

INTERNAP CORP

FORM 8-K (Current report filing)

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): February 28, 2017 (February 22, 2017)

Internap Corporation

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-31989
(Commission
File Number)

91-2145721
(I.R.S. Employer
Identification Number)

One Ravinia Drive, Suite 1300, Atlanta, Georgia 30346
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (404) 302-9700

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 Entry into a Material Definitive Agreement

On February 22, 2017, Internap Corporation, a Delaware corporation (the “Company”) entered into a Securities Purchase Agreement (the “Securities Purchase Agreement”) with certain purchasers (the “Purchasers”), pursuant to which the Company issued to the Purchasers an aggregate of 23,802,850 shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”), at a price of US\$1.81 per share, for the aggregate purchase price of US\$43,083,158.50 (the “Purchase Price”), which closed on February 27, 2017. The Securities Purchase Agreement contains customary representations, warranties, covenants and conditions for agreements of this type.

The Company also entered into a Registration Rights Agreement (the “Registration Rights Agreement”) with each of the Purchasers. Pursuant to the Registration Rights Agreement, the Company is required to file, within a specified time period, a shelf registration statement registering offers and sales of the shares acquired by the Purchasers pursuant to the Securities Purchase Agreement.

The foregoing descriptions of the Securities Purchase Agreement and the Registration Rights Agreement do not purport to be complete and are qualified in their entirety by reference to the Securities Purchase Agreement, a copy of which is attached as Exhibit 10.1 to this Current Report on Form 8-K, and the Registration Rights Agreement, a copy of which is attached as Exhibit 10.2 to this Current Report on Form 8-K, respectively, each of which is incorporated herein by reference.

On February 22, 2017, the Company issued a press release announcing the transaction (the “February 22 Release”). A copy of the February 22 Release is attached hereto as Exhibit 99.1 to this Current Report on Form 8-K.

Item 3.02 Unregistered Sales of Equity Securities

Pursuant to the Securities Purchase Agreement, the Company issued an aggregate of 23,802,850 unregistered shares of common stock to the Purchasers. The sale of shares of common stock in accordance with the Securities Purchase Agreement was made in reliance on the exemption from registration of Section 4(a)(2) of the Securities Act of 1933, as amended. A description of the Securities Purchase Agreement is set forth above in Item 1.01 and is incorporated by reference herein as if fully set forth herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

The following exhibits are filed herewith:

- 10.1 Securities Purchase Agreement, by and among the Company and the Purchasers identified on Schedule 1 therein, dated as of February 22, 2017.
 - 10.2 Registration Rights Agreement, by and among the Company and stockholders listed on the signature pages thereto, dated as of February 22, 2017.
 - 99.1 Press Release, dated February 22, 2017.
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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: February 28, 2017

Internap Corporation
(Registrant)

/s/ Peter D. Aquino

Peter D. Aquino
President and Chief Executive Officer

SECURITIES PURCHASE AGREEMENT

DATED AS OF FEBRUARY 22, 2017

BY AND AMONG

INTERNAP CORPORATION

AND

THE PURCHASERS PARTY HERETO

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SECURITIES PURCHASE AGREEMENT

This Securities Purchase Agreement, dated as of February 22, 2017 (this “Agreement”), is by and among Internap Corporation, a Delaware corporation (the “Company”), and the parties listed on Schedule 1 hereto as signing this Agreement on behalf of the various purchasers hereunder (each a “Purchaser” and collectively, the “Purchasers”).

WHEREAS, the Purchasers desire to purchase from the Company, and the Company desires to issue and sell to the Purchasers, an aggregate of 23,802,850 shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”) at a price of US\$1.81 per share, all in accordance with this Agreement; and

WHEREAS, the Shares are being sold in a private placement, without registration under the Securities Act or any other applicable securities Laws, in reliance on one or more exemptions from registration and other requirements thereunder.

In consideration of the promises and the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For all purposes of this Agreement, the following terms shall have the following respective meanings:

“Affiliate” of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Avenir” means Avenir Corporation, on behalf of certain Persons for whose advisory accounts Avenir has investment discretion.

“Avenir Purchasers” means the Persons for which Avenir has investment discretion over such Person’s advisory account who are purchasing Shares pursuant to this Agreement, each of whom shall be a Purchaser for all purposes under this Agreement.

“Board” means the Board of Directors of the Company.

“Business Day” means any day other than a Saturday, Sunday or holiday on which banks in New York City are required or permitted to be closed.

“By-Laws” means the Company’s By-Laws, as amended.

“Certificate of Incorporation” means the Company’s Restated Certificate of Incorporation, as amended.

“Closing” has the meaning set forth in Section 2.2.

“Closing Date” has the meaning set forth in Section 2.2.

“Common Stock” has the meaning set forth in the Recitals.

“Company” has the meaning set forth in the Preamble.

“Company Related Parties” means the Company’s Affiliates or any direct or indirect equity holders, members, managers, directors, officers, employees, agents, or representatives of the Company or any of its Affiliates (other than the Company).

“Effect” has the meaning set forth in definition of Material Adverse Effect.

“Engagement Letter” has the meaning set forth in Section 6.6(c).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Documents” has the meaning set forth in Section 3.14.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Existing Credit Agreement” means the Credit Agreement dated as of November 26, 2013, by and among the Company, the lenders from time to time party thereto and Jefferies Finance LLC, as administrative agent, as amended by the First Amendment to Credit Agreement dated as of October 30, 2015, the Second Amendment to Credit Agreement dated as of April 12, 2016 and the Third Amendment to Credit Agreement dated as of January 26, 2017.

“Financial Statements” has the meaning set forth in Section 3.7.

“GAAP” means generally accepted accounting principles as in effect in the United States.

“Governmental Entity” means any national, federal, state, municipal, local, territorial, foreign or other government or any department, commission, board, bureau, agency, regulatory authority or instrumentality thereof, or any court, judicial, administrative or arbitral body or public or private tribunal.

“Intellectual Property Rights” means all registered copyrights, copyright registrations and copyright applications, trademark registrations and applications for registration, patents and patent applications, trademarks, service marks, service names, trade names, Internet domain names and any other intellectual property rights or licenses that are used by the Company or its Subsidiaries in their businesses as presently conducted, including all: (i) databases, computer programs and other computer software user interfaces, know-how, trade secrets, customer lists,

proprietary technology, processes and formulae, source code, object code, algorithms, development tools, instructions and templates created by or on behalf of the Company or its Subsidiaries; and (ii) inventions, trade dress, logos and designs created by or on behalf of the Company or any of its Subsidiaries.

“Investment Company Act” mean the Investment Company Act of 1940, as amended.

“Jefferies” has the meaning set forth in Section 4.5(e).

“Law” means any applicable federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, order, edict, decree, rule, regulation, ruling or other legally binding requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Lien” means any mortgage, pledge, security interest or other encumbrance.

“Material Adverse Effect” means any state of facts, change, event, violation, inaccuracy, effect, condition, circumstance, occurrence or development (any such item, an “Effect”) that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, (i) is materially adverse to the business, operations, properties, results of operations, assets, liabilities or condition (including financial condition) of the Company and its Subsidiaries, taken as a whole, or (ii) prevents the performance by the Company of any of its obligations under this Agreement or any Related Agreement to which it is a party or the consummation of the transactions contemplated hereby or thereby; provided, however, that none of the following shall constitute or shall be considered in determining whether there has occurred a Material Adverse Effect: (x) changes in the national or world economy or financial markets as a whole or changes in general economic conditions that affect the Company or its Subsidiaries, so long as such changes or conditions do not adversely affect the Company and its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries or markets in which they operate; and (y) any change in Law or GAAP or interpretation thereof after the date of this Agreement, so long as such changes do not adversely affect the Company and its Subsidiaries, taken as a whole, in a materially disproportionate manner relative to other similarly situated participants in the industries or markets in which they operate.

“NASDAQ” means The NASDAQ Stock Market LLC (NASDAQ Global Market).

“Non-Avenir Purchasers” means the Purchasers other than the Avenir Purchasers.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, Governmental Entity or any other entity.

“Preferred Stock” has the meaning set forth in Section 3.6(a).

“Purchaser” has the meaning set forth in the Preamble.

“Purchase Price” has the meaning set forth in Section 2.1.

“Purchaser Related Parties” means, with respect to any Purchaser, such Purchasers’ Affiliates or any direct or indirect equity holders, members, managers, directors, officers, employees, agents, or representatives of such Purchaser or any of its Affiliates (other than the Purchaser).

“Registration Rights Agreement” means the Registration Rights Agreement to be entered into between the Company and the Purchasers.

“Related Agreements” means, collectively, the Registration Rights Agreement and any other agreements, documents, certificates or instruments delivered pursuant to this Agreement.

“SEC” means the U.S. Securities and Exchange Commission.

“SEC Documents” means all filings under the Securities Act or under Section 13 or 15(d) of the Exchange Act (including all financial statements, amendments, exhibits and schedules thereto and the results of the Company’s operations and cash flow contained therein) filed by the Company with, or furnished by the Company to, the SEC on or after January 1, 2015.

