

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

In re:

Pegasus Rural Broadband, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 11-11772 (PJW)

(Jointly Administered)

DEBTORS' JOINT PLAN OF REORGANIZATION

Submitted by:

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Dated: February 7, 2012

Nothing contained herein shall constitute an offer, acceptance, or a legally binding obligation of the Debtors or any other party in interest and the Plan is subject to approval of the Bankruptcy Court and other customary conditions. This Plan is not an offer with respect to any securities. This is not a solicitation of acceptances or rejections of the Plan. Acceptances or rejections with respect to the Plan may not be solicited until a disclosure statement has been approved by the United States Bankruptcy Court for the District of Delaware. Such a solicitation will only be made in compliance with applicable provisions of securities and/or bankruptcy laws.

¹ The Debtors are Xanadoo Spectrum, LLC, a Delaware limited liability company; Xanadoo Holdings, Inc., a Delaware corporation; Xanadoo, LLC, a Delaware limited liability company; Pegasus Guard Band, LLC, a Delaware limited liability company; and Pegasus Rural Broadband, LLC, a Delaware limited liability company. Xanadoo Holdings, Inc. is the sole member of Xanadoo, LLC, Pegasus Guard Band, LLC, and Pegasus Rural Broadband, LLC. Xanadoo Holdings, Inc. is a wholly owned subsidiary of Xanadoo Spectrum, LLC.

[The Debtors have received expressions of interest in writing for exit financing and for their operating assets relating to their 2.5 GHz assets and unlicensed wireless business. Other expressions of interest are being discussed with the Debtors, their investment bankers and the various interested third parties.

As a result, this Plan, including the timeline set forth herein, is subject to the ongoing negotiations with various interested parties.]

YOU SHOULD NOT RELY ON THE INFORMATION CONTAINED IN, OR THE TERMS OF, THIS PLAN FOR ANY PURPOSE (INCLUDING IN CONNECTION WITH THE PURCHASE OR SALE OF THE DEBTORS' SECURITIES) PRIOR TO THE CONFIRMATION OF THE PLAN BY THE BANKRUPTCY COURT.

Pegasus Rural Broadband, LLC, and the other above-captioned debtors and debtors-in-possession, hereby propose the following joint plan of reorganization pursuant to Chapter 11 of the Bankruptcy Code.

ARTICLE I

DEFINITIONS

The following terms used in the Plan shall have the meanings specified below, and such meanings shall be equally applicable to both the singular and plural forms of such terms, unless the context otherwise requires. Any terms defined in the Disclosure Statement and not otherwise defined herein shall have the meanings set forth in the Disclosure Statement when used herein. Any term used in the Plan, whether or not capitalized, that is not defined in the Plan or in the Disclosure Statement, but that is defined in the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules, shall have the meaning set forth therein.

1.1. **700 MHz Assets:** Shall mean the 23 licenses for the 700 MHz A Block issued by the Federal Communications Commission to, and held by, Pegasus Guard Band, LLC.

1.2. **Adequate Protection Liens:** Shall have the meaning ascribed to such term in paragraph 8(a) of the DIP Facility Order.

1.3. **Administrative Claims:** Any Claim for costs and expenses of administration of the Estates under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code, including: (a) the actual and necessary costs and expenses incurred after the Petition Date of preserving the respective Estates and operating the businesses of the Debtors; (b) Professional Fees; (c) all fees and charges assessed against the Estates under chapter 123 of Title 28 of the United States Code, 28 U.S.C. §§ 1911-30; and (d) Claims arising under section 503(b)(9) of the Bankruptcy Code. *provided, however, that the Holder of an Administrative Claim (except for an Administrative Claim based upon (i) Professional Fees, the allowance and timing for filing of applications for Professional Fees being governed by Plan Section 13.6), (ii) DIP Facility Claims, (iii) fees or charges asserted against the respective Estates under 28 U.S.C. § 1930, and (iv) goods or services provided to the Debtors during these Cases in the ordinary course of the Debtors' businesses by non-Professionals) must file a request for payment on or before the*

Applicable Administrative Claims Bar Date for such Administrative Claim to be eligible to be considered an Allowed Claim.

1.4. **Affiliate:** This term shall have the meaning assigned to it in Bankruptcy Code § 101(2); provided, however, that where the context so requires, the term “debtor” in such section shall mean that Person to which the defined term “Affiliate” refers.

1.5. **Aggregate Unsecured Claims:** Collectively, all of the General Unsecured Claims.

1.6. **Allowance Date:** With reference to a particular Claim, the date on which such Claim becomes an Allowed Claim; provided, however, that, if a Claim becomes an Allowed Claim pursuant to an order of the Bankruptcy Court, the Allowance Date shall be the date on which such order becomes a Final Order, and if a Claim becomes an Allowed Claim pursuant to the Plan, the Allowance Date shall be deemed the Effective Date.

1.7. **Allowed:** Such word shall mean, except as otherwise provided in the Plan (including in Section 13.5 hereof), with reference to a Claim: (a) any Claim against a Debtor that has been listed by such Debtor in the Schedules filed by such Debtor as liquidated in an amount greater than zero dollars (\$0.00) and not disputed or contingent and for which no contrary Proof of Claim has been filed and as to which no timely objection has been interposed; (b) any Claim as to which a Proof of Claim has been timely filed and (i) no objection to the allowance thereof has been timely interposed on or before the Claims Objection Bar Date, and (ii) such Claim has not (as applicable) been withdrawn, paid in full, or otherwise deemed satisfied in full (pursuant to an order of the Bankruptcy Court or otherwise); (c) any Claim as to which an objection has been filed and a Final Order has been entered in favor of the respective Claim Holder with respect to all or any portion of such Claim, or any such objection has been settled, waived through payment, or withdrawn; (d) any Claim that has otherwise been allowed by a Final Order (including, without limitation, the DIP Facility Order, with respect to DIP Facility Claims); (e) any Claim as to which, upon the lifting of the automatic stay pursuant to Bankruptcy Code § 362, the liability of a Debtor, allowance, and the amount thereof are determined by a Final Order of a court of competent jurisdiction other than the Bankruptcy Court; (f) with respect to any Administrative Claim for goods or services provided to the Debtors during these Cases in the ordinary course of the Debtors’ businesses by non-Professionals, such Administrative Claim has not been withdrawn, paid, or otherwise satisfied in full (pursuant to an order of the Bankruptcy Court or otherwise in the ordinary course of the Debtors’ businesses), or otherwise deemed satisfied in full in the ordinary course of the Debtors’ businesses; or (g) any Claim that is expressly deemed an Allowed Claim under the Plan (including the Lenders’ Deficiency Claim, if any). Except for the DIP Facility Claims and unless otherwise ordered by the Bankruptcy Court prior to Confirmation, or as specifically provided to the contrary in the Plan with respect to any particular Claim, an “Allowed” Claim shall not, for any purpose under the Plan, include (i) any interest on such Claim to the extent accruing or maturing on or after the Petition Date, (ii) punitive or exemplary damages, or (iii) any fine, penalty, or forfeiture.

1.8. **Allowed Claims:** All Allowed Claims in the particular Class or of the specific type or nature described.

1.9. **Allowed Interests:** All Allowed Interests in the particular Class or of the specific type or nature described.

1.10. **Allowed Insured Claims:** All Insured Claims that are Allowed Claims.

1.11. **Amended and Restated By-Laws:** Collectively, the respective by-laws of the Reorganized Debtors, on or after the Effective Date, a sample form(s) of which is to be included in the Plan Supplement.

1.12. **Amended and Restated Certificates of Incorporation:** Collectively, the respective certificates of incorporation of those of the Reorganized Debtors that are corporations, on or after the Effective Date, a sample form(s) of which is to be included in the Plan Supplement.

1.13. **Amended and Restated LLC Agreements:** The amended and restated limited liability company agreements of those of the Reorganized Debtors that are limited liability companies, on or after the Effective Date, a sample form(s) of which is to be included in the Plan Supplement.

1.14. **Applicable Administrative Claims Bar Date:** Either (i) the Initial Administrative Claims Bar date, to the extent the applicable Administrative Claim arose prior thereto, or (ii) the Final Administrative Claims Bar Date, to the extent the applicable Administrative Claim arose on or after the Initial Administrative Claims Bar Date.

1.15. **Assets:** All of the right, title, and interest of any of the Debtors in and to any and all assets and property, whether tangible, intangible, real, or personal, that constitute property of the respective Estates within the purview of Bankruptcy Code § 541, including, without limitation, any and all claims, Causes of Action, and/or rights of the respective Debtors under federal and/or state law.

1.16. **Assumption Dispute:** Such term shall have the meaning ascribed to it in Plan Section 7.2.

1.17. **Avoidance Claims:** All of the Debtors' and the Estates' Causes of Action against any Person arising under any of Bankruptcy Code §§ 502(d), 544, 545, 547, 548, 549, 550, and/or 553, or under similar or related state or federal statutes and common law, including, without limitation, all preference, fraudulent conveyance, fraudulent transfer, and/or other similar avoidance claims, rights, and Causes of Action, whether or not litigation has been commenced as of the Effective Date to prosecute such Avoidance Claims.

1.18. **Ballot:** The form distributed to each Holder of a Claim in Classes 2A, 2B and 3A, 3B and 5 (as applicable), on which is to be indicated either an acceptance or rejection of the Plan.

1.19. **Bankruptcy Code:** The Bankruptcy Reform Act of 1978, Title 11, United States Code, as amended from time to time, and made applicable to these Cases.

1.20. **Bankruptcy Court:** The United States Bankruptcy Court for the District of Delaware.

1.21. **Bankruptcy Rules:** The Federal Rules of Bankruptcy Procedure, promulgated under Section 2075, Title 28, United States Code, as amended from time to time, and made applicable to these Cases.

1.22. **Business Day:** A day other than a Saturday, Sunday, “legal holiday” (as such term is defined in Bankruptcy Rule 9006(a)), or any other day on which commercial banks in New York, New York are authorized or required by law to close.

1.23. **(These) Cases:** The cases for the reorganization of the Debtors commenced by voluntary petitions under Chapter 11, filed on the Petition Date, in the Bankruptcy Court.

1.24. **Cash:** Legal tender of the United States of America.

1.25. **Cause of Action:** Any and all actions, proceedings, causes of action, claims, suits, accounts, controversies, rights to legal or equitable remedies, and rights to payment, whether known, unknown, reduced to judgment, not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured and whether asserted or unasserted, in law, equity, or otherwise.

1.26. **Chapter 11:** Chapter 11 of the Bankruptcy Code.

1.27. **Claim:** Any right to payment from one or more of the Debtors or otherwise relating to or arising from any of the Debtors’ Assets, arising, or with respect to which the obligation giving rise to such right has been incurred, before the Effective Date, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or any right to an equitable remedy for breach of performance arising, or with respect to which the obligation giving rise to such right has been incurred, before the Effective Date, if such breach gives rise to a right to payment from one or more of the Debtors, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

1.28. **Claims Agent:** Epiq Systems, Inc., in its capacity as the claims, noticing, and balloting agent for the Debtors in these Cases.

1.29. **Claims Filing Bar Date:** The applicable date designated by that certain order of the Bankruptcy Court, dated September 8, 2011 (Docket No. 307), as the last date for timely filing Proofs of Claim other than with respect to (a) Administrative Claims or (b) Rejection Claims (i) arising under those Executory Contracts that will be rejected under and pursuant to the Plan or (ii) with respect to which a separate deadline for timely filing a Proof of Claim has been established by a separate order of the Bankruptcy Court.

1.30. **Claims Objection Bar Date:** With respect to any Claim, the date on or before the later of (i) the 30th day following the Effective Date; (ii) the 30th day after the date such Claim is timely filed; or (iii) such later date as may be established from time to time by entry of an order, prior to the expiration of the dates set forth in clauses (i) and (ii) hereof, by the Bankruptcy Court establishing the last date for filing objections to Claims.

1.31. **Class:** A category, designated herein, of Claims or Interests that are substantially similar to the other Claims or Interests in such category as specified in Article II of the Plan.

1.32. **Collateral Agent:** BPC AS LLC (as successor to Beach Point Capital Management LP and Post Advisory Group, LLC).

1.33. **Compensation and Benefits Programs:** Such term shall have the meaning ascribed to it in Plan Section 7.8(a).

1.34. **Confirmation:** The entry on the docket of the Bankruptcy Court of the Confirmation Order.

1.35. **Confirmation Date:** The date upon which Confirmation occurs.

1.36. **Confirmation Hearing Date:** The hearing before the Bankruptcy Court pursuant to section 1128 of the Bankruptcy Code on the motion for entry of the Confirmation Order.

1.37. **Confirmation Objection Deadline:** The deadline established by the Bankruptcy Court as the last date to timely submit an objection to the proposed Confirmation of the Plan.

1.38. **Confirmation Order:** The order of the Bankruptcy Court confirming the Plan pursuant to Bankruptcy Code § 1129, in form and substance acceptable to the Debtors and the Sponsors.

1.39. **Creditor:** Any Holder of a Claim against one or more of the Debtors, or with respect to any of the Debtors' Assets, that arose (or is based on an obligation incurred) on or before the Effective Date, including, without limitation, any Allowed Claim against the respective

1.40. **Debtor:** Any one of the Debtors.

1.41. **Debtor Parties:** Collectively, the Debtors, the Reorganized Debtors, the Estates, and any Person seeking to exercise the rights of the Estates, including, without limitation, any successor to the Debtors or any Estate representative appointed or selected pursuant to Bankruptcy Code § 1123(b) or otherwise (including, without limitation, any Chapter 11 or Chapter 7 trustee appointed in any of these Cases), on their own behalf and on behalf of all the Debtors' respective Interest Holders and Creditors derivatively.

1.42. **Debtors:** Collectively, Xanadoo Spectrum, LLC and the Subsidiary Debtors, as debtors and debtors-in-possession in these Cases.

1.43. **Diminution in Value:** Shall have the meaning ascribed to such term in the DIP Facility Order.

1.44. **DIP Facility:** The Debtor-in-Possession Loan Agreement, dated as of June 15, 2011 (as amended and modified from time to time), by and among the Borrowers (as such term is defined in the DIP Facility), as borrowers; and the DIP Facility Lender, as lender, as the same may be further amended, modified, or supplemented from time to time, together with (a) all of the documents, instruments, and agreements related thereto or entered into in connection therewith and (b) the DIP Facility Order and any subsequent orders of the Bankruptcy Court related thereto or entered into in connection therewith.

1.45. **DIP Facility Lender:** The Lender (as defined in the DIP Facility), in its capacity as the lender under the DIP Facility, and its participants, successors, and assigns thereunder.

1.46. **DIP Facility Order:** Collectively, the orders the Bankruptcy Court, dated June 20, 2011 (Docket no. 34), September 9, 2011 (Docket No. 212) and December 8, 2011 (Docket No. 363) approving the DIP Facility on an interim basis.

1.47. **Directors & Officers Liability Insurance Policies:** All insurance policies for directors, managers, and/or officers maintained by the Debtors as of the Effective Date, and all endorsements, amendments, tail policies, and other materials relating thereto.

1.48. **Disclosure Statement:** The disclosure statement and all supplements and exhibits thereto that relate to the Plan and are approved by the Bankruptcy Court pursuant to Bankruptcy Code § 1125, as the same may be amended or modified by the Debtors from time to time pursuant to the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules.

1.49. **Disclosure Statement and Solicitation Procedures Order:** The Bankruptcy Court Order approving the Disclosure statement and related solicitation documents and setting forth the Voting Record Date, Voting Deadline, Confirmation Objection Deadline, and Confirmation Hearing Date.

1.50. **Disputed Claim:** A Claim as to which a Proof of Claim has been filed, or deemed filed under applicable law, as to which an objection has been or may be timely filed and which objection, if timely filed, has not been withdrawn and has not been overruled or denied by a Final Order. A Claim shall be considered a Disputed Claim if (for among other reasons) any corresponding Claim scheduled by the Debtors in the Schedules is listed as disputed, contingent, or unliquidated, and the applicable Creditor has not properly filed a liquidated and non-contingent Proof of Claim on or Prior to the Claims Filing Bar Date.

1.51. **Disputed Claims Reserve:** This term shall have the meaning set forth in Plan Section 6.18.

1.52. **Disputed Claims Reserve Account:** An account at a financial institution approved by the Bankruptcy Court to hold Disputed Claims Reserves.

1.53. **Disputed Class Claim:** Any Disputed Claim in the particular Class described.

1.54. **Distribution Record Date:** The record date for purposes of making distributions under the Plan on account of Allowed Claims, which date shall be the Voting Deadline.

1.55. **Effective Date:** The Business Day on which the Plan becomes effective as provided for in Article VIII of the Plan.

1.56. **Employees:** Collectively, the present and former employees (including retirees) of any of the Debtors.

1.57. **Estate(s):** Individually, the estate of each Debtor in these Cases, and, collectively, the estates of all of the Debtors in these Cases, created pursuant to Bankruptcy Code § 541.

1.58. **Executory Contract:** Any executory contract or unexpired lease, subject to Bankruptcy Code § 365, between any of the Debtors and any other Person or Persons, specifically excluding contracts and agreements entered into pursuant to the Plan.

1.59. **Exit Credit Facility:** A secured financing facility, together with all documents, instruments, guaranties, letters of credit, and agreements related thereto or entered into in connection therewith, that shall be entered into by the Reorganized Debtors, as borrowers or guarantors (as applicable), and the Exit Credit Facility Lender(s), as lender(s), on the Effective Date, in form and substance acceptable to the Debtors, DIP Facility Lenders, and the Sponsors.

1.60. **Exit Credit Facility Agent:** The administrative agent under the Exit Credit Facility, if any, and all successors and assigns thereof.

1.61. **Exit Credit Facility Guarantees:** Collectively, the guarantees that are to be executed and delivered by the Exit Credit Facility Guarantors, concurrently with the execution and delivery of the Exit Credit Facility, in respect of the borrower(s)' obligations under the Exit Credit Facility.

1.62. **Exit Credit Facility Guarantors:** Those of the Reorganized Debtors that, pursuant to the Exit Credit Facility Guarantees, are guarantors of the borrower(s)' obligations under the Exit Credit Facility, in their respective capacities as such.

1.63. **Exit Credit Facility Lenders:** Collectively, the lenders under the Exit Credit Facility, and their respective participants, successors, and assigns thereunder.

1.64. **Final Administrative Claims Bar Date:** The deadline for filing any Administrative Claims incurred on and after _____, 2012, through and including the Confirmation Date, other than Administrative Claims based upon Professional Fees, fees or charges asserted against the respective Estates under 28 U.S.C. § 1930, and post-Petition Date liabilities incurred or expenses arising in the ordinary course of the Debtors' respective businesses (including, but not limited to, vendor, employee wage and benefit, and state and local property, sales, and use taxes), *which date shall be 30 days after the Confirmation Date as set forth in the Confirmation Order.*

1.65. **Final Order:** An order or judgment entered by the Bankruptcy Court or other applicable court that has not been reversed or stayed and as to which the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any right to appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Debtors and the Sponsors or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other applicable court shall have been affirmed by the highest court to which such order or judgment was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Bankruptcy Code § 502(j), Rules 59 or 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules may be but has not then been filed with respect to such order or judgment shall not cause such order or judgment not to be a Final Order.

