

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
	§	
SPEEDCAST INTERNATIONAL LIMITED, et al.,	§	
	§	Case No. 20-32243 (MI)
	§	
Debtors.¹	§	(Jointly Administered)
	§	

**NOTICE OF FILING OF
SECOND SUPPLEMENT TO PLAN SUPPLEMENT
IN CONNECTION WITH THIRD AMENDED JOINT CHAPTER 11 PLAN
OF SPEEDCAST INTERNATIONAL LIMITED AND ITS DEBTOR AFFILIATES**

PLEASE TAKE NOTICE THAT:

1. On April 23, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under the chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**”).

2. On November 2, 2020, the Bankruptcy Court entered the *Order (I) Scheduling Combined Hearing on (A) Adequacy of Disclosure Statement and (B) Confirmation of Plan; (II) Conditionally Approving Disclosure Statement; (III) Approving Solicitation Procedures and Form and Manner of Notice of Combined Hearing and Objection Deadline; (IV) Fixing Deadline to Object to Disclosure Statement and Plan; (V) Approving Notice and Objection Procedures for the Assumption of Executory Contracts and Unexpired Leases;*

¹ A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



(VI) *Authorizing Performance Under the Plan Sponsor Selection Procedures*; and (VII) *Granting Related Relief* (ECF No. 896).

3. On December 1, 2020, the Debtors filed the *Plan Supplement in Connection with Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 1011), and on December 17, 2020, the Debtors filed the *Supplement to Plan Supplement in Connection with Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 1144) (together, and as may be amended, modified, or supplemented the “**Plan Supplement**”).

4. On January 20, 2021, the Debtors filed the *Third Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 1383-1, Exhibit A) (as may be amended, modified, or supplemented, the “**Plan**”).²

5. The Plan Supplement is hereby amended or supplemented as follows:

Exhibit	Plan Supplement Document	Amendments/Supplements
Exhibit E	Schedule of Assumed and Rejected Contracts	Amended and supplemented as set forth in the cover page attached hereto as <u>Exhibit 1</u> and schedules attached hereto as <u>Exhibit 1-A</u> , <u>Exhibit 1-B</u> , and <u>Exhibit 1-C</u>
Exhibit F	Restructuring Steps Memorandum	Replaced with the revised version attached hereto as <u>Exhibit 2</u> that incorporates the changes reflected in the redline attached hereto as <u>Exhibit 2-A</u>
Exhibit G	Class 3 Trust Agreement	Addition of new exhibit attached hereto as <u>Exhibit 3</u>

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Plan.

6. The revised documents (i) amend, or (ii) replace and supersede all prior-filed versions of such documents.

7. The documents contained in the Plan Supplement are integral to, and are considered part of, the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is approved, the documents contained in this Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order. The Debtors reserve all rights with respect to the form of documents filed herewith and such documents remain subject to revision in all respects and in accordance with the Plan.

8. A combined hearing to consider final approval of the *Disclosure Statement for Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (ECF No. 899) and confirmation of the Plan is scheduled to continue on **Thursday, January 21, 2021 at 1:30 p.m. (prevailing Central Time)** before the Bankruptcy Court.

9. Copies of the exhibits contained in the Plan Supplement, and all documents filed in these chapter 11 cases are available free of charge by visiting <http://www.kccllc.net/speedcast>. Parties may also obtain copies of the pleadings by visiting the Bankruptcy Court's website at <https://ecf.txsb.uscourts.gov> in accordance with the procedures and fees set forth therein.

10. This notice will be served via ECF and on all contract counterparties whose contract or lease treatment is amended or supplemented by this *Second Supplement to Plan Supplement in Connection with Third Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates*, any other party entitled to notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure and any other party entitled to notice pursuant to Rule

9103-(d) of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas.

Dated: January 20, 2021
Houston, Texas

/s/ Alfredo R. Pérez
WEIL, GOTSHAL & MANGES LLP
Alfredo R. Pérez (15776275)
Brenda L. Funk (24012664)
Stephanie N. Morrison (admitted pro hac vice)
700 Louisiana Street, Suite 1700
Houston, Texas 77002
Telephone: (713) 546-5000
Facsimile: (713) 224-9511
Email: Alfredo.Perez@weil.com
Brenda.Funk@weil.com
Stephanie.Morrison@weil.com

-and-

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer (admitted pro hac vice)
Robert J. Lemons
David N. Griffiths (admitted pro hac vice)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Gary.Holtzer@weil.com
Robert.Lemons@weil.com
David.Griffiths@weil.com

-and-

WEIL, GOTSHAL & MANGES LLP
Paul R. Genender (00790758)
Amanda Pennington Prugh (24083646)
Jake R. Rutherford (24102439)
200 Crescent Court, Suite 300
Dallas, Texas 75201
Telephone: (214) 746-7877
Facsimile: (214) 746-7777
Email: Paul.Genender@weil.com
Amanda.PenningtonPrugh@weil.com
Jake.Rutherford@weil.com

*Attorneys for Debtors
and Debtors in Possession*

Certificate of Service

I hereby certify that on January 20, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Alfredo R. Pérez

Alfredo R. Pérez

Exhibit 1

**Schedule of Assumed and Rejected Contracts
Cover Page**

**Further Amendment and Supplement to Schedule of
Assumed Executory Contracts and Unexpired Leases**

In accordance with Section 8.1 of the *Third Amended Joint Chapter 11 Plan of Speedcast International Limited and its Affiliated Debtors* (ECF No. 1383–1, **Exhibit A**) (as may be amended, modified, or supplemented, the “**Plan**”)¹ and section 365 and 1123 of the Bankruptcy Code, as of and subject to the occurrence of the Effective Date, except as expressly set forth in sections 8.3, 8.4 and 8.5 of the Plan or in the Confirmation Order, each of the executory contracts and unexpired leases to which the Debtors are party shall (subject, in the cases of clauses (ii) and (iii), to the consent of the Plan Sponsor, whose consent will not to be unreasonably withheld) be deemed rejected as of the Effective Date, except for any executory contract or unexpired lease that (i) has been assumed pursuant to a Final Order prior to entry of the Confirmation Order and in respect to which a motion for such assumption has been filed prior to the initial filing of this Plan; (ii) is specifically designated in this exhibit, the initial *Schedule of Assumed Executory Contracts and Unexpired Leases* (ECF No. 1011, **Exhibit E**) (the “**Initial Schedule**”), or the *Amendment and Supplement to Schedule of Assumed Executory Contracts and Unexpired Leases* (ECF No. 1144, **Exhibit 3**) (collectively, the “**Assumption Schedules**”); or (iii) is the subject of a separate (A) assumption motion filed by the Debtors or (B) rejection motion filed by the Debtors under section 365 of the Bankruptcy Code before the Confirmation Date. **Exhibit 1–A** attached hereto amends and supplements **Exhibit E–1** of the Initial Schedule, and **Exhibit 1–B** attached hereto amends **Exhibit E–2** of the Initial Schedule. **Exhibit 1–C** attached hereto replaces **Exhibit E–4** of the Initial Schedule. The Debtors intend to assume all employment agreements,

¹ Unless otherwise defined, capitalized terms used herein have the meanings ascribed to them in the Plan.

offer letters, or award letters to which the Debtors are a party except as specifically set out in these Assumption Schedules.

Unless otherwise provided in the Plan or in the Confirmation Order and except as applicable to any Non-Released Party, all employment policies, and all compensation and benefits plans, policies, and programs of the Debtors applicable to their respective employees, retirees, and non-employee directors, including all savings plans, retirement plans, healthcare plans, disability plans, severance benefit plans, incentive plans, and life and accidental death and dismemberment insurance plans, are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code, regardless of whether such obligations are identified herein.

The Debtors have identified all agreements with its employees, including offer letters, employment agreements, or award letters (the “**Employee Agreements**”) in their Schedules, and notwithstanding the fact that the Debtors have not specifically enumerated each of those Employee Agreements herein or in the Schedules, all Employee Agreements to which the Debtors are a party are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code, unless otherwise set forth in **Exhibit 1–C** attached hereto.

The Debtors reserve all rights to amend, supplement, and otherwise modify the Assumption Schedules, including to add or remove executory contracts and unexpired leases, to assert that contracts or leases identified on the Assumption Schedules are not executory or unexpired, and to assert that contracts or leases not identified on the Assumption Schedules are executory or unexpired, at any time before the Effective Date and further reserve the right to reject

any particular executory contract or unexpired lease pursuant to separate motion under section 365 of the Bankruptcy Code effective as of a date specified by the Debtors in such motion.

Neither the exclusion nor the inclusion of a contract or lease by the Debtors on the Assumption Schedules, or any amendment, supplement, or modification to this schedule, nor anything contained herein, shall constitute an admission by the Debtors that any such contract or lease is an executory contract or unexpired lease or that the Debtors, the Reorganized Debtors, or their respective affiliates, has any liability thereunder. Except as otherwise provided in the Plan or in a previously entered order of the Bankruptcy Court, nothing shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors or the Reorganized Debtors under any executory or non-executory contract or unexpired or expired lease. Nothing herein or in the Plan shall increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors or the Reorganized Debtors, as applicable, under any executory or non-executory contract or unexpired or expired lease. For the avoidance of doubt, nothing herein or in the Plan shall or shall be deemed to constitute a waiver of any rights, claims and/or remedies of any Prepetition Lender against another Prepetition Lender(s) or the Syndicated Facility Agent under the Syndicated Facility Agreement, including, the New Incremental Term Loans (as defined in the Incremental Assumption and Amendment Agreement, dated as of October 16, 2018), the other SFA Loan Documents or any related instrument, agreement or document. If there is a dispute regarding whether a contract or lease is or was executory or unexpired at the time of its assumption under this Plan, the Debtors or Reorganized Debtors, as applicable, shall have sixty (60) days following entry of a Final Order resolving such dispute to alter their treatment of such contract or lease.

Out of an abundance of caution, the Debtors have listed certain contracts or leases on the Assumption Schedules that have or may have either terminated or expired (or will terminate or expire) prior to the Confirmation Hearing pursuant to the terms of such contracts or leases, or pursuant to a Notice of Termination delivered pursuant to the terms of such contracts or leases; or may have been objected to pursuant to the *Notice of Intent to Assume and Cure Amounts with Respect to Executory Contracts and Unexpired Leases of Debtors* (ECF No. 958). Such termination, expiration, or objection shall supersede any purported assumption or rejection implied by the listing of such contract or lease on this schedule.

As a matter of administrative convenience, in many cases the Debtors have listed the original parties to the documents listed in this schedule without taking into account any succession of trustees or any other transfers from one party to another. The fact that the current parties to a particular agreement may not be named in this schedule is not intended to change the treatment of such documents.

Out of an abundance of caution, and for the avoidance of doubt, the Debtors may have listed on the Assumption Schedules certain contracts or leases that they have previously assumed or rejected, and nothing herein is intended to change or alter the date of assumption or rejection or the terms of assumption or rejection of any previously assumed or rejected contract or lease.

Exhibit 1-A

**Schedule of Assumed and Rejected Contracts
Vendors and Other Contract Counterparties**

Schedule of Assumed and Rejected Contracts
Vendors and Other Contract Counterparties

Added to Schedule of Assumed Contracts and Leases - Vendors and Other Contract Counterparties

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
276	SpeedCast Americas, Inc.	Cisco Systems, Inc.	Advanced Services Statement of Work dated May 9, 2019 (Project ID 911377)	\$ 224,200.00
277	SpeedCast Americas, Inc.	Cisco Systems, Inc.	Advanced Services Statement of Work Change Request #1 dated August 21, 2019 (Project ID 911377)	See Item 276 Above
278	SpeedCast Americas, Inc.	Cisco Systems, Inc.	Advanced Services Statement of Work Change Request #2 dated December 19, 2019 (Project ID 911377)	See Item 276 Above
279	SpeedCast Americas, Inc.	Cisco Systems, Inc.	Advanced Services Statement of Work Change Request #3 dated April 27, 2020 (Project ID 911377)	See Item 276 Above
280	SpeedCast International Limited	Harris Corporation	Angola Excess Cash Repatriation Letter Agreement dated March 15, 2018	To be determined
281	SpeedCast Americas, Inc.	Carol Flaton	Independent Director Agreement dated June 19, 2020	\$ -
282	SpeedCast Americas, Inc.	Hooman Yazhari	Independent Director Agreement dated June 19, 2020	\$ -
283	SpeedCast Americas, Inc.	Stephe Wilks	Independent Director Agreement dated June 19, 2020	\$ -
284	SpeedCast Americas, Inc.	David Mack	Independent Director Agreement dated June 19, 2020	\$ -

Revisions to Schedule of Assumed Contracts and Leases - Vendors and Other Contract Counterparties

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount ¹
41	NewCom International, Inc.	Crown Castle Fiber LLC	MSA and orders for fiber optic telecommunications	\$ 6,866.06
42	Globecomm Network Services Corporation	Crown Castle Fiber LLC	Orders for fiber optic telecommunications	\$ 50,810.31
99	SpeedCast International Limited	Harris Corporation	Sale Agreement dated November 1, 2016, as amended from time to time.	To be determined

¹ The Cure Amounts set forth herein modify and supercede the corresponding Cure Amounts set forth in the Initial Cure Schedule. The "**Initial Cure Schedule**" means the *Schedule of Assumed Contracts and Leases and Proposed Cure Amounts* (Docket No. 958, Exhibit A)

Exhibit 1-B

**Schedule of Assumed and Rejected Contracts
Leases**

Schedule of Assumed and Rejected Contracts
Leases

Removed from Schedule of Assumed Contracts and Leases - Leases

Item	Debtor	Contract Counterparty	Contract Description	Cure Amount
3	CapRock UK Limited	Chess Property Group PLC	Property lease at Denmore Road Murcar Industrial Estate, Aberdeen, United Kingdom dated April 18, 2007	N/A
13	CapRock UK Limited	M&G UK Property	Property lease at Newton Road, Aberdeen, United Kingdom dated December 14, 1979	N/A
20	Globecomm Network Services Corporation	STORE Capital Acquisitions, LLC	Property lease at 45 Oser Ave, Hauppauge, New York dated September 27, 2018	N/A
21	Speedcast Cyprus Ltd.	Triaina S.A.	Property lease at 19 Gravias str, Piraeus, Greece dated January 2, 2020	N/A

Exhibit 1-C

**Schedule of Assumed and Rejected Contracts
Employment Contracts**

The Debtors intend to assume all employment agreements, offer letters, award letters, or other contracts with employees to which the Debtors are a party, except those for the individuals specifically set out below. The Debtors intend to reject all contracts (including any and all deeds of indemnity or other agreements with individuals providing for indemnification) related to the individuals listed below.

