

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

)	Chapter 11
In re:)	
)	Case No. 15-11469 (LSS)
F-Squared Investment Management, LLC, <i>et al.</i> , ¹)	
)	Jointly Administered
)	
Debtors.)	Re: Docket Nos. 9 & 192
)	

**NOTICE OF FILING OF AMENDMENT NO. 2
TO ASSET PURCHASE AGREEMENT**

PLEASE TAKE NOTICE that, on July 8, 2015 (the "**Petition Date**"), the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

PLEASE TAKE FURTHER NOTICE that, on the Petition Date, the Debtors filed the *Debtors' Motion for Entry of an Order (I)(A) Approving Procedures in Connection with Sale of Substantially All of Certain Debtors' Assets, (B) Approving Stalking Horse Protections, (C) Scheduling Related Auction and Hearing to Consider Approval of Sale, (D) Approving Procedures Related to Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Approving Form and Manner of Notice Thereof, and (II)(A) Authorizing Sale of Substantially All of Certain Debtors' Assets Pursuant to Successful Bidder's Asset Purchase Agreement, Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (B) Approving Assumption and Assignment of Certain Executory Contracts and*

¹ The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: F-Squared Investment Management, LLC (9247), F-Squared Investments, Inc. (0788), F-Squared Retirement Solutions, LLC (9247), F-Squared Alternative Investments, LLC (9247), F-Squared Solutions, LLC (9247), F-Squared Institutional Advisors, LLC (9247), F-Squared Capital, LLC (5257), AlphaSector LLS GP 1, LLC (3342), and Active Index Solutions, LLC (0788). The Debtors' address is 2221 Washington Street, Suite 201, Newton, Massachusetts 02462.

Unexpired Leases Related Thereto [Docket No. 9] (the “**Motion**”)² with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

PLEASE TAKE FURTHER NOTICE that, on August 25, 2015, the Bankruptcy Court entered the *Order (A) Authorizing and Approving (1) the Sale of Substantially all of the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests; and (2) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith; and (B) Granting Related* [Docket No. 192] (the “**Sale Order**”) approving the sale of substantially of the Debtors’ assets to Broadmeadow Capital, LLC (the “**Purchaser**”) pursuant to that certain Asset Purchase Agreement, dated July 3, 2015 (the “**Asset Purchase Agreement**”), as amended by that certain Amendment No. 1 to the Asset Purchase Agreement dated as of July 22, 2015.

PLEASE TAKE FURTHER NOTICE that the Debtors and the Purchaser had a disagreement over certain conditions of the Asset Purchase Agreement and to resolve such disagreement have entered into that certain Amendment No. 2 (the “**APA Amendment**”)³ to the Asset Purchase Agreement, which, among other things, amends the Revenue Multiple for the Assets Under Advisement at the end of the Initial Earn-Out Period or the Final Earn-Out Period.

PLEASE TAKE FURTHER NOTICE that, prior to entering into the APA Amendment, the Debtors consulted the Official Committee of the Unsecured Creditors (the “**Committee**”) and the Committee approved the Debtors’ entry into the APA Amendment.

PLEASE TAKE FURTHER NOTICE that a copy of the APA Amendment is attached hereto as **Exhibit A**.

² All capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion, the Sale Order or the Asset Purchase Agreement (each, as defined below), as applicable.

³ Certain portions of the APA Amendment have been redacted as they contain confidential information, including client names, set forth on the schedules to the Asset Purchase Agreement.

Date: September 8, 2015
Wilmington, Delaware

RICHARDS, LAYTON & FINGER, P.A.

/s/ Amanda R. Steele

Russell C. Silberglied (No. 3462)

Michael J. Merchant (No. 3854)

Zachary I. Shapiro (No. 5103)

Amanda R. Steele (No. 5530)

920 N. King Street

Wilmington, Delaware 19801

Telephone: 302-651-7700

Facsimile: 302-651-7701

Email: silberglied@rlf.com

merchant@rlf.com

shapiro@rlf.com

steele@rlf.com

Counsel for Debtors and Debtors in Possession

Exhibit A

(APA Amendment)

Execution Version

AMENDMENT NO. 2 TO ASSET PURCHASE AGREEMENT

THIS AMENDMENT NO. 2 TO ASSET PURCHASE AGREEMENT (this "Amendment"), dated as of September 8, 2015, is entered into by and among F-SQUARED INVESTMENT MANAGEMENT, LLC, a Delaware limited liability company ("Parent"), THE DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARIES OF THE PARENT LISTED ON SCHEDULE A ATTACHED HERETO (the "Seller Subsidiaries" and, together with Parent, "Sellers"), and BROADMEADOW CAPITAL, LLC, a Delaware limited liability company ("Purchaser"), and acknowledged and agreed to by CEDAR CAPITAL, LLC, a Delaware limited liability company. Sellers and Purchaser are sometimes herein referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, Sellers and Purchaser are parties to that certain Asset Purchase Agreement, dated as of July 3, 2015, as amended by Amendment No. 1 thereto, dated as of July 22, 2015 (as amended, modified or supplemented from time to time, the "Purchase Agreement");

WHEREAS, a disagreement has arisen as to whether Sellers have satisfied all of the conditions set forth in Article X of the Purchase Agreement (other than conditions that by their nature are to be satisfied at the Closing) and whether Purchaser is obligated to consummate the Transactions under the Purchase Agreement;

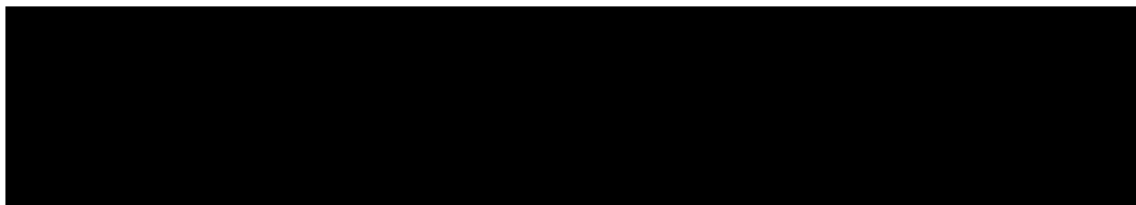
WHEREAS, to resolve the disagreement, the Parties have determined that it is in their respective best interests to amend the Purchase Agreement as specified herein; and