1.66. **General Unsecured Claims:** Unless otherwise specified in the Plan or in a Final Order of the Bankruptcy Court, all Claims (A) other than (i) Secured Claims (as provided for, and determined in accordance with, Bankruptcy Code § 506(a) and the Plan, including the DIP Facility Claims, the Secured Credit Facility Claim); (ii) Administrative Claims; (iii) Priority Claims; (iv) Tax Claims; or (v) Intercompany Claims; and (B) not otherwise entitled to priority under the Bankruptcy Code or a Final Order of the Bankruptcy Court.

1.67. **Holder:** The owner of any Claim or Interest, as such ownership is reflected on the Debtors' books and records, the Schedules, or any Proof of Claim.

1.68. **Initial Administrative Claims Bar Date:** The deadline for filing Administrative Claims incurred as of June 10, 2011, other than DIP Facility Claims, Administrative Claims based upon Professional Fees, fees or charges asserted against the respective Estates under 28 U.S.C. § 1930, and post-Petition Date liabilities incurred or expenses arising in the ordinary course of the Debtors' respective businesses (including, but not limited to, vendor, employee wage and benefit, and state and local property, sales, and use taxes), designated by that certain order of the Bankruptcy Court dated _____ (Docket No. _____) [**approving a motion to be filed requesting such date to be April 16, 2012**].

1.69. **Initial Distribution Date:** The date to be established by the Reorganized Debtors, which shall be no later than 60 days after the Effective Date or as soon as practicable thereafter, or such other date as the Bankruptcy Court may order.

1.70. **Insured Claim:** Any Claim arising from an incident or occurrence alleged to have occurred prior to the Effective Date that is covered under an insurance policy applicable to the Debtors or their businesses.

1.71. **Intercompany Claim:** (a) Any account reflecting intercompany book entries by one Debtor (or any non-Debtor Affiliate of a Debtor) with respect to any other Debtor or (b) any Claim that is not reflected in such book entries and is held by a Debtor (or any non-Debtor Affiliate of a Debtor) against any other Debtor.

1.72. **Interest:** An ownership interest in any of the Debtors as evidenced by an equity security (as such term is defined in Bankruptcy Code § 101(16)) of any Debtor, any rights to any dividends or distributions as a result of such ownership, and any option, warrant, or right to acquire any such ownership interest, including, without limitation, any and all Claims (i) for damages arising from the rescission of the purchase or sale of Old XHI Common Stock or (ii) for reimbursement or contribution allowed under Bankruptcy Code § 502 on account of such Claim, which Claims are subordinated pursuant to Bankruptcy Code § 510.

1.73. **Lenders' Deficiency Claim:** The portion of the Secured Credit Facility Claim that does not constitute a Secured Claim, as provided for in, and determined in accordance with, Bankruptcy Code § 506(a), which Lenders' Deficiency Claim shall be an Allowed Class 3D Claim for all purposes under the Plan and in these Cases (including with respect to voting thereon) in an amount as set forth in Plan Section 5.7.

1.74. **Lien:** Any lien, security interest, or other charge or encumbrance of any kind, or any other type of preferential arrangement, easement, right of way, or other encumbrance on title to real property.

1.75. **Local Bankruptcy Rules:** The Local Bankruptcy Rules for the District of Delaware, effective February 1, 2012, as amended from time to time, and applicable in these Cases.

1.76. **Motion to Approve Debtors' Disclosure Statement and Solicitation Procedures Order.** A motion, to be filed by the Debtors pursuant to Federal Rule of Bankruptcy Procedure 3017, for Bankruptcy Court approval of the form and manner of the Debtors' Disclosure Statement, and to set the dates by which holders of Claims or Interests may accept or reject the Debtors' proposed plan of reorganization (including but not limited to the Voting Deadline and Voting Record Date) and fix a date for Confirmation.

1.77. **NewCo:** A new Person to be created by the Parent for the purpose of entering into the Exit Credit Facility.

1.78. **New Notes:** Collectively, the new secured notes, in form and substance acceptable to the Debtors, Sponsors and the Collateral Agent, to be issued by Reorganized XHI and guaranteed by the New Notes Guarantors, and all security and other documents related thereto or entered into in connection therewith, on the terms set forth in the Plan Supplement.

1.79. **New Notes Guarantees:** Collectively, the guarantees to be executed and delivered by the New Notes Guarantors, concurrently with the execution and delivery of the New Notes, in respect of the Reorganized Debtors' obligations under the New Notes.

1.80. **New Notes Guarantors:** Collectively, the Reorganized Subsidiary Debtors, in their capacities as guarantors under the New Notes Guarantees, and any other party issuing a New Notes Guarantee.

1.81. **New XHI Common Stock:** The shares of common stock of Reorganized XHI to be issued and distributed in the manner provided by the Plan.

1.82. **Nominee:** For any Holder of a Claim or Interest, the designated representative of any such Holder.

1.83. **Old XHI Common Stock:** All the shares of common stock of XHI, \$0.01 par value per share, and any options (including, without limitation, all options issued under any of the Existing Stock Option Plans), warrants, or rights, contractual or otherwise, to acquire any shares of common stock of XHI.

1.84. **Operating Subsidiaries:** Collectively, Xandadoo, LLC and Pegasus Ruaral Broadband, LLC.

1.85. **Order Approving Debtors' Disclosure Statement and Solicitation Procedures:** Order entered by the Court approving the form and manner of the Debtors' Disclosure Statement, and setting the dates by which holders of Claims or Interests may accept or reject the Debtors' proposed plan of reorganization (including but not limited to the Voting Deadline and Voting Record Date) and fix a date for Confirmation.

1.86. **Other Assets:** Wireless high-speed broadband service, including digital phone services, utilizing: (a) licensed frequencies in the 2.5 GHz frequency band under the Xanadoo brand offered by Xanadoo Holdings, Inc., through its Xanadoo, LLC subsidiary and (b) unlicensed frequencies in the 900 MHz, 2.4 GHz and 5 GHz frequency bands through its

Pegasus Rural Broadband, LLC, but in the case of both (a) and (b), specifically excluding the Tax Assets

1.87. **Person:** An individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization, government or any political subdivision thereof, or any other Person.

1.88. **Petition Date:** June 10, 2011, the date upon which the voluntary petitions for relief under Chapter 11 with respect to the Debtors commencing these Cases were filed.

1.89. **Plan:** The Joint Plan of Reorganization proposed by the Debtors set forth herein, and all supplements and exhibits hereto, as the same may be amended, supplemented, or modified by the Debtors from time to time pursuant to, and in accordance with, the terms hereof, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, or any applicable orders of the Bankruptcy Court.

1.90. **Plan Documents:** The documents and forms of documents specified or referenced in, and/or to be executed by any of the Debtors and/or any of the Reorganized Debtors pursuant to the terms of the Plan, which documents may include, among others, the Amended and Restated By-Laws; the Amended and Restated Certificates of Incorporation; the Amended and Restated LLC Agreements; the Amended and Restated Limited Partnership Agreements; the NewCo LLC Agreement; all applicable certificates of formation and/or organization; the Exit Credit Facility; the New Notes; and the New Notes Guarantees, as all such documents and forms of documents may be amended and/or supplemented from time to time in accordance with the Plan, all of which documents shall be in form and substance satisfactory to the Debtors and the Sponsors.

1.91. **Plan Rejection Bar Date:** Such term shall have the meaning ascribed to it in Plan Section 7.5.

1.92. **Plan Supplement:** The supplement to the Plan containing a compilation of the draft forms and/or summaries of certain of the Plan Documents and certain related lists, summaries, and/or schedules, as may be amended, modified, or supplemented from time to time thereafter in accordance with the Plan.

1.93. **Post-Petition Interest:** Shall mean, when used with reference to a particular Allowed Claim or class of Allowed Claims treated under this Plan, simple interest that shall have accrued on such Claim from and including the applicable Debtor's Petition Date through and including the _____ Date, at the contract rate or, if no contract rate exists, ____%).

1.94. **Prepetition Collateral:** (i) All Collateral (as defined in the SPA) pledged prior to the Petition Date by the Debtors and (ii) 100% of the common stock of Xanadoo Holdings, Inc. (the "Pledged Equity") and all proceeds (as such term is defined in Section 9-102 of the Uniform Commercial Code, as in effect from time to time, of the State of New York and, in any event, shall include, without limitation, all dividends or other income from the Pledged Equity, collections thereon or distributions with respect thereto.

1.95. **Prepetition Liens:** All valid, fully perfected and enforceable liens and security interests securing the Prepetition Indebtedness defined as Liens in the SPA.

1.96. **Prepetition Indebtedness** mean the Obligations as defined in the SPA (defined below), as of the Petition Date, owed under the SPA and the Transaction Documents.

1.97. **Prepetition Noteholders:** Holders of the Prepetition Notes.

1.98. **Prepetition Notes:** 12.5% Senior Secured Promissory Notes issued by Xanadoo Holdings, Inc. with a maturity date of May 17, 2011.

1.99. **Priority Claims:** All Claims that are entitled to priority pursuant to Bankruptcy Code § 507(a) or (b) that are not Administrative Claims or Tax Claims.

1.100. **Professional:** Any professional employed by the Debtors or the Creditors Committee in these Cases pursuant to Bankruptcy Code §§ 327, 328, or 1103 or otherwise, and any professional seeking compensation or reimbursement of expenses in connection with these Cases pursuant to Bankruptcy Code §§ 330, 331, and/or 503(b)(4).

1.101. **Professional Fees:** All fees due and owing to any Professional for compensation or reimbursement of costs and expenses relating to services incurred on and after the Petition Date and on and prior to the Confirmation Date.

1.102. **Proof of Claim:** Any written statement timely and properly filed in these Cases by a Creditor in which such Creditor sets forth the amount purportedly owed and sufficient detail to identify the basis for a Claim.

1.103. **Pro Rata:** At any time, as applicable (a) the proportion that the amount of an Allowed Claim or Allowed Interest in a particular Class or category of Claims or Interests bears to the aggregate amount of all Claims or Interests (including Disputed Claims) in that Class or category of Claims or Interests; or (b) with respect to any consideration to be distributed to Holders of Claims in more than one Class under the Plan, the proportion that the amount of an Allowed Claim or an Allowed Interest bears to the aggregate amount of all Claims or Interests (including Disputed Claims) in all Classes entitled to receive distributions from such consideration.

1.104. **Qualified Bona Fide Third Party Offer:** Any offer submitted by a third party, other than a Prepetition Noteholder or an affiliate of the Debtors, prior to the consummation of the transfer of the 700 MHz Assets, that includes the following terms: (i) the sale must be consummated by the third party no later than _____, 2012; (ii) the third party must enter into a Purchase and Sale Agreement acceptable in form and substance to the Debtors which provides a cash offer equivalent to the consideration and equivalent terms and conditions provided by the Exit Credit Facility, including, but not limited to, the consideration required by §6.1(a) prior to _____, 2012, other than with respect to consideration and timing of closing (which shall be subject to the conditions specified in clause (i) and (iii) the third party must place into escrow no later than _____, 2012, at least \$5 million as earnest money to secure the third party's performance.

1.105. **Reinstated or Reinstatement:** Either (a) leaving unaltered the legal, equitable, and contractual right to which a Claim entitles the Holder thereof so as to leave such Claim unimpaired in accordance with Bankruptcy Code § 1124 or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in

Bankruptcy Code § 365(b)(2); (ii) reinstating the maturity of such Claim as such maturity existed before such default; (iii) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; or (iv) not otherwise altering the legal, equitable, or contractual rights to which such Claim entitles the Holder of such Claim; provided, however, that any contractual right that does not pertain to the payment when due of principal or interest on the obligation on which such Claim is based, including, but not limited to, financial covenant ratios, negative pledge covenants, covenants or restrictions on merger or consolidation, and affirmative covenants regarding corporate existence, prohibiting certain transactions or actions contemplated by the Plan, or conditioning such transactions or actions on certain factors, shall not be required to be reinstated in order to accomplish the Reinstatement.

1.106. **Reinstated Lien:** Any (a) Lien held by a Creditor in Class 2B that is expressly Reinstated at the election of the Reorganized Debtors.

1.107. **Rejection Claims:** All Claims arising as a result of a Debtor's rejection of an Executory Contract pursuant to Bankruptcy Code §§ 365 and/or 1123, subject to the limitations provided in Bankruptcy Code § 502(b) or as otherwise agreed to by the Debtors.

1.108. **Released Parties:** Collectively, (a) the Debtors, the Reorganized Debtors, the Sponsors and NewCo; (b) the Collateral Agent, Prepetition Noteholders and the DIP Facility Lender, solely in their respective capacities as such; (c) the current and former directors, officers, professionals, agents, and employees of the Debtors and the Reorganized Debtors, solely in their capacities as such; (d) the Sponsors, solely in their capacities as such; (e) the Exit Credit Facility Agent and the Exit Credit Facility Lenders, solely in their capacities as such; (e) with respect to each of the foregoing Persons, such Person's predecessors, successors, and assigns, and current and former directors, officers, employees, stockholders, members, subsidiaries, affiliates, principals, agents, advisors, financial advisors, attorneys, accountants, investment bankers, consultants, underwriters, appraisers, representatives, and other professionals, in each case in their respective capacities as such; and (f) any Person claimed to be liable derivatively through any Person referred to in clauses (a), (b), (c), (d), and (e) of this Section 1.158.

1.109. **Releasing Party or Releasing Parties:** Either a Non-Debtor Releasing Party or a Debtor Party (as applicable), or collectively, the Non-Debtor Releasing Parties and the Debtor Parties (as applicable).

1.110. **Reorganized Debtors:** Collectively, Reorganized Xanadoo and the Reorganized Subsidiary Debtors.

1.111. **Reorganized Xandoo:** Xanadoo Spectrum, LLC, as reorganized on and after the Effective Date.

1.112. **Reorganized Subsidiary Debtors:** Collectively, the respective Subsidiary Debtors, as reorganized on and after the Effective Date.

1.113. **Sale Agreement:** That certain Purchase and Sale Agreement, if any, attached as Exhibit __ to the Disclosure Statement.

1.114. **Schedules:** The schedules of assets and liabilities that have been filed in the Bankruptcy Court by the Debtors in accordance with Bankruptcy Code § 521 and/or any

applicable ruling of the Bankruptcy Court, as any such schedules or statements may be amended or supplemented from time to time in accordance with Bankruptcy Rule 1009, the Local Bankruptcy Rules, or an order of the Bankruptcy Court.

1.115. **Secured Claims:** All Claims that are secured by a properly perfected, valid, enforceable, and not otherwise avoidable lien on property in which an Estate has an interest or that is subject to setoff under Bankruptcy Code § 553, to the extent of the value of the Claim Holder's interest in the applicable Estate's interest in such property or to the extent of the amount subject to setoff, as applicable, as determined pursuant to Bankruptcy Code § 506(a) and, if applicable, § 1129(b); provided, however, that if the Holder of a Secured Claim is entitled to and does timely elect application of Bankruptcy Code § 1111(b)(2), then such Holder's Claim shall be a Secured Claim to the extent such Claim is Allowed.

1.116. **Secured Credit Facility Claim:** Shall mean any claim based on the Prepetition Indebtedness, as secured by the Transaction Documents.

1.117. **SPA:** That certain agreement dated May 17, 2007, between Xanadoo Holdings, Inc. and Post Advisory Group, LLC, as collateral agent at that time, the Prepetition Noteholders, the Parent, and the Operating Subsidiaries, pursuant to which the Prepetition Noteholders purchased the Prepetition Notes for an aggregate principal amount of \$30,000,000, as amended from time to time.

1.118. **Sponsors:** The non-Debtor parties to, as applicable, the Exit Credit Facility and/or an asset purchase agreement, if any.

1.119. **Subsidiary Debtors:** Xanadoo Holdings, Inc., a Delaware corporation; Xanadoo, LLC, a Delaware limited liability company; Pegasus Guard Band, LLC, a Delaware limited liability company; and Pegasus Rural Broadband, LLC, a Delaware limited liability company.

1.120. **Tax Assets:** The stock of XHI, the membership interests of each of Xanadoo, LLC and Pegasus Rural Broadband, LLC and any de minimis assets necessary to preserve the tax attributes of XHI.

1.121. **Tax Claims:** All Claims that are entitled to priority under Bankruptcy Code § 507(a)(8).

1.122. **Transaction Documents:** Shall mean, collectively, the SPA and: (a) the Notes; (b) the Collateral Agency Agreement; (c) the Warrants; (d) the Guarantees; (e) the Management Services Contract; (f) all Solvency Certificates; (g) all Compliance Certificates; (h) the Security Documents, as those terms are defined in the SPA, and (i) any notes and security documents issues from time to time under the SPA and other documents or instruments entered into in connection in connection with the SPA or the other Transaction Documents.

1.123. **Unencumbered Assets:** Except as otherwise set forth in Plan Section 6.16, collectively, the assets listed as "Unencumbered Assets" on Exhibit to the Disclosure Statement (as such schedule may be revised and included in the Plan Supplement or otherwise), to the extent any such assets are determined not to be subject to valid, enforceable, and non-avoidable Liens of the Prepetition Secured Interest, either by agreement of the Debtors and the Revolving Credit Facility Agent, or as determined by a Final Order of the Bankruptcy Court, which assets shall be maintained and sold in accordance with Section 6.9 hereof.

1.124. **Unimpaired Claims:** All Class 1, Class 2A, Class 2B, Class 3, Class 4 and Class 5 claims.

1.125. **Vendors:** Persons who supplied or provided goods, supplies, parts, materials, other tangible objects, and/or services to any of the Debtors prior to the Petition Date.

1.126. **Voting Deadline:** The deadline established by the Bankruptcy Court as the last date to timely submit a Ballot for voting to accept or to reject the Plan.

1.127. **Voting Record Date:** That date for determining which holders of Claims and Interests are entitled to vote to accept or reject the Plan, as set by the Court in the Disclosure Statement and Solicitation Procedures Order.

INTERPRETATION AND CONSTRUCTION

1.128. **Interpretation:** Unless otherwise specified herein: (a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and the neuter gender; (b) any reference herein to a contract, lease, instrument, release, indenture or other agreement or document being in a particular form or on particular terms and conditions means that the referenced document shall be substantially in that form or substantially on those terms and conditions; (c) any reference herein to an existing document or exhibit having been Filed or to be Filed shall mean that document or exhibit, as it may thereafter be amended, modified or supplemented; (d) unless otherwise specified, all references herein to “Articles” are references to Articles hereof or hereto; (e) unless otherwise stated, the words “herein,” “hereof” and “hereto” refer to the Plan in its entirety rather than to a particular portion of the Plan; (f) captions and headings to Articles are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation hereof.

1.129. **Construction and Application of Bankruptcy Code Definitions:** Unless otherwise defined herein, words and terms defined in section 101 of the Bankruptcy Code shall have the same meanings when used in this plan. Words and terms used but not defined herein shall have the meaning ascribed to such terms or words, if any, in the Bankruptcy Code. The rules of construction set forth in section 102 of the Bankruptcy Code shall apply to the construction of this plan.