Item	Debtor	Contract Counterparty
1	SpeedCast Communications, Inc., and all other Debtors with which the employee may have had contracts.	Peter Shaper
2	SpeedCast Communications, Inc., and all other Debtors with which the employee may have had contracts.	Gerard Johnston
3	SpeedCast Communications, Inc., and all other Debtors with which the employee may have had contracts.	Athina Vezyri
4	SpeedCast Communications, Inc., and all other Debtors with which the employee may have had contracts.	Pierre Beylier
5	SpeedCast Communications, Inc., and all other Debtors with which the employee may have had contracts.	Timothy Bailey

Exhibit 2

Restructuring Steps Memorandum

Restructuring Steps Memorandum

Capitalized terms used but not otherwise defined herein shall have the meanings as given to them in the *Amended and Restated Equity Commitment Agreement* (“ECA”) dated October 10, 2020 and the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (the “Plan”), dated November 25, 2020 and, in each case, as may be altered, amended, modified, or supplemented from time to time.

On or Before the Effective Date:

Step 1 – Speedcast International Limited (“SIL”) subscribes for shares in Speedcast UK Holdings Limited in exchange for an intercompany payable in an amount of \$64.9M and such intercompany payable is then offset against the \$64.9M loan Speedcast UK Holdings Limited owes to SIL.

Step 2 – SIL contributes its \$50.5M loan receivable from Speedcast Limited to Speedcast Limited in exchange for additional stock.

Step 3 – Speedcast Group Holdings Pty Ltd (“SGH”) transfers the stock of Speedcast Americas, Inc. (“SAI”) to SIL in exchange for consideration in an amount to be determined between the Debtors and the Plan Sponsor.

- In addition, SGH may (i) contribute its non-debtor subsidiaries to Speedcast Australia Pty Ltd. (“Speedcast Australia”) or another Debtor subsidiary of SGH and, then, (ii) transfer the stock of each Debtor subsidiary to SIL in exchange for consideration in an amount to be determined between the Debtors and the Plan Sponsor.
- At the Plan Sponsor’s request, SGH will elect to be treated as disregarded from SIL for U.S. federal income tax purposes, with an effective date on or before December 31, 2020.
- SGH may also take such other steps as are necessary under Australian law to exit the deed of cross guarantee with its other Australian Debtor affiliates.

Step 4 –

- (i) CB Hermes Holdings, L.P. (the “Commitment Party”) forms a new Delaware limited partnership (the “Holding Partnership”). The Holding Partnership or the Commitment Party forms a Delaware limited liability company (“New Speedcast Parent”), which will act as the parent of the reorganized Company Group Entities and will be a direct wholly owned subsidiary of the Holding Partnership. New Speedcast Parent forms a Delaware limited liability company (“HoldCo LLC 1”) as a direct wholly owned subsidiary. HoldCo LLC 1 forms a Delaware limited liability company (“HoldCo LLC 2”) as a direct wholly owned subsidiary;
- (ii) the Commitment Party may contribute its Claims to the Holding Partnership in actual or deemed exchange for new limited partnership interests of the Holding Partnership;
- (iii) HoldCo LLC 2 forms a new Australian company that is disregarded from its regarded owner (“Australian Holdco”) for U.S. federal income tax purposes; and

- (iv) Australian Holdco forms a new Australian company that is disregarded from its regarded owner (“Australian Co.”) for U.S. federal income tax purposes.

On the Effective Date:

Step 5 – New Speedcast Parent issues on the Plan Effective Date new common equity interests (“Direct Investment Shares”) to the Holding Partnership (if step 4(ii) has occurred) or to the Commitment Party (if step 4(ii) has not occurred) in exchange for an aggregate investment of not less than \$500M;

Step 6 – SIL contributes \$313.5M of receivables from SAI to SAI as a capital contribution.

- Step must occur simultaneously with step 7.

Step 7 –SIL transfers

- (i) the stock of SGH and each of its Australian subsidiaries to Australian Co.; and
- (ii) all of the stock of its non-Australian subsidiaries, including SAI, and any other assets to HoldCo LLC 2

in the case of (i) and (ii), for cash in an amount to be determined between the Debtors and the Plan Sponsor.

- SIL exits the deed of cross guarantee with SGH (and its other Australian subsidiaries).
- Step must occur simultaneously with step 6.

Step 8 – New Speedcast Parent directly or indirectly contributes cash or loans cash to SAI and any other subsidiary that must settle (i) a Syndicated Facility Secured Claim or (ii) an Allowed Unsecured Trade Claim.

Step 9 – SAI transfers cash or loans cash to Speedcast Communications, Inc. (“Comms”).

- Note that New Speedcast Parent may contribute or loan the cash directly or indirectly to Comms.

Step 10 –

- (i) SIL and any subsidiary that must settle a Syndicated Facility Secured Claim distribute cash and interests in the Class 3 trust, as applicable, to holders of Syndicated Facility Secured Claims in satisfaction of the Syndicated Facility Secured Claims;
- (ii) Comms distributes cash in repayment of the Replacement DIP Facility;

- (iii) each holder of an Allowed Unsecured Trade Claim receives its Pro Rata share of the Trade Claim Cash Amount;
- (iv) each holder of an Other Unsecured Claim (including each holder of a Syndicated Facility Deficiency Claim) receives its Pro Rata share of an interest in the net proceeds of the Litigation Trust; and
- (v) if step 4(ii) has not occurred, the Commitment Party contributes the Direct Investment Shares to the Holding Partnership.

Following the Effective Date

Step 11 – SIL may continue activities or commence an Australian liquidation, administration proceeding and/or “deed of company arrangement” in accordance with applicable law.

* * * * *

Note that, as referenced in the Plan, the Debtors may, at the direction of the Plan Sponsor, take any other steps (including, but not limited to, dissolution of entities, contribution or distribution of assets) as may be deemed necessary to effectuate the Plan so long as such steps do not contravene any other provision of the Plan. The Restructuring, the Corporate Restructuring and the Restructuring Transactions are intended to be treated, for U.S. federal income tax purposes, as a “reorganization” within the meaning of Section 368(a) of the Tax Code, and the Plan is intended to be treated as, and is hereby adopted as, a “plan of reorganization,” within the meaning of Section 354 and 368 of the Tax Code.

Exhibit 2-A

**Restructuring Steps Memorandum
Redline**

Restructuring Steps Memorandum

Capitalized terms used but not otherwise defined herein shall have the meanings as given to them in the *Amended and Restated Equity Commitment Agreement* (“ECA”) dated October 10, 2020 and the *Second Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates* (the “Plan”), dated November 25, 2020 and, in each case, as may be altered, amended, modified, or supplemented from time to time.

On or Before the Effective Date:

Step 1 – Speedcast International Limited (“SIL”) subscribes for shares in Speedcast UK Holdings Limited in exchange for an intercompany payable in an amount of \$64.9M and such intercompany payable is then offset against the \$64.9M loan Speedcast UK Holdings Limited owes to SIL.

Step 2 – SIL contributes its \$50.5M loan receivable from Speedcast Limited to Speedcast Limited in exchange for additional stock.

Step 3 – Speedcast Group Holdings Pty Ltd (“SGH”) transfers the stock of Speedcast Americas, Inc. (“SAI”) to SIL in exchange for consideration in an amount to be determined between the Debtors and the Plan Sponsor.

- In addition, SGH may (i) contribute its non-debtor subsidiaries to Speedcast Australia Pty Ltd. (“Speedcast Australia”) or another Debtor subsidiary of SGH and, then, (ii) transfer the stock of each Debtor subsidiary to SIL in exchange for consideration in an amount to be determined between the Debtors and the Plan Sponsor.
- At the Plan Sponsor’s request, SGH will elect to be treated as disregarded from SIL for U.S. federal income tax purposes, with an effective date on or before December 31, 2020.
- SGH may also take such other steps as are necessary under Australian law to exit the deed of cross guarantee with its other Australian Debtor affiliates.

On the Effective Date:

Step 4 –

- ~~(i) A successor entity acting as the parent of the reorganized Company Group Entities (“New Speedcast Parent”) issues on the Plan Effective Date new common equity interests (“Direct Investment Shares”) to Centerbridge Capital Partners III, L.P. and Centerbridge Capital Partners SBS III, L.P. (the “Commitment Parties”) in exchange for an aggregate investment of not less than \$500M;~~
- (i) CB Hermes Holdings, L.P. (the “Commitment Party”) forms a new Delaware limited partnership (the “Holding Partnership”). The Holding Partnership or the Commitment Party forms a Delaware limited liability company (“New Speedcast Parent”), which will act as the parent of the reorganized Company Group Entities and will be a direct wholly

owned subsidiary of the Holding Partnership. New Speedcast Parent forms a Delaware limited liability company (“HoldCo LLC 1”) as a direct wholly owned subsidiary. HoldCo LLC 1 forms a Delaware limited liability company (“HoldCo LLC 2”) as a direct wholly owned subsidiary;

(ii) the Commitment Party may contribute its Claims to the Holding Partnership in actual or deemed exchange for new limited partnership interests of the Holding Partnership;

(iii) ~~(ii) New Speedcast Parent~~ HoldCo LLC 2 forms a new Australian company that is disregarded from ~~New Speedcast Parent~~ its regarded owner (“Australian Holdco”) for U.S. federal income tax purposes; and

(iv) ~~(iii) Australian Holdco~~ forms a new Australian company that is disregarded from ~~Australian Holdco~~ its regarded owner (“Australian Co.”) for U.S. federal income tax purposes.

On the Effective Date:

Step 5 – New Speedcast Parent issues on the Plan Effective Date new common equity interests (“Direct Investment Shares”) to the Holding Partnership (if step 4(ii) has occurred) or to the Commitment Party (if step 4(ii) has not occurred) in exchange for an aggregate investment of not less than \$500M;

Step 56 – SIL contributes \$313.5M of receivables from SAI to SAI as a capital contribution.

- Step must occur simultaneously with step **67**.

Step 67 –SIL transfers

- (i) the stock of SGH and each of its Australian subsidiaries to Australian Co.; and
- (ii) all of the stock of its non-Australian subsidiaries, including SAI, and any other assets to ~~New Speedcast Parent~~ HoldCo LLC 2

in the case of (i) and (ii), for cash in an amount to be determined between the Debtors and the Plan Sponsor.

- SIL exits the deed of cross guarantee with SGH (and its other Australian subsidiaries).
- Step must occur simultaneously with step **56**.

Step 78 – New Speedcast Parent directly or indirectly contributes cash or loans cash to SAI and any other subsidiary that must settle (i) a Syndicated Facility Secured Claim or (ii) an Allowed Unsecured Trade Claim.

Step 89 – SAI transfers cash or loans cash to Speedcast Communications, Inc. (“Comms”).

- Note that New Speedcast Parent may contribute or loan the cash directly or indirectly to Comms.

Step 910 –

- (i) SIL and any subsidiary that must settle a Syndicated Facility Secured Claim distribute cash and interests in the Class 3 trust, as applicable, to holders of Syndicated Facility Secured Claims in satisfaction of the Syndicated Facility Secured Claims;
- (ii) Comms distributes cash in repayment of the Replacement DIP Facility;
- (iii) each holder of an Allowed Unsecured Trade Claim receives its Pro Rata share of the Trade Claim Cash Amount; ~~and~~
- (iv) each holder of an Other Unsecured Claim (including each holder of a Syndicated Facility Deficiency Claim) receives its Pro Rata share of an interest in the net proceeds of the Litigation Trust; and
- (v) if step 4(ii) has not occurred, the Commitment Party contributes the Direct Investment Shares to the Holding Partnership.

Following the Effective Date

Step 11 – SIL may continue activities or commence an Australian liquidation, administration proceeding and/or “deed of company arrangement” in accordance with applicable law.