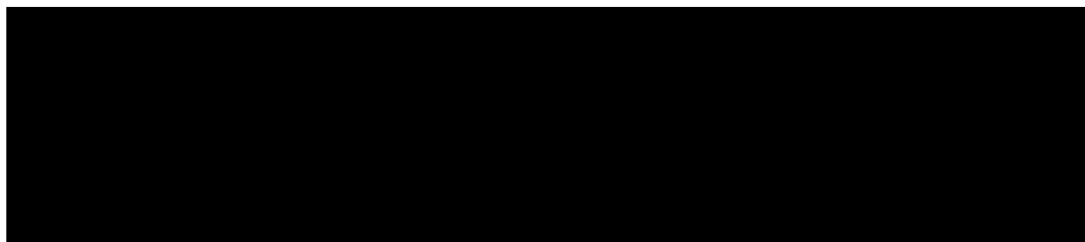
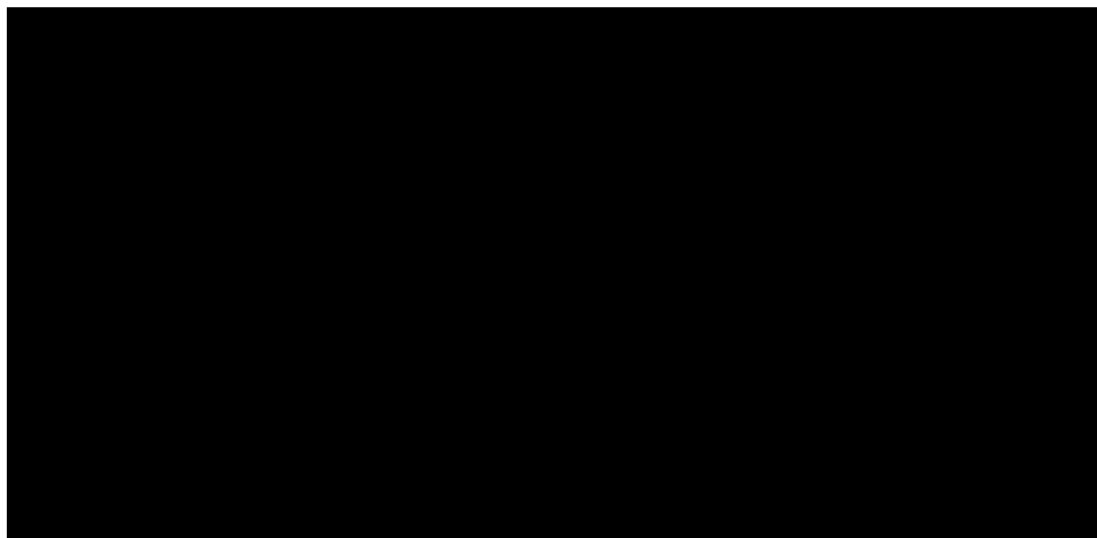
WHEREAS, capitalized terms used, but not otherwise defined herein, shall have the meanings given to such terms in the Purchase Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained and contained in the Purchase Agreement, the Parties hereby agree as follows:

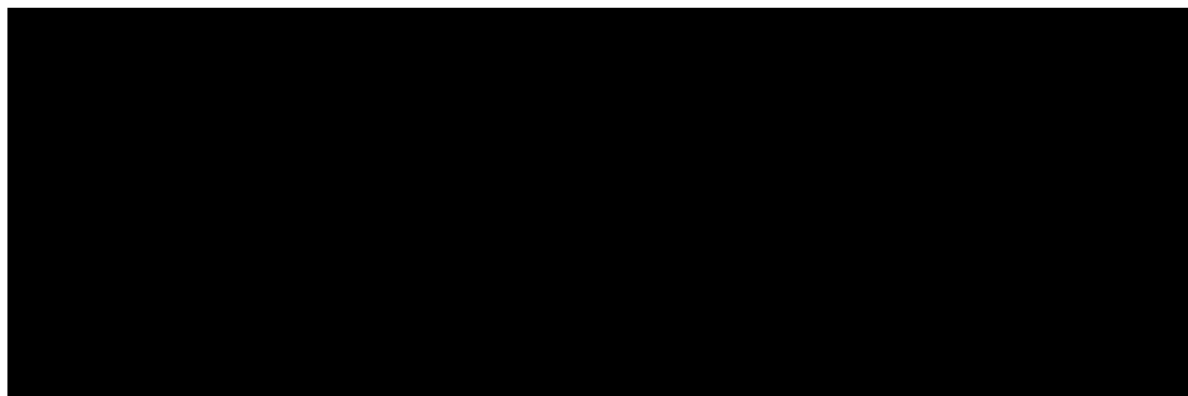
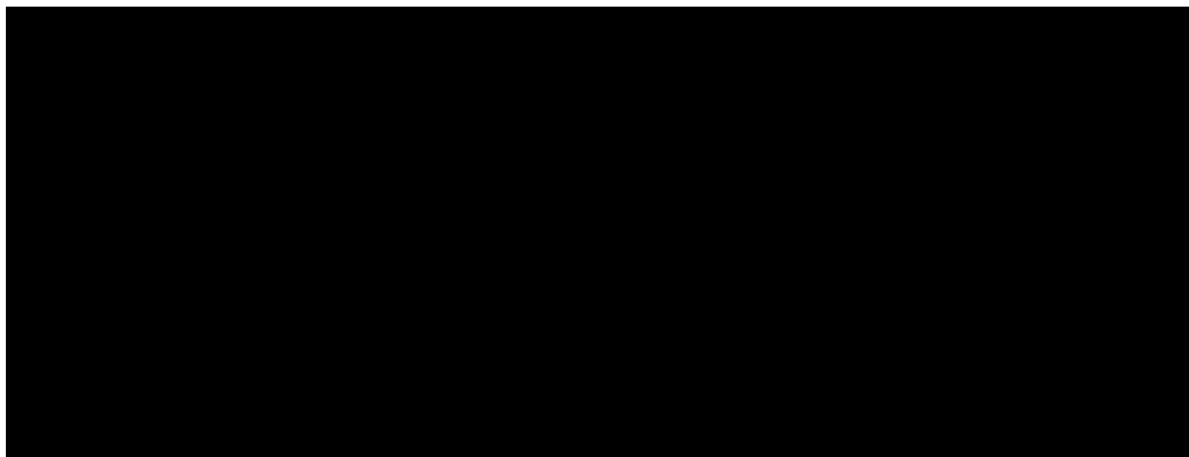
AGREEMENT