1.130. **Computation of Time:** The provisions of Bankruptcy Rule 9006(a) shall apply in computing any period of time prescribed or allowed herein.

1.131. **Plan Documents:** The Plan Documents are incorporated into and made a part of this Plan as if set forth in full herein.

1.132. **Inconsistencies:** To the extent there are any inconsistencies between the terms of this Plan and the Disclosure Statement, the terms of this Plan shall govern.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

2.1. In accordance with Bankruptcy Code § 1123(a)(1), Administrative Claims, DIP Facility Claims, and Tax Claims have not been classified and are excluded from the following Classes. (Article III of the Plan describes the treatment of Administrative Claims, DIP Facility Claims, and Tax Claims.) For the purposes of the Plan, Holders of Claims against, or Interests in, the Debtors are grouped as follows in accordance with Bankruptcy Code § 1122(a):

2.2. **Class 1 -- Priority Claims.** Class 1 consists of all Priority Claims against any of the Debtors. Class 1 Claims shall be treated in the manner set forth in Section 4.2 hereof.

2.3. **Class 2 -- Secured Claims Against One or More of the Debtors.**

(a) **Class 2A -- Secured Credit Facility Claims.** Class 2A consists of all Claims under the SPA or Transaction Document. Class 2A Claims shall be treated in the manner set forth in Section 4.3 hereof.

(b) **Class 2B -- Other Secured Claims Against Any of the Debtors.** Class 2B consists of any Secured Claims against any of the Debtors that are not otherwise classified in this Article II. Accordingly, Class 2 Claims include Claims arising under any secured leases of the Debtors, but do not include any (a) Claims under, respectively, the SPA or Transaction Documents, or the DIP Facility. Class 2 Claims also do not include any Tax Claims.

2.4. **Class 3 -- Aggregate Unsecured Claims Against any of the Debtors.** Class 3 consists of all Aggregate Unsecured Claims against any of the Debtors. To the extent applicable, Class 3 shall be treated in the manner set forth in Section 4.5 hereof.

(a) **Class 3A -- General Unsecured Claims Against Any of the Debtors.** Class 3A consists of all General Unsecured Claims against any of the Debtors. To the extent applicable, Class 3A Claims shall be treated in the manner set forth in Section 4.5 hereof.

(b) **Class 3B -- The Lenders' Deficiency Claim Against Any of the Debtors.** Class 3B consists of the Lenders' Deficiency Claim, if any, against any of the Debtors. To the extent applicable, Class 3B Claims shall be treated in the manner set forth in Sections 4.5.

2.5. **Class 4 -- Old XHI Common Stock Interests.** Class 4 consists of all Interests arising under or in connection with the Old XHI Common Stock. Class 4 Interests shall be treated in the manner set forth in Section 5.1 hereof.

2.6. **Class 5 -- Intercompany Claims.** Class 5 consists of all Intercompany Claims. Class 5 Claims shall be Allowed in the amounts as reflected on the Debtors' books and records, and shall be treated in the manner set forth in Section 4.6 hereof.

ARTICLE III

TREATMENT OF ADMINISTRATIVE CLAIMS, DIP FACILITY CLAIMS, AND TAX CLAIMS

3.1. **Administrative Claims.** Each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Claim, Cash equal to the amount of such Allowed Claim on the later of (a) the Initial Distribution Date and (b) the date that is 60 days after the Allowance Date, except to the extent that such Holder has agreed to a less favorable treatment of such Allowed Claim; provided, however, that Allowed Administrative Claims representing obligations incurred in the ordinary course of the Debtors' businesses shall be paid or performed in accordance with the terms and conditions of the particular transactions and any agreements related thereto. The Reorganized Debtors shall have (i) until the Initial Distribution Date (or such longer period of time as may be allowed by order of the Bankruptcy Court) to review and object to Administrative Claims that were required to be filed on or prior to the Initial Administrative Claims Bar Date and (ii) until 45 days following the Final Administrative Claims Bar Date (or such longer period of time as may be allowed by order of the Bankruptcy Court) to review and object to Administrative Claims that were required to be filed on or prior to the Final Administrative Claims Bar Date. If (i) the Reorganized Debtors fail to submit a timely objection to an Administrative Claim, or (ii) following a timely objection to such Administrative Claim, the Bankruptcy Court enters a Final Order deeming the Administrative Claim an Allowed Administrative Claim, such Administrative Claim shall be treated as an Allowed Administrative Claim hereunder.

3.2. **DIP Facility Claims:** DIP Facility Claims shall be Allowed Claims under the Plan in the aggregate amount equal to all obligations under the DIP Facility outstanding as of the Effective Date, as agreed to by the DIP Facility Lenders and the Debtors, or in the event of a dispute regarding such amount, as such amount has been determined by a Final Order of the Bankruptcy Court. On the Effective Date, at the election of the Debtors or the Reorganized Debtors, as applicable, (i) the DIP Lender shall, to the extent permissible under the applicable agreement, receive cancellation without draw of all outstanding letters of credit issued under the DIP Facility, (ii) the Debtors or the Reorganized Debtors, as applicable, shall arrange for the issuance of additional letters of credit in favor of the DIP Lender, equal to the DIP Lender's maximum exposure under such letters of credit, in a form and substance satisfactory to the DIP Lender, or (iii) the outstanding letters of credit under the DIP Facility shall be secured by Cash equal to 105% of the DIP Lender's maximum exposure under such outstanding letters of credit. The total distributions of New Notes and/or Cash on account of Allowed DIP Facility Claims pursuant to this Plan Section 3.2 (as applicable), shall be made by the Debtors on the Effective Date to the DIP Lender.

3.3. **Tax Claims.** Each Holder of an Allowed Tax Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Claim, at the election of the applicable Debtor, either (i) Cash equal to the amount of such Allowed Claim on the later of (a) the Initial Distribution Date and (b) the date that is 60 days after the Allowance Date, or (ii) in accordance with Bankruptcy Code § 1129(a)(9)(C), deferred Cash payments (a) of a value, as of the Effective Date, equal to the amount of such Allowed Tax Claim, (b) over a period not exceeding five years after the Petition Date, and (c) in a manner not less favorable than the treatment of the most favored nonpriority unsecured Claim provided for by the Plan, except to the extent such Holder has agreed to a less favorable treatment of such Allowed Claim.

ARTICLE IV

TREATMENT OF CLASSES THAT ARE UNIMPAIRED UNDER THE PLAN

THE DEBTORS' PLAN CONTEMPLATES THAT ALL UNIMPAIRED CLAIMS WILL BE PAID IN FULL **[OR, TO THE EXTENT NOT PAID IN FULL, THE CLASSES REPRESENTING SUCH CLAIMS SHALL HAVE APPROVED THE PLAN]**. ACCORDINGLY EACH CLASS COMPRISING THE UNIMPAIRED CLAIMS IS TREATED AS UNIMPAIRED HEREIN. NOTHING IN THIS PLAN SHOULD BE TAKEN AS AN ADMISSION THAT SUCH CLAIMS WILL BE PAID IN FULL OR THAT SUCH CLAIMS WILL BE ALLOWED, THOUGH IT IS THE INTENTION OF THE DEBTORS THAT ALL SUCH CLAIMS BE FULLY SATISFIED ON OR BEFORE THE EFFECTIVE DATE **[OR THAT THE CLASSES REPRESENTING SUCH CLAIMS SHALL HAVE APPROVED THE PLAN]**.

4.1. **Unimpaired Classes.** Classes 1, 2A, 2B, 3, 4 and 5 are unimpaired **[or have approved the Plan]**. Therefore, pursuant to Bankruptcy Code § 1126(f), the Holders of Allowed Claims or Allowed Interests (as applicable) in such Classes are conclusively presumed to have accepted the Plan and are not entitled to vote thereon.

4.2. **Class 1 -- Priority Claims.** If not otherwise paid in full pursuant to an order of the Bankruptcy Court prior to the Confirmation Date, and except to the extent such Holder has agreed to a less favorable treatment of such Allowed Claim, each Holder of an Allowed Class 1 Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, such Allowed Claim, Cash equal to the amount of such Allowed Claim on the latest of (a) the Initial Distribution Date, (b) the date that is 60 days after the Allowance Date of such Claim, and (c) the date when such Allowed Claim becomes due and payable according to its terms and conditions.

4.3. **Class 2A --- Secured Credit Facility Claims.** Each holder of an Allowed Secured Credit Facility Claim shall receive on the Initial Distribution Date, at the option of the Reorganized Debtors, either (i) the collateral securing such Allowed Secured Claim, (ii) Cash in an amount equal to the lesser of (x) the Allowed amount of such Claim, together with interest thereon and any reasonable fees, costs, or charges to the extent permitted under section 506(b) of the Bankruptcy Code or (y) the value of the collateral securing such Allowed Secured Claim, (iii) the treatment required under section 1124(2) of the Bankruptcy Code for such Claim to be unimpaired, or (iv) such other treatment to which the Reorganized Debtors and the Secured Facility Claim holder shall agree. If interest is required to be paid under the terms of the agreement governing an Allowed Secured Claim or an applicable order of the Bankruptcy Court, then such interest shall be paid at the rate provided for under such agreement or Bankruptcy Court order through the Initial Distribution Date. If interest is not provided for under any agreement or Bankruptcy Court order governing an Allowed Secured Credit Facility Claim, or if there is no agreement or Bankruptcy Court order governing such Claim, Post-Petition Interest shall be paid in Cash.

4.4. **Class 2B -- Other Secured Claims Against Any of the Debtors.** In full satisfaction, settlement, release, and discharge of, and in exchange for, each outstanding Allowed Class 2B Claim that has not previously been satisfied pursuant to an order of the Bankruptcy Court or otherwise in the ordinary course of the Debtors' businesses, at the election of the

applicable Debtor or Reorganized Debtor, such Debtor or Reorganized Debtor shall either: (a) pay the amount of such Allowed Class 2B Claim in full, in Cash, on the later of the Initial Distribution Date or the date that is 60 days after the Allowance Date of such Claim; (b) return the underlying collateral to the Holder of such Allowed Class 2B Claim; (c) Reinstate such Allowed Class 2B Claim in accordance with the provisions of Bankruptcy Code § 1124(2); or (d) treat such Allowed Class 2B Claim in a manner otherwise agreed to by the Holder thereof.

4.5. **Class 3 -- General Unsecured Claims Against Any of the Debtors.** Each holder of an Allowed General Unsecured Claim shall receive on the Initial Distribution Date, in full satisfaction of such Claim, Cash in an amount equal to the Allowed amount of such Claim, plus interest calculated in the manner provided in this Section 4.5. If such Claim constitutes an Allowed General Unsecured Claim pursuant to a Bankruptcy Court order, interest for the post-petition period shall be paid at the rate specified in such order through the Initial Distribution Date or, if such order is silent as to rate of interest, Post-Petition Interest shall be paid in Cash. If a Bankruptcy Court order has not been entered decreeing such Claim to be an Allowed General Unsecured Claim, and if interest is required to be paid under the terms of the agreement governing such Claim and a rate of interest is provided in such agreement, then interest for the post-petition period shall be paid at the rate provided for in such agreement through the Initial Distribution Date. If a Bankruptcy Court order has not been entered decreeing such Claim to be an Allowed General Unsecured Claim and if interest is not provided for or a rate of interest is not provided under any applicable agreement governing such Claim, or if there exists no agreement governing such Claim, then Post-Petition Interest shall be paid in Cash. If there is a dispute between the Debtors and the holder of an Allowed General Unsecured Claim as to interest lawfully required to be paid in respect of such Claim for the post-petition period, such dispute shall be determined by order of the Bankruptcy Court.

4.6. **Class 5 – Intercompany Claims.** All Intercompany Claims shall be reviewed by the Debtors or the Reorganized Debtors, as applicable, and adjusted, continued, or discharged, as the Debtors or the Reorganized Debtors, as applicable, determine as appropriate (by, among other things, releasing such claims, contributing them to capital, and issuing a dividend), taking into account, among other things, the distribution of consideration under the Plan and the economic condition of the Reorganized Debtors, among other things. Subject to the foregoing sentence, each holder of an Allowed Intercompany Claim shall receive on the Initial Distribution Date, in full satisfaction of such Claim, Cash in an amount equal to the Allowed amount of such Claim.

4.7. **Special Provision Regarding Unimpaired Claims.** Except as may otherwise be provided in the Plan, the Confirmation Order, any other Final Order of the Bankruptcy Court, or any Plan Document, nothing shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights and defenses, both legal and equitable, with respect to any Claims that are not impaired under the Plan, including, but not limited to, all rights with respect to legal and equitable defenses to, and/or setoffs or recoupments against, such Claims.

ARTICLE V

TREATMENT OF CLASSES THAT ARE IMPAIRED UNDER THE PLAN

5.1. **Class 4 – Old XHI Common Stock Interests.** Class 4 is impaired. On the Effective Date, all outstanding shares of Old XHI Common Stock and all other Old Stock of XHI shall be cancelled and shall be deemed terminated and of no force and effect. In addition, without limiting the generality of the foregoing, any and all options or rights to exercise warrants or options or to otherwise acquire any shares of Old XHI Common Stock or any other Interest in XHI, shall be cancelled and be deemed terminated and of no force and effect. Holders of Old XHI Common Stock will receive New XHI Common Stock pro rata to their Old XHI Common Stock holdings.

5.2. **Special Provision Regarding Impaired Claims.** Except as may otherwise be provided in the Plan, the Confirmation Order, any other Final Order of the Bankruptcy Court, or any Plan Document, nothing shall affect the Debtors' or the Reorganized Debtors' (as applicable) rights and defenses, both legal and equitable, with respect to any Claims that are impaired under the Plan, including, but not limited to, all rights with respect to legal and equitable defenses to, and/or setoffs or recoupments against, such Claims.

ARTICLE VI

MEANS FOR IMPLEMENTATION OF THE PLAN

6.1. General Settlement of Claims and Interests

Pursuant to §1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, distributions, releases, and other benefits provided under the Plan, on the Effective Date, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims and Interests and controversies resolved pursuant to the Plan.

6.2. Exit Financing or Sale of the 700MHz Assets:

(a) The Debtors and Sponsors shall enter into the Exit Credit Facility which shall provide, among other things, for the transfer of the 700 MHz Assets to NewCo for cash consideration equal to the amount necessary to satisfy 100% of each of the: (i) Prepetition Noteholder Claims, (ii) DIP Facility Claims, (iii) Administrative Claims, (iv) General Unsecured Claims; (v) Priority Claims; (vi) Intercompany Claims; and (vii) Interests. The Exit Credit Facility will also provide for an equity participation by _____ and the Sponsors as detailed in the Exit Credit Facility.

(b) The Debtors and Sponsors can elect to dispose of the 700 MHz assets through a competitive sale process. Nothing in this Section 6.1 shall preclude a party from providing a Qualified Bona Fide Third Party Offer to purchase the 700 MHz Assets as long as the Unimpaired Claims are paid in full and the Debtors consent to such sale process.

(c) The Debtors will file a Motion to Approve Debtors' Disclosure Statement and Solicitation Procedures Order by March 30, 2012, pursuant to the Exit Credit Facility or a sale of the 700 MHz Assets pursuant to a Qualified Bona Fide Third Party Offer.

(i) Pursuant to Federal Rule of Bankruptcy Procedure 3017, the Motion to Approve Debtors' Disclosure Statement and Solicitation Procedures Order will seek Bankruptcy Court approval of the form and manner of the Debtors' Disclosure Statement, and to set the dates by which holders of Claims or Interests may accept or reject the Debtors' proposed Plan (including, but not limited to, the Voting Deadline and Voting Record Date) and fix a date for Confirmation.

(ii) Subject to the schedule of the Court, a the Debtors' will set a Confirmation Hearing 30 to 45 days following the entry of an Order Approving Debtors' Disclosure Statement and Solicitation Procedures.

6.3. **NewCo Equity:** The issuance of NewCo equity by the Reorganized Debtors to the Plan Sponsors on the effective date in exchange for the proceeds of the Exit Credit Facility is authorized without any need for further corporate action by the Debtors or the Reorganized Debtors, as applicable. All of the shares of NewCo equity issued pursuant to the Plan shall be duly authorized, validly issued, fully paid, and non-assessable. On the Effective Date, each of the Reorganized Debtors and NewCo shall remain and shall be a private company.

6.4. **Registration Exemptions:** The offering, issuance, and distribution of any Securities pursuant to the Plan and any all settlement agreements incorporated therein are expected to be exempt from applicable federal and state securities laws (including blue sky laws), registration and other requirements, including but not limited to, the registration, prospectus delivery requirements of §5 of the Securities Act, pursuant to § 4(2) of the Securities Act, or another available exemption of the Securities Act, as applicable. In addition, under §1145 of the Bankruptcy Code, if applicable, any securities issued pursuant to the Plan or any and all settlements incorporated herein will be transferable under the Securities Act by the recipients thereof, subject to transferability restrictions, if any, either in the organizational documents of the Reorganized Debtors or NewCo or any other applicable regulatory and legal requirements.

6.5. **Disposition of Other Assets of the Debtors:**

(a) On the Effective Date of the Plan as a result of the transfer (or sale, if any) of the 700 MHz Assets, whether to NewCo or pursuant to a qualified Bona Fide Third Party Offer, the Other Assets shall remain with the Reorganized Debtors, subject to the Reorganized Debtors' agreement to accept such Other Assets and to assume or satisfy all non-rejected executory contracts, and the Debtors' bankruptcy action shall be dismissed.

(b) Prior to entry into the Exit Credit Facility, or sale of the 700 MHz Assets to a Qualified Bona Fide Third Party Offer, if any, the Debtors, in their discretion, may elect to sell the Other Assets pursuant to the following process:

- i. The Debtors shall solicit letters of intent from potential stalking horses identified by their investment bankers through the marketing process undertaken by the estate during the bankruptcy;
- ii. The Debtors and their investment bankers shall review all letters of intent and qualifications of potential stalking horse bidders;
- iii. The Debtors' investment bankers shall make a recommendation to the Debtors to enter into negotiations with a potential stalking horse bidder with, in the discretion of the investment bankers, the highest and best initial offer, using said stalking horse bidder's letter of intent as the starting point for negotiations;
- iv. If no stalking horse agreement is entered with the potential stalking horse bidder within 30 days of investment advisor's recommendation, the Debtors shall pursue an auction process;
- v. The Debtors and its investment banker shall establish prequalification of bidders and set terms of the auction. The opening bid to be set based on the results of the marketing process for the assets undertaken by the investment bankers;
- vi. The Debtors shall seek Bankruptcy Court approval for bidding, sale and auction procedures and set a sale process and auction pursuant to such order; and
- vii. Following the auction, the Debtors shall seek a Court Order approving the sale pursuant to the highest and best bid received at the auction, subject to Court approval of that bid.

- viii. Proceeds from such auction shall be distributed in accordance with the distribution priorities set forth in the Bankruptcy Code.

6.6. **Disposition of Tax Assets:** On the Effective Date, the Tax Assets shall be conveyed to NewCo to preserve the tax attributes of the Debtors and any related net operating losses.