* * * * *

• Note that, as referenced in the Plan, the Debtors may, at the direction of the Plan Sponsor, take any other steps (including, but not limited to, dissolution of entities, contribution or distribution of assets) as may be deemed necessary to effectuate the Plan so long as such steps do not contravene any other provision of the Plan. The Restructuring, the Corporate Restructuring and the Restructuring Transactions are intended to be treated, for U.S. federal income tax purposes, as a “reorganization” within the meaning of Section 368(a) of the Tax Code, and the Plan is intended to be treated as, and is hereby adopted as, a “plan of reorganization,” within the meaning of Section 354 and 368 of the Tax Code.

Exhibit 3

Class 3 Trust Agreement

CLASS 3 TRUST AGREEMENT

This Class 3 Trust Agreement (the “Class 3 Trust Agreement”) is made and established this ___ day of __, 2021, by and among SpeedCast International Limited; CapRock Communications (Australia) Pty Ltd; CapRock Communications Pte. Ltd.; CapRock Comunicações do Brasil Ltda.; CapRock Participações do Brasil Ltda.; CapRock UK Limited; CCI Services Corp.; Evolution Communications Group Limited; Globecomm Europe B.V.; Globecomm Network Services Corporation; Hermes Datacommunications International Limited; Maritime Communication Services, Inc.; NewCom International, Inc.; Oceanic Broadband Solutions Pty Ltd; Satellite Communications Australia Pty Ltd; SpaceLink Systems II, LLC; SpaceLink Systems, LLC; SpeedCast Americas, Inc.; SpeedCast Australia Pty Limited; Speedcast Canada Limited; SpeedCast Communications, Inc.; Speedcast Cyprus Ltd.; SpeedCast France SAS; SpeedCast Group Holdings Pty Ltd; SpeedCast Limited; SpeedCast Managed Services Pty Limited; SpeedCast Netherlands B.V.; SpeedCast Norway AS; SpeedCast Singapore Pte. Ltd.; SpeedCast UK Holdings Limited; and Telaurus Communications LLC (each, a “Debtor”, collectively, the “Debtors” and, as of the Effective Date, including New Speedcast Parent, the “Reorganized Debtors”), and Catherine Youngman, as Class 3 Trustee (the “Class 3 Trustee”), in connection with the *Third Amended Joint Chapter 11 Plan of Speedcast International Limited and its Debtor Affiliates*, dated January __, 2021 (as altered, amended, modified, or supplemented from time to time, the “Plan”), filed with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”) in the Chapter 11 Cases (as defined below).¹

RECITALS

WHEREAS, the Debtors each filed a voluntary petition in the Bankruptcy Court under chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”);

WHEREAS, the Chapter 11 Cases are continuing and are jointly administered under case number 20-32243;

WHEREAS, on January 20, 2021, the Debtors, Black Diamond Commercial Finance, L.L.C., Black Diamond Capital Management, L.L.C. (together with each of its controlled affiliates and any funds directly and indirectly advised or managed thereby and their respective successors and assigns “Black Diamond”) and Centerbridge Partners, L.P. (together with each of its controlled affiliates and any funds directly and indirectly advised or managed thereby and their respective successors and assigns, “Centerbridge”) entered into that certain Settlement Agreement (as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof, the “Settlement Agreement”);

WHEREAS, on January 20, 2021, the Debtors filed the Plan [Dkt. No. [●]];

WHEREAS, on January __, 2021, the Bankruptcy Court entered an order confirming the Plan (the “Confirmation Order”) [Dkt. No. [●]];

WHEREAS, the Effective Date of the Plan occurred on _____, 2021;

¹ Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Plan.

WHEREAS, the Plan contemplates, on the Effective Date, among other things, (a) the creation of a Class 3 Trust (the “Class 3 Trust”) to be treated as a “liquidating trust” within the meaning of Treasury Regulation Section 301.7701-4(d) (the “Trust Regulations”) for the benefit of holders of Class 3 Syndicated Facility Secured Claims as of the Class 3 Trust Record Date entitled to receive Class 3 Trust Interests (after giving effect to the waiver of rights to receive Class 3 Trust Interests by Centerbridge set forth in Section 4.3(a) of the Plan) (the “Class 3 Trust Beneficiaries”) and (b) the Class 3 Trust Causes of Action (as defined in and subject to the terms and provisions of the Plan) (collectively, the “Class 3 Trust Causes of Action”; following the Effective Date, Class 3 Trust Assets shall also be deemed to include all Class 3 Trust Distributable Proceeds and all other proceeds, products and income thereof) will be transferred into the Class 3 Trust, as set forth in the Plan; and

WHEREAS, the Plan further contemplates that the Class 3 Trust is intended to qualify as a “liquidating trust” within the meaning of the Trust Regulations, and shall be created for the purposes of, among other things, (a) investigating, prosecuting, settling, liquidating, or disposing of the Class 3 Trust Causes of Action and (b) distributing the Class 3 Trust Distributable Proceeds to the Class 3 Trust Beneficiaries as holders of Class 3 Syndicated Facility Secured Claims entitled to their Pro Rata share of the Class 3 Trust Distributable Proceeds consistent with the terms of this Class 3 Trust Agreement, with no objective to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to and consistent with the purpose of the Class 3 Trust and the Plan; and

WHEREAS, presuming that the Class 3 Trust qualifies as a “liquidating trust” within the meaning of the Trust Regulations, to the extent permitted by law, the parties hereto will elect to treat the Class 3 Trust for tax purposes as a “grantor trust” pursuant to the Treasury Regulations for U.S. federal income tax purposes, pursuant to Sections 671-679 of the Internal Revenue Code of 1986, as amended (the “IRC”), with the Class 3 Trust Beneficiaries to be treated as the grantors of the Class 3 Trust and deemed to be the owners of the Class 3 Trust Assets (subject to the rights of creditors of the Class 3 Trust), and consequently, for federal income tax purposes the transfer of the Class 3 Trust Assets to the Class 3 Trust shall be treated as a deemed transfer of those assets from the Reorganized Debtors and their Estates to the Class 3 Trust Beneficiaries followed by a deemed transfer by such Class 3 Trust Beneficiaries to the Class 3 Trust at a valuation determined by the Class 3 Trustee to be reported consistently by all parties; provided, however, if any assets are allocable to a disputed claim reserve, the Class 3 Trustee may elect to treat any disputed claim reserve as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9.

NOW, THEREFORE, pursuant to the Plan, the Settlement Agreement, and the Confirmation Order, in consideration of the promises, the mutual agreements of the parties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and affirmed, the parties hereto hereby agree as follows:

ARTICLE I. DECLARATION OF TRUST

1.1 Creation and Purpose of the Class 3 Trust. The Debtors, Reorganized Debtors and the Class 3 Trustee hereby create what shall be known as the “Class 3 Trust,” which is in a form reasonably acceptable to a majority of the Class 3 Trust Beneficiaries, for the purpose of (i)

evaluating and prosecuting the Class 3 Trust Causes of Action, (ii) liquidating the Class 3 Trust Assets, and (iii) distributing the Class 3 Trust Distributable Proceeds, if any, to the Class 3 Trust Beneficiaries in accordance with Treasury Regulation Section 301.7701-4(d), with no objective to continue or engage in the conduct of a trade or business.

1.2 Declaration of Trust. In order to declare the terms and conditions hereof, and in consideration of the confirmation of the Plan, the Debtors, the Reorganized Debtors and the Class 3 Trustee have executed this Class 3 Trust Agreement and, effective on the Effective Date, the Debtors hereby irrevocably transfer and assign to the Class 3 Trust, all of their right, title, and interest in the Class 3 Trust Assets, to have and to hold unto the Class 3 Trust and its successors and assigns, under and subject to the terms of the Plan and the Confirmation Order for the benefit of the Class 3 Trust Beneficiaries and their permitted successors and assigns solely to the extent provided for in this Class 3 Trust Agreement and in the Plan and Confirmation Order. Notwithstanding the foregoing, subject to Section 5.21 of the Plan and the rights of the Class 3 Trustee set forth in herein, all Class 3 Trust Distributable Proceeds shall be distributed by the Class 3 Trustee, to the Class 3 Trust Beneficiaries in accordance with the provisions hereof, including, without limitation, Sections 1.4 and 7.1 (and consistent with the Plan and the Confirmation Order).

1.3 Transfer and Vesting of Estate Assets.

(a) On the Effective Date, pursuant to the terms of the Plan, the Class 3 Trust Assets, including all Class 3 Trust Assets held or controlled by the Debtors, if any, shall be vested in the Class 3 Trust, which also shall, without limiting any of the other provisions hereof, own and be authorized to obtain, liquidate, and collect all of the Class 3 Trust Assets in the possession of the Debtors, and pursue all of the Class 3 Trust Causes of Action. All Class 3 Trust Assets shall be transferred and delivered to the Class 3 Trust free and clear of all Claims and Liens, and such transfer and delivery shall be exempt from any stamp, real estate transfer, mortgage reporting, sales, use or other similar tax. The Class 3 Trust will be the successor-in-interest to each of the Debtors and Reorganized Debtors with respect to any Claim, Cause of Action or other action or proceeding that was or could have been commenced by any of the Debtors or Reorganized Debtors prior to the Effective Date that is a Class 3 Trust Cause of Action and shall be deemed and entitled to be substituted for the same as the party in all such actions, litigations, arbitrations or similar proceedings. To the extent any of the foregoing does not automatically occur on the Effective Date or is not effectuated through the Plan, the Confirmation Order or this Class 3 Trust Agreement, the Reorganized Debtors shall, reasonably promptly following written request therefore by the Class 3 Trustee, cause to be executed such other and further documents in form and substance reasonably acceptable to the Class 3 Trustee and its Litigation Oversight Committee (described below), as are reasonably necessary to effectuate all of the foregoing. All reasonable out-of-pocket costs and expenses incurred, upon prior written request of the Class 3 Trustee, by the Debtors or the Reorganized Debtors in connection with actions taken under this subsection 1.3(a) or subsections 1.3(b) or (c) below shall be at the expense of the Class 3 Trust. For the avoidance of doubt, notwithstanding anything in the Plan to the contrary, the Debtors or Reorganized Debtors, as applicable, shall not charge the Class 3 Trust any amounts on account of such applicable entities' overhead costs or for the time of such entities' employees in assisting the Class 3 Trust.

(b) Any attorney-client privilege, work-product doctrine, joint interest privilege or other privilege or immunity (collectively, the “Privileges”)² belonging to any of the Debtors, and attaching to any documents, information or communications (whether written or oral) in connection with Class 3 Trust Assets (including Class 3 Litigation Causes of Action), shall be transferred (subject to the limitations below) to the Class 3 Trust solely for the purpose of allowing the Class 3 Trustee to carry out its obligations under this Class 3 Trust Agreement. Privileged material that the Debtors or Reorganized Debtors turn over that specifically relates to Class 3 Litigation Causes of Action shall automatically vest in, and be available for the assertion or waiver by the Class 3 Trustee, *provided* that the transfer of Privileges, and any obligation of the Debtors to turn over any documents, information or communications in connection with such transfer of Privileges, shall apply only to documents, information or communications dated on or before August 31, 2020 (which date cutoff shall not apply to any documents that refer to Peter Shaper and his dealings with the Debtors) and provided that the Class 3 Trustee and Class 3 Trust Beneficiaries shall maintain as strictly confidential all privileged information received pursuant to this Class 3 Trust Agreement. Should the Class 3 Trustee desire to waive any Privileges, the Class 3 Trustee must obtain the written consent of the Debtors or the Reorganized Debtors as appropriate, which shall not be unreasonably withheld. The Class 3 Trust’s receipt of the Privileges associated with the Class 3 Trust Assets shall not operate as a waiver of any or all other privileges possessed or retained by the Debtors or Reorganized Debtors. To the extent any documents, information, or communications transferred to the Class 3 Trust pursuant to this Class 3 Trust Agreement contain any personal information covered by Australian or other foreign privacy laws, SpeedCast International Limited and Class 3 Trustee will take any necessary steps, including effectuating any agreement required, to allow for the legal transfer of such information.

(c) Without limiting any other provision of this Class 3 Trust Agreement, the Plan or the Confirmation Order, the Debtors and/or Reorganized Debtors shall, subject to Section 1.3(d) below, reasonably promptly following receipt of a reasonable written request from the Class 3 Trustee, (i) take, or cause to be taken, all such further actions, and execute and/or deliver all such additional instruments, agreements or documents, as the Class 3 Trustee may reasonably request in order to evidence or effectuate the transfer of the Class 3 Trust Assets and Privileges to the Class 3 Trustee by the Plan; and (ii) otherwise take any action reasonably necessary to carry out the intent of the parties hereunder and under the Plan. Notwithstanding anything contained herein, without the express written consent of the Class 3 Trustee, no Entity or creditor of the Reorganized Debtors shall be permitted to assert, bring, institute, commence or continue any Class 3 Trust Cause of Action that is transferred to the Class 3 Trust pursuant to the Plan or take any other action in the name of the Class 3 Trust.