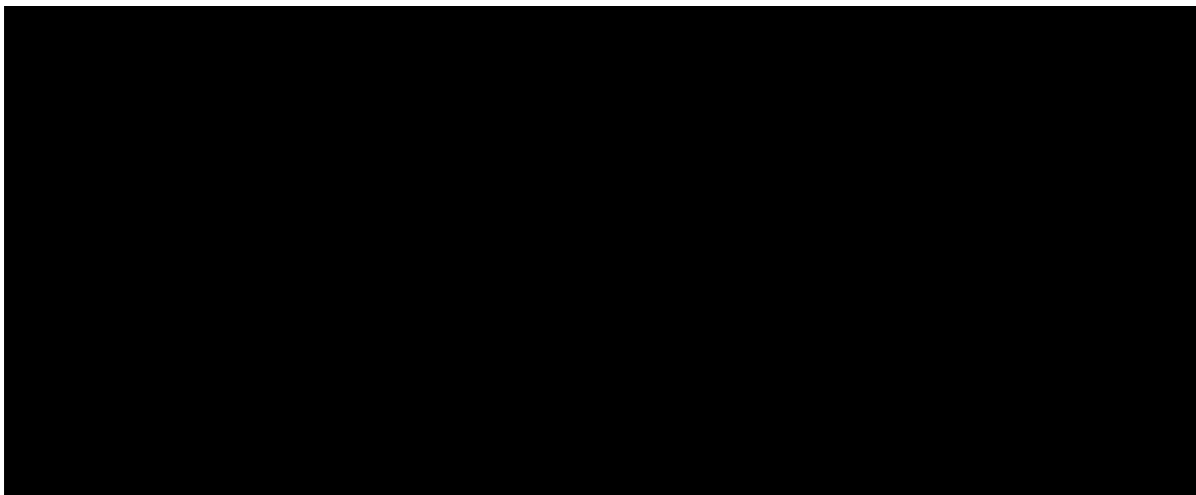
1. Amendments. The Purchase Agreement is hereby amended as set forth below.
 - 1.1. Schedule 1.1(a) of the Purchase Agreement is hereby amended as follows:
 - 1.1.1. The following Contracts are deleted Schedule 1.1(a):





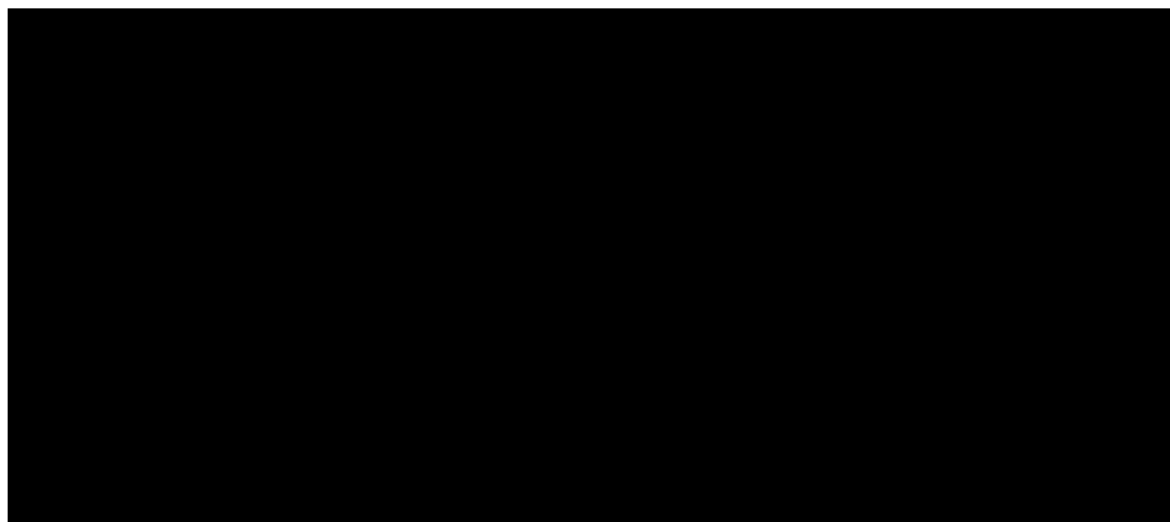
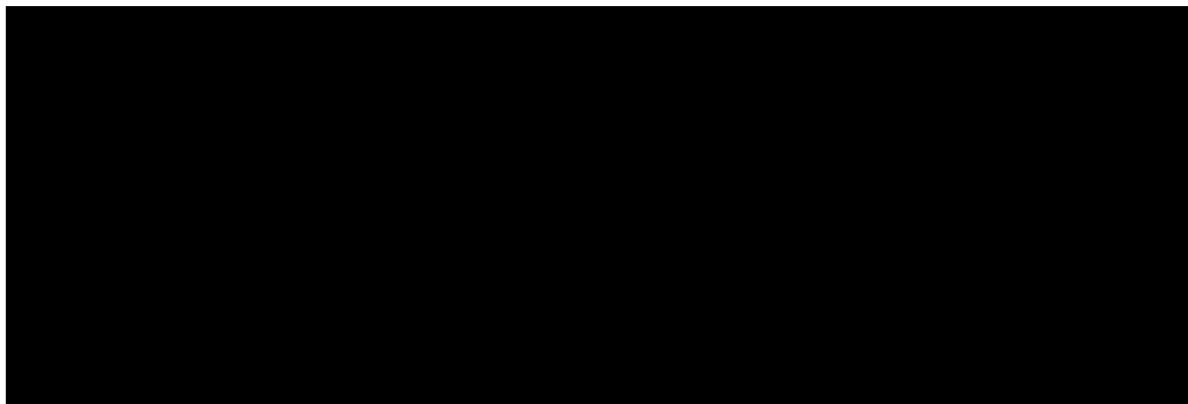
1.1.2. The following Contracts and the Contracts with the following contract parties are added to Schedule 1.1(a):