“Securities Act” means the Securities Act of 1933, as amended.

“Shares” has the meaning set forth in the Recitals.

“Stock Plans” means the Internap Corporation 2014 Stock Incentive Plan, 2005 Incentive Stock Plan as amended, 2000 Non-Officer Equity Incentive Plan and 1999 Non-Employee Directors’ Stock Option Plan, as amended, and the equity award inducement grants made to Peter D. Aquino upon his appointment as President and Chief Executive Officer of the Company.

“Subsidiary” has the meaning set forth in Rule 1-02(x) of Regulation S-X promulgated by the SEC.

“Tax” means all federal, state, local, foreign and other taxes, including income, gross receipts, franchise, property, sales, withholding, payroll, use and employment taxes and custom duties, together with any interest or penalties thereon or other similar additions to tax.

“Transfer Agent” means American Stock Transfer & Trust Company, LLC.

“Transaction Expenses Cap” means US\$100,000.

ARTICLE II PURCHASE AND SALE OF SHARES

Section 2.1 Purchase and Sale of Shares. Subject to the terms and conditions set forth in this Agreement, at the Closing the Company agrees to issue and sell the Shares to the Purchasers and the Purchasers agree, severally and not jointly, to purchase the Shares from the Company at a price of US\$1.81 per share for the aggregate purchase price of US\$43,083,158.50 (the “Purchase”

Price”), as set forth on Schedule 1 hereto; provided however that the obligations the Purchaser to purchase the Shares at the Closing are subject to the satisfaction (or waiver of such condition by the Purchasers) at or prior to the Closing of the following conditions:

- (a) the gross proceeds received by the Company for the Shares sold pursuant to this Agreement shall be no less than \$40.0 million in the aggregate;
- (b) the Company shall deliver each of the items set forth in Section 2.3(b) hereof;
- (c) the Common Stock shall have not been suspended from trading on NASDAQ; and
- (d) notice of the issuance of the Shares shall have been delivered to NASDAQ.

Section 2.2 Closing. The consummation of the purchase and sale of the Shares and other transactions contemplated hereby (the “Closing”) shall take place (and shall be deemed to occur) electronically at 10:00 AM, New York City time on the third (3rd) business day following the date of this Agreement, or at such other place and time as the parties may mutually agree; provided however that if the Closing does not occur prior to the close of business on March 3, 2017, this Agreement shall automatically terminate and be of no force and effect. The date on which the Closing occurs is referred to as the “Closing Date”.

Section 2.3 Closing Deliveries.

(a) Deliveries by the Purchaser. At the Closing, each Non-Avenir Purchaser shall deliver or cause to be delivered, and Avenir shall deliver on behalf of the Avenir Purchasers, to the Company the following items:

- (i) the Purchase Price by wire transfer of immediately available funds to an account previously designated in writing by the Company to the Purchasers, in full satisfaction of its respective payment of the Purchase Price pursuant to Section 2.1;
- (ii) a counterpart to the Registration Rights Agreement, executed on behalf of the Purchaser by a duly authorized signatory thereof; and
- (iii) such information as may be required by the Transfer Agent in respect to the Purchaser in order to provide for the issuance of the applicable Shares.

(b) Deliveries by the Company. At the Closing, the Company shall deliver or cause to be delivered to the Purchasers the following items:

- (i) certificates evidencing the Shares or evidence from the Transfer Agent of the issuance of the respective Shares in such names as directed by the Purchasers or their respective representatives on behalf of the Purchasers (including, in the case of the Avenir Purchasers, by Avenir) by book entry on the stock ledger, as requested by the Purchasers, of the Company pursuant to Section 2.1;

- (ii) a good standing certificate of the Company from the Secretary of State of the State of Delaware dated not more than 7 days prior to the Closing Date;
- (iii) a certificate of an officer of the Company that the representations and warranties set forth in this Agreement are true and correct as of the date of the Closing;
- (iv) a certificate of the secretary or another authorized officer of the Company certifying that the Certificate of Incorporation, By-Laws and the resolutions of the Board approving this Agreement are in full force and effect and to the incumbency of the officers of the Company signing this Agreement; and
- (v) a counterpart to the Registration Rights Agreement, executed on behalf of the Company by a duly authorized signatory thereof.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Purchasers, as of the date of this Agreement (except to the extent made only as of a specified date, in which case as of such date), except as set forth in the SEC Documents filed before the date of this Agreement (other than disclosures in any “risk factors” or “forward looking statements” contained in the SEC Documents or any other disclosure in the SEC Documents that is predictive or forward looking in nature), that:

Section 3.1 Subsidiaries. The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary of the Company, free and clear of all Liens, rights of first refusal, preemptive rights or other restrictions, and all of the issued and outstanding shares of capital stock or other equity interests of such Subsidiaries are validly issued and are fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities.

Section 3.2 Organization and Power. The Company is a corporation duly incorporated, validly existing and in good standing under the Laws of the state of Delaware and has all requisite corporate power and authority to own its properties and to carry on its business as presently conducted and as proposed to be conducted. Each of the Subsidiaries is a corporation or other entity duly incorporated or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has all requisite corporate or other entity power and authority to own its properties and to carry on its business as presently conducted and as proposed to be conducted. Each of the Company and its Subsidiaries is duly licensed or qualified to do business as a foreign corporation or other entity and is in good standing in each jurisdiction where the character of its property or the nature of the activities presently conducted by it makes such qualification necessary, except where the failure to so qualify has not had and would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.3 Authorization; Enforcement. The Company has all necessary corporate power and authority and has taken all necessary corporate action required for the due authorization, execution, delivery and performance by the Company of this Agreement and any other Related Agreement to which it is a party and the completion by the Company of the transactions contemplated hereby and thereby and for the due authorization, issuance, sale and delivery of the Shares. The Shares, when issued, sold, and delivered in accordance with the terms of this

Agreement for the consideration expressed herein, will be duly and validly issued, fully paid, and nonassessable, and will be free of restrictions on transfer other than the transfer restrictions set forth in Section 4.5(b) of this Agreement and under applicable state and federal securities Laws. The issuance of the Shares does not require any further corporate action and is not subject to any preemptive right or rights of first refusal under the Certificate of Incorporation or any contract to which the Company is a party. This Agreement has been duly executed and delivered by the Company, and each Related Agreement to which the Company is a party, when executed and delivered by the Company, will be duly executed and delivered. Assuming due execution and delivery thereof by each of the other parties thereto, this Agreement is, and each Related Agreement to which the Company is a party, when executed by the Company will be, a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirements relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 3.4 No Conflict. The authorization, execution, delivery and performance by the Company of this Agreement and the Related Agreements to which it is a party, and the completion by the Company of the transactions contemplated hereby and thereby, including the issuance of the Shares, do not and will not: (i) violate, conflict with or result in the breach of any provision of the Certificate of Incorporation or By-Laws or violate any provision of Law applicable to the Company or its Subsidiaries or any of their respective properties or assets; or (ii) with such exceptions as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, whether after the giving of notice or the lapse of time or both: (a) result in the creation of any Lien upon any asset of the Company or its Subsidiaries or the suspension, revocation, material impairment, forfeiture or nonrenewal of any franchise, permit, license or other right granted by a Governmental Entity to the Company or its Subsidiaries; or (b) violate any of the terms of, constitute a breach of, or default under, or result in or permit the cancellation, termination or acceleration of any bond, debenture, indenture, credit agreement, note or any other evidence of indebtedness, or any agreement, stock option or other similar plan, lease, mortgage, deed of trust or other instrument (including any material contract of the Company of the type described in the first sentence of Section 3.13) to which the Company or any of its Subsidiaries is a party, by which the Company or any of its Subsidiaries is bound, or to which any of the properties or assets of the Company or any of its Subsidiaries is subject.

Section 3.5 Government Approvals. No consent, approval, license or authorization of, or designation, declaration or filing with, any Governmental Entity is or will be required on the part of the Company in connection with the execution, delivery and performance by the Company of this Agreement and the Related Agreements to which it is a party, or in connection with the issuance of the Shares, except for: (i) those which have already been made or granted; (ii) the filing of a current report on Form 8-K with the SEC; (iii) filings with applicable state securities commissions; (iv) those which due to their requirements can be made or obtained following the Closing and which shall be so obtained; (v) post-Closing filings as may be required to be made with the SEC and with any state or foreign blue sky or securities regulatory authority; and (vi) as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.6 Authorized and Outstanding Stock.

(a) The authorized capital stock of the Company consists of 120,000,000 shares of the Common Stock and 20,000,000 shares of Preferred Stock, par value \$0.001 per share (the “Preferred Stock”).

(b) As of February 17, 2017, the issued and outstanding capital stock of the Company consists of 57,216,361 shares of the Common Stock. There are no outstanding shares of Preferred Stock. All of the issued and outstanding shares of capital stock of the Company are duly and validly authorized and are validly issued, fully paid and non-assessable. The designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of each class or series of capital stock of the Company are as set forth in the Certificate of Incorporation.