6.7. **Auction of 700MHz Assets:** If the Debtors fail to file a Motion to Approve Debtors' Disclosure Statement and Solicitation Procedures Order by March 30, 2012, pursuant to the Exit Credit Facility or a sale of the 700 MHz Assets pursuant to a Qualified Bona Fide Third Party Offer, the 700MHz Assets shall be auctioned as soon as practicable, but no later than **June 1, 2012**, with proceeds from such auction to be distributed in accordance with the distribution priorities set forth in the Bankruptcy Code.

6.8. **Boards of Directors/Managers of the Reorganized Debtors.** Reorganized XHI and may be converted to a limited liability company, partnership, joint venture, or other Person in connection with Confirmation. To the extent Reorganized XHI remains a corporation, it is currently contemplated that Reorganized XHI and shall initially have a one-person Board of Directors (although the Debtors reserve the right to revise the number of directors at any time on or before the Confirmation Date and shall inform the Bankruptcy Court of any such revision). The initial anticipated member of the Board of Directors and officers of Reorganized XHI shall be appointed in accordance with the respective Amended and Restated Bylaws, and shall be disclosed to the Bankruptcy Court in compliance with Bankruptcy Code § 1129(a)(5) on or before the Confirmation Date, unless some later date is permitted by the Bankruptcy Court. To the extent Reorganized XHI or any other Reorganized Debtor is converted to or remain a limited liability company or another Person in connection with Confirmation, as of the Effective Date, Reorganized XHI and each other Reorganized Debtor that so converts shall initially have a Board of Managers or similar governing body appointed in accordance with the governing documents for such Person. Reorganized XHI or another Person (which may or may not be a Reorganized Debtor) directly or indirectly wholly-owned by Reorganized XHI, shall be the initial sole member of each of the Reorganized Debtors that are limited liability companies. The boards of directors, sole members, and/or general partners of the Reorganized Debtors and shall have full power and authority to manage the respective businesses and affairs of the Reorganized Debtors on and after the Effective Date.

6.9. **Ownership of the Reorganized Subsidiary Debtors.** Except as the Debtors and the Reorganized Debtors may otherwise determine, the ownership of the capital stock or other equity interests of the respective Reorganized Subsidiary Debtors following the Effective Date shall be unaffected by the Plan, as each Debtor that owned or held the Old Stock or equity interest of a Subsidiary Debtor (to the extent that any of such Subsidiary Debtors has not been sold or otherwise transferred, dissolved, consolidated, or merged under applicable law prior to the Effective Date) as of the Effective Date shall, as a Reorganized Debtor on the Effective Date, own or hold such capital stock and/or equity interest (as applicable) in the corresponding Reorganized Subsidiary Debtor as of the Effective Date. In addition (other than with respect to any stock or joint venture interests cancelled, sold, or otherwise transferred by any of the Debtors on or prior to the Effective Date), on the Effective Date, each Reorganized Debtor shall own and retain its equity or joint venture interests in all non-Debtor subsidiaries, Affiliates, or joint ventures (to the extent that any such non-Debtor subsidiary, Affiliate, or joint venture interest has not been sold or otherwise transferred, dissolved, consolidated, or merged under applicable law prior to the Effective Date) to the same extent that the applicable Debtor owned such equity or joint venture interest in such non-Debtor subsidiary, Affiliate, or joint venture prior to the

Effective Date. The Debtors are also hereby authorized to dissolve, merge, consolidate, or undertake any similar transaction with respect to any of the Debtors or the Reorganized Debtors in accordance with applicable law prior to, on, or after the Effective Date, and to cause the transfer of assets between or among the Debtors in connection with any such dissolution, merger, or consolidation, without the need for any other further corporate action or court order.

6.10. Issuance of New Securities; Execution and Delivery of Plan Documents.

(a) On the Effective Date, Reorganized XHI shall issue the New XHI Common Stock and the New Notes; the Reorganized Subsidiary Debtors shall execute, deliver, and issue the New Notes Guarantees; and the applicable Reorganized Debtors shall issue any and all notes in connection with the Exit Credit Facility, the Exit Credit Facility Guarantees, and each other Plan Document. The issuance (i) the New XHI Common Stock pursuant to the Plan (including, pursuant to Section 6.21 hereof), (ii) the New Notes and the New Notes Guarantees, and (iii) any and all notes under or in connection with the Exit Credit Facility, the Exit Credit Facility Guarantees, or otherwise by any of the Reorganized Debtors, shall all be authorized hereby without the need for any further corporate action or court order.

(b) The execution and delivery by the Debtor(s) or the Reorganized Debtor(s) party thereto, or Xanadoo Company (as applicable) of all Plan Documents (including, without limitation, the Exit Credit Facility and the Exit Credit Facility Guarantees, any document in connection with the formation of NewCo or any document memorializing the New Notes, the New Notes Guarantees, and/or any other agreement entered into, or instrument, security interest, guaranty, or note issued in connection with any of the foregoing, any other Plan Document, and any other document reasonably necessary or appropriate to effectuate the events contemplated herein and therein), is hereby authorized without the need for any further corporate action or court order. All Plan Documents shall become effective and binding upon the parties thereto simultaneously in accordance with their respective terms and conditions as of the Effective Date.

6.11. Corporate Governance and Corporation Action.

(a) **The Amended and Restated Certificates of Incorporation, the Amended and Restated By-Laws, the Amended and Restated LLC Agreements, the Xanadoo Spectrum LLC Agreement, and Other Applicable Certificates of Formation and/or Organization.** On or before the Effective Date, (i) the Reorganized Debtors shall (x) file their respective Amended and Restated Certificates of Incorporation or other applicable certificates of formation and/or organization (as applicable) with the appropriate state officials in accordance with applicable state law and (y) adopt their respective Amended and Restated By-Laws, Amended and Restated LLC Agreements, Amended and Restated Limited Partnership Agreements, or similar constituent documents; and (ii) Xanadoo Company shall form NewCo, file the applicable certificate of formation with the appropriate state official in accordance with applicable state law, and the NewCo LLC Agreement shall be adopted. Each of the Amended and Restated Certificates of Incorporation, Amended and Restated LLC Agreements, Amended and Restated Limited Partnership Agreements, and NewCo LLC Agreement of the respective Reorganized Debtors and NewCo (as applicable) shall, among other things, prohibit the issuance of nonvoting equity securities to the extent required by Bankruptcy Code § 1123(a). After the Effective Date, the Reorganized Debtors and NewCo may amend and restate their respective Amended and Restated Certificates of Incorporation, Amended and Restated By-Laws, Amended and Restated LLC Agreements, Amended and Restated Limited Partnership Agreements, the NewCo LLC Agreement, applicable certificates of formation and/or organization, and/or other constituent documents (as applicable) as permitted by the governing state general corporation

law, limited liability corporation law, or limited partnership law (as applicable) and the applicable agreements and constituent documents (including the Amended and Restated Certificates of Incorporation, the Amended and Restated By-Laws, the Amended and Restated LLC Agreements, and the NewCo LLC Agreement) of the Reorganized Debtors and NewCo.

(b) **Corporate Action.** All actions reasonably necessary and desirable to effectuate, implement, or adopt the Exit Credit Facility; the issuance of the New XHI Common Stock; the formation of NewCo; the New Notes and the New Notes Guarantees; the adoption and/or filing (as applicable) of the NewCo LLC Agreement, the Amended and Restated Certificates of Incorporation, the Amended and Restated By-Laws, the Amended and Restated LLC Agreements, certificates of formation and/or organization, or similar constituent documents of the Reorganized Debtors and NewCo (including the selection of the directors, officers, and/or managers of the respective Reorganized Debtors and NewCo); any dissolution, consolidation, merger, or similar transaction involving any of the Subsidiary Debtors or Reorganized Subsidiary Debtors; and all other actions or transactions contemplated by the Plan, the Plan Documents, or such other documents, and all actions appropriate, necessary, or desirable to effectuate any of the foregoing or comparable transactions, shall be authorized and approved in all respects hereby without the need for any further corporate or similar action or court order. All matters provided for in the Plan or in any Plan Document involving the corporate structure, assets, and/or operations of the Debtors, the Reorganized Debtors, or NewCo and any corporate or similar action required by, or helpful to, the Debtors or the Reorganized Debtors in connection with the Plan or any of the Plan Documents shall be deemed to have occurred and shall be in effect, without any requirement of further action by the respective security holders, members, managers, officers, and directors of the Debtors or the Reorganized Debtors. After the Confirmation Date and on or prior to the Effective Date, the appropriate members of the Boards of Directors and/or members, managers, or officers of the Debtors, the Reorganized Debtors, and NewCo are authorized and directed to issue, execute, and deliver the agreements, documents, securities, certificates, and instruments contemplated by the Plan and/or any of the Plan Documents in the name of and on behalf of the applicable Debtor(s), Reorganized Debtor(s), or NewCo.

6.12. **Administration of the Plan.**

(a) After the Effective Date, each of the Reorganized Debtors and NewCo is authorized to perform those responsibilities, duties, and obligations set forth or contemplated herein, including, without limitation, subject to Section 6.11(b) hereof, making distributions as provided under the Plan; objecting to the allowance of any Claim or Interest, and prosecuting any litigation pertaining thereto or with respect to any Avoidance Claim; paying such Claims as may be later Allowed, as contemplated by the dispute resolution procedures contained in Plan Section 6.18; and overseeing and governing the continuing affairs and operations of the Reorganized Debtors on a go-forward basis.

(b) The Debtors, the Reorganized Debtors and NewCo, may retain without further Bankruptcy Court approval or notice such management, law firms, accounting firms, experts, advisors, agents, consultants, investigators, appraisers, auctioneers, or other professionals as they may deem desirable, necessary, or appropriate, including, without limitation, a transfer or disbursing agent, to aid them in the performance of their duties and obligations under the Plan and Confirmation Order. It shall not be a requirement that any such parties retained by any of the Debtors, the Reorganized Debtors, or NewCo, be a “disinterested person” (as such term is defined in Bankruptcy Code § 101(14)), and such retained parties may include Professionals or other Persons who had previously been active in these Cases on behalf of any Debtor, Creditor, or Interest Holder, or other constituency.

(c) The Reorganized Debtors shall be responsible for filing all federal, state, and local tax returns for the Debtors and for the Reorganized Debtors.

(d) To the extent the manner of performance is not specified herein, the Debtors, the Reorganized Debtors, and NewCo shall have the discretion to carry out and perform all other obligations or duties imposed on them, or actions contemplated or authorized, by the Plan, any Plan Document, or by law in any manner their respective Boards of Directors, managers, or officers so choose.

6.13. Provisions Relating to the Existing Notes, XHI Common Stock, and the DIP Facility.

(a) On the Effective Date, any and all notes issued in connection with the Prepetition Indebtedness, the DIP Facility, the Old XHI Common Stock and any other Interests in XHI; and any other options, warrants, calls, subscriptions, or other similar rights or other agreements or commitments, contractual or otherwise, obligating any of the Debtors to issue, transfer, or sell any shares of Old XHI Common Stock or other Interest in XHI, shall be automatically canceled and deemed terminated, extinguished, and of no further force and effect without further act or action under any applicable agreement, law, regulation, order, or rule, and the Holders thereof or the parties thereto shall have no rights, and such instruments or agreements shall evidence no rights, except the right to receive the distributions (if any) to be made to the Holders of such instruments under the Plan. Notwithstanding the foregoing, the 12.5% Notes and SPA shall continue in effect solely for the purposes of (i) allowing the Prepetition Noteholders to receive their distributions hereunder, (ii) allowing the Collateral Agent or its respective nominee to make distributions, if any, to be made on account of the Prepetition Indebtedness, (iii) allowing the Collateral Agent to appear in these Cases as collateral agent.

(b) No Holder of any notes issued in connection with the Prepetition Indebtedness or any of the Guarantees shall be entitled to any distribution under the Plan unless and until such Holder has first surrendered or caused to be surrendered any such notes or Guarantees to the Collateral Agent or its respective nominee, which in turn shall surrender any and all such notes or Guarantees to the Debtors or the Reorganized Debtors, or, in the event that such original notes or Guarantees have been lost, destroyed, stolen, or mutilated, has first executed and delivered an affidavit of loss and indemnity with respect thereto in a form customarily utilized for such purposes that is satisfactory to the Debtors or the Reorganized Debtors, and, in the event the Debtors or the Reorganized Debtors so request, has first furnished a bond in form and substance (including, without limitation, amount) satisfactory to the Debtors or the Reorganized Debtors (as applicable). If a Holder has actual possession of any note or Guarantee issued in connection with the Prepetition Indebtedness or any of the Guarantees, then such Holder must physically surrender or cause to be surrendered its note(s) or Guarantee(s) to the Collateral Agent or its respective nominee for subsequent distribution to the Debtors or the Reorganized Debtors (as applicable), in accordance with the procedures required by the Debtors. As soon as practicable after such surrender of the applicable note or Guarantee to the Debtors (or the Reorganized Debtors), or such delivery of an affidavit of loss and indemnity and such furnishing of a bond as provided in this Section 6.13(b), the Debtors or the Reorganized Debtors (as applicable) shall make the distributions provided in the Plan with respect to the applicable Allowed Claim(s) (as and to the extent as set forth in the Plan), although the Debtors or the Reorganized Debtors (as applicable) may, in their sole discretion, elect to make any such distributions prior to the surrender of the applicable note or Guarantee. Promptly upon the surrender of such instruments, the Debtors or the Reorganized Debtors (as applicable) shall

cancel any and all notes issued in connection with the Prepetition Indebtedness, or any of the Guarantees.

(c) On the Effective Date, the obligations with respect to and under the Prepetition Indebtedness shall be deemed terminated, canceled, and extinguished (all without any further action by any Person or the Bankruptcy Court), and shall have no further legal effect, and such instruments shall evidence no rights except the right to receive the distributions (if any) to be made to the Prepetition Noteholders under the Plan (which distributions shall, subject to the terms and conditions of the Plan, in turn be distributed on a Pro Rata basis by the Collateral Agent to (i) Holders of Secured Credit Facility Claims or (ii) the Holders of an Allowed Lenders' Deficiency Claim, in the manner as further set forth in the Plan (including, without limitation, Section 4.5 hereof)). Notwithstanding anything herein to the contrary, the authority of the Collateral Agent shall be terminated as of the Effective Date, except as otherwise provided for in Section 6.13 hereof.

(d) the Collateral Agent shall only be required to act and make distributions in accordance with the terms of the Plan and the the Collateral Agent and shall have no (i) liability for actions taken in accordance with the Plan or (ii) obligation or liability for distributions under the Plan to any party who does not hold an Allowed Claim against the Debtors as of the Distribution Record Date or who does not otherwise comply with the terms of the Plan.

6.14. Delivery of Distributions; Unclaimed Property; Undeliverable Distributions.

(a) Except as may otherwise be provided in Sections 6.12, 6.13, 6.16, 6.18 and 6.24 hereof, any distributions to Holders of Allowed Claims under the Plan shall be made: (i) at the addresses set forth either on the Schedules or as otherwise set forth on the Debtors' respective books and records, or on the respective Proofs of Claim filed by such Holders in the event that the addresses indicated thereon differ from those set forth on the Schedules or as otherwise set forth on the Debtors' respective books and records, or upon the applicable securities depositories, clearing systems, or broker, bank, or custodial participants in the clearing system (as applicable); or (ii) at the addresses set forth in any written notices of address change delivered to the Debtors or the Reorganized Debtors (if after the Effective Date) after the date of any related Proof of Claim.

(b) In accordance with Bankruptcy Code § 1143, any Holder of any note issued in connection with the Prepetition Indebtedness or any of the Guarantees that fails to surrender the applicable note or deliver an affidavit of loss and indemnity as provided herein prior to 5:00 p.m. (prevailing Eastern Time) on the date that is one year from and after the later of the Effective Date or the applicable Allowance Date with respect to any Claims arising from or relating to any such note issued in connection with the Prepetition Indebtedness or the Guarantees, shall be deemed to have forfeited all rights and claims in respect of such Claims and shall be forever barred from receiving any distributions under the Plan on account thereof. In such cases, any property held for distribution by the applicable Administrative Agent on account of Allowed Claims based on any such note issued in connection with the Prepetition Indebtedness or any of the Guarantees, shall be made available for redistribution, on a Pro Rata basis, to all other Holders of Allowed Claims arising under the Prepetition Indebtedness that timely surrendered the applicable note or delivered an affidavit of loss and indemnity as provided herein.

(c) If the distribution to the Holder of any Allowed Priority Claim, Allowed Class 2B Claim, or Allowed Class 3 Claim, is returned to the Reorganized Debtors as undeliverable, no further distribution shall be made to such Holder unless and until the

Reorganized Debtors are notified in writing of such Holder's then current address. The Reorganized Debtors shall retain any such undeliverable distributions.

(d) Any Holder of an Allowed Claim who does not assert a claim for an undeliverable distribution prior to 5:00 p.m. (prevailing Eastern Time) on the date that is one year after the date by which such Holder was first entitled to such distribution shall no longer have any claim to, or interest in, such undeliverable distribution and shall be forever barred from receiving any distribution under the Plan.

(e) Nothing contained in the Plan shall require the Debtors or the Reorganized Debtors to attempt to locate any Holder of an Allowed Claim.

6.15. Funding of Cash Distributions under the Plan. Any funds necessary to make the Cash distributions required under the Plan and/or to fund the future obligations of the Reorganized Debtors shall be made from: the Cash on hand of the Debtors and of the Reorganized Debtors; the Exit Credit Facility; the Sources and Uses Cash (to the extent available for distribution under the terms and conditions of the Exit Credit Facility and/or Sale Agreement, as applicable); the Cash generated as Unencumbered Asset Net Sale Proceeds, as and when received by the Debtors or the Reorganized Debtors, as applicable; and the future operations of the Debtors and the Reorganized Debtors (as applicable).

6.16. Unencumbered Assets and Distribution of Unencumbered Asset Net Sale Proceeds, if any.

(a) The Unencumbered Assets shall be maintained, sold, transferred, or otherwise disposed of by the Debtors or the Reorganized Debtors, as applicable, in the ordinary course of business. The Unencumbered Assets shall not be, and shall not be deemed to be, held in trust for the benefit of any Person, and the Debtors or the Reorganized Debtors, as applicable, shall be authorized to maintain, sell, transfer, or otherwise dispose of the Unencumbered Assets in their discretion and business judgment.

(b) If Class 3 votes as a Class in the aggregate to reject the Plan in accordance with Bankruptcy Code § 1126(c), then subject to the terms and conditions of the Plan, the Reorganized Debtors (or any transfer or disbursing agent retained by the Reorganized Debtors pursuant to Plan Section 6.12(b)) shall make the distributions to the Holders of Allowed Claims in Class 3 (as applicable) as necessary in the discretion of the disbursing agent.

(c) Any party-in-interest claiming to have a valid Lien upon any Asset listed on Exhibit to the Disclosure Statement as an Unencumbered Asset must file an objection prior to the Plan Objection Deadline in order to challenge the inclusion of any such Asset thereon, or be forever barred from doing so, such that the applicable Asset shall be treated as an Unencumbered Asset for all purposes under the Plan and in these Cases.