(d) Notwithstanding anything in the Plan, the Confirmation Order or the Settlement Agreement to the contrary, except as set forth in Section 1.3(a) and 1.3(b) hereof, following the Effective Date, the Reorganized Debtors shall have no obligation to provide any cooperation to the Class 3 Trustee or the Class 3 Trust Beneficiaries with respect to or in connection with the Class 3 Trust, including the administration thereof or the investigation, development or pursuit of any Class 3 Causes of Action.

² For clarity, Privileges shall not include any internal attorney work product of Debtors’ counsel in connection with the Chapter 11 Cases.

(e) All rights of the Class 3 Trust Beneficiaries in connection with any Rule 2004 examinations, orders, and agreements related thereto concerning the Debtors or their Affiliates shall be transferred to the Class 3 Trust for the purpose of allowing the Class 3 Trustee to carry out her obligations under this Class 3 Trust Agreement. For the avoidance of doubt, Class 3 Trust Beneficiaries shall be permitted to share any discovery, communications, or analyses obtained relating to the Debtors and/or the Class 3 Trust Assets with the Class 3 Trustee without waiver of any Privileges. The Class 3 Trustee shall not share any documents, communications or information obtained from the Debtors and/or Reorganized Debtors and their Affiliates with the Class 3 Trust Beneficiaries unless such Class 3 Trust Beneficiaries agree to be subject to the same confidentiality restrictions as set forth in Section 1.3(b) hereof, and agree to not use such materials for any purpose other than in connection with pursuit of the Class 3 Trust Cause of Action. To the extent that the Class 3 Trustee makes any allegations against any Released Party as defined in the Plan, the Class 3 Trustee shall use best efforts to file such allegations under seal. To the extent there is any objection to such document being filed under seal, the Class 3 Trustee shall provide the Debtors and/ or Reorganized Debtors prompt notice of same prior to filing such allegations publicly. In any event, the Class 3 Trustee is obligated to share the foregoing agreement to file under seal with any court as necessary.

(f) The transfer of the Class 3 Trust Assets to the Class 3 Trust shall be made, as provided in the Plan and this Class 3 Trust Agreement, for the benefit of the Class 3 Trust Beneficiaries. In accordance with the Settlement Agreement, the Plan and this Class 3 Trust Agreement, the Debtors shall transfer, on behalf of the Class 3 Trust Beneficiaries, the Class 3 Trust Assets to the Class 3 Trust for the benefit of the Class 3 Trust Beneficiaries. Upon the transfer of the Class 3 Trust Assets, the Debtors and Reorganized Debtors shall have no interest in or claim to the Class 3 Trust Assets or the Class 3 Trust, and the Class 3 Trust shall succeed to all of the Debtors and/or Reorganized Debtors' right, title and interest in and to the Class 3 Trust Assets. The Class 3 Trustee shall have no authority to bind the Debtors or the Reorganized Debtors in any manner except with respect to a Class 3 Trust Cause of Action. Notwithstanding the foregoing, for purposes of section 553 of the Bankruptcy Code, the transfer of the Class 3 Trust Assets to the Class 3 Trust shall not affect the mutuality of obligations which otherwise may have existed prior to the effectuation of such transfer. Notwithstanding anything in this Class 3 Trust Agreement to the contrary, the transfer of the Class 3 Trust Assets to the Class 3 Trust does not diminish, and fully preserves, any defenses a defendant would have if such Class 3 Trust Assets had been retained by the Reorganized Debtors. To the extent that any Class 3 Trust Assets cannot be transferred to the Class 3 Trust because of a restriction on transferability under applicable non-bankruptcy law that is not superseded or preempted by section 1123 of the Bankruptcy Code or any other provision of the Bankruptcy Code, such Class 3 Trust Assets shall be deemed to have been retained by the Reorganized Debtors and the Class 3 Trustee shall be deemed to have been designated as a representative of the Reorganized Debtors pursuant to section 1123(b)(3)(B) of the Bankruptcy Code to enforce and pursue such Class 3 Trust Assets on behalf of the Reorganized Debtors, and all proceeds, income and recoveries on account of any such Class 3 Trust Assets shall be assets of the Class 3 Trust and paid over thereto immediately upon receipt by the Reorganized Debtors, or any other Entity, to the Class 3 Trust.

1.4 Funding of the Trust and Rights to any Recovery. The Class 3 Trust shall be funded by Class 3 Trust Beneficiaries electing to participate and share in any recovery of the Class 3 Trust Assets (a "Participating Class 3 Trust Beneficiary" and, collectively, the "Participating

Class 3 Trust Beneficiaries”). For avoidance of doubt, the Debtors and Reorganized Debtors shall have no funding obligations with respect to the Class 3 Trust. The Class 3 Trustee shall from time to time, in consultation with the Litigation Oversight Committee, issue a notice to all Class 3 Trust Beneficiaries specifying the amount of any required funding, and setting forth the deadline for such funding (such notice a “Funding Notice”). Any Class 3 Trust Beneficiary shall inform the Class 3 Trustee of its election to participate on or before the date set forth in the Funding Notice and, upon making such election, it will be responsible for funding the amount set forth in the Funding Notice. Such amount shall be equal to each Class 3 Trust Beneficiary’s pro rata share of legal fees, expenses, and costs incurred or expected to be incurred by the Class 3 Trust to the extent of such Beneficiary’s pro rata holdings of Class 3 Syndicated Secured Claims as of the Class 3 Trust Record Date, which pro rata holdings shall be determined after giving effect to the waiver of rights to receive Class 3 Trust Interests by Centerbridge set forth in Section 4.3(a) of the Plan. Only those Class 3 Trust Beneficiaries who, at the time of a distribution pursuant to Section 7.1 hereof, have participated in funding the Class 3 Trust in compliance with a Funding Notice (thus becoming Participating Class 3 Trust Beneficiaries to the extent of any such funding) shall be entitled to a pro rata share of any recovery of the Class 3 Trust Distributable Assets.

1.5 Acceptance by Class 3 Trustee. The Class 3 Trustee hereby accepts the trust imposed upon her by this Class 3 Trust Agreement and agrees to observe and perform that trust on and subject to the terms and conditions set forth in this Class 3 Trust Agreement, the Plan, and the Confirmation Order. In connection with and in furtherance of the purposes of the Class 3 Trust, the Class 3 Trustee hereby accepts the transfer of the Class 3 Trust Assets.

1.6 Name of the Class 3 Trust. The Class 3 Trust established hereby shall be known as the “Speedcast SFA Lenders’ Litigation Trust”.

1.7 Capacity of Trust.

(a) Notwithstanding any state or federal law to the contrary or anything herein, the Class 3 Trust shall itself have the capacity to act or refrain from acting on its own behalf, including the capacity to sue and be sued. The Class 3 Trust may alone be the named movant, respondent, party plaintiff or defendant, or the like in all adversary proceedings, contested matters, and other cases or proceedings brought by or against it, and may settle and compromise all such matters in its own name, and the Class 3 Trust shall be deemed to be a party in interest for all purposes concerning the Class 3 Trust Causes of Action. The Class 3 Trust shall be vested with all the powers and authority set forth in the Plan and this Class 3 Trust Agreement.

(b) This Class 3 Trust Agreement is intended to create a trust and a trust relationship, and the Class 3 Trust is to be governed and construed in all respects as a trust. The Class 3 Trust is not intended to be, and shall not be deemed to be or treated as, a general partnership, limited partnership, joint venture, corporation, joint stock company or association, nor shall the Class 3 Trustee, or the Class 3 Trust Beneficiaries, or any of them, for any purpose be, or be deemed to be or treated in any way whatsoever to be, liable or responsible hereunder as partners or joint venturers. The relationship of the Class 3 Trust Beneficiaries, on the one hand, to the Class 3 Trust and the Class 3 Trustee, on the other, shall not be deemed a principal or agency relationship, and their rights shall be limited to those conferred upon them by this Class 3 Trust Agreement and the Plan.

(c) In accordance with section 1123(d) of the Bankruptcy Code, the Class 3 Trustee may enforce all rights to commence and pursue, as appropriate, any and all Class 3 Trust Causes of Action after the Effective Date. No Entity may rely on the absence of a specific reference in the Plan to any Class 3 Trust Cause of Action against such Entity as any indication that the Class 3 Trustee will not pursue any and all available Class 3 Trust Causes of Action against such Entity. Unless any Class 3 Trust Causes of Action against a Person are expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Bankruptcy Court order, including the Confirmation Order, the Class 3 Trustee expressly reserves all Class 3 Trust 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 Class 3 Trust Causes of Action upon, after, or as a consequence of the Confirmation Order. Any objections of the Debtors or Reorganized Debtors to the allowance of any Claims or Equity Interests filed with the Bankruptcy Court with respect to which they dispute liability, priority, and/or amount (or any objections, affirmative defenses and/or counterclaims, whether or not litigated to Final Order) shall not in any way limit the ability or the right of the Class 3 Trustee to assert, commence or prosecute any Class 3 Trust Cause of Action against the holder of such Claim or Equity Interest. Nothing contained in the Plan, the Confirmation Order or this Class 3 Trust Agreement shall be deemed to be a waiver, release, or relinquishment of any Class 3 Trust Cause of Action, right of setoff, or other legal or equitable defense which the Debtors had immediately prior to the Petition Date, against or with respect to any Claim against the Debtors. Without limiting the rights of the Class 3 Trust or the Class 3 Trustee, the Class 3 Trustee shall have, retain, reserve, and be entitled to assert all Class 3 Trust Causes of Action; provided, however, that the Class 3 Trustee shall not pursue any such actions or claims against any of the Released Parties.

(d) The Class 3 Trust and the Class 3 Trustee shall have all of the other rights, powers, duties and obligations set forth in the Plan and Confirmation Order, whether or not they are expressly set forth in this Class 3 Trust Agreement.

ARTICLE II. THE CLASS 3 TRUSTEE

2.1 Appointment. The Class 3 Trustee has been selected by Black Diamond, as the holder of Syndicated Facility Secured Claims as of the Class 3 Trust Record Date that holds a majority of the Class 3 Trust Interests as of the Effective Date (after giving effect to the waiver of rights to receive Class 3 Trust Interests set forth in Section 4.3(a) of the Plan), pursuant to the provisions of the Plan and this Class 3 Trust Agreement, and has been appointed as of the Effective Date. The Class 3 Trustee's appointment shall continue until the earlier of (a) the termination of the Class 3 Trust as set forth below, or (b) the Class 3 Trustee's resignation, death, dissolution, removal or liquidation, in each case in accordance with the provisions of this Class 3 Trust Agreement and the Plan.

2.2 Authority of Class 3 Trustee and Litigation Oversight Committee. Except as otherwise provided in this Class 3 Trust Agreement, the Plan, or the Confirmation Order, the Class 3 Trustee, subject to the management and direction of a "Litigation Oversight Committee" (whose initial members are identified in Exhibit A hereto), shall in an expeditious but orderly manner, liquidate and convert to Cash the Class 3 Trust Assets, which includes, without limitation, pursuing

recovery on the Class 3 Trust Causes of Action, and making distributions of Class 3 Trust Proceeds to the Class 3 Trust Beneficiaries as set forth herein and in the Plan. The Class 3 Trustee, subject to the management and direction of the Litigation Oversight Committee, shall have the absolute right to pursue, settle and compromise or not pursue any and all Class 3 Trust Causes of Action as it determines is in the best interests of the Class 3 Trust Beneficiaries, and consistent with the purposes of the Class 3 Trust and the Plan. The Class 3 Trustee shall have no liability for the outcome of any such decision except for any damages caused by intentional fraud, willful misconduct, or gross negligence. Subject to the terms of the Settlement Agreement, nothing in this Class 3 Trust Agreement shall be deemed to prevent the Class 3 Trustee from taking, or failing to take, any action that, based upon the advice of counsel or other professionals, it determines it is obligated to take (or refrain from taking) in the performance of any fiduciary or similar duty which the Class 3 Trustee owes to the Class 3 Trust Beneficiaries. No Entity dealing with the Class 3 Trust shall be obligated to inquire into the Class 3 Trustee's authority in connection with the acquisition, management, or disposition of Class 3 Trust Assets or general administration of the Class 3 Trust. Without limiting the foregoing, but subject to the Plan, the Confirmation Order, the Settlement Agreement and other provisions of this Class 3 Trust Agreement, the Class 3 Trustee shall, at the management and direction of the Litigation Oversight Committee, be expressly authorized to, with respect to the Class 3 Trust and the Class 3 Trust Assets, and may cause the Class 3 Trust to:

(a) Subject to the terms of this Class 3 Trust Agreement, exercise power and authority that may be or could have been exercised, commence all proceedings that may be or could have been commenced, and take all actions that may be or could have been taken, by any officer, director, shareholder or other party acting in the name of the Reorganized Debtors or their Estates with like effect as if duly authorized, exercised and taken by unanimous action of such officers, directors and shareholders or other party that are reasonably necessary to maximize the value of the Class 3 Trust Assets;