(c) Except with respect to options or other equity awards pursuant to the Stock Plans: (i) no subscription, warrant, option, convertible security or other right issued by the Company to purchase or acquire any shares of capital stock of the Company is authorized or outstanding; (ii) there is no option, warrant, call, right, commitment or agreement of any character to which the Company is a party or by which the Company is bound or obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend or enter into any such option, warrant, call, right, commitment or agreement or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of the Company; (iii) the Company has no obligation to pay any dividend or make any other distribution in respect of its capital stock; and (iv) there are no agreements between the Company and any holder of its capital stock relating to the acquisition, disposition or voting of the capital stock of the Company, except for this Agreement and the Company has not entered into any agreement with any Purchaser in connection with the offer or sale of the Common Stock other than this Agreement. No Person is entitled to any preemptive right or right of first refusal granted by the Company with respect to the issuance of any capital stock of the Company and the issuance of the Shares issuable hereunder will not trigger any anti-dilution or similar right that has not been properly waived.

Section 3.7 SEC Documents: Financial Information. The Company has timely filed all SEC Documents required to be filed by the Company with the SEC pursuant to the Exchange Act and the Securities Act since January 1, 2014. As of their respective filing dates (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing), the SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act and the rules and regulations of the SEC thereunder applicable to such SEC Documents, and as of their respective dates none of the SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated financial statements of the Company included in the SEC Documents (including all related notes and schedules, where applicable) (the “Financial Statements”) fairly present in all material respects the consolidated financial position of the Company and its consolidated Subsidiaries, as at the respective dates thereof, and their consolidated results of operations and consolidated cash flows for the respective periods then

ended (subject, in the case of the unaudited quarterly financial statements filed on Form 10-Q, to notes and normal year-end audit adjustments and to any other adjustments described therein, as permitted by the SEC on Form 10-Q) in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto or, in the case of unaudited interim financial statements, as permitted by the SEC on Form 10-Q).

Section 3.8 Material Changes; Undisclosed Events, Liabilities or Developments. Since the date of the latest unaudited Financial Statements filed with the SEC until the date of this Agreement, except as specifically disclosed in a subsequent SEC Document (other than disclosures in any “risk factors” or “forward looking statements” contained therein or any other disclosure that is predictive or forward-looking in nature) filed prior to the date hereof: (i) there has been no event, occurrence or development that has had or that would be reasonably expected to have a Material Adverse Effect; (ii) neither the Company nor any of its Subsidiaries has incurred any liability (contingent or otherwise) other than liabilities (a) incurred in the ordinary course of business consistent with past practice, (b) reflected or reserved against in the most recent balance sheet included in the SEC Documents, (c) which have been discharged or paid in full prior to the date of this Agreement or (d) incurred pursuant to the transactions contemplated by this Agreement; and (iii) the Company has not declared or made any dividend or distribution of cash or other property to its stockholders or purchased, redeemed or made any agreement to purchase or redeem any shares of its capital stock.

Section 3.9 Litigation. As of the date of this Agreement, there is no litigation, action, suit, investigation or governmental proceeding pending or, to the knowledge of the Company, threatened, against the Company or its Subsidiaries or affecting any of the properties or assets of the Company or its Subsidiaries that would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Neither the Company nor its Subsidiaries is in default with respect to any order, writ, injunction, decree, ruling or decision of any Governmental Entity that is expressly applicable to the Company or its Subsidiaries or any of the properties or assets of the Company and its Subsidiaries, except in each case as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.10 Compliance with Laws. The business of the Company and its Subsidiaries is not being conducted in violation of any Law, ordinance or regulation of any Governmental Entity, except for violations as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Neither the Company nor any Subsidiary has received notification from any Governmental Entity (a) asserting a violation of any Law, statute, ordinance or regulation or the terms of any judgments, orders, decrees, injunctions or writs applicable to the conduct of its business, (b) threatening to revoke any license, franchise, permit or government authorization, or (c) restricting or in any way limiting its operations as currently conducted or proposed to be conducted, except in each case as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.11 Taxes. The Company and its Subsidiaries: (i) have filed all Tax returns required to be filed within the applicable periods for such filings (with due regard to any extension); (ii) have paid all Taxes and other governmental assessments required to be paid; and (iii) have reserved in the Financial Statements an amount adequate for the payment of all Taxes for periods subsequent to the periods to which such returns, reports or declarations apply, except

in the case of clauses (i) and (ii) with respect to matters contested in good faith and for which adequate reserves have been established in accordance with GAAP.

Section 3.12 Intellectual Property. All Intellectual Property Rights purported to be owned by the Company or its Subsidiaries or otherwise are owned free and clear by the Company or its Subsidiaries (as the case may be) by operation of Law or have been validly assigned to the Company or its Subsidiaries (as the case may be) other than those Intellectual Property Rights where the failure to own or assign such rights would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. The Intellectual Property Rights are sufficient in all material respects to carry on the business of the Company and its Subsidiaries as presently conducted and as proposed to be conducted and the Company has taken commercially reasonable security measures to protect the secrecy, confidentiality and value of all of its material Intellectual Property Rights. To the knowledge of the Company, with such exceptions as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, the Intellectual Property Rights purported to be owned by the Company or its Subsidiaries do not infringe the intellectual property rights of any third party. Neither the Company nor any of its Subsidiaries has received any written notice or other written claim from any third party: (i) asserting that any of the Intellectual Property Rights purported to be owned by the Company or any of its Subsidiaries infringe any intellectual property rights of such third party; (ii) challenging the validity, effectiveness or ownership by the Company or any of its Subsidiaries of any of the Intellectual Property Rights; or (iii) asserting that the Company or any of its Subsidiaries is in material default with respect to any license granting Intellectual Property Rights to the Company or its Subsidiaries other than, in each such case, if the assertion, challenge or allegation in any such notice or claim were accurate or true, would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. The Company has no knowledge of any material infringement or improper use by any third party of any of the Intellectual Property Rights, other than any such infringement or improper use as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.13 Contracts and Commitments. All of the material contracts (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) of the Company or its Subsidiaries in effect on the date of this Agreement that are required to be described in the SEC Documents, or to be filed as exhibits thereto, have been so described or filed and are in full force and effect and, to the knowledge of the Company, upon completion of the transactions contemplated by this Agreement and the Related Agreements, will continue in full force and effect, without penalty or adverse consequence. Neither the Company nor its Subsidiaries nor, to the knowledge of the Company, any other party is in breach of or in default under any such contract, other than, in each such case, as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.14 Employee Matters. Except as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, the Company has described in, or filed as an exhibit to, the SEC Documents filed prior to the date of this Agreement all of the following types of documents, agreements, plans or arrangements that are required by federal securities laws to be described in, or filed as an exhibit to, the SEC Documents: employment agreements, consulting agreements, deferred compensation, pension or retirement agreements or arrangements (including all “employee pension benefit plans” as defined in Section 3(2) of ERISA, bonus,

incentive or profit-sharing plans or arrangements, or labor or collective bargaining agreements in effect of the Company and its Subsidiaries) (the “ERISA Documents”). Except for any compliance failures as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect: (i) the Company and its Subsidiaries are in compliance in all material respects with all applicable laws and regulations relating to labor, employment, fair employment practices, terms and conditions of employment, and wages and hours; and (ii) each ERISA Document has been administered in compliance with its terms and all applicable requirements of ERISA. To the Company’s knowledge, none of the Company’s or its Subsidiaries’ employees are obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with his or her employment obligations to the Company or its Subsidiaries or that would conflict with the Company’s and its Subsidiaries’ business as now conducted or proposed to be conducted, except for such contracts and other agreements, judgments, decrees and orders as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. The Company is not a party to any collective bargaining agreement.

Section 3.15 Transactions with Affiliates. Except for compensation arrangements with respect to which all required disclosures have been made in the SEC Documents, since January 1, 2016, there have been no loans, leases or other agreements, understandings or continuing transactions between the Company or its Subsidiaries, on the one hand, and any officer or director of the Company or its Subsidiaries or any Person that the Company believes is the owner of five percent or more of the Common Stock then outstanding or any corporation, partnership, trust or other entity in which any such officer, director, or stockholder has a substantial interest or is an officer, director, trustee or partner, or any respective family member or Affiliate of such officer, director or stockholder, on the other hand.

Section 3.16 Insurance. Each of the Company and its Subsidiaries is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company reasonably believes are prudent and customary for the businesses in which the Company and its Subsidiaries are engaged. All such insurance is fully in force, except where the failure to be in full force has not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect. The Company has no reason to believe that it will not be able to renew or extend its existing insurance coverage as and when such coverage expires or will not be able to obtain similar coverage from similar insurers as may be necessary to continue its business without an increase in cost significantly greater than general increases in cost experienced for similar companies in similar industries with respect to similar coverage.

Section 3.17 Investment Company Act. The Company is not, and immediately after giving effect to the sale of the Shares in accordance with this Agreement and the application of the proceeds thereof will not be required to be registered as, an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act.