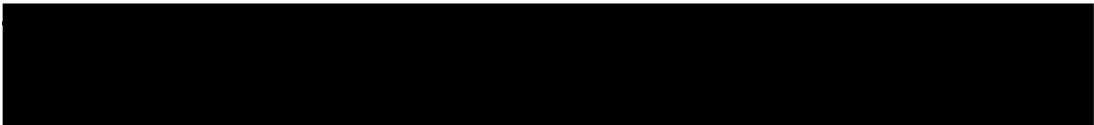
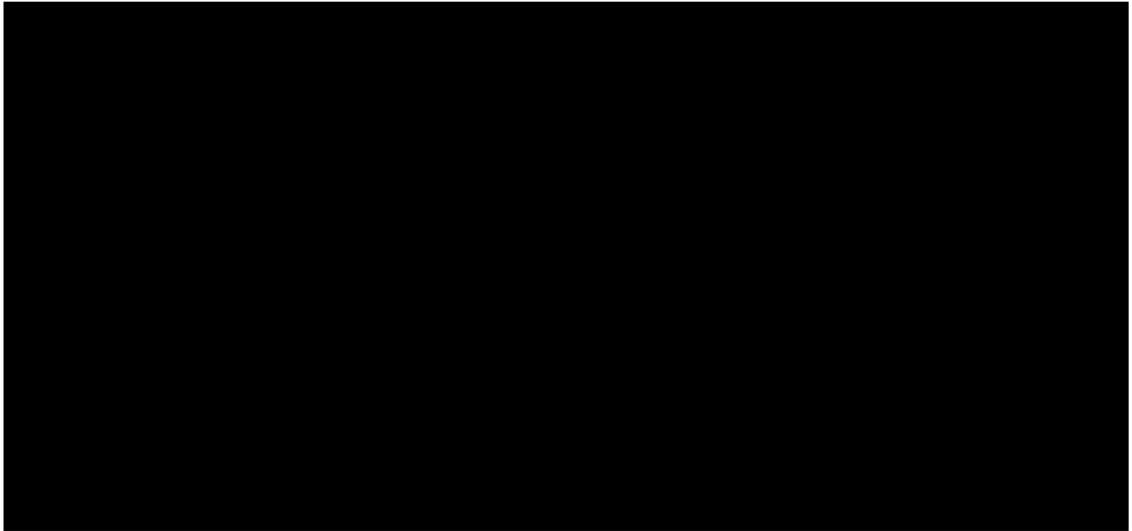
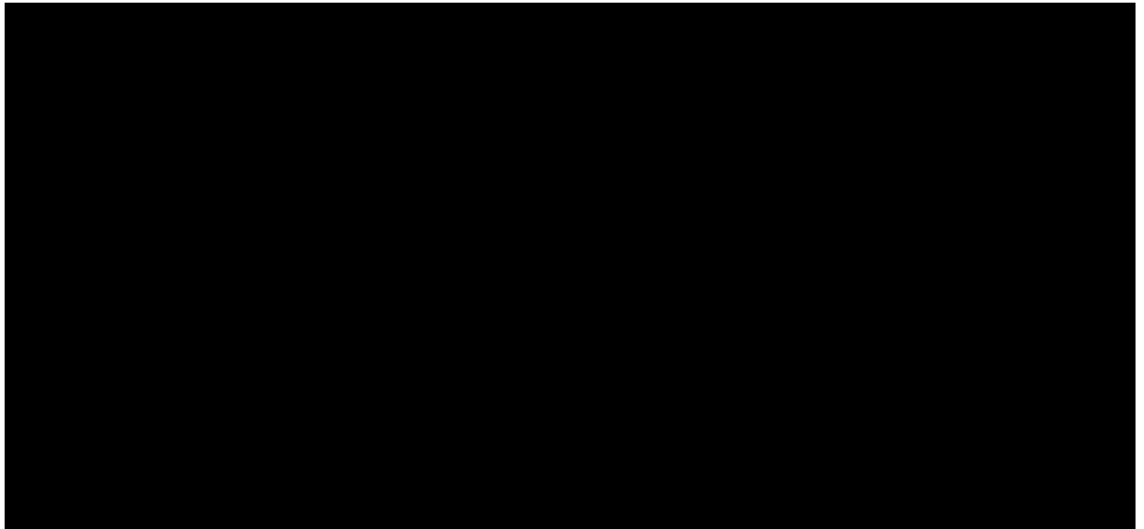


