory Contracts and Unexpired Leases.** All executory contracts and unexpired leases either (i) designated on Exhibit B to the Plan as rejected or (ii) existing but not listed on Exhibit B to the Plan are rejected as of the Effective Date, except for any executory contract or unexpired lease that has been assumed or rejected in accordance with a Final Order entered on or before the Confirmation Date.

**5.03. Approval.** Entry of the Confirmation Order constitutes: (a) the approval under Bankruptcy Code § 365 of the assumption of the executory contracts and unexpired leases assumed under the Plan; and (b) the approval under Bankruptcy Code § 365 of the rejection of the executory contracts and unexpired leases rejected under the Plan. Notwithstanding anything contained in this Section 5.03 to the contrary, the Debtor may add or change the treatment (assumed or rejected) of any executory contract or unexpired lease on Exhibit B to the Plan, thus changing the treatment of the contract or lease under the Plan, at any time before the Effective Date.

**5.04. Cure of Defaults.** On the Effective Date or as soon after as is feasible, the Debtor must Cure any defaults under any executory contract or unexpired lease assumed under the Plan. Any monetary Cure required for the assumption of a particular contract or lease is indicated on Exhibit B to the Plan. Any non-Debtor party to any such contract or lease that disputes the amount of Cure indicated on Exhibit B to the Plan must file a written objection with the Bankruptcy Court no later than the deadline for objecting to confirmation of the Plan. Any such objections not raised in that manner are waived. The Debtor will not, and need not as a condition to assuming any executory contract or unexpired lease under the Plan, Cure any default that need not be cured under Bankruptcy Code § 365(b).

**5.05. Rejection Claims Bar Date.** All Rejection Claims must be filed by the Rejection Claims Bar Date. Any Rejection Claim not filed by the Rejection Claims Bar Date is forever barred. All Rejection Claims are General Unsecured Claims under the Plan. With respect to any executory contract or unexpired lease rejected by the Debtor before the Confirmation Date, the deadline for filing a Rejection Claim remains the deadline set forth in the order of the Bankruptcy Court authorizing that rejection. If the order did not contain such a deadline, the deadline for filing a Rejection Claim is 30 days after the Confirmation Date.

**5.06. Indemnification Obligations.** Any obligation of the Debtor to indemnify any Person serving as a fiduciary of any employee benefit plan of the Debtor under charter, by-laws, contract, or applicable state law is an executory contract and is assumed as of the Effective Date. Any obligation of the Debtor to indemnify, reimburse, or limit the liability of any Person, including any officer or director of the Debtor, or any agent, professional, financial advisor, or underwriter of any securities issued by the Debtor related to any acts or omissions occurring before the Petition Date is rejected under the Plan as of the Confirmation Date if the Effective Date occurs. Any Claim resulting from these rejections in favor of any Person must be filed by the Rejection Claims Bar Date and constitutes a General Unsecured Claim. Notwithstanding any of the foregoing, nothing contained in the Plan affects the rights of any Person covered by any applicable D&O Policy with respect to any such policy.

**5.07. Benefit Plans.** All Benefit Plans not already assumed before the Confirmation Date are assumed as of the Confirmation Date if the Effective Date occurs. No Cure is required and no Cure will be made with respect to the assumption under the Plan of any Benefit Plan. Any non-Debtor beneficiary or participant in a Benefit Plan that disputes that no Cure is required for the assumption of the Benefit Plan must file an objection with the Bankruptcy Court no later than the deadline for objecting to confirmation of the Plan. Any such objections not raised in that manner are waived.

## **ARTICLE 6. DETERMINATION OF CLAIMS**

**6.01. Objections to Claims.** Notwithstanding the occurrence of the Effective Date, and except as to any Claim that has been Allowed before the Effective Date, Reorganized Accipiter may object to the allowance or seek estimation of any Claim against the Debtor on any grounds permitted by the Bankruptcy Code. Nothing in this section affects any party-in-interest's right to object to the allowance of any Claims or to seek the subordination of any Claim on any grounds permitted by the Bankruptcy Code. All objections to Claims must be brought by filing the appropriate pleading in the Bankruptcy Court before the first Business Day that is 180 days after the Confirmation Date, but the Bankruptcy Court may approve a later date on Reorganized Accipiter's motion filed (but not necessarily heard) before the first Business Day that is 180 days after the Confirmation Date.