Section 3.18 Margin Regulations. The Company is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Shares will be used in a manner as would cause the transactions contemplated hereby to violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 3.19 NASDAQ. As of the date hereof, the Common Stock is listed on NASDAQ, and no event has occurred, and the Company is not aware of any event that is reasonably likely to occur, that would result in the Common Stock being delisted from NASDAQ. The sale and issuance of the Shares complies with all rules and regulations of NASDAQ and the listing of the Shares on NASDAQ is not subject to any approvals except such as have been obtained prior to Closing.

Section 3.20 Issuance Exempt. Assuming the truth and accuracy of the representations and warranties of the Purchasers contained in Article IV hereof, the offer, sale, and issuance of the Shares will be exempt from the registration requirements of the Securities Act, and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities Laws (or qualification requirements under blue sky Laws).

Section 3.21 No Integrated Offering. Assuming the truth and accuracy of the representations and warranties of the Purchasers contained in Article IV hereof, neither the Company, nor any of its Affiliates or any other Person acting on the Company's behalf, has directly or indirectly engaged in any form of general solicitation or general advertising with respect to the Shares nor have any of such Persons made any offers or sales of any security or solicited any offers to buy any security under circumstances that would require registration of the Shares under the Securities Act or cause this offering of Shares to be integrated with any prior offering of securities of the Company for purposes of the Securities Act or any applicable stockholder approval provisions, including, without limitation, any applicable NASDAQ stockholder approval requirements.

Section 3.22 Internal Accounting and Disclosure Controls.

(a) The Company and its Subsidiaries maintain a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) and Rule 15d-15(f) of the Exchange Act) that has been designed by, or under the supervision of, the Company's principal executive and principal financial officers sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization, (ii) transactions are recorded as necessary to permit preparation of the Company's financial statements in conformity with GAAP and to maintain accountability for its assets, (iii) access to the Company's assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for the Company's assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. There are no material weaknesses in the Company's internal controls.

(b) (i) The Company and its Subsidiaries maintain disclosure controls and procedures (as such term is defined in Rule 13a-15(e) and Rule 15d-15(e) under the Exchange Act), (ii) such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company in the reports filed or to be filed or submitted under the Exchange Act is accumulated and communicated to management of the Company, including its

principal executive officer and principal financial officer, to allow timely decisions regarding required disclosures to be made, and (iii) such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established.

(c) (i) The Company has not been advised of or become aware of (A) any significant deficiencies in the design or operation of internal controls that has not been adequately remediated or that could adversely affect the ability of the Company or any of its Subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and its Subsidiaries; and (ii) since September 30, 2016 there has been no change in the Company's internal controls over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's and its Subsidiaries' internal controls over financial reporting.

Section 3.23 Off Balance Sheet Arrangements. There is no transaction, arrangement or other relationship between the Company or any of its Subsidiaries and an unconsolidated or other off balance sheet entity that is required to be disclosed by the Company in the SEC Documents and is not so disclosed, other than as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.24 Transfer Taxes. All stock transfer or other taxes (other than income or similar Taxes) which are required to be paid in connection with the transactions contemplated hereby have been fully paid or provided for by the Company, and all laws imposing such taxes will be or will have been complied with.

Section 3.25 Ownership of Property. Except as set forth in the SEC Documents, the Company has: (i) good and marketable fee simple title to its owned real property, if any, free and clear of all Liens, except for Liens that would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect; (ii) except as would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect, a valid leasehold interest in all leased real property, and each of such leases is valid and enforceable in accordance with its terms (subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies, and to limitations of public policy) and is in full force and effect, and (iii) good title to, or valid leasehold interests in, all of its other properties and assets, free and clear of all Liens, except for Liens that would not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 3.26 Finders or Brokers. Neither the Company nor any of its Affiliates has employed any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission from the Purchasers or any of their Affiliates in connection with or upon consummation of the transactions contemplated hereby.

Section 3.27 Material Non-Public Information. To the extent the Company has provided any material non-public information to any Purchaser, it has provided such information to every Purchaser.

Section 3.28 No Other Representations or Warranties. Except for the representations and warranties of the Company expressly set forth in this Article III, with respect to the transactions contemplated by this Agreement, the Company (i) expressly disclaims any representations or warranties of any kind or nature, express or implied, including with respect to the condition, value or quality of the Company and its Subsidiaries or any of the assets or properties of the Company and its Subsidiaries, and (ii) specifically disclaims any representation or warranty of merchantability, usage, suitability or fitness for any particular purpose with respect to any of the assets or properties of the Company and its Subsidiaries. Notwithstanding the foregoing, in making the decision to invest in the Shares the Purchasers will rely, and the Company agrees that the Purchasers may rely, on the information (A) contained in the SEC Documents or (B) that has provided in writing to Purchasers by the Company or on behalf of the Company.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Each Non-Avenir Purchaser represents and warrants, severally and not jointly, to the Company and Avenir represents and warrants on behalf of the Avenir Purchasers to the Company as of the date of this Agreement that:

Section 4.1 Organization and Power. Such Non-Avenir Purchaser is or, in the case of Avenir, Avenir is and to Avenir's knowledge each Avenir Purchaser is, if not a natural person, an entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to own its properties and to carry on its business as presently conducted.

Section 4.2 Authorization: Enforcement. Such Purchaser has, or in the case of Avenir each Avenir Purchaser has, all necessary power and authority and has taken all necessary action required for the due authorization, execution, delivery and performance by the Purchaser of this Agreement and any other Related Agreement to which it is a party and the completion by the Purchaser of the transactions contemplated hereby and thereby. Avenir represents that it has all necessary power and authority for the due execution and delivery of this Agreement and any Related Agreement on behalf of the Avenir Purchasers. This Agreement has been duly executed and delivered by the Non-Avenir Purchaser, and in the case of Avenir by Avenir, and each Related Agreement to which the Purchaser is a party, when executed and delivered by the Purchaser, or in the case of Avenir by Avenir, will be duly executed and delivered. Assuming due execution and delivery thereof by each of the other parties thereto, this Agreement is, and each of the Related Agreement to which the Purchaser is a party, when executed by the Purchaser, will be a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms, except as such enforceability may be limited by applicable laws relating to bankruptcy, insolvency, reorganization, moratorium or other similar legal requirements relating to or affecting creditors' rights generally and except as such enforceability is subject to general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law).

Section 4.3 No Conflict. The authorization, execution, delivery and performance by the Purchaser of this Agreement and the Related Agreements to which it is a party, and the completion by the Purchaser of the transactions contemplated hereby and thereby do not and will not: (i) violate, conflict with or result in the breach of any provision of the organizational documents of

the Purchaser; or (ii) with such exceptions that would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on the Purchaser's ability to perform its obligations under this Agreement and the Related Agreements to which it is a party, whether after the giving of notice or the lapse of time or both: (a) violate any provision of Law applicable to the Purchaser or its property or assets; or (b) violate any provision of, constitute a breach of, or default under, or result in or permit the cancellation, termination or acceleration of any material contract to which the Purchaser is a party, by which the Purchaser is bound, or to which any of the property or assets of the Purchaser is subject.

Section 4.4 Government Approvals. No consent, approval, license or authorization of, or designation, declaration or filing with, any Governmental Entity is or will be required on the part of the Purchaser in connection with the execution, delivery and performance by the Purchaser of this Agreement and the Related Agreements to which it is a party, except for: (i) those which have already been made or granted; (ii) those which may be made or obtained following the Closing; or (iii) as would not, individually or in the aggregate, be reasonably expected to have a material adverse effect on its ability to perform its obligations under this Agreement and the Related Agreements to which it is a party.

Section 4.5 Investment Representations.

(a) Each Non-Avenir Purchaser represents and warrants that it is, and Avenir represents and warrants that each Avenir Purchaser is, an "accredited investor" as that term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

(b) The Purchaser understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws. The Purchaser has been advised by the Company that the Shares have not been registered under the Securities Act, that the Shares will be issued on the basis of the statutory exemption provided by Section 4(a)(2) under the Securities Act or Regulation D promulgated thereunder, or both, relating to transactions by an issuer not involving any public offering and under similar exemptions under certain state securities laws, that this transaction has not been reviewed by, passed on or submitted to any U.S. federal or state agency or self-regulatory organization where an exemption is being relied upon, and that the Company's reliance thereon is based in part upon the representations made by the Purchaser in this Agreement and the Related Agreements to which the Purchaser is a party. The Purchaser acknowledges that it has been informed by the Company of, or is otherwise familiar with, the nature of the limitations imposed by the Securities Act and the rules and regulations thereunder on the transfer of securities.

(c) The Purchaser is purchasing the Shares for its own account and not with a view to, or for sale in connection with, any distribution thereof in violation of U.S. federal or state securities laws.