1.2. Schedule 1.1(e) Agreement is hereby amended as follows:

1.2.1. The following Contracts are added to Schedule 1.1(e):

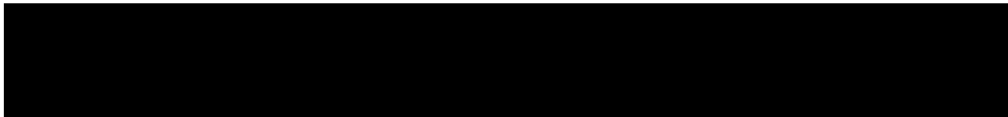


1.2.2. The following Contracts and Contracts with the following contract parties are deleted from Schedule 1.1(e):

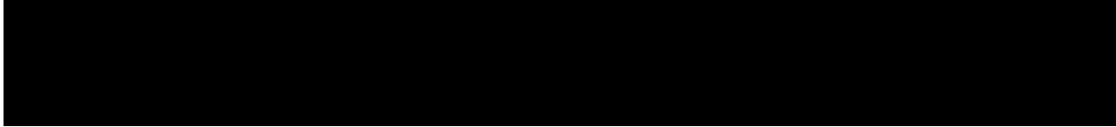


1.3. Schedule 2.2 of the Purchase Agreement is hereby amended as set forth below.

1.3.1. Schedule 2.2 of the Purchase Agreement is hereby amended to remove the following assets from such schedule and by removing such assets from Schedule 2.2, such assets shall be deemed Purchased Assets under the Purchase Agreement.

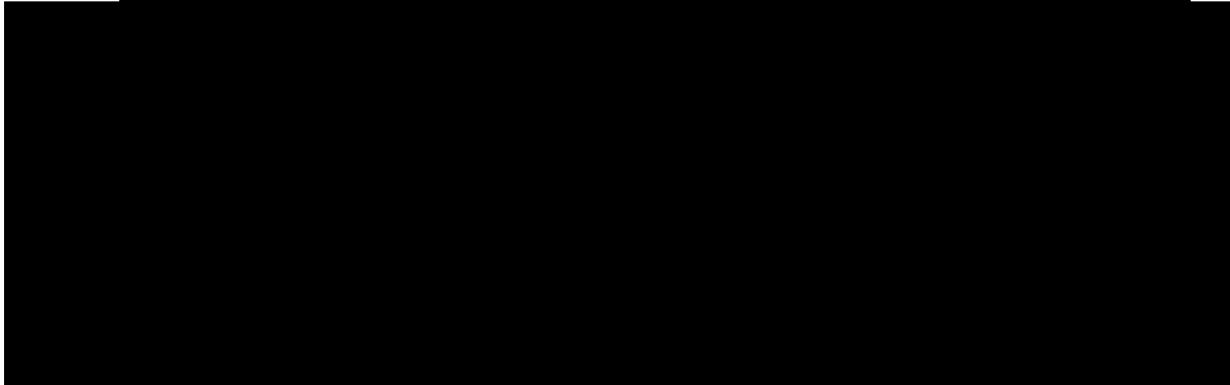
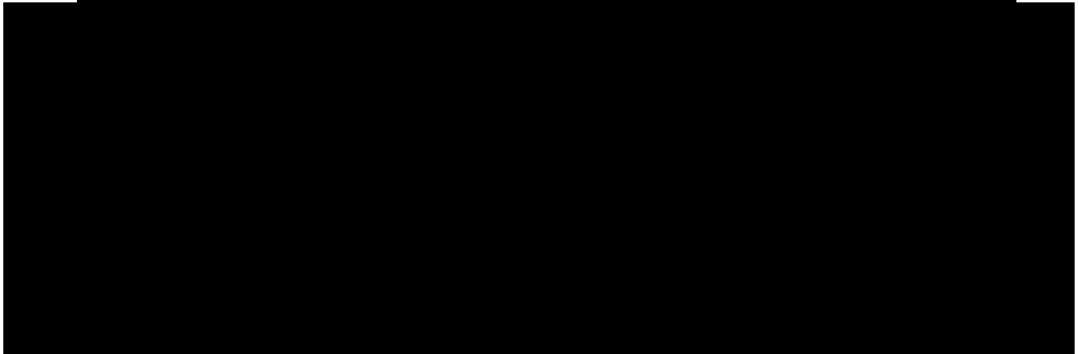
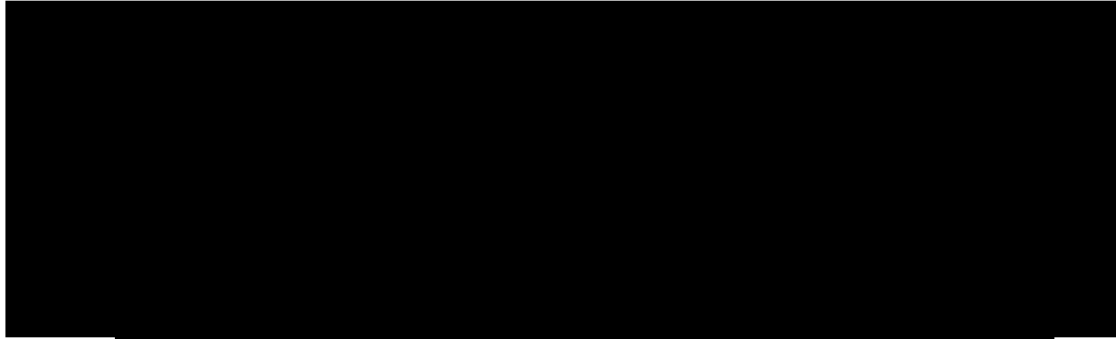


1.3.2. Schedule 2.2 of the Purchase Agreement is hereby amended to add the following asset to such schedule and by adding such asset to Schedule 2.2, such assets shall be deemed an Excluded Asset under the Purchase Agreement.