(b) Open and maintain bank accounts on behalf of or in the name of the Class 3 Trust, incur debt to fund and finance the Class 3 Trust, calculate and make distributions of Class 3 Trust Proceeds to the Participating Class 3 Trust Beneficiaries, and take other actions consistent with the Plan and the implementation thereof, including the establishment, re-evaluation, adjustment, and maintenance of appropriate reserves, in the name of the Class 3 Trust, provided that the Class 3 Trustee need not maintain the Class 3 Trust's reserves in segregated bank accounts, if more than one is required in the discretion of the Class 3 Trustee, and may pool funds in the reserves with each other and other funds of the Class 3 Trust; provided, however, that the Class 3 Trust shall treat all such reserved funds as being held in segregated accounts in its books and records;

(c) Receive, manage (including, for the avoidance of doubt, use the proceeds, products and income of the Class 3 Trust to fund on-going fees, costs and expenses of the Class 3 Trust), invest (in any manner permitted to be made by a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d), as reflected therein, or under applicable IRS guidelines, rulings, or other controlling authorities), supervise, protect, collect, liquidate and distribute the Class 3 Trust Assets;

(d) Hold legal title to any and all Class 3 Trust Assets;

(e) Commence, prosecute, compromise, adjust, settle, sue on or defend, withdraw, abandon, resolve any or all Class 3 Trust Causes of Action, or otherwise protect and enforce the rights to the Class 3 Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium, or similar law and general principles of equity;

(f) Engage in, intervene in, join, compromise, adjust, release, mediate, arbitrate, sue on or defend, counterclaim, setoff, recoup, pursue, prosecute, abandon, or otherwise deal with and settle any actions, suits, proceedings, disputes, claims, controversies, demands, causes of action, or other litigation in favor of or against the Class 3 Trust, to enter into agreements relating to the foregoing, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof, all in the name of the Class 3 Trust if necessary or appropriate, and institute or continue actions that were or could have been commenced by any of the Debtors prior to the Effective Date that is a Class 3 Trust Asset, and prosecute or defend all related litigation or appeals, and, when appropriate, settle such actions and claims;

(g) Enforce, waive, assign or release rights, privileges or immunities of any kind (including the Privileges) subject to Section 1.3(b) above;

(h) Seek any relief from, or resolution of, any disputes by the Bankruptcy Court or other court of competent jurisdiction;

(i) Seek a determination of tax liability or refund under section 505 of the Bankruptcy Code; (2) file, if necessary, any and all tax and information returns required with respect to the Class 3 Trust; (3) make tax elections for and on behalf of the Class 3 Trust; (4) pay taxes, if any, payable for and on behalf of the Class 3 Trust; and (5) file and prosecute claims for tax refunds to which the Reorganized Debtors or the Class 3 Trust may be entitled; provided, however, that notwithstanding any other provision of this Class 3 Trust Agreement, the Class 3 Trustee shall have no personal responsibility for the signing or accuracy of the Reorganized Debtors' income tax returns that are due to be filed after the Effective Date or for any tax liability related thereto;

(j) Pay all valid and lawful expenses, debts, charges, taxes and liabilities of the Class 3 Trust;

(k) Take all other actions not inconsistent with the provisions of the Plan that the Class 3 Trustee deems reasonably necessary or desirable to administer the Class 3 Trust;

(l) Enter into any agreement or execute any document or instrument required by or consistent with the Plan, the Confirmation Order or this Class 3 Trust Agreement and perform all duties and obligations thereunder;

(m) If any of the Class 3 Trust Assets are situated in any state or other jurisdiction in which the Class 3 Trustee is not qualified to act as trustee, nominate and appoint an Entity duly qualified to act as trustee in such state or jurisdiction and require from each such trustee such security as may be designated by the Class 3 Trustee in its reasonable discretion; confer

upon such trustee all the rights, powers, privileges, and duties of the Class 3 Trustee hereunder, subject to the conditions and limitations of this Class 3 Trust Agreement, except as modified or limited by the Class 3 Trustee and except where the conditions and limitations may be modified by the laws of such state or other jurisdiction (in which case, the laws of the state or other jurisdiction in which such trustee is acting shall prevail to the extent necessary); require such trustee to be answerable to the Class 3 Trustee for all monies, assets and other property that may be received in connection with the administration of all property; and, remove such trustee, with or without cause, and appoint a successor trustee at any time by the execution by the Class 3 Trustee of a written instrument declaring such trustee removed from office, and specifying the effective date and time of removal, which notice shall be promptly served on the Class 3 Trust Beneficiaries;

(n) Purchase and carry all insurance policies and pay all insurance premiums and costs the Class 3 Trustee deems reasonably necessary or advisable;

(o) Implement, enforce, or discharge all of the terms, conditions, and all other provisions of, and all duties and obligations under, the Plan, the Confirmation Order, and this Class 3 Trust Agreement; and

(p) Employ and compensate Class 3 Trustee Representatives.³ Nothing in this Class 3 Trust Agreement shall limit the Class 3 Trustee from engaging counsel or other professionals (at the sole expense of the Class 3 Trust), including the Class 3 Trustee itself to do work for or represent the Class 3 Trust.

2.3 Limitations on the Class 3 Trustee. Notwithstanding anything to the contrary under applicable law, this Class 3 Trust Agreement or the Plan to the contrary, the Class 3 Trustee shall not undertake any of the following, and any of the following actions by the Class 3 Trustee shall be null and void:

(a) Take or commence any actions against any Released Parties;

(b) Take, or fail to take, any action that would jeopardize treatment of the Class 3 Trust as a “liquidating trust” under the Trust Regulations;

(c) Take any action in contravention of the Plan, the Confirmation Order, the Settlement Agreement or this Class 3 Trust Agreement, in each case without express Bankruptcy Court approval;

(d) Possess the Class 3 Trust Assets for purposes other than the purposes of the Class 3 Trust as expressly provided in the Plan and this Class 3 Trust Agreement;

(e) Receive transfers of any listed stocks or securities, any readily-marketable assets or any operating assets of a going business; provided, however, that in no event shall the

³ “Class 3 Trustee Representatives” means any current or former officers, directors, employees, attorneys, professionals, accountants, investment bankers, financial advisors, consultants, agents and other representatives retained by the Class 3 Trustee pursuant to the terms hereof.

Class 3 Trustee receive or invest in any such investment that would jeopardize treatment of the Class 3 Trust as a “liquidating trust” under the Trust Regulations; or

(f) Receive or retain any operating assets of a going business, a partnership interest in a partnership that holds operating assets, or fifty percent (50%) or more of the stock of a corporation with operating assets; provided, however, that in no event shall the Class 3 Trustee receive or retain any such asset or interest that would jeopardize treatment of the Class 3 Trust as a “liquidation trust” under the Trust Regulations.

Notwithstanding any of the foregoing, the Class 3 Trustee shall not be prohibited from engaging in any trade or business on its own account, provided that such activity does not interfere with the Class 3 Trustee’s administration of the Class 3 Trust or its duties as Class 3 Trustee, or jeopardize treatment of the Class 3 Trust as a “liquidating trust” under the Trust Regulations.

2.4 Compensation of Class 3 Trustee and Class 3 Trustee Representatives.

(a) The Class 3 Trustee shall be entitled to receive from the Class 3 Trust reasonable compensation and reimbursement of its reasonable out-of-pocket expenses for the performance of its duties after the Effective Date on terms and conditions to be agreed upon between the Litigation Oversight Committee and Class 3 Trustee prior to the Effective Date and filed with the Bankruptcy Court. Any successor to the Class 3 Trustee shall also be entitled to reasonable compensation in connection with the performance of its duties, which compensation may be different from the terms provided herein, plus the reimbursement of reasonable out-of-pocket expenses. For the avoidance of doubt, all compensation, reimbursements or other amounts paid to the Class 3 Trustee shall be at the sole cost of the Class 3 Trust.

(b) The Class 3 Trustee Representatives (unless the Class 3 Trustee Representatives and the Class 3 Trustee agree to different treatment) seeking compensation or reimbursement shall submit written statements to the Class 3 Trustee and the Litigation Oversight Committee on a periodic basis. The Class 3 Trustee and Litigation Oversight Committee shall have thirty (30) days from the date such statement is received to review the statement and object to any portion of such statement by serving a written objection on the party seeking compensation setting forth the precise nature of the objection and the amount at issue. At the expiration of the thirty (30) day period, the Class 3 Trustee shall pay from the Class 3 Trust Assets 100% of the amounts requested, except for any portion of such fees and expenses to which objection has been made, if any. The Class 3 Trustee and/or Litigation Oversight Committee, and the party seeking compensation, shall attempt to consensually resolve objections, if any, to any statement. If the Class 3 Trustee and the party seeking compensation are unable to reach a consensual resolution of any such objection, the party seeking compensation who received an objection to its fees and expenses may seek payment of such fees and expenses by filing a motion with the Bankruptcy Court, providing notice of such motion to the Class 3 Trustee and the Participating Class 3 Trust Beneficiaries, and obtaining an order from the Bankruptcy Court. If any agent or professional of the Class 3 Trustee fails to submit a written statement as set forth above, it shall be ineligible to receive payment of the fees and expenses that would be the subject of such written statement as provided in this Class 3 Trust Agreement until such written statement is submitted.

2.5 General Duties, Obligations, Rights, and Benefits of the Class 3 Trustee. The Class 3 Trustee shall have all duties, obligations, rights, and benefits assumed by, assigned to or vested in the Class 3 Trust, or reasonably necessary to accomplish the purpose of the Class 3 Trust, under the Plan, the Confirmation Order, this Class 3 Trust Agreement and any other agreement entered into pursuant to or in connection with the Plan. Such duties, obligations, rights and benefits include, without limitation, all duties, obligations, rights and benefits relating to (a) administering the Class 3 Trust Assets; and (b) all of the other powers set forth in Section 2.2 hereof, in each case subject to the limitations set forth in Section 2.3 hereof. The Class 3 Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be read into this Class 3 Trust Agreement against the Class 3 Trustee.

2.6 Replacement of the Class 3 Trustee.

(a) The Class 3 Trustee may resign at any time upon thirty (30) days' prior written notice to the Litigation Oversight Committee (a "Resignation Notice"), provided that such resignation shall only become effective upon the appointment of a successor Class 3 Trustee, which notice shall also include the proposed terms of engagement of the successor Class 3 Trustee.

(b) In addition, the Litigation Oversight Committee may remove the Class 3 Trustee with or without cause.

(c) In the event the Class 3 Trustee's appointment terminates for any of the reasons set forth in clauses (a) or (b) above, such Class 3 Trustee shall be promptly compensated for all reasonable fees and expenses accrued through the effective date of termination, whether or not previously invoiced. The provisions of Article IV of this Class 3 Trust Agreement shall survive the resignation or removal of any Class 3 Trustee, in accordance with Section 4.8 of this Class 3 Trust Agreement.

(d) In the event the Class 3 Trustee's appointment terminates for any of the reasons set forth in clauses (a) or (b) above, or as a result of the death, disability, dissolution or liquidation of the Class 3 Trustee, the Litigation Oversight Committee will appoint a successor Class 3 Trustee.

2.7 Class 3 Trust Continuance. The death, disability, dissolution, liquidation, resignation, or removal of the Class 3 Trustee shall not terminate the Class 3 Trust or revoke any existing agency created by the Class 3 Trustee pursuant to this Class 3 Trust Agreement or invalidate any action theretofore taken by the Class 3 Trustee, and the provisions of this Class 3 Trust Agreement shall be binding upon and inure to the benefit of the successor Class 3 Trustee and all its successors or assigns.

**ARTICLE III.
PROSECUTION AND RESOLUTION OF ACTIONS**

3.1 Exclusive Authority; Representative. Without limiting the authority of the Class 3 Trust or the Class 3 Trustee set forth in this Class 3 Trust Agreement herein, the Plan or the

Confirmation Order, the Class 3 Trust shall be deemed to be a party in interest, and shall have the exclusive right, power, and interest to pursue, settle, defend, or abandon, as the case may be, all Class 3 Trust Causes of Action, as trustee and external administrator of the Reorganized Debtors and their Estates pursuant to section 1123(b)(3) of the Bankruptcy Code.

3.2 Class 3 Trust Proceeds. Any and all Class 3 Trust Proceeds, plus all income earned on Class 3 Trust Assets, after payment of any and all expenses of the Class 3 Trust and subject to holdbacks for the Class 3 Trust Reserve (as defined below), shall be added to the Class 3 Trust Assets, held as a part thereof (and title therein shall be vested in the Class 3 Trustee), and distributed to the Participating Class 3 Trust Beneficiaries, in accordance with the terms of this Class 3 Trust Agreement.