6.17. Manner of Payments Under the Plan. Any Cash distribution to be made by the Debtors or the Reorganized Debtors (as applicable) pursuant to the Plan may be made by a check on a United States bank selected by the Debtors or the Reorganized Debtors (as applicable); provided, however, that Cash distributions made to (i) foreign Holders of Allowed Claims may be paid, at the option of the Debtors or the Reorganized Debtors (as applicable), in such funds and by such means as are necessary or customary in a particular foreign jurisdiction, and (ii) either of the Parent on account of the DIP Facility Claims or the Collateral Agent on Account of the Prepetition Indebtedness Claims, respectively, shall be made by wire transfer as directed by the

applicable party from a domestic bank selected by the Debtors or the Reorganized Debtors (as applicable).

6.18. Disputed Claims.

(a) No distribution or payment shall be made on a Disputed Claim until such Disputed Claim becomes an Allowed Claim. On the Initial Distribution Date, any Cash distributions reserved for the Holders of any Disputed Claims in each Class under the Plan shall be deposited in deposit accounts that meet the requirements of Bankruptcy Code § 345 for the benefit of the Holders of Disputed Claims whose Claims are ultimately Allowed in the respective Classes in which the Disputed Claims are classified (each deposit account, a “**Disputed Claims Reserve**”).

(b) Subject to the other provisions of the Plan (including Section 6.18(a) hereof), the Reorganized Debtors (or any transfer or disbursing agent retained thereby pursuant to Section 6.12(b)) shall withhold from the property to be distributed under the Plan and deposit in the applicable Disputed Claims Reserve a sufficient amount of such withheld property to be distributed on account of the amount of Claims that are Disputed Claims in such Class had such Disputed Claims been Allowed Claims as of the Initial Distribution Date for such Class under the Plan.

(c) As to a Disputed Claim, the Bankruptcy Court shall, upon a motion by the Debtors or the Reorganized Debtors or any other party in interest in these Cases (as applicable), estimate the maximum allowable amount of such Disputed Claim and the amount to be placed in the applicable Disputed Claims Reserve on account of such Disputed Claim. Any Creditor whose Claim (i) is estimated by an order of the Bankruptcy Court or (ii) is the subject of a motion or objection to (A) estimate or liquidate the Allowed amount of such Disputed Claim at zero dollars (\$0.00) or (B) disallow, expunge, vacate, or otherwise strike such Disputed Claim in full on any grounds, as contemplated by Plan Section 6.12(a), shall not have any recourse to the Debtors or to the Reorganized Debtors (as applicable), any Assets theretofore distributed on account of any Allowed Claim, or any other Person or property in the applicable Class if the finally Allowed Claim of that Creditor exceeds that estimated maximum allowable amount. Instead, such Creditor shall have recourse only to any remaining amounts in the applicable Disputed Claims Reserve or from any future distributions made by the Debtors or the Reorganized Debtors with respect to Allowed Claims in the applicable Class.

(d) All earnings on any Cash held in a Disputed Claims Reserve (if any) shall be held in trust and shall be distributed only in the manner described in Section 6.18(e) of the Plan.

(e) At such time as all or any portion of a Disputed Claim becomes an Allowed Claim, the distributions reserved for such Disputed Claim or such portion, plus any earnings thereon, net of any taxes, shall be released from the appropriate Disputed Claims Reserve and delivered to the Holder of such Allowed Claim in the manner as described in the Plan. At such time as all or any portion of any Disputed Priority Claim or any Disputed Class 1, 2B, or 2C Claim is determined not to be an Allowed Claim, the distribution reserved for such Disputed Claim or such portion, plus any earnings thereon, net of any taxes, shall be released from the appropriate Disputed Claims Reserve and returned to the Reorganized Debtors. At such time as all or any portion of any Disputed Class 3 Claim (or Disputed Class 3 Claim, as applicable) is determined not to be an Allowed Claim, the distribution reserved for such Disputed Claim or such portion, plus any earnings thereon, shall be released from the appropriate Disputed

Claims Reserve account and made available for redistribution in a timely manner to the other Holders of Allowed Claims of such Classes; provided, however, that none of the Debtors, the Reorganized Debtors, or any transfer or disbursing agent retained by the Reorganized Debtors pursuant to Plan Section 6.12 shall be required to make any such redistribution until the aggregate amount available with respect thereto is at least \$1,000. Upon the resolution of all Disputed Claims, any remaining amounts that had been reserved on account thereof shall be finally distributed in the manner set forth herein.

(f) After the Confirmation Date, the Debtors, and on and after the Effective Date, the Reorganized Debtors shall have the authority to object to and litigate any Disputed Claims and shall have the authority to settle, compromise, resolve, or withdraw any objection to Disputed Claims.

6.19. Deadlines for Determining the Record Holders of the Various Classes of Claims. At the close of business on the Distribution Record Date, the respective transfer records for the Credit Facilities, the Trust Preferred Securities, the Junior Subordinated Notes, and the Old XHI Common Stock shall be closed and there shall be no further changes in the record holders of the respective DIP Facility Claims, General Unsecured Claims, or the Old XHI Common Stock after such date. None of the Debtors, the Reorganized Debtors, any disbursing agent or transfer agent retained by the Reorganized Debtors pursuant to Plan Section 6.12(b), nor the respective Administrative Agents or Indenture Trustees shall (as applicable) have any obligation to recognize any transfer of the 12.5% Note Claims, the DIP Facility Claims, General Unsecured Claims, the Old XHI Common Stock, any notes or other securities issued in connection with either of the Credit Facilities, or any of the Guarantees, occurring after the _____ Date (as applicable), and such parties shall be entitled, instead, to recognize and deal for all purposes hereunder with only those record holders thereof as of the close of business on the _____ Date.

6.20. The Exit Credit Facility and the Exit Credit Facility Guarantees.

(a) On the Effective Date (or as soon thereafter as is practicable), the Reorganized Debtors, either as direct borrowers or as Exit Credit Facility Guarantors; the Exit Credit Facility Agent, as agent; and the Exit Credit Facility Lender(s), as lender(s) (in each case, as may be set forth in the final Exit Credit Facility), shall (as applicable) execute and deliver the Exit Credit Facility, the Exit Credit Facility Guarantees, and any and all security agreements, mortgages or extensions of mortgages, certificates, and other instruments, agreements, assignments, and documents contemplated and/or required by the Exit Credit Facility, including, but not limited to, any and all such documents that serve to evidence and secure the Reorganized Debtors' respective obligations under the Exit Credit Facility and/or the Exit Credit Facility Guarantees (as applicable), and any Liens and security interests in favor of the Exit Credit Facility Lender(s) securing such obligations.

6.21. New XHI Common Stock. On the Effective Date (or as soon thereafter as is practicable), (i) The Parent or Reorganized XHI shall form New XHI, (ii) The Parent or Reorganized XHI shall issue the shares of New XHI Common Stock to New XHI. As of the Effective Date, such shares of New XHI Common Stock shall represent 100% of the outstanding shares of New XHI Common Stock.

6.22. The New Notes and the New Notes Guarantees. As further set forth in the Plan Supplement, on the Effective Date (or as soon thereafter as is practicable), Reorganized XHI shall issue the New Notes and the New Notes Guarantors shall execute and deliver the New Notes

Guarantees concurrently therewith. The New Notes shall be secured by Liens and security interests on all or substantially all of the assets of the Reorganized Debtors that are junior in priority only to the Liens and security interests granted to the various Exit Credit Facility Lenders under the Exit Credit Facility.

6.23. **No Fractional Shares.** No fractional new XHI shares shall be issued or distributed under the Plan. Whenever any distribution to a particular Person would otherwise call for the distribution of a fraction of a share of New XHI shares, the actual distribution of such units shall be rounded down to the next lower whole number. The total number of new XHI shares to be distributed to a Class of Claims shall be adjusted as necessary to account for this rounding. No consideration shall be provided in lieu of fractional new XHI shares that are rounded down.

6.24. **De Minimis Distributions.** No Holder of an Allowed Claim shall be entitled to receive any distribution from any Debtor, Reorganized Debtor, any disbursing agent or transfer agent retained by the Reorganized Debtors pursuant to Plan Section 6.12(b), unless and until at least \$75 in Cash is then on hand and specifically allocable for a distribution on account of such Allowed Claim. To the extent that an amount less than \$75 in Cash does not become available and specifically allocable for distribution on account of a particular Claim within the date that is one year after the Effective Date, the Holder of such Claim shall have its Claim for, and its right to, such distribution discharged and shall be forever barred from asserting any such claim against, or interest in, the Reorganized Debtors or their respective property. Any Cash not distributed pursuant to this Plan Section 6.24 shall be the property of the Reorganized Debtors, and any such Cash held by any disbursing agent or transfer agent shall be returned to the Reorganized Debtors.

6.25. **Withholding and Reporting Requirements.** In connection with the Plan and all instruments issued in connection therewith and distributed thereunder, the Debtors, the Reorganized Debtors, NewCo, the Collateral Agent, or any disbursing agent or transfer agent retained by the Reorganized Debtors or the Collateral Agent pursuant to Plan Section 6.12(b), as the case may be, shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions under the Plan shall be subject to any such withholding and reporting requirements.

6.26. **Direction to Parties.** From and after the Effective Date, the Reorganized Debtors and NewCo may apply to the Bankruptcy Court for an order directing any party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by the Plan, and to perform any other act, including the satisfaction of any Lien or the execution and delivery of a Lien Waiver, that is necessary, appropriate, or beneficial for the consummation of the Plan.

6.27. **Setoffs.** The Debtors shall, pursuant to Bankruptcy Code § 553, set off against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Claim, all claims, rights, and Causes of Action of any nature that the Debtors may hold against the Holder of such Allowed Claim that are not otherwise waived, released, or compromised in accordance with the Plan; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim shall constitute a waiver or release by the Debtors of any such claims, rights, and Causes of Action that any of the Debtors may possess against such Holder.

6.28. **Plan Supplement.** The Plan Supplement shall be filed with the Bankruptcy Court within the time established by the order of the Bankruptcy Court approving the Disclosure Statement or other applicable order of the Bankruptcy Court. The Plan Supplement shall include

(unless previously filed) the respective draft forms of a sample Amended and Restated Certificate of Incorporation, Amended and Restated LLC Agreement, Amended, and Amended and Restated Bylaws, and any applicable certificates of formation and/or organization; the draft forms of the New Notes and the New Notes Guarantees. The Debtors shall also include in the Plan Supplement a draft form of, or term sheet for, the Exit Credit Facility or any shareholder agreement, but only if and to the extent that such a draft(s) is available as of the date of the filing of the Plan Supplement. The Plan Supplement may also include revised or updated lists of (a) the Executory Contracts identified as “to be assumed” under the Plan and the proposed respective cure amounts due thereunder (if any), (b) the Executory Contracts identified as “to be rejected” under the Plan, (c) any revisions to Exhibit to the Disclosure Statement, containing a revised schedule of the Unencumbered Assets, and/or (d) any revisions to Exhibit to the Disclosure Statement, containing a revised schedule of developments that will not revert in the Reorganized Debtors. The draft forms, summaries, lists, and schedules so set forth in the Plan Supplement may be amended, modified, or supplemented from time to time after the filing of the Plan Supplement. Upon its filing, the Plan Supplement may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. Holders of Claims or Interests may obtain a copy of the Plan Supplement upon written request to the Claims Agent, or through the Bankruptcy Court’s website, www.deb.uscourts.gov, or the website maintained by the Claims Agent, www.epiq11.com.

6.29. Allocation of Distributions. All distributions paid to Holders of Allowed Claims in satisfaction thereof pursuant to the Plan shall be allocated, first, to the original principal amounts of such Claims (as determined for federal income tax purposes) and, second, to the portion of such Claims representing interest (as determined for federal income tax purposes); any excess thereafter shall be allocated to the remaining portion of such Claims.

6.30. Distribution Limitations. Notwithstanding any other provision of the Plan to the contrary, no distribution shall be made on account of any Claim or Interest, or part thereof, (a) that is not an Allowed Claim or an Allowed Interest (as applicable), (b) that has been avoided or is subject to any objection, or (c) is otherwise not entitled to any distribution pursuant to Bankruptcy Code § 502(d). The sum total of the value of the distributions to be made on the Initial Distribution Date to all Claims or Interests in a particular Class (if any) shall not exceed the aggregate amount of the Allowed Claims or Allowed Interests (as applicable) in such Class (if any), and the distribution to be made to each individual Holder of an Allowed Claim or an Allowed Interest shall not exceed the amount of such Holder’s Allowed Claim or Allowed Interest (as applicable).

6.31. Limitations on Amounts to Be Distributed to Holders of Allowed Insured Claims. Distributions under the Plan to each Holder of an Allowed Insured Claim shall be in accordance with the treatment provided under the Plan for the Class in which such Allowed Insured Claim is classified, but solely to the extent that such Allowed Insured Claim is not satisfied from proceeds payable to the Holder thereof under any pertinent insurance policies and applicable law. Nothing in this Section 6.31 shall constitute a waiver of any claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, or liabilities that any Person may hold against any other Person, including the Debtors’ insurance carriers or sureties.

6.32. “Change of Control” Provisions. Notwithstanding anything to the contrary that may be contained in the Plan or the Confirmation Order, any insurance policy, either of the Credit Facilities, the Junior Subordinated Notes Indentures, any documents entered into in connection with the Trust Preferred Securities, any Executory Contract, or other contract or agreement to which any of the Debtors or their Affiliates is a party, the transactions to be consummated in

accordance with the Plan shall not create, or be deemed to create, any claim or right in connection therewith, upon a “Change of Control” or similar term, as such term may be defined or utilized in any of such documents or agreements.

6.33. **United States Trustee’s Fees.** The Debtors and the Reorganized Debtors shall be responsible for timely payment of fees incurred pursuant to 28 U.S.C. § 1930(a)(6). After confirmation of the Plan, the Debtors shall file with the Bankruptcy Court and the United States Trustee a quarterly post-confirmation report, in the format specified by the United States Trustee, for each quarter that any of such Reorganized Debtors’ particular Cases remain open. The United States Trustee quarterly fee shall be calculated on all disbursements made by the Reorganized Debtors until the particular Cases are closed, converted to cases under Chapter 7 of the Bankruptcy Code, or dismissed (as applicable). The Bankruptcy Court shall retain jurisdiction to decide any post-confirmation dispute concerning the United States Trustee quarterly fees.

6.34. **Preservation of Causes of Action.** Subject to the releases set forth in Article IX below and waiver in Section 6.27, unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors and the Reorganized Subsidiary Debtors shall retain and may enforce all rights to commence and pursue, as appropriate, any and all Causes of Action, whether arising before or after the Commencement Date, including any actions specifically enumerated in the Plan Supplement, and the Reorganized Debtors’ and Reorganized Subsidiary Debtors’ respective rights to commence, prosecute, or settle such Causes of Action shall be preserved notwithstanding the occurrence of the Effective Date. The Reorganized Debtors and Reorganized Subsidiary Debtors may pursue such Causes of Action, as appropriate, in accordance with the best interests of the Reorganized Debtors. **No Person may rely on the absence of a specific reference in the Plan, the Plan Supplement, or the Disclosure Statement to any Cause of Action against it as any indication that the Debtors or the Reorganized Debtors or the Reorganized Subsidiary Debtors will not pursue any and all available Causes of Action against it. The Debtors, the Reorganized Debtors and the Reorganized Subsidiary Debtors expressly reserve all of their respective rights to prosecute any and all Causes of Action against any Person, except as otherwise expressly provided in the Plan or a Final Order.** Unless any Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, the Reorganized Debtors expressly reserve all Causes of Action, for later adjudication, and, therefore no preclusion doctrine, including the doctrines of res judicata, collateral estoppel, issue preclusion, claim preclusion, estoppel (judicial, equitable or otherwise), or laches, shall apply to such Causes of Action upon, after, or as a consequence of the Confirmation or occurrence of the Effective Date.

Further, subject to the releases set forth in Article IX below, the Reorganized Debtors and the Reorganized Subsidiary Debtors reserve and shall retain the foregoing Causes of Action notwithstanding the rejection or repudiation of any Executory Contract during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy Code, any Causes of Action that a Debtor may hold against any Person shall vest in the Reorganized Debtors or Reorganized Subsidiary Debtors, as the case may be. The applicable Reorganized Debtor and Reorganized Subsidiary Debtors, through their respective authorized agents or representatives, shall retain and may exclusively enforce any and all such Causes of Action. The Reorganized Debtors and the Reorganized Subsidiary Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw or litigate to judgment any such Causes of Action and to decline

to do any of the foregoing without the consent or approval of any third party or further notice to or action, order or approval of the Bankruptcy Court.

6.35. **Avoidance Actions.** The Debtors, the Reorganized Debtors and the Reorganized Subsidiary Debtors waive all Avoidance Claims, provided, however, that any Avoidance Claims against a Person that has filed a Claim against the Debtors is expressly preserved solely for the purposes of resolving Disputed Claims pursuant to Section 6.18.

6.36. **Sales or Restructuring Transactions.** The Debtors and/or the Reorganized Debtors are hereby authorized, but not directed, to engage in any sale or restructuring transaction involving their Assets, businesses, and/or operations, including, without limitation, (a) forming, or causing to be formed, new direct or indirect subsidiaries, or causing to dissolve, consolidate, or merge any existing direct or indirect subsidiaries, (b) engaging in asset sales, assignments, or transfers to unrelated third parties or to Affiliates, or (c) transferring operations to existing or newly formed direct or indirect subsidiaries. The Debtors and the Reorganized Debtors are hereby authorized (but not directed) to take any and all actions as may be reasonable, necessary, or appropriate to effectuate any such transactions, without the need for any further court order or notice.