(d) The Purchaser confirms and agrees that (i) it has independently evaluated the merits of its decision to purchase the Shares, (ii) it has not relied on the advice of, or any representations by, Jefferies LLC, in its capacity as placement agent ("Jefferies"), or any affiliate thereof or any representative of Jefferies or its affiliates in making such decision, and (iii) neither Jefferies nor any of its representatives has any responsibility with respect to the completeness or

accuracy of any information or materials furnished to such Purchaser in connection with the transactions contemplated hereby.

Section 4.6 Finders or Brokers. Neither the Purchaser nor any of its Affiliates has employed any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who might be entitled to any fee or any commission from the Company or any of its Affiliates in connection with or upon consummation of the transactions contemplated hereby.

Section 4.7 No Other Representations or Warranties. The Purchaser acknowledges that it (i) has received access to such books and records, facilities, equipment, contracts and other assets of the Company and its Subsidiaries which it has desired or requested to review, (ii) has conducted an independent investigation of the Company and its Subsidiaries and the transactions contemplated by this Agreement and (iii) has had access to management of the Company to discuss and ask questions regarding the businesses and assets of the Company and its Subsidiaries.

ARTICLE V COVENANTS OF THE PARTIES

Section 5.1 Regulatory.

(a) For so long as a Purchaser or any of its Affiliates holds any portion of the Shares, the Company shall promptly, upon the request of such Purchaser, use its commercially reasonable efforts to cooperate with, and assist the Purchaser in any regulatory consent, filing, notification or clearance that the Purchaser, upon advice of counsel, determines is advisable as to or by reason of its ownership or holding of the Shares. Each party shall promptly furnish to the other party all necessary information and provide reasonable assistance as the other party may reasonably request in connection with this Section 5.1(a). Each party shall keep the other party apprised of the status of any communication with, and any inquiries or requests for additional information from, any Governmental Entity (or other Person regarding any of the transactions contemplated by this Agreement or the Related Agreements) with respect to this Section 5.1(a) and shall use its respective commercially reasonable efforts to comply promptly with any such inquiry or request (and, unless otherwise prohibited by law, provide copies of any such communications that are in writing).

(b) All fees, costs and expenses incurred in connection with Section 5.1(a) above shall be paid by the party incurring such costs or expenses.

Section 5.2 Use of Proceeds. The Company covenants and agrees, and the Purchasers acknowledge, that the proceeds of the Shares shall be used by the Company for (i) the payment of the fees and expenses of the transactions contemplated by this Agreement and (ii) the repayment of indebtedness and other obligations under or with respect to the Existing Credit Agreement.

Section 5.3 Purchaser Transaction Expenses. The Company shall reimburse the Purchasers (and shall be responsible for discharging) all reasonable and invoiced out-of-pocket fees, costs and expenses incurred by the Purchasers up to the Transaction Expenses Cap, including the fees and expenses of attorneys, accountants and other outside professionals and consultants engaged by the Purchasers and/or their Affiliates, in connection with the preparation, negotiation

and execution of this Agreement, the Related Agreements and the transactions contemplated hereby and thereby, including any preliminary discussions or undertakings with respect to such transactions.

Section 5.4 Placement Agent's Fees. The Company acknowledges that it has engaged Jefferies in its capacity as placement agent in connection with the sale of the Shares. The Company shall be responsible for the payment of any placement agent's fees, financial advisory fees, or brokers' commissions, in each case payable to third parties retained by the Company, relating to or arising out of the transactions contemplated by this Agreement.

Section 5.5 Further Assurances. Subject to Section 6.10 hereof, after the Closing, and for no further consideration, each of the parties shall, and shall cause its Affiliates to, execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments and take such other actions as may reasonably be requested to more effectively consummate the transactions contemplated by this Agreement and the Related Agreements.

Section 5.6 Lock-up. For a period commencing on the date hereof and ending on the 90th day after the date hereof, the Company agrees not to, directly or indirectly, other than with respect to the Shares, (1) offer for sale, sell, pledge or otherwise dispose of (or enter into any transaction or device that is designed to, or could be expected to, result in the disposition by any person at any time in the future of) any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the Common Stock issued pursuant to the Stock Plans or any other employee benefit plans, qualified stock option plans or other employee or director compensation plans or programs existing on the date hereof or pursuant to currently outstanding options, warrants or rights), or sell or grant options, rights or warrants with respect to any shares of Common Stock or securities convertible into or exchangeable for Common Stock (other than the grant of options pursuant to the Stock Plans or any other option or equity compensation plans existing on the date hereof), (2) enter into any swap or other derivatives transaction that transfers to another, in whole or in part, any of the economic benefits or risks of ownership of such shares of Common Stock, whether any such transaction described in clause (1) or (2) above is to be settled by delivery of Common Stock or other securities, in cash or otherwise, (3) file or cause to be filed a registration statement, including any amendments, with respect to the registration of any shares of Common Stock or securities convertible, exercisable or exchangeable into Common Stock or any other securities of the Company (other than with respect to any registration statement filed in connection with any amendment to the Company's registration statement on Form S-3 dated November 23, 2016) or (4) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of a majority in interest of the Purchasers.

Section 5.7 Press Release. The Company and the Purchasers agree to issue a joint press release announcing this Agreement, which press release will contain all material, non-public information disclosed by the Company to the Purchasers. The Company shall issue the press release prior to 9:30 AM, New York City time on the date of this Agreement.

ARTICLE VI
MISCELLANEOUS

Section 6.1 Execution and Counterparts. This Agreement may be executed in multiple counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties. In the event that any signature is delivered by facsimile transmission or by email delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

Section 6.2 Intentionally Omitted.

Section 6.3 Governing Law. This Agreement is to be construed in accordance with and governed by the internal Laws of the State of New York without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New York to the rights and duties of the parties. All disputes and controversies arising out of or in connection with this Agreement shall be resolved exclusively in (i) the Supreme Court of the State of New York, New York County, or (ii) the United States District Court for the Southern District of New York, and each party agrees to submit to the jurisdiction of said courts and agrees that venue shall lie exclusively with such courts.

Section 6.4 Waiver of Jury Trial. Each party hereby waives, and agrees to cause each of its Affiliates to waive, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement, the Related Agreements or any transaction contemplated hereby or thereby. Each party (i) certifies that no representative of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto and thereto have been induced to enter into this Agreement and the Related Agreements by, among other things, the mutual waivers and certifications in this Section 6.4.

Section 6.5 Entire Agreement; No Third Party Beneficiary. This Agreement and the Related Agreements contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement are merged in and are superseded and canceled by, this Agreement and the Related Agreements. This Agreement does not create any rights, claims or benefits inuring to any Person that is not a party hereto nor create or establish any third party beneficiary hereto; *provided*, that Jefferies is an intended third party beneficiary of this Agreement as set forth in Section 6.6.

Section 6.6 Reliance by and Exculpation of Jefferies as Placement Agent

(a) Each Purchaser agrees and acknowledges that (i) Jefferies, its affiliates and its representatives have not made, and will not make any representations or warranties with respect to the Company or the offer and sale of the Shares, and such Purchaser will not rely on any statements made by Jefferies, orally or in writing, to the contrary, (ii) such Purchaser will be

responsible for conducting its own due diligence investigation with respect to the Company and the offer and sale of the Shares, (iii) such Purchaser will be purchasing Shares based on the results of its own due diligence investigation of the Company, (iv) such Purchaser has negotiated the offer and sale of the Shares directly with the Company, and Jefferies will not be responsible for the ultimate success of any such investment and (v) the decision to invest in the Company will involve a significant degree of risk, including a risk of total loss of such investment. Each Purchaser further represents and warrants to Jefferies that it, including any fund or funds that it manages or advises that participates in the offer and sale of the Shares, is permitted under its constitutive documents (including, without limitation, all limited partnership agreements, charters, bylaws, limited liability company agreements, all applicable side letters with investors, and similar documents) to make investments of the type contemplated by this Agreement. In light of the foregoing, to the fullest extent permitted by law, the Company releases Jefferies, its employees, officers, representatives and affiliates from any liability with respect to such Purchaser's participation in the offer and sale of the Shares including, but not limited to, any improper payment made in accordance with the information provided by the Company, except to the extent such liability arises out of or is based on any action of or failure to act by Jefferies that is determined, by a final, non-appealable judgment by a court, to have resulted primarily and directly from Jefferies' gross negligence, willful misconduct or bad faith. This Section 6.6 shall survive any termination of this Agreement.

(b) The Company agrees and acknowledges that Jefferies may rely on its representations, warranties, agreements and covenants contained in this Agreement and each Purchaser agrees that Jefferies may rely on such Purchaser's representations and warranties contained in this Agreement as if such representations, warranties, agreements and covenants, as applicable, were made directly to Jefferies.

(c) The Company agrees for the express benefit of Jefferies, that: (1) neither Jefferies, nor any of its affiliates or any of its representatives has any duties or obligations other than those specifically set forth herein or in the engagement letter, dated as of January 10, 2017, between the Company and Jefferies (the "Engagement Letter"); and (2) Jefferies, its affiliates and its representatives shall be entitled to be indemnified by the Company for acting as placement agent hereunder pursuant to the indemnification provisions set forth in the Engagement Letter.