ARTICLE IV. LIABILITY OF CLASS 3 TRUSTEE

4.1 Standard of Care; Exculpation. Subject to the terms of the Settlement Agreement, neither the Class 3 Trustee nor any Class 3 Trustee Representative (each, an “Exculpated Party” and collectively, the “Exculpated Parties”) shall be liable for any losses, claims, damages, liabilities, obligations, settlements, proceedings, suits, judgments, causes of action, litigation, actions, or investigations (whether civil or administrative and whether sounding in tort, contract or otherwise), penalties, costs, and expenses, including reasonable fees and disbursements (collectively referred to herein as “Losses”), whether or not in connection with litigation in which any Exculpated Party is a party, or administering or enforcing this Class 3 Trust Agreement (including these exculpation provisions), as and when imposed on the Class 3 Trustee, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Class 3 Trustee’s execution, delivery, and acceptance of or the performance or nonperformance of its powers, duties and obligations under this Class 3 Trust Agreement, the Plan, or the Confirmation Order, or as may arise by reason of any action, omission or error of an Exculpated Party; provided, however, that the foregoing limitation shall not apply to any Losses suffered or incurred by any holder of a Claim or Interest or Beneficiary that are determined by a Final Order of the Bankruptcy Court to have been caused by the intentional fraud, willful misconduct or gross negligence of such Exculpated Party. Every act taken or omitted, power exercised or obligation assumed by the Class 3 Trust or any other Exculpated Party pursuant to the provisions of this Class 3 Trust Agreement, the Plan, or the Confirmation Order shall be held to be taken or omitted, exercised, or assumed, as the case may be, by the Class 3 Trust or any Exculpated Party acting for and on behalf of the Class 3 Trust and not otherwise; provided, however, that none of the foregoing Entities are deemed to be responsible for any other such Entities’ actions or inactions. Except as provided in the first proviso of the first sentence of this Section, every Entity contracting or otherwise dealing with or having any relationship with the Class 3 Trust or any Exculpated Party shall have recourse only to the Class 3 Trust Assets for payment of any liabilities or other obligations arising in connection with such contracts, dealings or relationships, and the Class 3 Trust and the Exculpated Parties shall not be individually liable therefor. In no event shall the Class 3 Trustee or any other Exculpated Party be liable for indirect, punitive, special, incidental, or consequential damage or loss (including but not limited to lost profits) whatsoever, even if the Class 3 Trustee has been informed of the likelihood of such loss or damages and regardless of the form of action. Any liability of the Class 3 Trustee or any other

Exculpated Party under this Class 3 Trust Agreement shall be limited to an amount equal to the fees actually paid to the Class 3 Trustee as of the date of any determination.

4.2 Indemnification and Limitation on Liability.

(a) Members of the Litigation Oversight Committee and the Class 3 Trustee (including any director, officer, member, affiliate, employee, employer, professional, successor, assign, agent, or representative of the Class 3 Trustee) (each, an “Indemnified Party” and collectively, the “Indemnified Parties”) shall be defended, held harmless, and indemnified from time to time by the Class 3 Trust against any and all Losses, including, without limitation, the costs for counsel or others in investigating, preparing, defending, or settling any action or claim, whether or not in connection with litigation in which any Indemnified Party is a party, or administering or enforcing this Class 3 Trust Agreement (including these indemnity provisions), as and when imposed on the Indemnified Parties, incurred, caused by, relating to, based upon or arising out of (directly or indirectly) the Indemnified Parties’ execution, delivery, and acceptance of or the performance, implementation or administration, or nonperformance of its powers, duties, and obligations under this Class 3 Trust Agreement, the Plan, or the Confirmation Order, or as may arise by reason of any action, omission, or error of an Indemnified Party; provided, however, such indemnity shall not apply to any such Losses that are determined by a Final Order of the Bankruptcy Court to have been caused by the intentional fraud, willful misconduct, or gross negligence of such Indemnified Party. Satisfaction of any obligation of the Class 3 Trust arising pursuant to the terms of this Section shall be, in the first instance, satisfied from any applicable insurance coverage, and any remaining amounts shall be payable from the Class 3 Trust Assets, and in either case shall be advanced prior to the conclusion of such matter (to the greatest extent possible) and such right to payment shall be prior and superior to the rights of the Class 3 Trust Beneficiaries to receive a distribution of the Class 3 Trust Assets.

(b) The Class 3 Trust shall promptly pay to the Indemnified Party the expenses set forth in subparagraph (a) above upon submission of invoices therefore on a current basis. Each Indemnified Party hereby undertakes, and the Class 3 Trust hereby accepts its undertaking, to repay any and all such amounts so paid by the Class 3 Trust if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified therefore under this Class 3 Trust Agreement.

(c) Neither the Class 3 Trustee nor any current or successor members of the Litigation Oversight Committee (or either of their professionals) will be liable for punitive, exemplary, consequential, or special damages for breach of this Class 3 Trust Agreement under any circumstances.

(d) In the event Black Diamond has any obligation to reimburse any person pursuant to paragraph 7(b) of the term sheet attached as Exhibit 1 to the Settlement Agreement, then the Class 3 Trust shall indemnify Black Diamond to the extent of any such reimbursement out of the available Class 3 Trust Distributable Proceeds.

4.3 No Liability for Acts of Successor/Predecessor Class 3 Trustees. Upon the appointment of a successor Class 3 Trustee and the delivery of the Class 3 Trust Assets to the successor Class 3 Trustee, the predecessor Class 3 Trustee and any director, officer, affiliate,

employee, employer, professional, agent, or representative of the predecessor Class 3 Trustee shall have no further liability or responsibility with respect to the Class 3 Trust, the Class 3 Trust Assets or this Class 3 Trust Agreement. A successor Class 3 Trustee shall have no duty to examine or inquire into the acts or omissions of its immediate or remote predecessor and no successor Class 3 Trustee shall be in any way liable for the acts or omissions of any predecessor Class 3 Trustee unless a successor Class 3 Trustee expressly assumes such responsibility. A predecessor Class 3 Trustee shall have no liability for the acts or omissions of any immediate or subsequent successor Class 3 Trustee for any events or occurrences subsequent to the cessation of its role as Class 3 Trustee.

4.4 Reliance by Class 3 Trustee on Documents or Advice of Counsel or Other Professionals. Except as otherwise provided in this Class 3 Trust Agreement, the Class 3 Trustee and any director, officer, member, affiliate, employee, employer, professional, agent, or representative of the Class 3 Trustee, may rely, and shall be protected from liability for acting or failing to act, upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document reasonably believed by the Class 3 Trustee to be genuine and to have been presented by an authorized party. The Class 3 Trustee shall not be liable for any action taken or omitted or suffered by the Class 3 Trustee in reasonable reliance upon the advice of counsel or other professionals engaged by the Class 3 Trustee in accordance with this Class 3 Trust Agreement. The Class 3 Trustee shall be fully indemnified by the Class 3 Trust for or in respect of any action taken, suffered or omitted by it and in accordance with such advice or opinion.

4.5 Conflicts of Interest. Conflicts of interest of the Class 3 Trustee will be addressed by the Class 3 Trustee appointing a disinterested person to handle any matter where the Class 3 Trustee has identified a conflict of interest or the Bankruptcy Court, on motion of a party in interest, determines one exists. In the event the Class 3 Trustee is unwilling or unable to appoint a disinterested person to handle any such matter, the Litigation Oversight Committee may file an objection with the Bankruptcy Court, on notice to the Class 3 Trustee and the Participating Class 3 Trust Beneficiaries, setting forth such objection and seeking entry of an order appointing a disinterested person recommended in such objection.

4.6 Insurance. In consultation with and subject to approval of the Litigation Oversight Committee, the Class 3 Trustee may purchase, using the Class 3 Trust Assets, and carry, all insurance policies and pay all insurance premiums and costs reasonably necessary or advisable, including, without limitation, purchasing any errors and omissions insurance with regard to any Losses it may incur, arising out of or due to its actions or omissions, or consequences of such actions or omissions, other than as a result of its fraud or willful misconduct, with respect to the implementation and administration of the Plan or this Class 3 Trust Agreement.

4.7 No Liability for Good Faith Error of Judgment. The Class 3 Trustee shall not be liable for any error of judgment made in good faith, unless it shall be finally determined by a Final Order that the Class 3 Trustee was grossly negligent in ascertaining the pertinent facts.

4.8 Survival. The provisions of this Article IV shall survive the termination of this Class 3 Trust Agreement and the death, resignation, removal, liquidation, dissolution, or replacement of the Class 3 Trustee.

**ARTICLE V.
GENERAL PROVISIONS CONCERNING
ADMINISTRATION OF THE CLASS 3 TRUST**

5.1 Class 3 Trust Reserve. The Class 3 Trustee, in consultation and with the approval of the Litigation Oversight Committee, shall establish the Class 3 Trust Reserve in accordance with Section 8.2 of this Class 3 Trust Agreement.

5.2 Books and Records. The Class 3 Trustee shall maintain in respect of the Class 3 Trust and the Class 3 Trust Beneficiaries books and records relating to the Class 3 Trust Assets and the payment of expenses of and claims against or assumed by the Class 3 Trust in such detail and for such period of time as may be necessary to enable it to make full and proper reports in respect thereof as required under the Plan, Confirmation Order or this Class 3 Trust Agreement. Except as expressly provided in this Class 3 Trust Agreement, the Plan, or the Confirmation Order, or as may be required by applicable law (including securities law), nothing in this Class 3 Trust Agreement is intended to require the Class 3 Trust to file any accounting or seek approval of any court with respect to the administration of the Class 3 Trust, or as a condition for making any payment or transfer out of the Class 3 Trust Assets. Within 60 days following termination of the Class 3 Trust, the Class 3 Trustee must destroy or return to the Reorganized Debtors, in its discretion after consultation with the Reorganized Debtors, any copies of the Debtors' and/or Reorganized Debtors' documents, books, or records. If reasonably requested by the Reorganized Debtors, the Litigation Trustee shall provide the Reorganized Debtors a written certification of the destruction of all copies of the Debtors and/or the Reorganized Debtors' applicable books and records within 30 days of the destruction thereof.

5.3 Final Accounting of Class 3 Trustee. The Class 3 Trustee (or any such successor Class 3 Trustee) shall within thirty (30) days after the termination of the Class 3 Trust or the death, dissolution, liquidation, resignation, or removal of the Class 3 Trustee, render an accounting containing the following information:

- (a) A description of the Class 3 Trust Assets.
- (b) A summarized accounting in sufficient detail of all gains, losses, receipts, disbursements and other transactions in connection with the Class 3 Trust and the Class 3 Trust Assets during the Class 3 Trustee's term of service, including their source and nature.
- (c) Separate entries for all receipts of principal and income.
- (d) The ending balance of all Class 3 Trust Assets as of the date of the accounting, including the Cash balance on hand and the name(s) and location(s) of the depository or depositories where the Cash is kept.
- (e) All known liabilities of the Class 3 Trust.
- (f) A description of all Class 3 Trust Causes of Action and the status thereof.

5.4 Filing of Accounting. The final accounting described in the above Section shall be filed with the Bankruptcy Court and the Reorganized Debtors and all Class 3 Trust Interests shall

have notice that the final accounting has been filed and an opportunity to have a hearing on the approval of the accounting and the discharge and release of the Class 3 Trustee.

ARTICLE VI. BENEFICIAL INTERESTS AND BENEFICIARIES

6.1 Trust Beneficial Interests. Each Class 3 Trust Beneficiary shall hold a beneficial interest in the Class 3 Trust (such interests, “Class 3 Trust Interests”) in the same proportion as its rights as holders of Class 3 Syndicated Secured Claims as of the Class 3 Trust Record Date (after giving effect to the waiver of rights to receive Class 3 Trust Interests by Centerbridge set forth in Section 4.3(a) of the Plan). The Class 3 Trust Interests will be uncertificated; accordingly, distributions of Class 3 Trust Interests will be accomplished solely by the entry of the names of such holders and their respective Class 3 Syndicated Secured Claims as of the Class 3 Trust Record Date in a registry maintained by the Class 3 Trustee (the “Claims Registry”). Each holder of a Class 3 Trust Interest shall take and hold its uncertificated beneficial interest subject to all of the terms and provisions of this Class 3 Trust Agreement, the Confirmation Order, and the Plan.

6.2 Interest Beneficial Only. Ownership of a beneficial interest in the Class 3 Trust shall not entitle any Participating Class 3 Trust Beneficiary to any title in or to the Class 3 Trust Assets or to any right to call for a partition or division of the Class 3 Trust Assets or to require an accounting. The interest of a holder of a Participating Class 3 Trust Interest is in all respects personal property. Any transfer of any Class 3 Trust Interest in violation of this Class 3 Trust Agreement shall be null and void. A holder of a Class 3 Trust Interest shall have no title to, right to, possession of, management of, or control of, any Class 3 Trust Assets except as herein expressly provided. No surviving spouse, heir or devisee of any deceased holder of a Class 3 Trust Interest shall have any right of dower, homestead, or inheritance, or of partition, or any other right, statutory or otherwise, in the Class 3 Trust Assets, but the whole title to all the Class 3 Trust Assets shall be vested in the Class 3 Trust and the sole interest of the holders of Class 3 Trust Interests shall be the rights and benefits given to such persons under this Class 3 Trust Agreement. The record holder of Class 3 Trust Interests, as evidenced by the Claims Registry, will be entitled to participate in the rights due to a holder of Class 3 Trust Interests hereunder.

6.3 Evidence of Beneficial Interest. Ownership of a Class 3 Trust Interest shall not be evidenced by any certificate, security, or receipt or in any other form or manner whatsoever, except as maintained by the Class 3 Trustee. Except as otherwise required by law, references in this Class 3 Trust Agreement to the identification of holders and the providing of information to holders shall be read to mean holders of record as set forth in the Claims Registry and shall not mean any beneficial owner not recorded in such official registry.