**6.02. Contingent Claims.** Until a Contingent Claim becomes an Allowed Claim or is Disallowed, the Claim is treated as a Disputed Claim for all purposes under the Plan. The holder of a Contingent Claim is entitled to a distribution under the Plan only when the Contingent Claim becomes an Allowed Claim. Any Contingent Claim for reimbursement or contribution held by a Person that may be liable with the Debtor on a Claim of a Creditor is Disallowed as of the

Effective Date if: (a) that Creditor's Claim is Disallowed; (b) the Claim for reimbursement or contribution is contingent as of the Effective Date; or (c) that Person asserts a right of subrogation to the rights of the Creditor under Bankruptcy Code § 509.

## **ARTICLE 7. AVOIDANCE ACTIONS, LITIGATION CLAIMS**

**7.01. Retention and Reservation.** All Avoidance Actions and Litigation Claims are retained and reserved for Reorganized Accipiter, which is designated as the Estate's representative under Bankruptcy Code § 1123(b)(3)(B) for purposes of the Avoidance Actions and Litigation Claims.

**7.02. Prosecution.** Reorganized Accipiter has the sole authority to prosecute, defend, compromise, settle, and otherwise deal with any Avoidance Actions and Litigation Claims, and does so in its capacity as a representative of the Estate in accordance with Bankruptcy Code § 1123(b)(3)(B). Reorganized Accipiter pays the fees and costs associated with litigating the Avoidance Actions and the Litigation Claims. Reorganized Accipiter has sole discretion to determine in its business judgment which Avoidance Actions and Litigation Claims to pursue, which to settle, and the terms and conditions of those settlements.

## **ARTICLE 8. CONDITIONS PRECEDENT**

**8.01. Conditions to Confirmation.** The Plan may not be confirmed unless and until:

**a. Approval of Disclosure Statement.** The Bankruptcy Court enters a Final Order approving the Disclosure Statement.

**b. Form of Confirmation Order.** The Bankruptcy Court enters the Confirmation Order in form and substance reasonably acceptable to the Debtor. If the any party is unable to reach an agreement with any other party regarding the form and substance of the Confirmation Order, the Bankruptcy Court will resolve all such disputes.

**c. Substance of Confirmation Order.** The Confirmation Order contains the following:

(i) The provisions of the Confirmation Order are non-severable and mutually dependent;

(ii) The Plan's assumption or rejection of all executory contracts and unexpired leases is approved;

(iii) The Debtor is released and discharged from all obligations arising under all executory contracts and unexpired leases rejected during the Chapter 11 Case or under the Plan;

(iv) In accordance with Bankruptcy Code § 1123(b)(3)(B), Reorganized Accipiter is appointed as the Estate's representative to prosecute, compromise, or abandon any Avoidance Actions and Litigation Claims in accordance with the Plan; and

(v) The Bankruptcy Court retains jurisdiction to the fullest extent permissible by applicable law and at least to the extent contemplated by Article 10 of the Plan.

**8.02. Conditions to Effectiveness.** The Effective Date does not occur unless and until:

- a. The Confirmation Date occurs;
- b. No request for revocation of the Confirmation Order under Bankruptcy Code § 1144 is pending;
- c. Sufficient Cash exists to make all payments required under the Plan to be made on the Effective Date; and
- d. All instruments and agreements to be issued, entered into, delivered, or filed under the Plan are issued, entered into, delivered, or filed and are effective.

**8.03. Waiver of Conditions.** The Debtor may waive any condition to confirmation or the Effective Date, in whole or in part, at any time without notice, an order of the Bankruptcy Court, or any further action other than proceeding to confirmation and consummation of the Plan.