ARTICLE VII

EXECUTORY CONTRACTS

7.1. **Rejection or Assumption of Executory Contracts.**

(a) As of the Confirmation Date, but subject to the occurrence of the Effective Date and the terms and conditions of the Plan (including Sections 7.2 and 7.3 hereof), all Executory Contracts (including, without limitation, those Executory Contracts identified as “to be rejected” on the list attached as Exhibit to the Disclosure Statement, as such list may be revised and included in the Plan Supplement, as an exhibit to the Confirmation Order, or otherwise, and those otherwise expressly rejected under and pursuant to the terms of the Plan, including under Article VII hereof) shall be deemed rejected by the applicable Debtors in accordance with the provisions and requirements of Bankruptcy Code §§ 365 and 1123, except those Executory Contracts that (a) have previously been assumed by an order of the Bankruptcy Court, (b) are the subject of a motion to assume pending on the Confirmation Date, (c) are identified as “to be assumed” on the list attached as Exhibit to the Disclosure Statement (as such list may be revised and included in the Plan Supplement or otherwise), or (d) are otherwise expressly assumed under and pursuant to the terms of the Plan (including under Article VII hereof). Assumption of the Executory Contracts at issue in clauses (c) or (d) in the immediately preceding sentence shall be effective as of the Confirmation Date, subject to the occurrence of the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all such rejections and assumptions (as applicable) pursuant to Bankruptcy Code §§ 365(a) and 1123, subject to the occurrence of the Effective Date and the terms and conditions of the Plan (including Sections 7.2 and 7.3 hereof). The listing of a document on either Exhibit or Exhibit to the Disclosure Statement (as either such list may be revised and included in the Plan Supplement, as an exhibit to the Confirmation Order, or otherwise), or any other statement in this Plan (including in this Plan Section 7.1) or in the Disclosure Statement shall not constitute an admission by the Debtors that such document is an executory contract or unexpired lease or that the Debtors have any liability thereunder. Each Executory Contract assumed pursuant to this

Article VII (i.e., those Executory Contracts at issue in clauses (c) and (d) of the first sentence of this Plan Section 7.1) or otherwise shall revest in and be fully enforceable by the respective Reorganized Debtor in accordance with its terms, except as may be modified by (w) any agreement with respect thereto between the Debtors and the applicable non-debtor party, (x) the provisions of the Plan, (y) any order of the Bankruptcy Court approving and authorizing its assumption, or (z) applicable federal law. The Debtors shall retain the right at all times prior to the Effective Date (i) to assume any additional or other Executory Contract(s) not specifically identified on the list thereof attached as Exhibit to the Disclosure Statement (or as such list may be revised and included in the Plan Supplement or otherwise) as “to be assumed” (including, without limitation, any Executory Contract currently identified on Exhibit to the Disclosure Statement as “to be rejected” or are otherwise being rejected pursuant to the terms of the Plan) or (ii) to reject any additional or other Executory Contract(s) not specifically identified on the list thereof attached as Exhibit to the Disclosure Statement (or as such list may be revised and included in the Plan Supplement or otherwise) as “to be rejected” (including, without limitation, any Executory Contract currently identified on Exhibit to the Disclosure Statement as “to be assumed” or are otherwise being assumed pursuant to the terms of the Plan), in each case upon providing notice to the non-Debtor party thereto. Without limiting the effect of this Plan Section 7.1, Exhibit to the Disclosure Statement contains a schedule of all known Executory Contracts (in addition to those referenced in Plan Sections 7.7, 7.8, 7.9, and 7.11) anticipated to be assumed under this Plan (as such schedule may be revised and included in the Plan Supplement or otherwise), subject to the Debtors’ right to determine at any time subsequently, on or prior to the Effective Date, including, without limitation, as may be set forth in the Plan Supplement, to either assume or reject any Executory Contracts or to include additional Executory Contracts to be either (a) assumed under the Plan or (b) rejected under the Plan, in each case upon providing notice to the non-Debtor party thereto.

(b) Notwithstanding anything herein or the Confirmation Order to the contrary, to the extent not terminated or cancelled in accordance with their terms or pursuant to an order of the Bankruptcy Court prior to the Effective Date, each of the limited partnership agreements, limited liability company agreements, or similar agreements between any of the Debtors and either another Debtor or any non-Debtor Affiliate to which only one or more of the Debtors and either another Debtor or any non-Debtor affiliates are parties, shall, regardless of whether such agreements are Executory Contracts, be deemed assumed by the applicable Debtors as of the Confirmation Date, subject to the occurrence of the Effective Date, and shall remain in full force and effect thereafter in accordance with their terms. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to Bankruptcy Code §§ 365 and 1123 and otherwise, subject to the occurrence of the Effective Date. Each agreement assumed pursuant to this Plan Section 7(b) shall be retained by, and shall revest in, and be fully enforceable by, the respective Reorganized Debtor in accordance with its terms.

7.2. Cure of Defaults of Assumed Executory Contracts. To the extent there are any monetary amounts by which each Executory Contract to be assumed pursuant to the Plan (i.e., those Executory Contracts at issue in clauses (c) and (d) of the first sentence of Plan Section 7.1) is in default must be satisfied pursuant to Bankruptcy Code § 365(b)(1) and the terms of the Plan, such satisfaction shall be by payment of the default amount (as such amount has been agreed upon by the Reorganized Debtors in the manner set forth in Plan Sections 7.2 or 7.3 or, in the event of a dispute regarding such default amount, as such amount has been determined by a Final Order of the Bankruptcy Court, subject to the Debtors’ or the Reorganized Debtors’ right to elect thereafter to reject such agreement in the manner set forth below in this Section 7.2) in Cash by the latest of (a) the Effective Date (or as soon thereafter as is practicable), (b) in the event of a dispute regarding the default amount, within 60 days of the entry of an order of the Bankruptcy

Court establishing such default amount, (c) the date of a Final Order of the Bankruptcy Court (or as soon thereafter as is practicable) approving and authorizing the assumption of an Executory Contract not otherwise assumed pursuant to the terms of the Plan, or (d) on such other terms as the parties to such Executory Contracts may otherwise agree. Notwithstanding the foregoing, in the event of a dispute regarding: (x) the amount of any required cure payments, (y) the ability of the Reorganized Debtors to provide “adequate assurance of future performance” (within the meaning of Bankruptcy Code § 365) under the contract or lease to be assumed, or (z) any other matter pertaining to assumption (each an “**Assumption Dispute**”), the cure payments required shall be made following the entry of a Final Order resolving the Assumption Dispute and approving the assumption or as otherwise agreed by the parties to such dispute; provided, however, that (i) in the event the Bankruptcy Court determines that the actual cure payment owed to a particular non-Debtor party to an Executory Contract exceeds the proposed cure amount as set forth either in Plan Section 7.3 or the notice provided by the Debtors pursuant to Section 7.3 hereof and as set forth on Exhibit to the Disclosure Statement (as applicable), or (ii) the Debtors and the applicable non-Debtor party involved in any Assumption Dispute cannot otherwise consensually resolve such Assumption Dispute, the Debtors may reject the Executory Contract at issue pursuant to Bankruptcy Code § 365 rather than paying the disputed cure amount, by presenting a proposed order to the Bankruptcy Court for such rejection, without any prior notice (although the Debtors shall inform the applicable non-Debtor party to such Executory Contract of the rejection thereof and of the Plan Rejection Bar Date). In the event any Executory Contract is so rejected, the non-Debtor party thereto shall be entitled to file a Proof of Claim pursuant to Plan Section 7.4, which Claim shall be classified pursuant to Plan Section 7.5, but shall not be entitled to any other or further Claim or relief from any of the Debtors or the Reorganized Debtors. After the Confirmation Date, the Debtors, and on and after the Effective Date, the Reorganized Debtors, shall have the authority to settle, compromise, resolve, or withdraw any Assumption Dispute without the need for any Bankruptcy Court or other approval or any other or further notice.

7.3. The Proposed Cure Amount and Objection Deadline. The Debtors shall provide notice to the non-Debtor parties to all Executory Contracts listed on Exhibit as being assumed of (a) the proposed default amount (if any) owed under the applicable Executory Contract and (b) the last date by which such non-Debtor party may file an objection or other response with respect to such proposed default amount. *All other Executory Contracts being assumed under the Plan that are not specifically identified on the list thereof attached as Exhibit to the Disclosure Statement (or as such list may be revised and included in the Plan Supplement or otherwise), including any Executory Contracts being assumed pursuant to Plan Sections 7.6, 7.7, 7.8, 7.9, 7.10, or 7.11, shall be deemed to have a proposed default amount of \$0 for all purposes in these Cases. Any non-Debtor party that fails to object or otherwise respond on or prior to the Confirmation Objection Deadline to the proposed default amount owed either (i) as listed on such notice and Exhibit (or as such list may be revised) or (ii) as otherwise set forth in this Section 7.3 of the Plan, shall be deemed to have consented to such applicable proposed amount and to the proposed assumption by the Debtors of the applicable Executory Contract, and may not receive any other or additional distribution or consideration from the Debtors, the Estates, the Reorganized Debtors, or the Assets, or otherwise seek recourse against, the Debtors, the Estates, the Reorganized Debtors, or any of their Assets, beyond such proposed amount owed.*

7.4. Rejection of Contracts with Vendors. All contracts, work orders, or other similar agreements entered into prior to the Petition Date by any Debtor with any Vendor, to the extent not terminated or cancelled in accordance with their terms or pursuant to an order of the Bankruptcy Court prior to the Effective Date, shall be (i) deemed rejected pursuant to the Plan, to

the extent that they constitute Executory Contracts, which rejection shall be deemed effective as of the Confirmation Date, subject to the occurrence of the Effective Date, and (ii) deemed terminated to the extent that they do not constitute Executory Contracts, which termination shall be deemed effective as of the Confirmation Date, subject to the occurrence of the Effective Date. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of all such rejections and/or terminations pursuant to Bankruptcy Code §§ 363, 365(a), and 1123 or otherwise, subject to the occurrence of the Effective Date, and subject to the Debtors' rights to elect, in their discretion, to instead assume any particular pre-Petition Date contract, work order, or other similar agreement with any Vendor in accordance with the terms and conditions of Article VII hereof, in which case such pre-Petition Date contract, work order, or other similar agreement shall revert in, and be fully enforceable by, the respective Reorganized Debtor in accordance with its terms, except as may be modified by any agreement with respect thereto between the Debtors and the applicable non-debtor party or any order of the Bankruptcy Court approving and authorizing its assumption.

7.5. Rejection Claims.

(a) Each non-Debtor party to any Executory Contract rejected under and pursuant to this Article VII shall be entitled to file, not later than 30 days after the entry of the Confirmation Order (the "**Plan Rejection Bar Date**"), a Proof of Claim against the applicable Debtor for alleged Rejection Claims. *If no such Proof of Claim for a Rejection Claim is timely filed against the applicable Debtor, any such Claim shall not be entitled to receive any distributions under the Plan on account thereof from the Debtors, the Reorganized Debtors, or their respective Estates or Assets.* Objections to any such Proof of Claim shall be filed not later than 90 days after such Proof of Claim is filed (subject to any potential further extensions of such date as so ordered and approved by the Bankruptcy Court), and the Bankruptcy Court shall decide any such objections. Distributions (if any) in respect of such Claims (consistent with the distributions to be received by Holders of other Claims in the Class into which such Claims fall, as determined by Section 7.6 hereof) shall be made no earlier than the later of (i) 60 days after the expiration of the 90-day period (as such period may be extended by order of the Bankruptcy Court) for filing an objection in respect of any Proof of Claim filed pursuant to this Section 7.5 and (ii) 60 days after the Claim has been Allowed by a Final Order of the Bankruptcy Court, provided that no such distribution shall be made before the Effective Date.

(b) Notwithstanding anything to the contrary herein, the Plan Rejection Bar Date shall apply only to Rejection Claims with respect to those Executory Contracts that are to be rejected under and pursuant to the Plan. Any Holder of a Rejection Claim for an Executory Contract that is not to be rejected pursuant to the Plan, but whose Rejection Claim instead arises under an Executory Contract that either has already been rejected by an order of the Bankruptcy Court or is the subject of a separate motion to reject pending on the Confirmation Date, must file a Proof of Claim for such Rejection Claim by the date provided in any order relating to such rejection.

7.6. Classification of Rejection Claims. Except as otherwise provided under the Plan, any Rejection Claims against any of the Debtors shall be treated as Class 3 Claims, as applicable, in each instance to the extent it is an Allowed Claim.

7.7. Insurance Policies.

(a) All insurance policies of the Debtors (including, without limitation, the Directors & Officers Liability Insurance Policies) providing coverage to the Debtors and/or the

Debtors' current or former directors, officers, stockholders, agents, employees, representatives, predecessors, and others for conduct in connection in any way with the Debtors, their assets, liabilities, and/or operations, regardless of whether such policies are Executory Contracts, unless previously rejected and/or terminated or expired in accordance with their terms, shall be deemed assumed by the applicable Debtors as of the Confirmation Date, subject to the occurrence of the Effective Date, and shall remain in full force and effect thereafter in accordance with their terms. Entry of the Confirmation Order by the Bankruptcy Court shall constitute approval of such assumptions pursuant to Bankruptcy Code §§ 365 and 1123 and otherwise, subject to the occurrence of the Effective Date. Each insurance policy assumed pursuant to Article VII hereof shall be retained by, and shall revert in, and be fully enforceable by, the respective Reorganized Debtor in accordance with its terms, except as may be modified by the provisions of the Plan, any order of the Bankruptcy Court approving and authorizing its assumption, or applicable federal law.

(b) Notwithstanding anything provided herein to the contrary, no provision of the Plan, including, without limitation, the discharge and release from Claims as provided for in Article IX hereof, shall be deemed in any way to diminish or impair the enforceability of any insurance policies, or any agreements, documents, or instruments relating to the foregoing, that may cover claims against any of the Debtors, any other Person, or otherwise with respect to any of the Debtors' present or previously-owned Assets or developments. Any failure by the Debtors to list any particular insurance policy on any schedule of Executory Contracts to be assumed under the Plan (either contained in the Disclosure Statement, including, without limitation, Exhibit thereto, the Plan Supplement, or otherwise) shall not in any way impair the Debtors', the Reorganized Debtors', or any beneficiary's (as applicable) ability to enforce such policy, and instead, any and all such policies and bonds shall be transferred to and vested in the Reorganized Debtors and shall remain and continue in full force and effect on and after the Effective Date in accordance with this Plan Section 7.7.

(c) Nothing contained in the Disclosure Statement (or any exhibits thereto), the Plan, or the Confirmation Order shall constitute an admission by any of the Debtors that their insurance policies constitute Executory Contracts under, or for purposes of, Bankruptcy Code § 365.

(d) Any Claims by any non-Debtor party to any insurance policies, or any agreements, documents, or instruments relating to the foregoing, against any of the Debtors that arose on or prior to the Petition Date, other than for any Claim for any unpaid premiums thereunder, shall be treated as Class 3 Claims, as applicable, in each instance to the extent they are Allowed Claims, and shall be subject to all applicable defenses and objections of the Debtors, the Estates, and the Reorganized Debtors (including, but not limited to, as provided for in Bankruptcy Code § 502(e)); provided, however, that, to the extent any non-Debtor party to any insurance policies, or any agreements, documents, or instruments relating to the foregoing has a fixed, non-contingent, and liquidated Claim against the Debtors and holds any collateral to secure the Debtors' obligations thereunder, such party may, upon granting the Debtors a minimum of 14 days' notice in writing, apply such collateral to reduce the Allowed amount of any fixed, non-contingent, and liquidated Claim such party may have against the Debtors under such any insurance policies, or any agreements, documents, or instruments relating to the foregoing. In the event the Debtors object within such 14-day period to such proposed application of any collateral, such party shall be stayed from the application thereof until the dispute has been adjudicated by a Final Order of the Bankruptcy Court or upon an agreement with respect thereto with the Debtors or the Reorganized Debtors (as the case may be), which the parties may enter into with any further notice or court order. Alternatively, any party to any insurance policies, or any

agreements, documents, or instruments relating to the foregoing that shall be retained by and revert in the Reorganized Debtors in the manner set forth in this Plan Section 7.7 and who currently holds any collateral to secure the Debtors' obligations thereunder, may continue to retain such collateral on and after the Effective Date in the manner provided for in the applicable agreements with the Debtors. In addition, any Claim for any unpaid premiums under such insurance policies, that are being retained by and shall revert in the Reorganized Debtors shall constitute Administrative Claims (subject to all applicable defenses and objections of the Debtors, the Estates, and the Reorganized Debtors).

7.8. Compensation and Benefits Programs.

(a) Except as otherwise expressly provided under the Plan (including, without limitation, as set forth in this Plan Section 7.8 with respect to the Existing Stock Option Plans, the SERP, the Deferral Plan, and agreements with third-party administrators under the Debtors' medical plans prior to 2009) or any exhibit to the Disclosure Statement, in the Plan Supplement, or to the Plan, unless otherwise rejected or lawfully terminated by the Debtors, all employment policies, and all compensation and benefit plans, policies, and programs of the Debtors applicable to their current or former Employees, retirees, and non-Employee directors, including, without limitation, all savings plans, any profit-sharing plans, pension or retirement plans (including, but not limited to, any plans qualified under Internal Revenue Code § 401(a)), healthcare plans, disability plans, benefit plans, and life, accidental death, and dismemberment insurance plans in effect as of the Confirmation Date (collectively, the "**Compensation and Benefits Programs**") shall be treated as either Executory Contracts under the Plan and on the Confirmation Date, subject to the occurrence of the Effective Date, shall be assumed pursuant to the provisions of Bankruptcy Code §§ 365 and 1123 or otherwise deemed assumed on the Confirmation Date, subject to the occurrence of the Effective Date. Any failure by the Debtors to list any particular Compensation and Benefits Program on any schedule of Executory Contracts to be assumed under the Plan (either contained in the Disclosure Statement, including, without limitation, Exhibit thereto, the Plan Supplement, or otherwise) shall not in any way impair the Debtors' ability to assume such program and instead, any and all such programs (except those referenced in Plan Section 7.8(b)) shall be deemed assumed (to the extent any such agreements constitute Executory Contracts) and/or otherwise shall remain in full force and effect on and after the Effective Date in accordance with Plan Section 7.8. The Debtors and the Reorganized Debtors (as applicable) shall retain their rights to amend, modify, or terminate the Compensation and Benefits Programs in accordance with the terms of the applicable agreements and applicable law.

7.9. Obligations to Indemnify Directors, Officers, and Employees, etc.

Notwithstanding anything to the contrary in the Plan, the obligations of each of the Debtors to indemnify any Person who has served as one of the Debtors' directors, officers, employees, agents, representatives, management, or otherwise, at any time on or after the Petition Date, by reason of such person's service to such Debtor in such a capacity, to the extent provided in the applicable certificates or articles of incorporation, formation, organization, limited partnership, or limited liability company or operating agreements, limited partnership agreements, by-laws, or similar constituent documents, by statutory law, or by written agreement, policies, or procedures of or with such Debtor, shall be deemed and treated as Executory Contracts that are assumed by the applicable Debtor or Reorganized Debtor pursuant to the Plan and Bankruptcy Code §§ 365 and 1123 or otherwise on the Confirmation Date, subject to the occurrence of the Effective Date. Accordingly, such indemnification obligations shall not be discharged, but shall instead survive and be unaffected by entry of the Confirmation Order and the consummation of this Plan. Any failure by the Debtors to list any particular indemnification obligation on any schedule of

Executory Contracts to be assumed under the Plan (either contained in the Disclosure Statement, including, without limitation, Exhibit thereto, the Plan Supplement, or otherwise) shall not in any way impair the Debtors' ability to assume such obligation.

7.10. Contracts and Leases Entered Into Post-Petition. Any contracts and leases entered into after the Petition Date by any Debtor, to the extent not terminated or cancelled in accordance with their terms or pursuant to an order of the Bankruptcy Court prior to the Effective Date, shall survive and remain unaffected by entry of the Confirmation Order and the consummation of the Plan.

7.11. Permits and Licenses: The Debtors, and, as of the Effective Date the Reorganized Debtors, shall be authorized by the Plan, to continue to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Assets or the Debtors' businesses, and all such licenses, permits, registrations, and governmental authorizations and approvals shall survive in full force and effect, remain unaffected by entry of the Confirmation Order and the consummation of the Plan and are deemed to have been, and under the Plan are, assumed by the Reorganized Debtors as of the Effective Date. All applicable governmental entities are hereby authorized and directed to continue to honor and operate under all such licenses, permits, registrations, and governmental authorizations or approvals. Any failure by the Debtors to list any particular license, permit, registration, or governmental authorization or approval on any schedule of Executory Contracts to be assumed under the Plan (either contained in the Disclosure Statement, including, without limitation, Exhibit thereto, the Plan Supplement, or otherwise) shall not in any way impair the Debtors' ability to assume such license, permit, registration, or governmental authorization or approval, and instead, any and all such license, permit, registration, and governmental authorization or approval shall be deemed assumed (to the extent any such agreements constitute Executory Contracts) and/or otherwise shall remain in full force and effect on and after the Effective Date in accordance with Plan Section 7.11.