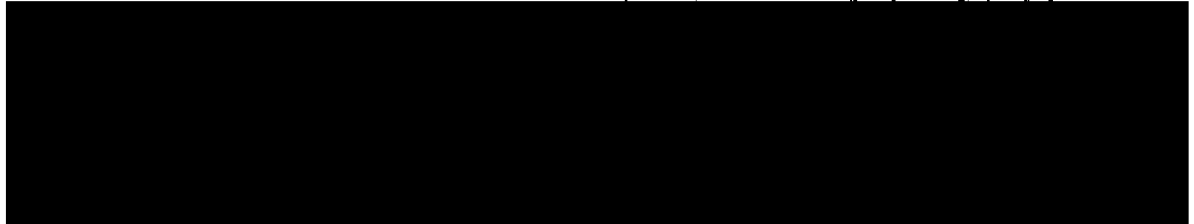
1.4. Section 2.5 of the Purchase Agreement is hereby amended to add the following new sections (e) and (f):

"(e) The Parties hereby agree that in accordance with Section 2.5(a) of the Agreement, the below listed non-executory Purchased Contracts will be assigned to Purchaser at the Closing unless the Bankruptcy Court orders otherwise. If a non-debtor party files an objection to the assumption and assignment of any such Contract, then Purchaser may determine, pursuant to Section 2.5(c), whether to have the relevant Contract be an Excluded Contract or to have such Contract transferred pursuant to and in accordance with Section 2.7 (Further Conveyances; Nonassignable Assets).



1.5. Section 2.6 and the Schedules to the Purchase Agreement are hereby amended as set forth below.

1.5.1. Section 2.6 of the Purchase Agreement is hereby amended to add the following at the end of Section 2.6(d):



1.5.2. The Purchase Agreement is hereby amended to add new Schedule 2.6(d) in the form attached hereto as Exhibit A.

1.6. The definition of "Revenue Multiple" set forth in Section 3.4(b) of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

"Revenue Multiple" means the Revenue Multiple set forth below for Assets Under Advisement at the end of the Initial Earn-Out Period or the Final Earn-Out Period, as applicable.

<u>Assets Under Advisement</u>	<u>Revenue Multiple</u>
$\$0.00 \leq AUA < \$1,000,000,000$	0.0
$\$1,000,000,000 \leq AUA < \$2,000,000,000$	1.0
$\$2,000,000,000 \leq AUA < \$3,000,000,000$	1.2
$\$3,000,000,000 \leq AUA < \$4,000,000,000$	1.3
$\$4,000,000,000 \leq AUA < \$5,000,000,000$	1.4
$\$5,000,000,000 \leq AUA$	1.5

"

1.7. Section 3.5 of the Purchase Agreement is hereby amended and restated in its entirety to read as follows:

"Section 3.5 Fee Adjustment Amount.

(a) Sellers have delivered to the Purchaser an estimated statement of the amount of the Unearned Fees and the amount of Unpaid Fees estimated as of the Closing Date, which reflects that estimated Unearned Fees as of the Closing Date are \$92,782.55 and estimated Unpaid Fees as of the Closing Date are \$244,584.11 (the "Estimated Closing Date Unearned Fees and Unpaid Fees").

(b) Sellers understand and acknowledge that notwithstanding the requirements contained in Section 3.5 of the Purchase Agreement, Sellers are

unable to provide Purchaser, prior to Closing, with reasonable supporting documentation and data used by Sellers to calculate the Estimated Closing Date Unearned Fees and Unpaid Fees. Accordingly, it is hereby agreed that at Closing, Purchaser shall deposit \$151,801.56 (the "Escrowed Funds") in escrow pursuant to that certain Closing Escrow Agreement among the Parties (other than Cedar) and the Closing Escrow Holder.

(c) Reserved.

(d) By October 20, 2015, Purchaser shall provide Sellers with all documentation and data received by Purchaser after the Closing Date Effective Time that Sellers need to calculate the actual Unearned Fees as of the Closing Date, the actual Unpaid Fees as of the Closing Date and the Fee Adjustment Amount. On or before October 30, 2015, Sellers shall provide Purchaser with their proposed calculation of the actual Unearned Fees as of the Closing Date, the actual Unpaid Fees as of the Closing Date and the Fee Adjustment Amount, along with reasonable supporting documentation and data used by Sellers to calculate same (collectively, "Sellers' Actual Unearned Fees/Unpaid Fees Proposal"). On or before November 15, 2015, Sellers and Purchaser shall endeavor in good faith to unanimously agree in writing on the amount of actual Unearned Fees as of the Closing Date, the actual Unpaid Fees as of the Closing Date, and the Fee Adjustment Amount. In the event Sellers and Purchaser are unable to so agree in writing by November 15, 2015, the determination of the amount of actual Unearned Fees as of the Closing Date, the amount of actual Unpaid Fees as of the Closing Date and the Fee Adjustment Amount shall be submitted to the Special Accountants for determination, whose determination shall be binding and conclusive on the parties. The determination of the Special Accountants may be submitted to the Bankruptcy Court for enforcement, but the parties agree that the Bankruptcy Court shall not have authority to determine the amount of actual Unearned Fees as of the Closing Date, the actual Unpaid Fees as of the Closing Date or the Fee Adjustment Amount. The Special Accountants shall have thirty (30) days from the date that the Special Accountants are engaged by Sellers and Purchaser to make such determination.

(e) The Special Accountants shall be directed to determine the non-prevailing party in a dispute between Sellers and Purchaser with respect to determination of the Fee Adjustment Amount, and such non-prevailing party shall be responsible for paying all fees and expenses of the Special Accountants.

(f) Based on amounts agreed in writing by the parties or determined by the Special Accountants, as applicable, if the Unpaid Fees at the Closing Date Effective Time exceed the Unearned Fees at the Closing Date Effective Time, the amount such Unpaid Fees exceed the Unearned Fees shall be the "Fee Adjustment Amount" that shall be added to the Purchase Price. If the Unearned Fees at the Closing Date Effective Time exceed the Unpaid Fees at the Closing Date Effective Time, the amount such Unearned Fees exceed the

Unpaid Fees shall be the "Fee Adjustment Amount" that shall be subtracted from the Purchase Price.