## **ARTICLE 9. TITLE TO PROPERTY; THIRD PARTY RIGHTS**

**9.01. Vesting of Assets.** Except as provided in the Plan or the Confirmation Order, all property of the Estate vests in Reorganized Accipiter on the Effective Date free and clear of all Liens and Claims existing before the Effective Date. From and after the Effective Date, Reorganized Accipiter may use and dispose of its property free of any restrictions of the Bankruptcy Code, including the employment of, and payment to, Professionals except as otherwise provided in the Plan or the Confirmation Order.

**9.02. Discharge.** Except as provided in the Plan or the Confirmation Order: (a) the rights granted under this Plan and the treatment of Claims and Equity Interests under this Plan are in exchange for and in complete satisfaction, discharge, and release of, all Claims including any interest accrued on any Claim from the Petition Date; and (b) confirmation of this Plan discharges the Debtor and Reorganized Accipiter from all Claims or other debts that arose before the Confirmation Date to the fullest extent allowed under Bankruptcy Code §§ 1141(a), 1141(b), 1141(c), and 1141(d)(1).

**9.03. Injunction.**

**a. Generally.** Except as provided in the Plan or the Confirmation Order, as of the Confirmation Date, all entities that have held, currently hold, or may hold a Claim that is unclassified by the Plan or that is classified by Article 3 of the Plan or that is subject to a distribution under the Plan, or an Equity Interest or other right of an equity holder, are permanently enjoined from taking any of the following actions on account of any such Claims, debts, liabilities, Equity Related Claims, or Equity Interests or rights: (i) commencing or continuing in any manner any action or other proceeding against any property to be distributed under the Plan; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment,



award, decree, or order against any property to be distributed under the Plan; (iii) creating, perfecting, or enforcing any Lien or encumbrance against any property to be distributed under the Plan; and (iv) commencing or continuing any action, in any manner, in any place, that does not comply with or is inconsistent with the provisions of the Plan or the Bankruptcy Code.

**b. Limited Scope.** Nothing in this Plan: (i) extinguishes, prohibits, or otherwise limits the right of any holder of a Claim to assert a right to setoff or recoupment arising in connection with that Claim as part of the resolution and treatment of that Claim under the Plan; (ii) extinguishes, prohibits, or otherwise limits the right of the Estate or Reorganized Accipiter to assert and prevail on any Avoidance Action or Litigation Claim; (iii) enjoins or otherwise precludes any party-in-interest from enforcing the terms of the Plan and the Confirmation Order.

**9.04. Exculpation.** None of the Debtor, the Committee, Reorganized Accipiter, or any of their respective members, officers, directors, employees, advisors, professionals, or agents has any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of, the Chapter 11 Case, the pursuit of confirmation of the Plan, the consummation of the Plan, or the administration of the Plan or the property to be distributed under the Plan, except for willful misconduct or gross negligence. In all respects, the Debtor, the Committee, Reorganized Accipiter, and each of their respective members, officers, directors, employees, advisors, professionals, and agents are entitled to rely on the advice of counsel with respect to their duties and responsibilities under the Plan.

**9.05. Preservation of Insurance.** The satisfaction of Claims as provided in the Plan, except as necessary to be consistent with the Plan, does not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtor or any other Person.

## **ARTICLE 10. RETENTION OF JURISDICTION**

**10.01. Bankruptcy Court Jurisdiction.** Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court retains as much jurisdiction over the Chapter 11 Case after the Effective Date as legally permissible, including jurisdiction to:

**a.** Allow, disallow, determine, liquidate, classify, estimate, or establish the amount, priority, or secured or unsecured status of any Claim, and resolve any request for payment of any Administrative Claim and any objection to the Allowance or priority of any Claim;

**b.** Grant or deny any applications for allowance of compensation or reimbursement of expenses authorized under the Bankruptcy Code or the Plan;

**c.** Resolve any matters related to the assumption or rejection of any executory contract or unexpired lease to which the Debtor is a party and to hear, determine and, if necessary, liquidate any Claims arising from such rejection;