ARTICLE VIII

CONDITIONS PRECEDENT TO CONFIRMATION AND EFFECTIVENESS

8.1. **Conditions to Confirmation.** Confirmation of the Plan shall not occur unless and until the following conditions have been satisfied, waived, or modified pursuant to Plan Section 8.3: (a) the Bankruptcy Court shall have entered an order approving the Disclosure Statement as containing adequate information pursuant to Bankruptcy Code § 1125, and such order shall not have been reversed, stayed, amended, or modified in any manner adverse to the Debtors or their Estates, and (b) the Confirmation Order shall be acceptable, in form and substance, to the Debtors and any Sponsors.

8.2. **Conditions to Effectiveness.** Notwithstanding any other provision of the Plan or the Confirmation Order, the Effective Date shall not occur, and the Plan shall not be binding on any Person, unless and until each of the following conditions has been satisfied, waived, or modified pursuant to Plan Section 8.3:

(a) The Confirmation Order (i) shall have been entered on the docket by the Clerk of the Bankruptcy Court in form and substance acceptable to the Debtors, and (ii) shall not have been reversed, stayed, amended, or modified in any manner adverse to the Debtors or their Estates;

(b) The Plan Documents and all other documents provided for under, and reasonably necessary to effectuate the terms of, and actions contemplated under, the Plan, shall be in form and substance acceptable to the Debtors and the Sponsors, and shall have been executed and delivered by the parties thereto, unless such execution or delivery has been waived in writing by the parties benefited by such documents. The Plan Documents to which the condition in this sub-paragraph (b) refers include, but are not limited to, the following documents:

(1) the Amended and Restated Certificates of Incorporation, the Amended and Restated LLC Agreements, the Amended and Restated By-Laws, and all applicable certificates of formation and/or organization;

(2) the Exit Credit Facility and all instruments, certificates, guarantees, agreements, and documents contemplated by Plan Section 6.20; and

(3) the New Notes and the New Notes Guarantees, and all instruments, certificates, guarantees, agreements, and documents contemplated by Plan Section 6.22.

(c) All conditions precedent to the consummation of, and the funding obligation under, the Exit Credit Facility shall have been satisfied or waived in accordance with the terms thereof;

(d) The Amended and Restated Certificates of Incorporation, the Amended and Restated LLC Agreements, and all applicable certificates of formation and/or organization (as applicable) shall have been adopted and/or filed with the applicable authority of each Reorganized Debtor's;

(e) The new respective Boards of Directors or Managers (as applicable) of the Reorganized Debtors shall have been appointed;

(f) All authorizations, consents, filings, and regulatory approvals required (if any) in connection with the effectiveness of the Plan shall have been obtained, effected, or executed and shall remain in full force and effect; and

(g) All statutory fees due and payable to the United States Trustee as of the Effective Date shall have been paid in full.

8.3. Effect of Non-Occurrence of Effective Date.

(a) If the Effective Date (i) does not occur for any reason within 90 days following the entry of the Confirmation Order, unless such time period is extended by the Debtors with the consent of the Plan Sponsors, or (ii) if on or before 90 days following the entry of the Confirmation Order, either the Debtors determine, with the agreement of the Plan Sponsors, or the Bankruptcy Court rules, that one or more of the conditions to effectiveness set forth in Section 8.2 will not be satisfied within such period, then the Plan and the Confirmation Order shall immediately, upon such applicable date, be deemed null and void and, in such event, nothing contained herein or therein shall be deemed to constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person or to prejudice in any manner the rights of the Debtors or any Person in any further proceedings (whether or not such proceedings involve any of the Debtors).

(b) Except as expressly provided in Section 8.4, if the Confirmation Order is vacated or revoked, the Plan shall be null and void *ab initio* in all respects, and, without limiting the generality of the foregoing, nothing contained in the Plan or the Disclosure Statement shall: (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors; (b) prejudice in any manner the rights of the Debtors; (c) constitute an admission, acknowledgement, offer, or undertaking by the Debtors in any respect; or (d) affect or impair, in any way, any and all Claims against the Debtors, any and all claimed contractual subordination rights and claims between or among the Holders of Claims against the Debtors, and any and all rights and claims between or among holders of Claims relating in any manner to distributions on account of Claims against the Debtors based upon any claimed contractual subordination rights.

8.4. Waiver or Modification of Conditions. The Debtors may, but shall have no obligation to, waive or modify in writing, at any time, any of the conditions set forth in this Article VIII, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan; provided that the Sponsors' consent shall be required to waive or modify any of the conditions set forth in Plan Section 8.2(b), (c), (d), (e), and (f). The failure to satisfy, waive, or modify any such condition may be asserted by the Debtors regardless of the circumstances giving rise to the failure of such conditions to be satisfied, waived, or modified.

ARTICLE IX

TITLE TO PROPERTY AND RELEASES

9.1. Vesting of Property. Except as otherwise provided in the Plan (or the Confirmation Order, and notwithstanding the substantive consolidation of the Debtors solely for the limited purpose of all actions associated with voting, confirmation, and distribution, as provided for in Article XI hereof, upon the Effective Date, but retroactive to the Confirmation Date, (a) the Reorganized Debtors shall continue to exist as separate corporate entities with all the

powers of corporations under applicable law and without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) under applicable state law, and (b) all Assets of the respective Debtors (including, but not limited to, the Debtors' respective equity interests in any Subsidiary Debtor or any non-Debtor subsidiary or joint venture (to the extent that any such non-Debtor subsidiary or joint venture has not been dissolved under applicable law prior to the Effective Date)), wherever situated, shall vest in the applicable Reorganized Debtor, subject to the provisions of the Plan and the Confirmation Order. Thereafter, each Reorganized Debtor may operate its business, incur debt and other obligations in the ordinary course of its business, and may otherwise use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, and the Bankruptcy Court. After the Effective Date, but retroactive to the Confirmation Date, all property retained by the Reorganized Debtors pursuant hereto shall be free and clear and divested of all Claims, debts, Liens, security interests, obligations, encumbrances, and interests of Creditors and Interest Holders of the Debtors and all other Persons, except as contemplated by or provided in the Plan or the Confirmation Order and except for the obligation to perform according to the Plan and the Confirmation Order, and except for the respective claims, debts, Liens, security interests, encumbrances, and interests (a) of those Holders of any Reinstated Liens, or (b) arising in connection with the Exit Credit Facility, the Exit Credit Facility Guarantees, the New Notes, or the New Notes Guarantees.

Without limiting the generality of the foregoing, the Confirmation Order (a) shall be effective as a determination that all Liens existing prior to the Effective Date (other than any Reinstated Liens) have been unconditionally released, disallowed, discharged, and terminated as of the Effective Date, and that such release, disallowance, discharge, and termination shall be binding upon and shall govern the acts of all entities, including, without limitation, all parties asserting a Lien, filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Assets. In addition, each and every federal, state, and local governmental agency or department shall be hereby directed to accept any and all documents and instruments (including the Plan, the Confirmation Order, and/or all Lien Waivers) as provided by the Debtors, the Reorganized Debtors, or any related parties to revise appropriately all applicable records and files to reflect that all such Liens have been released, discharged, and terminated in accordance herewith, the Confirmation Order, and/or such Lien Waivers. Except for Holders of Reinstated Liens, if any person or Person that has filed Liens or other documents or agreements evidencing Liens on, Claims, or other interests in, the Assets shall not have delivered to the Debtors prior to the Effective Date, a Lien Waiver in proper form for filing and executed by the appropriate parties, with respect to the Assets or otherwise, then the Debtors and the Reorganized Debtors (as applicable) shall be hereby authorized and empowered (but not required) to execute and file any termination statements, instruments of satisfaction, releases of Liens, or other documents on behalf of the applicable person or Person with respect to the Assets, and shall also be hereby authorized to file, register, or otherwise record or present a copy of the Plan and the Confirmation Order which, once filed, registered, or otherwise recorded or presented, shall constitute conclusive evidence of the release of all Liens of any kind or nature whatsoever in the Assets.

9.2. Discharge and Injunction. *Other than with respect to any Reinstated Liens, pursuant to Bankruptcy Code § 1141(d) or otherwise, except as may otherwise be provided herein or in the Confirmation Order, upon the occurrence of the Effective Date, the rights*

afforded and the payments and distributions to be made under the Plan shall be in complete exchange for, and in full and unconditional settlement, satisfaction, discharge, and release of, any and all existing debts, Claims, and Interests of any kind, nature, or description whatsoever against the Debtors or any of the Debtors' Assets or other property, and shall effect a full and complete release, discharge, and termination of all security interests, or other Claims, interests, or encumbrances upon all of the Debtors' Assets and property. No Creditor or Interest Holder of the Debtors nor any other Person may receive any distribution from the Debtors, the Estates, the Reorganized Debtors, Xanadoo Company, or the Assets, or seek recourse against, the Debtors, the Estates, the Reorganized Debtors, Xanadoo Holdings, or any of their Assets, except for those distributions expressly provided for under the Plan. All Persons are precluded from asserting, against any property that is to be distributed under the terms of the Plan, any Claims, Interests, obligations, rights, Causes of Action, liabilities, Liens, or equity interests based upon any act, omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, other than to the extent Reinstated or as expressly provided for in the Plan or the Confirmation Order, whether or not (a) a Proof of Claim or Proof of Interest based upon such debt or Interest (as applicable) is filed or deemed filed under Bankruptcy Code § 501; (b) a Claim or Interest based upon such debt or Interest (as applicable) is allowed under Bankruptcy Code § 502; or (c) the Holder of a Claim or Interest based upon such debt or Interest (as applicable) has voted to accept the Plan or is deemed to have accepted the Plan under Bankruptcy Code § 1126(f). Except as otherwise provided in this Plan Section 9.2 or the Confirmation Order with respect to a Claim that is expressly Reinstated under the terms and conditions of the Plan, all Holders of Claims and Interests arising prior to the Effective Date shall be permanently barred and enjoined from asserting against the Debtors, the Estates, the Reorganized Debtors, Xanadoo Company, their successors, or the Assets, any of the following actions on account of such Claim or Interest: (a) commencing or continuing in any manner any action or other proceeding on account of such Lien, Claim, or Interest against property to be distributed under the terms of the Plan or the property of any of the Reorganized Debtors or Xanadoo Company, other than to enforce any right to distribution with respect to such property under the Plan; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, Lien, or order against any of the property to be distributed under the terms of the Plan or the property of any of the Reorganized Debtors or Xanadoo Company, other than as permitted under subclause (a) of this sentence; (c) creating, perfecting, or enforcing any Lien or encumbrance against any property to be distributed under the terms of the Plan or the property of any of the Reorganized Debtors or Xanadoo Company; (d) asserting any right of setoff or subrogation of any kind, directly or indirectly, against any obligation due the Debtors or the Reorganized Debtors, the Assets or any other property of the Debtors or the Reorganized Debtors, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons; and (e) acting or proceeding in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan.

9.3. No Waiver of Discharge. Except as otherwise specifically provided herein, nothing in the Plan shall be deemed to waive, limit, or restrict in any way the discharge granted to the Debtors upon Confirmation of the Plan by Bankruptcy Code § 1141.

9.4. Post-Consummation Effect of Evidences of Claims or Interests. Except as otherwise expressly set forth in the Plan (including, without limitation, Section 6.9), any and all notes, stock certificates, Liens, other than any Reinstated Liens, and/or other evidences of Claims against, or Interests in, any of the Debtors shall, effective upon the Effective Date, represent only the right to participate in the distributions contemplated by the Plan, if any, and shall otherwise be cancelled and of no force and effect as of the Effective Date.

9.5. **Term of Injunctions or Stays.** Unless otherwise provided in the Plan or the Confirmation Order, all injunctions or stays provided for in these Cases pursuant to Bankruptcy Code § 105, § 362, or otherwise, and in effect on the Confirmation Date, shall remain in full force and effect until the Effective Date.

9.6. **Releases by Holders of Claims or Interests.**

(a) *Except as otherwise provided herein, as of the Confirmation Date, but subject to the occurrence of the Effective Date, each Non-Debtor Releasing Party, in consideration of the obligations of the Debtors and the Reorganized Debtors under the Plan and the Cash, the New XHI Common Stock, the New Notes, the New Notes Guarantees, the Exit Credit Facility, the Reinstatement of the Reinstated Liens, and the other contracts, instruments, releases, agreements, waivers, and documents to be executed and delivered in connection with the Plan, and in consideration of the efforts of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the Released Parties from any and all claims, obligations, rights, Causes of Action, or liabilities (including, but not limited to, any claims arising out of, or relating to, any alleged fiduciary or other duty; any alleged violation of any federal or state securities law or any other law relating to creditors' rights generally; any of the Released Parties' ownership of any securities of any of the Debtors; or any derivative claims asserted on behalf of a Debtor), whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity or otherwise, that such Non-Debtor Releasing Party ever had, now has, or may have that are based in whole or in part on any act, omission, transaction, event, or other occurrence from the beginning of time through and including the Effective Date and in any way relating to the Debtors, these Cases, or the Plan; the Disclosure Statement; the Plan Documents; the formulation, negotiation, preparation, dissemination, implementation, and/or administration of the Plan, the Disclosure Statement, and the Plan Documents and the transactions contemplated thereby; the solicitation of votes with respect to, and the pursuit of Plan Confirmation; the Confirmation and consummation of the Plan; the subject matter of, or the transactions or events giving rise to, any Claim or Interest of such Non-Debtor Releasing Party, any security previously issued by any of the Debtors, and any and all claims based upon or arising out of such actions or omissions shall be forever and completely waived and released by the Non-Debtor Releasing Parties; provided, however, this Section 9.6(b) shall not release, and the Non-Debtor Releasing Parties do not waive the right to enforce, the Debtors' or the Reorganized Debtors' duties, obligations, covenants, and agreements under (i) the Plan, (ii) any settlement agreement approved by the Bankruptcy Court in these Cases, regardless of whether such approval is granted prior to or after the Confirmation Date, (iii) the Assumed Contracts, or (iv) the Plan Documents to be delivered under the Plan; provided further, however, that the release set forth in this Section 9.6(b) is in addition to the discharge of Claims and termination of Interests provided in the Plan and under the Confirmation Order and the Bankruptcy Code; and provided further, however, that nothing in this Plan Section 9.6(b) shall be deemed to assert or imply any admission of liability on the part of any of the Released Parties.*

(b) *All Non-Debtor Releasing Parties shall be forever precluded from asserting any of the claims released pursuant to this Section 9.6 against any of the Released Parties or any of the Released Parties' respective assets; and to the extent that any Non-Debtor Releasing Party receives monetary damages from any Released Party on account of any claim released pursuant to this Section 9.6, such Non-Debtor Releasing Party hereby assigns all of its*

right, title, and interest in and to such recovery to the Released Parties against whom such money is recovered.

(c) Notwithstanding any provision of the Plan to the contrary, the releases contained in this Section 9.6 shall not be construed as, or operate as a release of, or limitation on (i) any claims by the Non-Debtor Releasing Parties against the Released Parties that do not relate to or involve the Debtors or these Cases, (ii) any claims, obligations, rights, causes of action, or liabilities by the Non-Debtor Releasing Parties against the Released Parties arising out of any action or omission to the extent that such action or omission is determined in a Final Order by a court of competent jurisdiction to have constituted willful misconduct or fraud, or (iii) objections to Claims.

9.7. Releases by the Debtor Parties. *On the Effective Date, pursuant to Bankruptcy Code § 1123(b), Bankruptcy Rule 9019, or otherwise, and except as otherwise specifically provided in the Plan or in the Plan Documents, the Debtor Parties, in consideration of the obligations of the Debtors and the Reorganized Debtors under the Plan and the Cash, New XHI Common Stock, the New Notes and the New Notes Guarantees, the Exit Credit Facility, the Reinstatement of the Reinstated Liens, and the other contracts, instruments, releases, agreements, waivers, and documents to be executed and delivered in connection with the Plan, and in consideration of the efforts of the Released Parties to facilitate the expeditious reorganization of the Debtors and the implementation of the restructuring contemplated by the Plan, shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged the Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise, that such Debtor Party ever had, now has, or may have that are based in whole or in part on any act, omission, transaction, or occurrence taking place on or prior to the Effective Date and in any way relating to the Debtors, these Cases, or the Plan; the Disclosure Statement; the Plan Documents; the formulation, negotiation, preparation, dissemination, implementation, and/or administration of the Plan, the Disclosure Statement, and the Plan Documents; the confirmation and consummation of the Plan; the subject matter of, or the transactions or events giving rise to, any Claim or Interest of such Debtor Party, or any security previously issued by any of the Debtors. The immediately preceding sentence shall not, however, apply to (i) any indebtedness of any Person to any of the Debtors for money borrowed by such Person or any other contractual obligation of any Person to any of the Debtors, (ii) any claims by the Debtor Releasing Parties against the Released Parties arising out of any action or omission to the extent that such action or omission is determined in a Final Order by a court of competent jurisdiction to have constituted willful misconduct or fraud, or (iii) any setoff, counterclaim, or defense under Bankruptcy Code § 502(d) that the Debtors may have or assert against any Person, other the DIP Facility Lender or Prepetition Secured Parties (whose respective Claims shall, for the avoidance of doubt, be allowed in the respective manner and amounts provided in the Plan), provided that the aggregate amount thereof shall not exceed the aggregate amount of any Claims held or asserted by such Person against the Debtors. Holders of Claims or Interests against any of the Debtors shall be enjoined from commencing or continuing any action, employment of process, or act to collect, offset, or recover any such claim that could be brought on behalf of or in the name of the Debtors.*

9.8. Injunction Related to Releases. *The Confirmation Order will and shall be deemed to enjoin permanently the commencement or prosecution by any Person, whether directly, derivatively, or otherwise, of any claims, obligations, suits, judgments, damages,*

demands, debts, rights, Causes of Action, or liabilities released pursuant to the Plan (including the releases set forth in this Article IX).