(g) Subject to Section 3.5(i) and Section 3.5(j) below, any Fee Adjustment Amount payable to Sellers shall be distributed from the Escrowed Funds, and the remaining balance, if any, of the Closing Escrow Account shall be distributed from the Escrowed Funds to Purchaser.

(h) The parties acknowledge that Documents located on servers that are Excluded Assets may include privileged information of Sellers related to the SEC Related Actions that Sellers do not desire to transfer to Purchaser (any such information, "Privileged Information"). Sellers hereby agree that on or before September 25, 2015, Sellers shall deliver to Purchaser all data and Documents residing on such servers that are Purchased Assets under the Purchase Agreement, provided that Seller shall not be required to deliver any Privileged Information or other Documents that are not Purchased Assets.

(i) Sellers hereby agree that notwithstanding anything to the contrary contained in the Purchase Agreement or this Amendment: (i) Sellers shall be liable to Purchaser for any damages incurred by Purchaser arising from Sellers' failure to comply in all respects with Section 3.5(g), and that the limitations on liability set forth in the Purchase Agreement (including, without limitation, in Section 11.5 thereof) shall not apply with respect to any such liability; and (ii) Purchaser shall be entitled to a distribution from the Escrowed Funds in an amount not to exceed the damages incurred by Purchaser as a result of such failure, which distribution shall take priority over any distribution otherwise payable to Sellers from the Escrowed Funds pursuant to this Amendment.

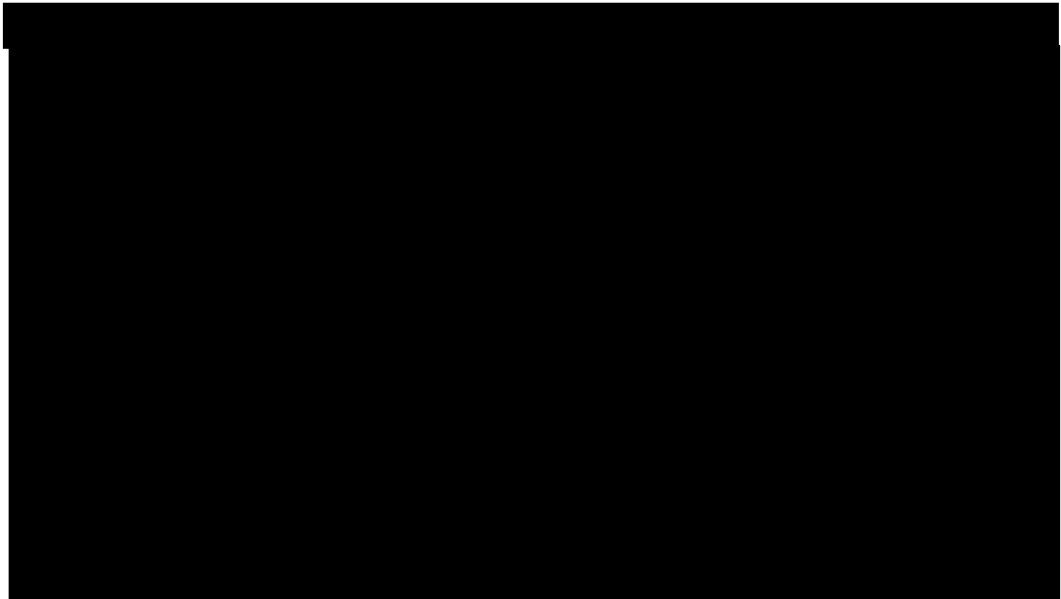
(j) Notwithstanding anything to the contrary contained herein, if any Fee Adjustment Amount is to be paid to the Sellers from the Closing Escrow Amount, then such amount shall not be distributed by the Escrow Holder until the earlier of (i) such time as Purchaser has provided written notice to the Escrow Holder that Purchaser has received all Documents that are Purchased Assets and that are located on servers that are Excluded Assets or (ii) December 30, 2015, provided, however, that the Escrow Holder shall not distribute any portion of the Closing Escrow Amount pursuant to this Section 3.5(j)(ii) if Escrow Holder has received written notice from Sellers or Purchaser directing Escrow Holder not to distribute the Closing Escrow Amount except pursuant to written agreement of the Sellers and Purchaser or a court order. The Escrowed Funds shall be governed by the terms of this Amendment, the Transition Services Agreement and the Closing Escrow Agreement, and will be released by the Escrow Holder and delivered to Purchaser and/or Sellers, as applicable, in accordance with such terms."

1.8. Schedule 5.11 of the Purchase Agreement is hereby amended to add the following sentence at the end of Item 1:



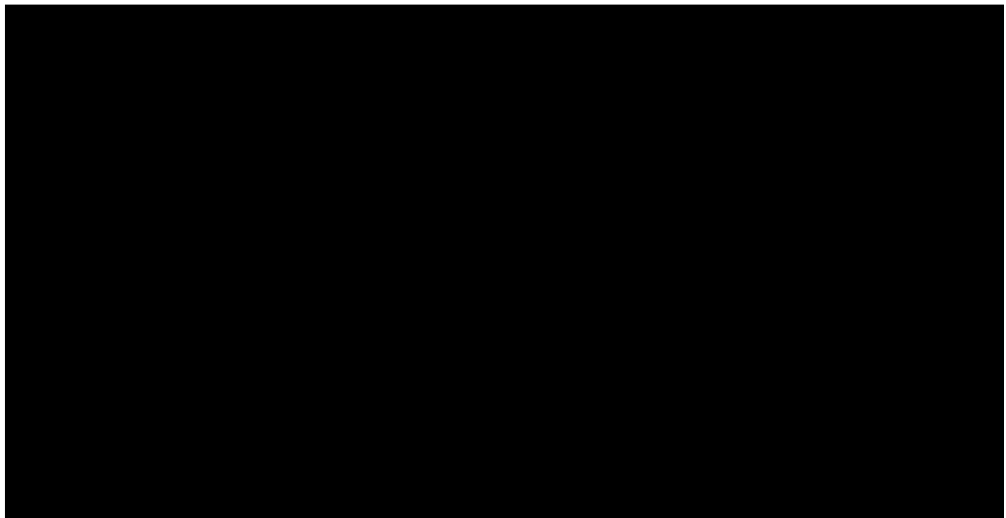
1.9. Schedule 5.12 of the Purchase Agreement is hereby amended as follows:

1.9.1. Subsection (a) of Schedule 5.12 is amended to include the Contracts with the below identified Clients in the "Schedule of Material Client Contracts" which has been incorporated by reference into item 1 of such schedule:



1.9.2. Subsection (b) of Schedule 5.12 is amended to add the below identified notices after item of 4:

(a) "5. The Sellers have received termination notices from the following contract parties with respect to such parties' Contracts, the contract parties no longer have any Assets Under Advisement with Sellers or the Contracts with the following contract parties have been terminated:





1.10. The Purchase Agreement is hereby amended to include Schedule 8.14 in the form attached hereto as Exhibit B.

1.11. The Parties hereby confirm that F-Squared US Sector Fund is an Excluded Asset. Following the Closing, Sellers shall wind-up the F-Squared US Sector Fund in accordance with Section 8.12 of the Purchase Agreement, provided, however, Sellers will not be required to wind up F-Squared US Sector Fund until such wind up is approved by an Order of the Bankruptcy Court. Sellers agree to file a motion seeking an Order to approve such wind up with the Bankruptcy Court no later than five (5) Business Days after the Closing Date. For purposes of the Purchase Agreement, the Investment In Hedge Fund Amount shall be \$0.

1.12. Section 8.14 of the Purchase Agreement is hereby amended to add the following new sentence at the end of such section.

"Purchaser and Sellers agree to promptly after the Closing, pursuant to Section 2.7 of the Purchase Agreement, take such further actions as are necessary to transfer the Acquired Seeded Strategies and all right, title and interest therein from Sellers to either Purchaser or Purchaser's designee. The Parties agree that Purchaser's designee receiving the interest in the Acquired Seeded Strategies shall be an Affiliate of Purchaser."

2. Confirmation and Waivers of Closing Conditions.

2.1. Purchaser hereby confirms that all of the conditions set forth in Section 10.1(a) and Section 10.3(d) of the Purchase Agreement have been satisfied or are hereby waived by Purchaser.

2.2. Sellers hereby confirm that all of the conditions set forth in Section 10.2(a) and Section 10.3(d) of the Purchase Agreement have been satisfied or are hereby waived by Sellers.

3. Agreement in Effect. Except as expressly set forth in this Amendment, the Purchase Agreement shall remain in full force and effect and shall not be deemed to have been modified or amended by this Amendment. All references in the Purchase Agreement to the term "Agreement" means the Purchase Agreement as amended hereby. Each of the Parties understands and agrees that by executing and delivering this Amendment the other Parties do not hereby waive any of their respective rights or remedies under the Purchase Agreement.

4. Entire Agreement. This Amendment, the Purchase Agreement (including the Schedules and Exhibits thereto) and the Confidentiality Agreement represent the entire understanding and agreement among the Parties with respect to the subject matter hereof.

5. Severability. If any term or other provision of this Amendment is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Amendment will nevertheless remain in full force and effect so long as the economic or legal substance of the transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Amendment so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the transactions are consummated as originally contemplated to the greatest extent possible.
6. GOVERNING LAW; SUBMISSION TO JURISDICTION. THIS AMENDMENT, AND ALL CLAIMS OR CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT) THAT MAY BE BASED UPON, ARISE OUT OF OR RELATE TO THIS AMENDMENT, OR THE NEGOTIATION, EXECUTION, TERMINATION, VALIDITY, PERFORMANCE OR NONPERFORMANCE OF THIS AMENDMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY CONFLICT OF LAWS PRINCIPLES THEREOF. THE PROVISIONS OF SECTION 13.3 OF THE PURCHASE AGREEMENT ARE INCORPORATED HEREIN BY REFERENCE AND MADE A PART HEREOF.

7. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. Any signature delivered by facsimile or electronic mail shall be deemed to be an original signature hereunder.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed by their respective duly authorized signatories as of the date first above written.

SELLERS

PARENT:

F-SQUARED INVESTMENT MANAGEMENT, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

SELLER SUBSIDIARIES:

F-SQUARED INVESTMENTS, INC.

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

F-SQUARED INSTITUTIONAL ADVISORS, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

F-SQUARED ALTERNATIVE INVESTMENTS,
LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

ALPHASECTOR LLS GP 1, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

ACTIVE INDEX SOLUTIONS, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

F-SQUARED RETIREMENT SOLUTIONS, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

F-SQUARED SOLUTIONS, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

F-SQUARED CAPITAL, LLC

By: David Phelps
Name: David Phelps
Title: Chief Restructuring Officer

PURCHASER

BROADMEADOW CAPITAL, LLC

By: 

Name: Paul Ingersoll
Title: Chief Executive Officer

and acknowledged and agreed to by:

CEDAR CAPITAL, LLC

By: 

Name: Paul Ingersoll
Title: Chief Executive Officer

SCHEDULE A

Seller Subsidiaries

F-SQUARED INVESTMENTS, INC.

F-SQUARED INSTITUTIONAL ADVISORS, LLC

F-SQUARED ALTERNATIVE INVESTMENTS, LLC

ALPHASECTOR LLS GP 1, LLC

ACTIVE INDEX SOLUTIONS, LLC

F-SQUARED RETIREMENT SOLUTIONS, LLC

F-SQUARED SOLUTIONS, LLC

F-SQUARED CAPITAL, LLC

Exhibit A

Schedule 2.6(d)

Contracts with the following contract counterparties:



Exhibit B

Schedule 8.14

Acquired Seeded Strategies

[attached]