6.4 Exemption from Registration. It is intended that the Class 3 Trust Interests and the entitlements hereunder, if any, of the Class 3 Trust Beneficiaries shall not constitute “securities.” To the extent the Class 3 Trust Interests or the entitlements of the Class 3 Trust Beneficiaries are deemed to be “securities,” the issuance of Class 3 Trust Interests to Class 3 Trust Beneficiaries of any entitlements hereunder or under the Plan (and any redistribution of any of the foregoing pursuant to the Plan or otherwise) shall be exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended (the “Securities Act”), and any applicable state and local laws requiring registration of securities. If the Class 3

Trustee determines, with the advice of counsel, that the Class 3 Trust is required to comply with registration and/or reporting requirements of the Securities Act, the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), or the Investment Company Act of 1940, as amended (the “Investment Company Act”), then the Class 3 Trustee shall take any and all actions to comply with such registration and reporting requirements, if any, and file reports with the Securities and Exchange Commission (the “SEC”) to the extent required by applicable law. Notwithstanding the foregoing procedure, nothing herein shall be deemed to preclude the Class 3 Trustee from amending this Class 3 Trust Agreement to make such changes as are deemed necessary or appropriate by the Class 3 Trustee, with the advice of counsel, to ensure that the Class 3 Trust is not subject to registration and/or reporting requirements of the Securities Act, the Exchange Act, the Trust Indenture Act or the Investment Company Act, except that no amendment to this Class 3 Trust Agreement may be made which would not be permitted by Section 11.1 of this Class 3 Trust Agreement.

6.5 Transfers of Beneficial Interests. The Class 3 Trust Interests are non-transferable and shall not be assigned, pledged or hypothecated, in whole or in part, except upon the death of an individual interest holder, in which case such holder’s legal representative under applicable law. Any purported transfer, assignment, pledge or hypothecation of a Class 3 Trust Interest or any part thereof not permitted by this Section shall constitute a violation of this Class 3 Trust Agreement and shall be void *ab initio*.

6.6 Change of Address. A Class 3 Trust Beneficiary may, after the Effective Date, select an alternative address by filing a notice with the Bankruptcy Court (with a copy served on the Class 3 Trustee) identifying such alternative address. Absent such notice, the Class 3 Trustee shall not recognize any such change of address. Such notification shall be effective only upon receipt by the Class 3 Trustee and Reorganized Debtors.

6.7 Litigation Oversight Committee. The Litigation Oversight Committee shall have two members selected by Black Diamond responsible for advising, assisting, supervising, and directing the Class 3 Trustee in the administration of the Class 3 Trust pursuant to this Class 3 Trust Agreement. The initial members of the Litigation Oversight Committee shall be the Persons set forth on Exhibit A, attached hereto. Members of the Litigation Oversight Committee shall have the right to direct and remove the Class 3 Trustee, and shall have such other rights to operate and manage the Class 3 Trust as are not inconsistent with the Settlement Agreement, the Confirmation Order, the Plan and the terms of this Class 3 Trust Agreement. No other Class 3 Trust Beneficiary shall have any consultation or approval rights whatsoever in respect of the management and operation of the Class 3 Trust. Each member of the Litigation Oversight Committee shall have the right to appoint his, her, or its successor. In the event that a member of the Litigation Oversight Committee member is unable to appoint his, her, or its successor, the replacement member of the Litigation Oversight Committee shall be appointed by Black Diamond.

6.8 Authority of the Litigation Oversight Committee. The Litigation Oversight Committee shall have the authority and responsibility to advise, assist, supervise and direct the Class 3 Trustee in the administration of the Class 3 Trust and shall have the authority to remove the Class 3 Trustee. The Class 3 Trustee shall consult with the Litigation Oversight Committee on a quarterly basis. The Litigation Oversight Committee shall have the authority to select and engage such professional advisors as it deems necessary and desirable to assist the Litigation

Oversight Committee in fulfilling its obligations under this Class 3 Trust Agreement and the Plan, and the Class 3 Trust shall pay the reasonable and documented fees of such advisors (including on an hourly, contingency, or modified contingency basis) and reimburse such advisors for their reasonable and documented out-of-pocket costs and expenses consistent with the terms of this Class 3 Trust Agreement. Members of the Litigation Oversight Committee can be switched upon written notice to the Class 3 Trustee.

ARTICLE VII. DISTRIBUTIONS

7.1 Distributions to Participating Class 3 Trust Beneficiaries. The Class 3 Trustee shall distribute Class 3 Trust Distributable Proceeds only to those Class 3 Trust Beneficiaries who are Participating Class 3 Trust Beneficiaries at the time of a distribution. The amount of each Participating Class 3 Trust Beneficiary's individual distribution shall be equal to the amount to be distributed to all Participating Class 3 Trust Beneficiaries multiplied by a fraction, the numerator of which shall be the amount that such Participating Class 3 Beneficiary has funded pursuant to Section 1.4 hereof, and the denominator of which shall be the amount that all Participating Class 3 Trust Beneficiaries have funded pursuant to Section 1.4 hereof. By way of example, if a Participating Class 3 Trust Beneficiary has, at the time of a distribution, funded 1/10 of all amounts funded by Participating Class 3 Trust Beneficiaries, and the amount of the distribution is \$1,000, such Participating Class 3 Trust Beneficiary shall be entitled to \$100 and the remaining \$900 shall be distributed to all other Participating Class 3 Trust Beneficiaries using the same pro rata calculation. For the avoidance of doubt, no Class 3 Trust Trust Beneficiary who, at the time of a distribution, is not a Participating Class 3 Trust Beneficiary shall be entitled to any distribution of Class 3 Trust Distributable Proceeds.

7.2 Reserves.

(a) Notwithstanding anything in this Class 3 Trust Agreement to the contrary, the Class 3 Trustee may withhold from amounts transferrable to the Participating Class 3 Trust Beneficiaries, and supplement from time to time, a reserve (the "Litigation Trust Reserve") in such amount as the Class 3 Trustee, with consultation and direction from the Litigation Oversight Committee, determines is or may be reasonably necessary (a) to meet contingent liabilities and to maintain the value of the Class 3 Trust Assets during the term of the Class 3 Trust; (b) to administer the Class 3 Trust and pay reasonable administrative expenses including, without limitation, the compensation and the reimbursement of reasonable, actual and necessary costs, fees, and expenses (including attorneys' fees and expenses, financial advisor fees and expenses of the Class 3 Trustee in connection with the performance of their duties in connection with this Class 3 Trust Agreement; (c) to wind-up the affairs of the Class 3 Trust; and (d) to satisfy all other liabilities of the Class 3 Trust incurred or assumed in respect of the Class 3 Trust, or to which the Class 3 Class 3 Trust Assets are otherwise subject, other than Claims, in accordance with the Plan, the Confirmation Order and this Class 3 Trust Agreement.

(b) The Class 3 Trustee may also withhold from Class 3 Trust Proceeds any and all amounts, determined in with consultation and with direction from the Litigation Oversight Committee, to be required by any law, regulation, rule, ruling, directive or other governmental requirement.

ARTICLE VIII. TAXES

8.1 Liquidating Trust. The Class 3 Trust shall be treated as a “liquidating trust” as described within the Trust Regulations and as a grantor trust pursuant to IRC Sections 671-677. As such, the Class 3 Trust Beneficiaries will be treated as both the grantors and the deemed owners of the Class 3 Trust. Any items of income, deduction, credit, and loss of the Class 3 Trust shall be allocated for federal income tax purposes to the Class 3 Trust Beneficiaries. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Class 3 Trustee of a private letter ruling if the Class 3 Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Class 3 Trustee), the Class 3 Trustee may timely elect to (x) treat any portion of the Class 3 Trust allocable to Disputed Claims as a “disputed ownership fund” governed by Treasury Regulation Section 1.468B-9 (and make any appropriate elections) and (y) to the extent permitted by applicable law, report consistently with the foregoing for state and local income tax purposes. If and to the extent an election to be taxed as a “disputed ownership fund” is made, for U.S. federal income tax purposes the “disputed ownership fund” will be taxable as a separate corporate entity subject to tax on amounts it earns on a current basis.

8.2 Tax Returns. In accordance with IRC Section 6012 and Treasury Regulation Section 1.671-4(a), the Class 3 Trust shall file with the Internal Revenue Service (the “IRS”) annual tax returns on Form 1041. In addition, the Class 3 Trust shall file in a timely manner such other tax returns, statements or disclosures (in accordance with applicable Treasury Regulations and Rev. Proc. 94-45, 1994-2 C. B. 684), including any state and local tax returns, as are required by applicable law and pay any taxes shown as due thereon out of the Class 3 Trust Assets. Within a reasonable time following the end of the taxable year, the Class 3 Trust shall send to each Participating Class 3 Trust Beneficiary a separate statement setting forth the Class 3 Trust Beneficiary’s share of items of income, gain, loss, deduction or credit and will instruct each such Beneficiary to report such items on their federal income tax returns. The Class 3 Trust may provide each Participating Class 3 Trust Beneficiary with a copy of the Form 1041 for the Class 3 Trust (without attaching any other Participating Class 3 Trust Beneficiary’s Schedule K-1 or other applicable information form) along with such Participating Class 3 Trust Beneficiary’s Schedule K-1 or other applicable information form in order to satisfy the foregoing requirement. The Class 3 Trust shall allocate the taxable income, gain, loss, deduction, or credit of the Class 3 Trust with respect to each Participating Class 3 Trust Beneficiary. All parties shall report for U.S. federal, state, and local income tax purposes consistently with the foregoing.

8.3 Tax Identification Numbers. The Class 3 Trustee shall require any Participating Class 3 Trust Beneficiary to furnish to the Class 3 Trustee its social security number or employer or taxpayer identification number as assigned by the IRS and the Class 3 Trustee may condition any distribution to any Participating Class 3 Trust Beneficiary upon the receipt of such identification number. No distribution shall be made to or behalf of a Participating Class 3 Trust Beneficiary unless and until such holder has provided the Class 3 Trustee with any information applicable law requires the Class 3 Trust to obtain in connection with making distributions, including completed IRS Form W-8 or W-9, as applicable. If a Participating Class 3 Trust Beneficiary does not timely provide the Class 3 Trustee with its taxpayer identification number in the manner and by the deadline established by the Class 3 Trustee, then the distribution to such

Participating Class 3 Trust Beneficiary shall be administered as unclaimed property in accordance with Section 6.7 of the Plan.

8.4 Withholding of Taxes and Reporting Related to Class 3 Trust Operations. The Class 3 Trust shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Class 3 Trust shall be subject to any such withholding and reporting requirements. To the extent that the operation of the Class 3 Trust or the liquidation of the Class 3 Trust Assets creates a tax liability, the Class 3 Trust shall promptly pay such tax liability out of the Class 3 Trust Assets and any such payment shall be considered a cost and expense of the operation of the Class 3 Trust payable without Bankruptcy Court order. The Class 3 Trust may reserve a sum, the amount of which shall be determined by the Class 3 Trustee sufficient to pay the accrued or potential tax liability arising out of the operations of the Class 3 Trust or the operation of the Class 3 Trust Assets. The Class 3 Trustee, on behalf of the Class 3 Trust, may enter into agreements with taxing authorities or other governmental units for the payment of such amounts as may be withheld. Any federal, state, or local withholding taxes or other amounts required to be withheld under applicable law shall be deducted from distributions hereunder. The Class 3 Trustee may withhold and pay to the appropriate taxing authority all amounts required to be withheld under the Tax Code or any provision of any foreign, state or local tax law with respect to any payment or distribution on account of Claims against the Reorganized Debtors. All such amounts withheld and paid to the appropriate taxing authority shall be treated as amounts distributed to the applicable holders of the Claims against the Reorganized Debtors. All Participating Class 3 Trust Beneficiaries shall be required to provide any information necessary to effect the withholding of such taxes.

8.5 Expedited Determination of Taxes. The Class 3 Trustee may request an expedited determination of taxes or tax refund rights of the Class 3 Trust under section 505(b) of the Bankruptcy Code for all returns or claims filed for the Class 3 Trust for all taxable periods through the termination of the Class 3 Trust.

ARTICLE IX. DISSOLUTION OF CLASS 3 TRUST

9.1 Dissolution of Class 3 Trust.

(a) The Class 3 Trust shall commence on the Effective Date and end no later than the fifth (5th) anniversary of the Effective Date (the “Initial Class 3 Trust Term”); provided, however, that the Class 3 Trustee may, subject to the further provisions of this Section, extend the term of the Class 3 Trust for such additional period of time as is necessary to facilitate or complete the recovery and liquidation of the Class 3 Trust Assets as follows: within the six (6) month period prior to the termination of the Initial Class 3 Trust Term, the Class 3 Trustee may file a notice of intent to extend the term of the Class 3 Trust with the Bankruptcy Court and, upon approval of the Bankruptcy Court of such extension request following notice and a hearing, the term of the Class 3 Trust shall be so extended. The Class 3 Trust may file one or more such extension notices, each notice to be filed within the six (6) month period prior to the termination of the extended term of the Class 3 Trust (all such extensions are referred to herein in the aggregate as the “Supplemental Class 3 Trust Term”). Notwithstanding anything to the contrary in this Section, however, the

Supplemental Class 3 Trust Term may not, in the aggregate, exceed three (3) years without a favorable letter ruling from the IRS that any further extension would not adversely affect the status of the Class 3 Trust as a “liquidating trust” (or a “liquidating trust” treated as a grantor trust pursuant to the Trust Regulations) under the Trust Regulations.