9.9. **Exculpation.** *No Released Party shall have or incur, and each Released Party hereby is exculpated from, any liability (whether arising under contract, tort, or federal or state securities laws, whether known or unknown, foreseen or unforeseen, then existing or hereafter arising, in law, equity, or otherwise) to any Person for any pre-Petition Date or post-Petition Date act or omission taken or not taken (as the case may be), or any other transaction, event, or occurrence in any way in connection with, arising from or relating to the Debtors, these Cases (and the commencement or administration thereof); the Disclosure Statement, the Plan (either prior to Confirmation or approval of same, or as same may be confirmed or otherwise approved by the Bankruptcy Court), or any orders of the Bankruptcy Court related thereto, the Plan Documents or the transactions contemplated thereby, or the formulation, negotiation, preparation, dissemination, implementation, or administration of any of the foregoing documents; the solicitation of votes in connection with, and the pursuit of, Confirmation of the Plan; the property to be distributed under the Plan; the Exit Credit Facility; the Confirmation and/or consummation of the Plan; the Effective Date; any contract, instrument, release, or other agreement or document created or entered into in connection with the Plan; any other act taken or omitted to be taken in connection with, or in contemplation of, any of the restructuring or other transactions contemplated by the Plan; and the property to be distributed or otherwise transferred under the Plan; provided, however, that nothing in this Section 9.9 shall exculpate or release any Released Party from its obligations arising under confidentiality agreements and common-interest agreements; provided further, however, that nothing in this Section 9.9 shall release any Person from any claims, obligations, rights, causes of action, or liabilities arising out of such Person's willful misconduct or fraud. Each Released Party shall be entitled reasonably to rely upon the advice of counsel with respect to its duties and responsibilities under the Plan.*

ARTICLE X

MODIFICATION AND RESERVATION OF RIGHTS IN THE EVENT OF NONACCEPTANCE OF THE PLAN

The Debtors hereby reserve the right to request that the Bankruptcy Court confirm the Plan over the non-acceptance of any impaired Class of Claims or Interest in accordance with the applicable provisions of Bankruptcy Code § 1129(b). In the event that any impaired Class or Classes of Allowed Claims does not accept the Plan, upon the written request of the Debtors filed with the Bankruptcy Court, the Plan may (if necessary) be modified, revised, and amended to provide such treatment as set forth in such request, to ensure that the Plan does not discriminate unfairly, and is fair and equitable, with respect to the Classes rejecting the Plan, and, in particular, to provide the treatment necessary to meet the requirements of Bankruptcy Code § 1129(a) and (b) with respect to (i) the rejecting Classes and (ii) any other Classes adversely affected by the modifications caused by this Article X. In particular, the treatment of any rejecting Classes or adversely affected Classes may be modified and amended from that set forth in Article V of the Plan, even if less favorable, to the minimum treatment necessary to meet the requirements of Bankruptcy Code § 1129(a) and (b). These modifications may include, but shall not be limited to, cancellation of all amounts otherwise payable under the Plan to the rejecting Classes and to any junior Classes affected thereby (even if such Classes previously accepted the Plan) consistent with Bankruptcy Code § 1129(b)(2)(B)(ii) and (C)(ii). Nothing herein affects or excuses the Debtors' obligations, as plan proponents, to comply with the provisions of Bankruptcy Code § 1127 with respect to any proposed modifications of the Plan.

ARTICLE XI

SUBSTANTIVE CONSOLIDATION OF THE DEBTORS

The Plan contemplates and is predicated upon the substantive consolidation of the Estates and the Debtors only for the limited purposes of all actions associated with voting, confirmation, and distribution. Accordingly, on the Effective Date, all of the Debtors and their Estates shall, only for purposes of Sections 4 and 5 of the Plan, be deemed merged and (i) all assets and liabilities of the Debtors shall be treated only for purposes of such Plan Sections 4 and 5 as though they were merged, (ii) all guarantees of the Debtors of payment, performance, or collection of obligations of any other Debtors shall be eliminated and cancelled, (iii) all joint obligations of two or more Debtors and all multiple Claims against such entities on account of such joint obligations shall be considered a single claim against the Debtors, and (iv) any Claim filed in these Cases shall be deemed filed against the consolidated Debtors and a single obligation of the consolidated Debtors on and after the Effective Date. Such substantive consolidation shall not (other than for voting, treatment, and distribution purposes under the Plan) affect (x) the legal and corporate structures of the respective Debtors or the Reorganized Debtors (including the corporate ownership of the Subsidiary Debtors), and (y) any intercompany claims.

The Plan shall serve as, and shall be deemed to be, a motion for entry of an order substantively consolidating the Estates and these Cases for the limited purposes described above, although nothing herein or in the Disclosure Statement shall, or shall be deemed to, prejudice or otherwise affect the Debtors' right to file a separate motion seeking substantive consolidation if they elect to do so in their discretion. If no objection to the substantive consolidation provided for in the Plan is timely filed by the deadline established therefor by the Bankruptcy Court, an order approving such substantive consolidation (which may be the Confirmation Order or any other order) may be entered by the Bankruptcy Court. If any such objections are timely filed and served, a hearing with respect to the proposed substantive consolidation of the Estates and these Cases and the objections thereto may be scheduled by the Bankruptcy Court, which hearing may, but is not required to, coincide with the Confirmation Hearing.

The Debtors reserve the right to otherwise seek the entry of an order of the Bankruptcy Court providing for the further substantive consolidation of some or all of the Debtors for the purpose of implementing the Plan, including for purposes of voting, confirmation, and distributions to be made under the Plan, subject to the right of any party in interest to object to such relief.

Notwithstanding the substantive consolidation provided for herein, nothing in this Plan shall affect the obligation of each Debtor to pay quarterly fees to the United States Trustee program pursuant to 28 U.S.C. § 1930 until the earlier of the time its particular Case is closed, dismissed, or converted to a case under Chapter 7.

ARTICLE XII

RETENTION OF JURISDICTION

12.1. Claims and Actions. Following the Effective Date, the Bankruptcy Court shall retain such jurisdiction over these Cases as is legally permissible, including, without limitation, such jurisdiction as is necessary to ensure that the intents and purposes of the Plan are carried out. The Bankruptcy Court shall also expressly retain jurisdiction: (a) to hear and determine all Claims against, or Interests in, any of the Debtors; and (b) to enforce all Causes of Action that

may exist on behalf of any of the Debtors that are not otherwise waived or released under the Plan.

12.2. Retention of Additional Jurisdiction. Following the Effective Date, the Bankruptcy Court shall also retain jurisdiction for the purpose of classification of Claims and Interests, the re-examination of Claims or Interests that have been Allowed, and the dispositions of any objections as may be filed to any Claims, including Bankruptcy Code § 502(c) proceedings for estimation of Claims. The Bankruptcy Court shall further retain jurisdiction for the following additional purposes:

(a) to decide all questions and disputes regarding title to the respective Assets of the Debtors, all Causes of Action, controversies, disputes, or conflicts, whether or not subject to any pending action as of the Effective Date, between any of the Debtors and any other party, including, without limitation, any right to recover assets pursuant to the provisions of the Bankruptcy Code;

(b) to enforce (with respect to all parties, and all applicable federal, state, and local governmental agencies or departments) and interpret the terms and conditions of the Plan;

(c) to enter such orders, including, but not limited to, such future injunctions as are necessary to enforce the respective title, rights, and powers of the Debtors, and to impose such limitations, restrictions, terms, and conditions on such title, rights, and powers as the Bankruptcy Court may deem necessary;

(d) to enter an order or orders closing these Cases;

(e) to correct any defect, cure any omission, or reconcile any inconsistency in the Plan or the Confirmation Order as may be necessary to implement the intents and purposes of the Plan;

(f) to decide any and all objections to the allowance of Claims or Interests or purported Liens;

(g) to determine any and all applications for allowances of compensation and reimbursement of expenses and the reasonableness of any fees and expenses authorized to be paid or reimbursed under the Bankruptcy Code or the Plan;

(h) to determine any applications or motions pending on the Effective Date for the rejection, assumption, or assignment of any Executory Contract (including under the provisions of Article VII hereof) and to hear and determine, and, if need be, to liquidate any and all Claims and/or disputes arising therefrom and/or with respect to any extant or future Claims and/or disputes related to the revesting of non-executory contracts, including, but not limited to;

(i) to determine any and all applications, adversary proceedings, and contested matters that may be pending on the Effective Date;

(j) to consider any modification of the Plan, whether or not the Plan has been substantially consummated, and to remedy any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, to the extent authorized by the Plan or the Bankruptcy Court;

(k) to determine all controversies, suits, and disputes that may arise in connection with the interpretation, enforcement, or consummation of the Plan or any Plan Document;

(l) to consider and act on the compromise and settlement of any Claim against or Cause of Action by or against any of the Debtors arising under or in connection with the Plan;

(m) to issue such orders in aid of execution of the Plan as may be authorized by Bankruptcy Code § 1142;

(n) to protect any Reorganized Debtor or Released Party against any Claims, Liens, or Interests released or discharged pursuant to the Plan (including Article IX hereof) and/or to adjudicate any action alleging that any Non-Debtor Released Party engaged in willful misconduct or fraud; and

(o) to enforce the provisions of the Plan (including Section 6.13 thereof) relating to the release, discharge, and termination of applicable Liens and to otherwise require all applicable Federal, state, and local governmental agencies to (i) recognize the Debtors' appointment as attorney-in-fact for the purposes of executing and/or filing any Lien Waiver or any other related or appropriate documents with any Person in order to effectuate the release, discharge, and (ii) accept any and all documents and instruments (including the Plan, the Confirmation Order, and/or all Lien Waivers) as provided by the Debtors, the Reorganized Debtors, or any related parties to revise appropriately all applicable records and files to reflect that all such Liens have been released, discharged, and terminated in accordance with the Plan, the Confirmation Order, and/or such Lien Waivers; and

(p) to determine such other matters or proceedings as may be provided for under Title 28 or any other title of the United States Code, the Bankruptcy Code, the Bankruptcy Rules, the Local Bankruptcy Rules, other applicable law, the Plan, or in any order or orders of the Bankruptcy Court, including, but not limited to, the Confirmation Order or any order that may arise in connection with the Plan or the Confirmation Order.

12.3. Failure of Bankruptcy Court to Exercise Jurisdiction. If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is otherwise without jurisdiction over any matter arising out of these Cases, including the matters set forth in this Article XII, this Article XII shall not prohibit or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

ARTICLE XIII

MISCELLANEOUS PROVISIONS

13.1. Governing Law. Except to the extent the Bankruptcy Code, the Bankruptcy Rules, or the Local Bankruptcy Rules, are applicable, and subject to the provisions of the Plan Documents and any other contract, instrument, release, indenture, or other agreement or document entered into in connection with the Plan, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without giving effect to the principles of conflicts of law thereof.

13.2. **Revocation or Withdrawal of the Plan.** The Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Date. If the Debtors so revoke or withdraw the Plan, then the Plan shall be null and void and, in such event, nothing contained herein shall be deemed to (a) constitute a waiver or release of any Claims by or against, or any Interests in, the Debtors or any other Person or (b) prejudice in any manner the rights of the Debtors or any Person in any further proceedings involving any of the Debtors.

13.3. **Successors and Assigns.** The rights, benefits, and obligations of any Person named or referred to in the Plan shall be binding upon, and shall inure to the benefit of, the heirs, executors, administrators, successors, or assigns of such Person.

13.4. **Modification of the Plan Prior to or After the Entry of the Confirmation Order.** The Debtors reserve the right to alter, amend, or modify the Plan prior to the entry of the Confirmation Order, subject to (i) the Sponsors' consent, and (ii) solely with respect to alterations, amendments, or modifications to Plan Sections 2.4 and 13.6. After the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, upon order of the Bankruptcy Court, may amend or modify the Confirmation Order, and the Plan, in accordance with Bankruptcy Code § 1127, the Confirmation Order, and the Plan, subject to the Sponsors' consent.

13.5. **No Late Charges.** Except as expressly stated in the Plan, or allowed by a Final Order of the Bankruptcy Court, no late charge is to be allowed on any Claim subsequent to the Petition Date.

13.6. **Professional Fees.** No Professional Fees shall be paid with respect to any Claim or Interest except as specified herein or as allowed by an order of the Bankruptcy Court. All final applications for Professional Fees for services rendered in connection with these Cases prior to and including the Confirmation Date shall be filed with the Bankruptcy Court not later than 90 days after the Effective Date. Notwithstanding anything to the contrary herein, the Debtors or the Reorganized Debtors (as applicable) shall pay any and all Allowed, Court-approved Professional Fees and that were either unpaid or the subject of a holdback as of the Effective Date.

13.7. **Amounts of Claims.** All references to Claims and amounts of Claims refer to the amount of the Claim Allowed by an order of the Bankruptcy Court or by the Plan; provided, however, that Claims that have been objected to and that have not been Allowed or disallowed prior to the day set for return of Ballots shall be voted and counted, if at all, at the amount, if any, as estimated by the Bankruptcy Court. The Debtors and other interested parties reserve the right, both before and after Confirmation, to object to Claims so as to have the Bankruptcy Court determine or estimate the Allowed amount of such Claim under the Plan.

13.8. **Bankruptcy Code § 1145 and Other Exemptions.** Pursuant to Bankruptcy Code § 1145(a)(1), the issuance of any securities under the Plan, including, without limitation, the New XHI Common Stock, the New Notes, and the New Notes Guarantees, to the extent any of the foregoing constitute "securities" under applicable law, shall be exempt from the registration requirements of the Securities Act, and any state or local laws requiring registration for the offer or sale of securities. All such securities, when issued or sold, shall be freely transferable by the recipients thereof, subject to: (i) the provisions of Bankruptcy Code § 1145(b) relating to "underwriters," as defined therein; (ii) any restrictions contained in the terms of the applicable securities themselves; or (iii) any restrictions on the securities that have been agreed to by the Holder of the securities with respect thereto. Any securities to be issued under the Plan shall be issued without further act or action under applicable law, regulation, order, or rule.

13.9. Bankruptcy Code § 1146(a) Exemption. Pursuant to Bankruptcy Code § 1146(a), the issuance, transfer, or exchange of any notes, equity securities, instruments, mortgages, or documents under or in connection with the Plan or the Plan Documents (including, without limitation, the Exit Credit Facility), the assignment or surrender of any lease or sublease, the creation or recording of any mortgage, deed of trust, Lien, pledge, or other security interest or the making, assignment, or delivery of any lease, sublease, deed, or any other instrument of transfer (or deemed transfer) under, in furtherance of, or in connection with the Plan or any Plan Document (including, without limitation, the Exit Credit Facility), including any deeds, bills of sale, assignments, mortgages, deeds of trust, or similar documents executed in connection with any assets subject to the Plan, shall not be subject to any stamp, real estate transfer, mortgage recording, sales, use, intangible, transfer, controlling interest transfer, realty transfer, recordation, documentary stamp, real property transfer, excise, or other similar tax or fee, nor any Uniform Commercial Code filing or recording fee or similar or other governmental assessment. All appropriate state or local government officials or agents shall forgo the collection of any such tax or governmental assessment and shall accept for filing and recordation any of the foregoing instruments or other documents without the payment of any such tax or governmental assessment.

13.10. Applicability of Bankruptcy Code § 1125. The protection afforded by Bankruptcy Code § 1125(e) with regard to the solicitation of acceptances or rejections of the Plan and with regard to the offer, issuance, sale, or purchase of the New XHI Common Stock, the New Notes and the New Notes Guarantees, and/or any other securities or notes issued in connection with the Exit Credit Facility, or otherwise under the Plan, or any other security, shall apply to the fullest extent provided by law, and the entry of the Confirmation Order shall constitute the determination by the Bankruptcy Court that the Debtors, the Administrative Agents, the DIP Facility Lender, the Prepetition Secured Parties, and each of their respective officers, directors, partners, employees, members, agents, attorneys, accountants, financial advisors, investment bankers, dealer-managers, placement agents, and other professionals, shall have acted in good faith and in compliance with the applicable provisions of the Bankruptcy Code pursuant to Bankruptcy Code § 1125(e) and, therefore, are not liable on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing solicitation of acceptance or rejection of a plan or the offer, issuance, sale, or purchase of securities.

13.11. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under Bankruptcy Code §§ 1101 and 1127(b).

13.12. Severability. Except as to terms which, if unenforceable, would frustrate the overall purposes of the Plan, should any provision in the Plan be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any or all other provisions of the Plan.

13.13. Implementation. The Debtors, the Reorganized Debtors, the Prepetition Secured Parties, the DIP Facility Lender, all Exit Credit Facility Lenders and the Exit Credit Facility Agent shall take all steps, and execute all documents, including appropriate releases, certificates, and Lien Waivers, reasonably necessary, beneficial, or appropriate to effectuate the provisions contained in the Plan.

13.14. Service of Documents. Any pleading, notice or other document required by the Plan to be served on or delivered to the following parties shall be sent by first class U.S. mail, postage prepaid to:

The Debtors:

Pegasus Rural Broadband, LLC
225 City Line Avenue
Bala Cynwyd, PA 19004
Attn.: Mr. Mark Pagon
Scott Blank, Esq.

with copies to:

and

Elliott Greenleaf
1105 North Market Street, Suite 1700
Wilmington, Delaware 19801
Attn.: Rafael X. Zahralddin, Esq.
Shelley A. Kinsella, Esq.
Jonathan M. Stemerman, Esq.

Counsel to the DIP Lender:

Drinker Biddle & Reath LLP
One Logan Square, Suite 2000
Philadelphia, PA 19103
Attn: Andrew Kassner, Esq.
Michael Jordan, Esq.

Counsel to the Prepetition Secured Parties:

Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor
Los Angeles, CA 90017
Attn: Mark Shinderman, Esq.
Neil Wertlieb, Esq.

13.15. **Compromise of Controversies.** Pursuant to Bankruptcy Rule 9019, and in consideration of the classification, distribution, and other benefits provided under the Plan, the provisions of the Plan shall constitute a good faith compromise and settlement of all Claims or controversies resolved pursuant to the Plan. The entry of the Confirmation Order on the Bankruptcy Court's docket shall constitute the Bankruptcy Court's approval of each of the compromises or settlements provided for in the Plan, and the Bankruptcy Court's findings shall constitute the Bankruptcy Court's determination that such compromises and settlements are fair and reasonable and are in the best interests of the Debtors, the Reorganized Debtors, the Estates, and any Person holding Claims against or Interests in any of the Debtors.

13.16. **No Admissions.** Notwithstanding anything herein to the contrary, prior to the occurrence of the Effective Date, nothing contained in the Plan shall be deemed as an admission by any Person with respect to any matter set forth herein.

13.17. **Filing of Additional Documents.** On or before the Effective Date, the Debtors may file with the Bankruptcy Court such agreements and other documents as may be necessary and appropriate to effectuate and further evidence the terms and conditions of the Plan.

13.18. **Further Actions.** The Debtors, the Reorganized Debtors, and Xanadoo Company shall be authorized to execute, deliver, file, or record such documents, contracts, instruments, certificates, releases, Lien Waivers, and other agreements and to take such other action as may be reasonably necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan, any Plan Document, the transactions contemplated herein and therein, the New Notes and the New Notes Guarantees, the Exit Credit Facility, or any notes or guarantee issued in connection herewith or therewith.

Dated: February 7, 2012

XANADOO SPECTRUM, LLC

Debtor and Debtor-in-Possession (for itself and the other Debtors and Debtors-in-Possession)

By: /s/ Howard Verlin

Howard Verlin
Executive Vice President

Submitted by:

ELLIOTT GREENLEAF

Rafael X. Zahralddin-Aravena (DE Bar No. 4166)
Shelley A. Kinsella (DE Bar No. 4023)
Jonathan M. Stemerman (DE Bar No. 4510)
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Counsel to the Debtors and Debtors in Possession