(d) The Company agrees and acknowledges that the consummation by Jefferies, as placement agent, of its obligations set forth in the Engagement Letter, are subject to the condition that, at Closing, Jenner & Block LLP, counsel to the Company, shall have provided Jefferies with a legal opinion in form and substance reasonably satisfactory to Jefferies.

Section 6.7 Notices. All notices and other communications hereunder shall be in writing and given by certified or registered mail, return receipt requested, nationally recognized overnight delivery service, such as Federal Express, or electronic mail or personal delivery against receipt to the party to whom it is given, in each case, at such party's address or electronic mail address set forth below or such other address or electronic mail address as such party may hereafter specify by notice to the other parties given in accordance herewith. Any such notice or other communication shall be deemed to have been given as of the date so personally delivered or transmitted by electronic mail, on the next Business Day when sent by overnight delivery services or five days after the date so mailed if by certified or registered mail.

If to the Company, to:

Internap Corporation
1 Enterprise Ave. N.
Secaucus, NJ 07094
Attention: Richard P. Diegnan
Email: rdiegnan@inap.com

with a copy to (which shall not constitute notice):

Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
Attention: Thomas A. Monson
Email: tmonson@jenner.com

If to any Purchaser, to the address set forth for such Purchaser on its signature page hereto.

Section 6.8 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns, and no other Person shall have any right or obligation hereunder. Neither party hereto may assign its rights or obligations under this Agreement without the prior written consent of the other party; provided, however, that the rights and obligations hereunder may be assigned by any Purchaser to a controlled Affiliate of such Purchaser or any transferee of Shares of a Purchaser (provided that any such transfer complies with the restrictions on transfer set forth in Section 4.5 hereof); provided, that, in such event, such Purchaser shall remain responsible for all obligations of such Purchaser under this Agreement following the Closing. Any purported assignment or delegation in violation of this Agreement shall be null and void ab initio.

Section 6.9 Headings. The Section, Article and other headings contained in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

Section 6.10 Amendments and Waivers. This Agreement may not be modified or amended except by an instrument or instruments in writing signed by each party; provided that if any such instrument shall be signed by less than all Purchasers (or their respective successors or assigns), such modification or amendment shall be effective only against Purchasers (or their successors or assigns) signing the instrument. Any party may, only by an instrument in writing, waive compliance by any other party with any term or provision hereof on the part of such other party to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. The rights and remedies of the parties are cumulative and are not exclusive of any rights or remedies that they would otherwise have hereunder.

Section 6.11 Interpretation: Absence of Presumption .

(a) For the purposes hereof: (i) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (ii) the terms “hereof,” “herein,” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits, and Schedules to this Agreement unless otherwise specified; (iii) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless the context otherwise requires or unless otherwise specified; and (iv) the word “or” shall not be exclusive.

(b) With regard to each and every term and condition of this Agreement, the Related Agreements and any agreement or instrument subject to the terms hereof, the parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which party actually prepared, drafted or requested any term or condition of this Agreement or any agreement or instrument subject hereto.

(c) The Company agrees that the parties have negotiated in good faith and at arms’ length concerning the transactions contemplated herein, and that the Purchaser would not have agreed to the terms of this Agreement without each and every of the terms, conditions, protections and remedies provided herein and in the Related Agreements.

Section 6.12 Severability . Any provision hereof that is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof; provided, however, that the parties shall attempt in good faith to reform this Agreement in a manner consistent with the intent of any such ineffective provision for the purpose of carrying out such intent.

Section 6.13 Enforcement . The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. Accordingly, each of the parties shall be entitled to specific performance of the terms hereof, including an injunction or injunctions to prevent breaches of this Agreement or the Related Agreements, in addition to any other remedy to which each party is entitled at law or in equity. Each of the parties further hereby waives (i) any defense in any action for specific performance that a remedy at law would be adequate and (ii) any requirement under any Law to post security as a prerequisite to obtaining equitable relief.

Section 6.14 Remedies: Survival of Representations and Warranties . Any and all remedies set forth in this Agreement or the Related Agreements: (i) shall be in addition to any and all other remedies the Purchasers or the Company may have at law or in equity; (ii) shall be cumulative; and (iii) may be pursued successively or concurrently as the Purchasers and the Company may elect. The exercise of any remedy by the Purchasers or the Company shall not be

deemed an election of remedies or preclude the Purchasers, on the one hand, or the Company, on the other hand, from exercising any other remedy in the future. The representations and warranties of the parties herein shall terminate as of, and shall not survive, or be of any further force or effect following, the Closing, except that the representations and warranties set forth in Article III and Section 4.6 shall survive the Closing until the expiration of the statute of limitations therefore, and, with respect to such representations and warranties that survive the Closing, the parties shall be entitled to any right or remedy available to them relating to, or as a result of, any breach of such representations and warranties, provided that no Purchaser shall be entitled to damages, in the aggregate, from the Company that are in excess of the respective portion of the Purchase Price paid by such Purchaser. Under no circumstance shall any party be entitled to exemplary or punitive damages or lost profits. The covenants set forth in this Agreement shall survive in accordance with their terms and until fully performed at which time they shall terminate.

[Signature Page Follows]

The parties have executed this Securities Purchase Agreement as of the date first written above.

INTERNAP CORPORATION

By: /s/ Peter D. Aquino
Name: Peter D. Aquino
Title: President & Chief Executive Officer

[Signature Page to Securities Purchase Agreement]

PURCHASER:

THE GABELLI SMALL CAP GROWTH FUND

By: /s/ David Goldman
Name: David Goldman
Title: Gabelli Funds, LLC

[Signature Page to Securities Purchase Agreement]

PURCHASERS:

Avenir Corporation, on behalf of certain advisory accounts

By: /s/ Peter C. Keefe
Name: Peter C. Keefe
Title: Executive Chairman

[Signature Page to Securities Purchase Agreement]

PURCHASERS:

Park West Investors Master Fund, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Address:

Park West Asset Management LLC

900 Larkspur Landing Circle, Suite 165

Larkspur, CA 94939

Phone: (415) 524-2900

[Signature Page to Securities Purchase Agreement]

PURCHASERS:

Park West Partners International, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Address:

Park West Asset Management LLC

900 Larkspur Landing Circle, Suite 165

Larkspur, CA 94939

Phone: (415) 524-2900

[Signature Page to Securities Purchase Agreement]

PURCHASERS:

Nineteen77 Global Multi-Strategy Alpha
(Levered) Master Limited

By: UBS O'Connor LLC, as investment advisor

By: /s/ Andrew Hollenbeck / Nicholas Vagra

Name: Andrew Hollenbeck / Nicholas Vagra

Title: Manager, General Counsel /
Manager, Chief Operating Officer

[Signature Page to Securities Purchase Agreement]

PURCHASERS:

O'Connor Global Multi-Strategy Alpha
Master Limited

By: UBS O'Connor LLC, as investment advisor

By: /s/ Andrew Hollenbeck / Nicholas Vagra

Name: Andrew Hollenbeck / Nicholas Vagra

Title: Manager, General Counsel /
Manager, Chief Operating Officer

[Signature Page to Securities Purchase Agreement]

SCHEDULE 1

List of Purchasers

Purchaser	Number of Shares	Purchase Price
Avenir Corporation	4,990,697	\$9,033,161.57
The Gabelli Small Cap Growth Fund	5,524,861	\$9,999,998.41
Nineteen77 Global Multi-Strategy Alpha (Levered) Master Limited O'Connor Global Multi-Strategy Alpha Master Limited	5,000,000	\$9,050,000.00
Park West Partners International, Limited Park West Investors Master Fund, Limited	8,287,292	\$14,999,998.52
Total	23,802,850	\$43,083,158.50

REGISTRATION RIGHTS AGREEMENT

DATED AS OF FEBRUARY 22, 2017

BY AND AMONG

INTERNAP CORPORATION

AND

THE STOCKHOLDERS PARTY HERETO

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REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement, dated as of February 22, 2017, is by and among Internap Corporation, a Delaware corporation (the “Company”), and each of the stockholders of the Company listed in the signature pages hereto (each, an “Initial Stockholder” and collectively the “Initial Stockholders”).

WHEREAS, the Company and the Initial Stockholders have on the date hereof entered into that certain Securities Purchase Agreement (as defined below);

WHEREAS, pursuant to the Securities Purchase Agreement, the Initial Stockholders purchased an aggregate of 23,802,850 shares (the “Purchased Shares”) of the Company’s Common Stock (as defined below); and

WHEREAS, the parties hereto wish to enter into this Agreement on the date hereof in order to set forth their relative rights with regard to the registration of the Company’s securities and certain other matters.

In consideration of the mutual covenants and agreements herein contained and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement hereby agree as follows:

1. Certain Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

“Affiliate” of any Person means any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlling,” “controlled by” and “under common control with”) as used with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” means this Registration Rights Agreement, including all amendments, modifications and supplements hereof and any exhibits hereto.