**d.** Ensure that distributions required under the Plan are accomplished in accordance with the Plan;

e. Decide or resolve any motions, adversary proceedings, contested matters, and any other matters and grant or deny any applications or motions involving the Debtor that may be pending on the Effective Date;

f. Enter any necessary or appropriate orders to implement or consummate the Plan's provisions and all contracts, instruments, releases, and other agreements or documents created in connection with the Plan or the Disclosure Statement;

g. Resolve any cases, controversies, suits, or disputes that may arise in connection with the consummation, interpretation, or enforcement of the Plan, or any Person's obligations incurred in connection with the Plan;

h. Hear and determine any motion or application to modify the Plan before or after the Effective Date under Bankruptcy Code § 1127 or modify the Disclosure Statement or any contract, instrument, release, or other agreement or document issued, entered into, filed, or delivered in connection with the Plan or the Disclosure Statement; or hear or determine any motion or application to remedy any defect or omission or reconcile any inconsistency in any Bankruptcy Court order, the Plan, the Disclosure Statement, or any contract, instrument, release, or other agreement or document issued, entered into, filed or delivered in connection with the Plan or the Disclosure Statement, in such manner as may be necessary or appropriate to consummate the Plan, to the extent authorized by the Bankruptcy Code;

i. Issue injunctions, enter and implement other orders, or take any other necessary or appropriate actions to restrain any entity's interference with consummation or enforcement of the Plan;

j. Enter and implement any necessary or appropriate orders if the Confirmation Order is for any reason modified, stayed, reversed, revoked, or vacated;

k. Determine any other matters that may arise in connection with or related to the Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, or other agreement or document issued, entered into, filed, or delivered in connection with the Plan, the Disclosure Statement or the Confirmation Order;

l. Issue a final decree and enter an order closing the Chapter 11 Case; and

m. Adjudicate the Disputed Claims, the Avoidance Actions, and the Litigation Claims and any other cause of action or claims of the Estate.

## **ARTICLE 11. AMENDMENT AND WITHDRAWAL OF PLAN**

**11.01. Amendment of Plan.** At any time before the Confirmation Date, the Debtor may amend the Plan under Bankruptcy Code § 1127(a) as long as doing so does not materially and adversely affect the treatment and rights of the holders of Claims and Equity Interests under the Plan. After the Confirmation Date but before substantial consummation of the Plan as defined in Bankruptcy Code § 1101(2), the Debtor or Reorganized Accipiter may, under Bankruptcy Code § 1127(b), institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any

inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and any matters necessary to carry out the Plan's purposes as long as those proceedings do not materially and adversely affect the treatment of holders of Claims or Equity Interests under the Plan. The Debtor or Reorganized Accipiter must serve prior notice of those proceedings in accordance with the Bankruptcy Rules or applicable order of the Bankruptcy Court.

**11.02. Revocation or Withdrawal of Plan.** The Debtor may revoke or withdraw the Plan at any time before the Confirmation Date. If withdrawn or revoked, the Plan is void and nothing contained in the Plan waives or affects any Claims by or against the Debtor or any other Person in any further proceedings involving the Debtor or an admission of any sort, and the Plan and any transaction contemplated by the Plan may not be admitted into evidence in any proceeding.

## **ARTICLE 12. MISCELLANEOUS**

**12.01. Effecting Documents; Further Transactions; Timing.** The Debtor and Reorganized Accipiter and all other parties any agreement or instrument to be executed under the Plan must, as of the Effective Date and without further order of the Bankruptcy Court, execute, deliver, file, or record all contracts, instruments, releases, and other agreements or documents contemplated in the Plan, and take all actions necessary or appropriate to effect and further evidence the terms of the Plan. All transactions required to occur on the Effective Date under the terms of the Plan are deemed to have occurred simultaneously.

**12.02. Exemption from Transfer Taxes.** Under Bankruptcy Code § 1146(a): (a) the issuance, distribution, transfer, and exchange of assets or property of the Estate; (b) the execution, assignment, modification, or recording of any lease or sublease; and (c) the execution, delivery, or recording of a deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, the Confirmation Order, or any transaction contemplated above, or any transactions arising out of, contemplated by, or in any way related to, the foregoing are not subject to any document recording tax, stamp tax, conveyance fee, intangibles or similar tax, mortgage tax, or real estate transfer tax, or other similar tax or governmental assessment and the appropriate state or local government officials or agents are directed to forego the collection of any such tax or assessment and to accept for filing or recordation any of the foregoing instruments or other documents without the payment of any such tax or assessment.