(b) The Class 3 Trust may be terminated earlier than its scheduled termination if (i) the Class 3 Trustee, in consultation with and at the direction of the Litigation Oversight Committee, determines that the pursuit of additional Class 3 Trust Causes of Action is not likely to yield sufficient additional proceeds to justify further pursuit of such claims, or (ii) the Class 3 Trustee has administered all Class 3 Trust Assets and materially performed all duties required by the Plan, the Confirmation Order, and this Class 3 Trust Agreement.

9.2 Events Upon Termination. At the conclusion of the term of the Class 3 Trust, the Class 3 Trustee shall transfer the remaining Class 3 Trust Assets and Class 3 Trust Proceeds (subject to a reserve for expenses to be incurred in winding up the affairs of the Class 3 Trust as set forth in Section 7.2), to all Class 3 Trust Beneficiaries, in accordance with the Plan, the Confirmation Order, and this Class 3 Trust Agreement.

9.3 Winding Up, Discharge, and Release of the Class 3 Trustee. Upon a motion by the Class 3 Trustee, the Bankruptcy Court may enter an order relieving the Class 3 Trustee and the Class 3 Trustee Representatives of any further duties, discharging, and releasing the Class 3 Trustee and releasing its bond, if any. For the purposes of winding up the affairs of the Class 3 Trust in an orderly manner at the conclusion of its term, the Class 3 Trustee shall continue to act as Class 3 Trustee until its duties under this Class 3 Trust Agreement have been fully discharged or its role as Class 3 Trustee is otherwise terminated under this Class 3 Trust Agreement and the Plan. Upon such an occurrence, the Class 3 Trustee shall proceed as promptly as possible (but in no event for a period longer than three (3) months, unless a longer period is approved by the Bankruptcy Court) to wind up the affairs of the Class 3 Trust and make any required federal, state or local filings for the dissolution of the Class 3 Trust. The Class 3 Trust Beneficiaries shall have no right to wind up the affairs of the Class 3 Trust. Upon its dissolution, the Class 3 Trustee shall file a final report with the Bankruptcy Court stating that the Class 3 Trust has been dissolved, whereupon the Class 3 Trustee shall be discharged from any further responsibility under the Agreement.

ARTICLE X. MISCELLANEOUS PROVISIONS

10.1 Amendments. Unless otherwise expressly set forth in this Class 3 Trust Agreement, the Class 3 Trustee (in consultation with the Litigation Oversight Committee), and, solely with respect to any term or provision that materially or adversely affects their respective rights, interests or obligations, the Plan Sponsor and/or the Reorganized Debtors, as applicable, may modify, supplement, or amend this Class 3 Trust Agreement in any way that is not inconsistent with the Plan, the Settlement Agreement, or the Confirmation Order.

10.2 Waiver. No failure by the Class 3 Trust or the Class 3 Trustee to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver, nor shall any single

or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof, or of any other right, power, or privilege.

10.3 Cumulative Rights and Remedies. The rights and remedies provided in this Class 3 Trust Agreement are cumulative and are not exclusive of any rights under law or in equity.

10.4 No Bond Required. Notwithstanding any state law to the contrary, the Class 3 Trustee (including any successor Class 3 Trustee) shall be exempt from giving any bond or other security in any jurisdiction.

10.5 Irrevocability. This Class 3 Trust Agreement and the Class 3 Trust created hereunder shall be irrevocable, except as otherwise expressly provided in this Class 3 Trust Agreement.

10.6 Relationship to the Plan. The principal purpose of this Class 3 Trust Agreement is to aid in the implementation of certain aspects of the Plan. Therefore, the Plan, the Confirmation Order, and the Settlement Agreement are each hereby incorporated into this Class 3 Trust Agreement and made a part hereof by this reference. The provisions of the Plan and Class 3 Trust Agreement shall be construed in a manner consistent with each other so as to effectuate the purposes of each; *provided*, that if there is determined to be any inconsistency between any provision of this Class 3 Trust Agreement on the one hand and the Plan, the Confirmation Order, or the Settlement Agreement on the other hand, then, the provisions of the Plan, the Confirmation Order, or the Settlement Agreement (as applicable) shall govern.

10.7 Division of Class 3 Trust. Under no circumstances shall the Class 3 Trustee have the right or power to divide the Class 3 Trust unless authorized to do so by the Bankruptcy Court.

10.8 Applicable Law. Except to the extent that the Bankruptcy Code or Bankruptcy Rules apply, unless otherwise stated, and subject to the provisions of any contract, instrument, release, indenture or other agreement or document entered into in connection herewith, this Class 3 Trust 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 conflict of laws thereof.

10.9 Retention of Jurisdiction. Without in any way limiting Article XI of the Plan, notwithstanding the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Class 3 Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Class 3 Trust Agreement, or any Entity's obligations incurred in connection herewith, including without limitation, any action against the Class 3 Trustee or any professional retained by the Class 3 Trustee, in each case in its capacity as such, or any disputes with the Class 3 Trust Beneficiaries. Each party to this Class 3 Trust Agreement hereby irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Class 3 Trust Agreement or of any other agreement or document delivered in connection with this Class 3 Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum *non conveniens* or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any

provision of this Class 3 Trust Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret or construe any provision of this Class 3 Trust Agreement.

10.10 Severability. In the event that any provision of this Class 3 Trust Agreement or the application thereof to any Entity or circumstance shall be determined by the Bankruptcy Court to be invalid or unenforceable to any extent, the remainder of this Class 3 Trust Agreement, or the application of such provision to Entities or circumstance, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Class 3 Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

10.11 Limitation of Benefits. Except as otherwise specifically provided in this Class 3 Trust Agreement, the Plan or the Confirmation Order, nothing herein is intended or shall be construed to confer upon or to give any Entity other than the parties hereto and the Class 3 Trust Beneficiaries any rights or remedies under or by reason of this Class 3 Trust Agreement.

10.12 Notices. Except as provided in Section 11.9 of this Class 3 Trust Agreement, all notices, requests, demands, consents, and other communications hereunder shall be in writing and shall be deemed to have been duly given to an Entity, if delivered in person or by facsimile with an electromagnetic report of delivery or if sent by overnight mail, registered mail, certified mail, or regular mail, with postage prepaid, to the following addresses:

If to the Class 3 Trustee:

Catherine E. Youngman
Fox Rothschild LLP
49 Market Street
Morristown, NJ 07960-5122
T: (973) 992-4800
cyoungman@foxrothschild.com

with a copy to:

Zaiger LLC
432 Park Avenue, Suite 19A
New York, New York 10022
Telephone: (917) 572-7701
Attn: Jeffrey H. Zaiger (jzaiger@zaigerllc.com)

If to a Class 3 Trust Beneficiary:

To the name and distribution address set forth in the
Claims Registry with respect to such Beneficiary

The parties may designate in writing from time to time other and additional places to which notices may be sent.

10.13 Reserved.

10.14 Integration. This Class 3 Trust Agreement, the Plan, and the Confirmation Order together constitute the entire agreement with, by and among the parties hereto, and there are no terms, conditions, representations, warranties, covenants, or obligations except as set forth herein, in the Plan and in the Confirmation Order. This Class 3 Trust Agreement, together with the Plan and the Confirmation Order, supersede all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the parties hereto, relating to any transaction contemplated hereunder. Except as otherwise provided in this Class 3 Trust Agreement, the Plan or Confirmation Order, nothing herein is intended or shall be construed to confer upon or give any Entity other than the parties hereto and the Class 3 Trust Beneficiaries any rights or remedies under or by reason of this Class 3 Trust Agreement.

10.15 Interpretation. The recitals to this Class 3 Trust Agreement are hereby incorporated in and made a part of this Class 3 Trust Agreement by this reference. The enumeration and Section headings contained in this Class 3 Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Class 3 Trust Agreement or of any term or provision hereof. Unless context otherwise requires, whenever used in this Class 3 Trust Agreement the singular shall include the plural and the plural shall include the singular, and words importing the masculine gender shall include the feminine and the neuter, if appropriate, and vice versa, and words importing persons shall include partnerships, associations, and corporations. The words herein, hereby, and hereunder and words with similar import, refer to this Class 3 Trust Agreement as a whole and not to any particular section or subsection hereof unless the context requires otherwise. Any reference to the “Class 3 Trustee” shall be deemed to include a reference to the “Class 3 Trust” and any reference to the “Class 3 Trust” shall be deemed to include a reference to the “Class 3 Trustee” except for the references to “Exculpated Parties” and “Indemnified Parties” in Sections 4.1 and 4.2, respectively, and such other provisions in which the context otherwise requires. For purposes of this Class 3 Trust Agreement: (i) the rules of construction set forth in section 102 of the Bankruptcy Code shall apply; (ii) capitalized terms used but not defined herein or in the Plan shall have the meanings assigned to them in the Bankruptcy Code; and (iii) Rule 9006 of the Federal Rules of Bankruptcy Procedure shall govern the computation of time for any actions or proceedings in connection with the Class 3 Trust.

10.16 Fiscal Year. The fiscal year of the Class 3 Trust will begin on the first day of the month following the Effective Date and end on the last day of the month on which the Effective Date occurred of each calendar year.

10.17 Intention of Parties to Establish Liquidating Trust. This Class 3 Trust Agreement is intended to create a “liquidating trust” under the Trust Regulations and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Class 3 Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

10.18 Confidentiality. The Litigation Oversight Committee, the Class 3 Trustee and each successor Class 3 Trustee (each a “Covered Person”) shall, during the period that they serve in such capacity under this Class 3 Trust Agreement and following either the termination of this Class 3 Trust Agreement or such individual’s removal, incapacity, or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Entity to which any of the Class 3 Trust Assets relate or of which it has become aware in its capacity (the “Information”), except to the extent disclosure is required by applicable law, order, regulation or legal process. In the event that any Covered Person is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar legal process) to disclose any Information, such Covered Person shall notify the Reorganized Debtors reasonably promptly (unless prohibited by law) so that the Reorganized Debtors may try to seek an appropriate protective order or other appropriate remedy or, in its discretion, waive compliance with the terms of this Section (and if the Reorganized Debtors seeks such an order, the relevant Covered Person will provide cooperation as the Reorganized Debtors shall reasonably request). In the event that no such protective order or other remedy is obtained, or that the Reorganized Debtors waive compliance with the terms of this Section and any Covered Person is nonetheless legally compelled to disclose the Information, the Covered Person will furnish only that portion of the Information, which the Covered Person, advised by counsel, is legally required and will give the Reorganized Debtors written notice (unless prohibited by law) of the Information to be disclosed and exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded the Information.

10.19 Counterparts. This Class 3 Trust Agreement may be signed by the parties hereto in counterparts, which, when taken together, shall constitute one and the same document. Delivery of an executed counterpart of this Class 3 Trust Agreement by facsimile or email in pdf format shall be equally effective as delivery of a manually executed counterpart.

[Remainder of Page Left Blank]

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Class 3 Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers or representatives, all as of the date first above written.

REORGANIZED DEBTORS:

SpeedCast International Limited

By: _____
Its:

CapRock Communications (Australia) Pty Ltd

By: _____
Its:

CapRock Communications Pte. Ltd.

By: _____
Its:

CapRock Comunicações do Brasil Ltda.

By: _____
Its:

CapRock Participações do Brasil Ltda.

By: _____
Its:

CapRock UK Limited

By: _____
Its:

CCI Services Corp.

By: _____
Its:

Evolution Communications Group Limited

By: _____
Its:

Globecomm Europe B.V.

By: _____
Its: _____

Globecomm Network Services Corporation

By: _____
Its: _____

Hermes Datacommunications International Limited

By: _____
Its: _____

Maritime Communication Services, Inc.

By: _____
Its: _____

NewCom International, Inc.

By: _____
Its: _____

Oceanic Broadband Solutions Pty Ltd

By: _____
Its: _____

Satellite Communications Australia Pty Ltd

By: _____
Its: _____

SpaceLink Systems II, LLC

By: _____
Its: _____

SpaceLink Systems, LLC

By: _____
Its: _____

SpeedCast Americas, Inc.

By: _____
Its: _____

SpeedCast Australia Pty Limited

By: _____
Its: _____

Speedcast Canada Limited

By: _____
Its: _____

SpeedCast Communications, Inc.

By: _____
Its: _____

Speedcast Cyprus Ltd.

By: _____
Its: _____

SpeedCast France SAS

By: _____
Its: _____

SpeedCast Group Holdings Pty Ltd

By: _____
Its: _____

SpeedCast Limited

By: _____
Its: _____

SpeedCast Managed Services Pty Limited

By: _____
Its: _____

SpeedCast Netherlands B.V.

By: _____
Its: _____

SpeedCast Norway AS

By: _____
Its: _____

SpeedCast Singapore Pte. Ltd.

By: _____
Its: _____

SpeedCast UK Holdings Limited

By: _____
Its: _____

Telaurus Communications LLC

By: _____
Its: _____

CLASS 3 TRUSTEE:

Name: Catherine E. Youngman

Exhibit A

Litigation Oversight Committee

- Samuel Goldfarb
- Ethan Auerbach