“Blackout Period” has the meaning set forth in Section 7(e) hereof.

“Board” means the Company’s Board of Directors.

“Business Day” means any day, except a Saturday, Sunday or legal holiday on which banking institutions in the City of New York are authorized or obligated by law or executive order to close.

“Common Stock” means the common stock, par value \$0.001 per share, of the Company.

“Company” has the meaning set forth in the Preamble and includes any

other Person referred to in the second sentence of Section 13(c) hereof.

“Delay Period” means a Demand Delay Period and a Shelf Delay Period.

“Demand Delay Period” has the meaning set forth in Section 3(d) hereof.

“Demand Registration” has the meaning set forth in Section 3(a) hereof.

“Demand Registration Statement” has the meaning set forth in Section 3(a) hereof.

“Demand Stockholders” means, as of the date of determination, any Stockholder or Stockholders holding in the aggregate shares of Common Stock that constitute 10% or more of the Purchased Shares.

“Effectiveness Deadline” has the meaning set forth in Section 2(a) hereof.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“Full Cooperation” means, in connection with any underwritten offering, that, in addition to the cooperation otherwise required by this Agreement, (a) members of senior management of the Company (including the chief executive officer and chief financial officer) fully and reasonably cooperate with the underwriter(s) in connection therewith and make themselves reasonably available to participate in “road-show” and other customary marketing activities in such locations (domestic and foreign) as recommended by the underwriter(s) (including one-on-one meetings with prospective purchasers of the Registrable Securities); provided that such activities shall not unreasonably interfere with the duties of such members of senior management in the ordinary course of the Company’s business and (b) the Company prepares preliminary and final prospectuses (preliminary and final prospectus supplements in the case of an offering pursuant to the Shelf Registration Statement) for use in connection therewith containing such additional information as reasonably requested by the underwriter(s) (in addition to the minimum amount of information required by law, rule or regulation).

“Fully Marketed Underwritten Offering” means an underwritten offering in which there is Full Cooperation.

“Governmental Entity” means any national, federal, state, municipal, local, territorial, foreign or other government or any department, commission, board, bureau, agency, regulatory authority or instrumentality thereof, or any court, judicial, administrative or arbitral body or public or private tribunal.

“Initial Stockholders” has the meaning set forth in the Preamble.

“Joinder” has the meaning set forth in Section 11(a) hereof.

“Permitted Transferee” has the meaning set forth in Section 11(a) hereof.

“Person” means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, Governmental Entity or any other entity.

“Piggyback Registration” has the meaning set forth in Section 4(a) hereof.

“Prospectus” means the prospectus or prospectuses included in any Registration Statement, as amended or supplemented by any prospectus supplement with respect to the terms of the offering of any portion of the Registrable Securities covered by such Registration Statement and by all other amendments and supplements to the prospectus, including post-effective amendments and all material incorporated by reference in such prospectus or prospectuses.

“Purchased Shares” has the meaning set forth in the Recitals.

“Registrable Securities” means (i) the Purchased Shares, (ii) any other shares of Common Stock of the Company owned as of the date hereof by the Initial Stockholders (including, for the avoidance of doubt, any shares of Common Stock held by Affiliates of or funds managed by the Initial Stockholders or held in advisory accounts for which the Initial Stockholders have investment discretion) and (iii) any shares of Common Stock issued as a distribution with respect to, in exchange for, upon exercise of, or in replacement of any such Purchased Shares or other Common Stock, in each case held by such Stockholder; provided, however, that such securities shall cease to be Registrable Securities when (x) a Registration Statement registering such securities under the Securities Act has been declared effective and such securities have been sold or otherwise transferred by the holder thereof pursuant to such effective Registration Statement or (y) such securities are sold in accordance with Rule 144.

“Registration Statement” means any registration statement of the Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such Registration Statement, including post-effective amendments, all exhibits and all materials incorporated by reference in such Registration Statement.

“Rule 144” means Rule 144 promulgated by the SEC pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC as a replacement thereto having substantially the same effect as such rule.

“Rule 415” means Rule 415 promulgated by the SEC pursuant to the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC as a replacement thereto having substantially the same effect as such rule.

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended.

“Securities Purchase Agreement” means the Securities Purchase Agreement, dated as of February 22, 2017, by and among the Company and the Initial Stockholders.

“Shelf Delay Period” has the meaning set forth in Section 2(d) hereof.

“Shelf Registration Statement” has the meaning set forth in Section 2(a) hereof.

“Stockholders” means (i) the Initial Stockholders and (ii) each Permitted Transferee who becomes a party to or bound by the provisions of this Agreement in accordance with the terms hereof.

“Suspension Notice” has the meaning set forth in Section 7(e) hereof.

2. Shelf Registration Statements.

(a) Filing of Registration Statement. After the Company files its annual report on Form 10-K for the year ended December 31, 2016, the Company shall use its best efforts to promptly, but in no event later than 15 days following such Form 10-K filing, file a Registration Statement on Form S-3 or such other form under the Securities Act then available to the Company providing for the resale pursuant to Rule 415 from time to time by the Stockholders of the Registrable Securities beneficially owned by such Stockholders (including the Prospectus, amendments and supplements to the Registration Statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such shelf registration statement, the “Shelf Registration Statement”). The Company shall use its reasonable best efforts to cause the Shelf Registration Statement to be declared effective by the SEC as promptly as practicable following such filing, but in no event later than 90 days following the date hereof (the “Effectiveness Deadline”). If the Shelf Registration Statement is not declared effective by the SEC on or prior to the Effectiveness Deadline, the Company will make pro rata payments to each Stockholder, as liquidated damages and not as a penalty, in an amount equal to 1.5% of the aggregate purchase price initially paid for such Registrable Securities pursuant to the Securities Purchase Agreement, for each 30-day period or pro rata for any portion thereof following the Effectiveness Deadline for which the Registration Statement has not been declared effective. Such payments shall not be an exclusive remedy for such events and shall not affect the right of the Stockholders to seek injunctive relief under this Agreement. Such payments shall be made to each Stockholder in cash no later than three (3) Business Days after the end of each 30-day period. The Company shall use its reasonable best efforts to maintain the effectiveness of the Shelf Registration Statement for a period of at least thirty-six (36) months in the aggregate plus the duration of any Blackout Period or Shelf Delay Period, or such shorter period that shall terminate when all of the Registrable Securities covered by such Shelf Registration Statement have been sold pursuant to such Shelf Registration Statement in accordance with the plan of distribution set forth therein.

(b) Number of Fully Marketed Underwritten Offerings. Each Demand Stockholder shall be entitled to request an aggregate of three (3) Fully Marketed Underwritten Offerings pursuant to the Shelf Registration Statement. If any Demand Stockholder requests a Fully Marketed Underwritten Offering, the Company shall provide Full Cooperation in connection therewith. An underwritten offering shall not count as one of the permitted Fully Marketed Underwritten Offerings if the Company does not provide Full Cooperation in connection therewith or such Demand Stockholders are not able to sell at least 50% in the aggregate of the Registrable Securities desired to be sold in such Fully Marketed Underwritten Offering. Except as provided in this Section 2(b), there shall be no limitation on the number of takedowns off the Shelf Registration Statement.

(c) Priority on Fully Marketed Underwritten Offerings. If in connection with a Fully Marketed Underwritten Offering pursuant to this Section 2 the managing underwriter shall advise the Company that in its opinion the number of securities requested to be included in such offering exceeds the number that can be sold in such offering without having an adverse effect on such offering, including the price at which such securities can be sold, then the Company shall include in such Fully Marketed Underwritten Offering the maximum number of securities that such underwriter advises can be so sold without having such effect, allocated (i) first, to Registrable Securities requested by the Demand Stockholders to be included in such Fully Marketed Underwritten Offering and (ii) second, among all securities requested to be included in such registration by any other Persons (including securities to be sold for the account of the Company) allocated among such Persons in such manner as they may agree.