**12.03. Binding Effect.** The Plan is binding on, and inures to the benefit of, the Debtor and the holders of all Claims and Equity Interests and their respective successors and assigns.

**12.04. Governing Law.** Except to the extent that the Bankruptcy Code or other federal law is applicable or as provided in any document entered into in connection with the Plan, the rights, duties and obligations of any Person arising under the Plan are governed by, and construed and enforced in accordance with, the internal laws of the State of Arizona, without regard for Arizona's choice of law provisions.

**12.05. Modification of Treatment of Claims.** Reorganized Accipiter reserves the right to modify the treatment of any Allowed Claim in any manner adverse only to the holder of that Claim at any time after the Effective Date on that holder's prior written consent.

**12.06. Setoffs and Recoupment.** The Debtor and Reorganized Accipiter may but are not required to set off or recoup against any Claim and the payments or other distributions to be made under the Plan in respect of such Claim, Claims of any nature that arose before the Petition Date that the Estate may have against the holder of such Claim to the extent such Claims may be set off or recouped under applicable law, but neither the failure to do so nor the fact of any Claim under the Plan becoming Allowed constitutes a waiver or release by the Estate of any such claim that it may have against such holder.

**12.07. Notices.** Any notice required or permitted to be provided under the Plan must be in writing and served by certified return-receipt-requested U.S. mail, hand delivery, overnight courier, or read-receipt-enabled email.

**12.08. Delivery of Notices.** If personally delivered or sent by overnight courier in accordance with the Plan, notice is deemed delivered on actual receipt; if emailed in accordance with the Plan, notice is deemed delivered on the noticing party's receipt of the read-receipt; and if sent by U.S. mail in accordance with the Plan, notice is deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of that failure or refusal. Any party to the Plan may change its address for the purposes of the Plan by giving notice of the change.

**12.09. Severability.** If the Bankruptcy Court or any appellate court finds the Plan or any provision of the Plan to be invalid, illegal or unenforceable, or if the Bankruptcy Court cannot confirm the Plan under Bankruptcy Code § 1129, the Bankruptcy Court, at the Debtor's or Reorganized Accipiter's request, may retain the power to alter and interpret the Plan or any such provision to make it valid or enforceable to the maximum extent feasible, consistent with the original purpose of the provision held to be invalid or unenforceable, and such provision will then become applicable as altered or interpreted. The Confirmation Order constitutes a judicial determination and provides that each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and enforceable.

**12.10. Plan Documents.** Notwithstanding anything to the contrary contained in the Plan, including any reference in the Plan to documents in the forms annexed to the Plan as exhibits, the Debtor may revise any such document by filing the revised document with the Bankruptcy Court at least five days before the deadline for voting on the Plan, or with the written consent of all parties in interest that are entitled to vote on the Plan and are materially and adversely affected by the revision.

**12.11. Inconsistency.** If any inconsistency between the Plan and the Disclosure Statement exists, the Plan governs. If any inconsistency between the Plan and any document promulgated under the Plan exists, the document governs.

**12.12. Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection with the Plan, the Debtor or Reorganized Accipiter, as applicable, must comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions under the Plan remain subject to any such withholding and reporting requirements. The Debtor and Reorganized Accipiter, as applicable, may take all actions necessary to comply with such withholding and

reporting requirements. Notwithstanding any other provision of the Plan, each holder of an Allowed Claim that receives a distribution under the Plan has sole responsibility for the satisfaction or payment of any tax obligation imposed by any governmental unit, including income, withholding, and other tax obligation on account of such distribution.

**12.13. Post-Effective Date Fees; Final Decree.** Reorganized Accipiter is responsible for paying any post-Effective Date fees under 28 U.S.C. § 1930(a)(6) and filing post-confirmation reports until the Bankruptcy Court enters a final decree, which Reorganized Accipiter may seek as soon as feasible after distributions under the Plan have commenced. Notice of application for a final decree need be given only to those parties that, after the Effective Date, specifically request such notice in writing.

**12.14. De Minimis Distributions.** No distributions of less than \$1 will be made on account of any Claim. If the holder of an Allowed Claim does not receive a distribution owing to this provision on the Effective Date or any subsequent date, the Allowed Claim remains eligible for distributions on the first date set for distributions when such distribution exceeds \$1.

**12.15. Method of Payment; Payments, Filings, and Notices Only on Business Days.** Payments of Cash under the Plan must be made by check drawn on a domestic bank or by wire transfer from a domestic bank. Whenever any payment, distribution, filing, delivery, or notice to be made under the Plan is due on a day other than a Business Day, it may instead be made, without interest or penalty, on the immediately following Business Day.

**12.16. Delivery of Distributions; Undeliverable Distributions.** Distributions to a holder of an Allowed Claim will be made: (a) to the address set forth on the holder's proof of claim, the Schedules, or, if no proof of claim is filed and the holder does not appear on the Schedules, the holder's last known address; or (b) to the address set forth in any written notice of address change delivered to the Debtor or Reorganized Accipiter. If any holder's distribution is returned as undeliverable, no further distributions to that holder will be made unless and until Reorganized Accipiter is notified of the holder's then-current address. Claims held by a holder whose distributions are returned as undeliverable and who fails to notify Reorganized Accipiter of its correct address within 90 days after the distributions are returned to Reorganized Accipiter as undeliverable will be expunged, after which all unclaimed property will revert to Reorganized Accipiter free of any restrictions. Nothing contained in the Plan requires the Debtor or Reorganized Accipiter to attempt to locate any holder of an Allowed Claim.

**12.17. Failure to Negotiate Checks.** Checks issued in respect of distributions under the Plan are void if not negotiated within 180 days after issuance. Any amounts returned to Reorganized Accipiter in respect of a non-negotiated check will be held by Reorganized Accipiter. Requests for reissuance of any such check must be made in writing directly to Reorganized Accipiter by the holder of the Allowed Claim with respect to which such check originally was issued. All amounts represented by any voided check will be held until the later of 180 days after the Effective Date and 180 days after the voided check was issued, and all requests for reissuance by the holder of the Allowed Claim in respect of the voided check must be made before that date. After that time, all such amounts vest in Reorganized Accipiter free of any restriction. Claims in respect of void checks and the underlying distributions are forever barred against the Debtor, Reorganized Accipiter, their agents, or their respective property, notwithstanding any federal or state escheat laws to the contrary.

Dated August 27, 2014

**PERKINS COIE LLP**

By:     /s/ Jordan A. Kroop      
Jordan A. Kroop  
Bradley A. Cosman  
Kirstin Eidenbach

**ACCIPITER COMMUNICATIONS, INC.,  
d/b/a ZONA COMMUNICATIONS**

By:     /s/ Patrick Sherrill      
Patrick Sherrill  
President and Chief Executive Officer

## **Exhibit A**

### **Avoidance Actions**

All statutory causes of action preserved for the Estate under Bankruptcy Code §§ 510, 542, 543, 544, 545, 547, 548, 549, 550, and 553 that the Estate may have against any Person, including any Person identified below.

### **Litigation Claims**

All rights, claims, torts, liens, actions, causes of action, avoiding powers, proceedings, debts, contracts, judgments, offsets, damages, and demands in law or in equity, whether known or unknown, contingent or otherwise, that the Estate has brought or may have against any Person, including any Person identified below.

**Exhibit B  
Executory Contracts and Unexpired Leases**

All executory contracts and unexpired leases to which the Debtor is a party that have not been assumed or rejected by separate order of the Bankruptcy Court before the Effective Date (and have not expired by their own terms on or before the Effective Date) is either assumed and assigned or rejected as indicated below.

Non-Debtor Party	Contract Description	Treatment	Cure Amount

**TO COME**



**Exhibit C**  
**Amended and Restated Articles of Incorporation**  
**Amended and Restated Bylaws**

**TO COME**