(d) Restrictions on Shelf Registrations and Fully Marketed Underwritten Offerings. The Company may postpone the filing or effectiveness of a Shelf Registration Statement or the commencement of any Fully Marketed Underwritten Offering pursuant to a Shelf Registration Statement if, based on the good faith judgment of the Board, such postponement is necessary in order to avoid premature disclosure of a matter that (x) would be required to be made so that such Shelf Registration Statement would not be materially misleading and (y) the Board has determined would not be in the best interest of the Company to be disclosed at such time; provided, however, that the Demand Stockholders requesting such Shelf Registration Statement or Fully Marketed Underwritten Offering shall be entitled, at any time after receiving notice of such postponement, to withdraw such request and, if such request is withdrawn, such Shelf Registration Statement or Fully Marketed Underwritten Offering thereunder shall not count as one of the permitted Fully Marketed Underwritten Offerings contemplated in Section 2(b). The Company shall provide written notice to the Demand Stockholders of (x) any postponement of the filing or effectiveness of the Shelf Registration Statement or a Fully Marketed Underwritten Offering pursuant to this Section 2(d), (y) the Company's decision to file or seek effectiveness of such Shelf Registration Statement or commence such Fully Marketed Underwritten Offering following such postponement and (z) the effectiveness of such Shelf Registration Statement. The Company may defer the filing or effectiveness of such Shelf Registration Statement or the commencement of a particular Fully Marketed Underwritten Offering pursuant to this Section 2(d) only once during any 12-month period. Notwithstanding the provisions of this Section 2(d), the Company may not postpone the filing or effectiveness of a Shelf Registration Statement or the commencement of a Fully

Marketed Underwritten Offering past the date that is the earliest of (a) the date upon which any disclosure of a matter the Board has determined would not be in the best interest of the Company to be disclosed is disclosed to the public or ceases to be material, (b) thirty (30) days after the date upon which the Board has determined such matter should not be disclosed and (c) such date that, if such postponement continued, would result in there being more than forty-five (45) days in the aggregate in any 12-month period during which the filing or effectiveness of the Shelf Registration Statement or the commencement of one or more Fully Marketed Underwritten Offerings has been so postponed. The period during which filing or effectiveness of a Shelf Registration Statement or commencement of a Fully Marketed Underwritten Offering is so postponed hereunder is referred to as a “Shelf Delay Period.” If the Shelf Delay Period exceeds the periods permitted by this Section 2(d), the Company will make pro rata payments to each Demand Stockholder, as liquidated damages and not as a penalty, in an amount equal to 1.5% of the aggregate purchase price initially paid for such Registrable Securities pursuant to the Securities Purchase Agreement, for each 30-day period or pro rata for any portion thereof during which the Shelf Delay Period exceeds the periods permitted by this Section 2(d). Such payments shall not be an exclusive remedy for such events and shall not affect the right of the Demand Stockholders to seek injunctive relief under this Agreement. Such payments shall be made to each Demand Stockholder in cash no later than three (3) Business Days after the end of each 30-day period.

3. Additional Demand Registrations.

(a) Right to Request Registration. If at any time during this Agreement, the Company is not then eligible to register for resale the Registrable Securities on Form S-3 or other registration form for a shelf offering to be made from time to time pursuant to Rule 415 or if Rule 415 is otherwise not available to the Company for the offer and sale of the Registrable Securities, the Registrable Securities may be registered separate from a Shelf Registration Statement. Any time after the date hereof and subject to the foregoing sentence and Section 2(a), any Demand Stockholders may request registration for resale under the Securities Act of all or part of the Registrable Securities pursuant to a Registration Statement separate from the Shelf Registration Statement (a “Demand Registration”). As promptly as practicable after such request, but in any event within fifteen (15) days of such request by the Demand Stockholders, the Company shall file a Registration Statement registering for resale such number of shares of Registrable Securities held by such Demand Stockholders as requested to be so registered (including the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto and all material incorporated by reference or deemed to be incorporated by reference, if any, in such registration statement, a “Demand Registration Statement”). In connection with each such Demand Registration involving an underwritten offering, the Company shall provide Full Cooperation.

(b) Number of Demand Registrations. Each Demand Stockholder will be entitled to request a total of three (3) Demand Registrations pursuant to Section 3(a), minus the number of Fully Marketed Underwritten Offerings completed from the Shelf Registration Statement. A registration shall not count as one of the permitted Demand Registrations pursuant to Section 3(a) (i) if the related Demand Registration Statement does

not become effective, (ii) if the Demand Stockholders are not able to register and sell at least 50% of the aggregate Registrable Securities requested to be included in such registration, (iii) if the Company did not provide Full Cooperation in connection therewith or (iv) in the case of a Demand Registration that would be the last permitted Demand Registration requested pursuant to Section 3(a), if the Demand Stockholders are not able to register and sell all of the Registrable Securities requested to be included in such registration.

(c) Priority on Demand Registrations. If a Demand Registration pursuant to this Section 3 involves an underwritten offering and the managing underwriter shall advise the Company that in its opinion the number of securities requested to be included in such registration exceeds the number that can be sold in such offering without having an adverse effect on such offering, including the price at which such securities can be sold, then the Company shall include in such registration the maximum number of securities that such underwriter advises can be so sold without having such effect, allocated (i) first, to Registrable Securities requested by the Demand Stockholders to be included in such registration and (ii) second, among all securities requested to be included in such registration by any other Persons (including securities to be sold for the account of the Company) allocated among such Persons in such manner as they may agree.

(d) Restrictions on Demand Registrations. The Company may postpone the filing or the effectiveness of a Demand Registration Statement if, based on the good faith judgment of the Board, such postponement is necessary in order to avoid premature disclosure of a matter that (x) would be required to be made so that such Demand Registration Statement would not be materially misleading and (y) the Board has determined would not be in the best interest of the Company to be disclosed at such time; provided, however, that the Demand Stockholder requesting such Demand Registration Statement shall be entitled, at any time after receiving notice of such postponement and before such Demand Registration Statement becomes effective, to withdraw such request and, if such request is withdrawn, such Demand Registration shall not count as one of the permitted Demand Registrations. The Company shall provide written notice to the Demand Stockholders of (x) any postponement of the filing or effectiveness of a Demand Registration Statement pursuant to this Section 3(d), (y) the Company's decision to file or seek effectiveness of such Demand Registration Statement following such postponement and (z) the effectiveness of such Demand Registration Statement. The Company may defer the filing or effectiveness of a particular Demand Registration Statement pursuant to this Section 3(d) only once during any 12-month period. Notwithstanding the provisions of this Section 3(d), the Company may not postpone the filing or effectiveness of a Demand Registration Statement past the date that is the earliest of (a) the date upon which any disclosure of a matter the Board has determined would not be in the best interest of the Company to be disclosed is disclosed to the public or ceases to be material, (b) forty-five (45) days after the date upon which the Board has determined such matter should not be disclosed and (c) such date that, if such postponement continued, would result in there being more than sixty (60) days in the aggregate in any 12-month period during which the filing or effectiveness of one or more Registration Statements has been so postponed. The period during which filing or effectiveness is so postponed hereunder is referred to as a "Demand Delay Period."

(e) Effective Period of Demand Registrations. After any Demand Registration filed pursuant to this Agreement has become effective, the Company shall use its reasonable best efforts to keep such Demand Registration Statement effective for a period of at least one hundred and eighty (180) days from the date on which the SEC declares such Demand Registration Statement effective plus the duration of any Demand Delay Period and any Blackout Period, or such shorter period that shall terminate when all of the Registrable Securities covered by such Demand Registration Statement have been sold pursuant to such Demand Registration Statement in accordance with the plan of distribution set forth therein.

4. Piggyback Registrations.

(a) Right to Piggyback. Whenever the Company proposes to publicly sell or register for sale any of its common equity securities pursuant to a registration statement under the Securities Act (other than a registration statement on Form S-4 or Form S-8 or any similar successor forms thereto), whether for its own account or for the account of one or more securityholders of the Company which permits the inclusion of a Stockholder's Registrable Securities (a "Piggyback Registration"), the Company shall give prompt written notice to each Stockholder of its intention to effect such sale or registration and, subject to Sections 4(b) and 4(c), shall include in such transaction all Registrable Securities with respect to which the Company has received a written request from the Stockholders for inclusion therein within fifteen (15) days after the receipt of the Company's notice. The Company may postpone or withdraw the filing or the effectiveness of a Piggyback Registration at any time in its sole discretion, without prejudice to the Stockholders' right to immediately request a Demand Registration or Shelf Registration Statement hereunder. A Piggyback Registration shall not be considered a Demand Registration for purposes of Section 3 of this Agreement or a Shelf Registration Statement for purposes of Section 2 of this Agreement.

(b) Priority on Primary Registrations. If a Piggyback Registration is initiated as an underwritten primary registration on behalf of the Company, and the managing underwriter advises the Company in writing that in its opinion the number of securities requested to be included in such registration exceeds the number that can be sold in such offering without having an adverse effect on such offering, including the price at which such securities can be sold, then the Company shall include in such registration the maximum number of shares that such underwriter advises can be so sold without having such effect, allocated (i) first, to the securities the Company proposes to sell and (ii) second, to the Registrable Securities and other securities requested to be included in such registration by the Stockholders and other security holders of the Company, pro rata among the holders of such securities on the basis of the number of shares, including Registrable Securities, requested to be registered by such holders.

(c) Priority on Secondary Registrations. If a Piggyback Registration is initiated as an underwritten registration on behalf of a holder of the Company's securities other than Registrable Securities and such registration permits the inclusion of a Stockholder's Registrable Securities, and the managing underwriter advises the Company in writing that in its opinion the number of securities requested to be included in such

registration exceeds the number that can be sold in such offering without having an adverse effect on such offering, including the price at which such securities can be sold, then the Company shall include in such registration the maximum number of shares that such underwriter advises can be so sold without having such effect, allocated (i) first, to the securities requested to be included therein by the holder(s) requesting such registration and (ii) the Registrable Securities and other securities requested to be included in such registration by the Stockholders, other security holders and the Company, pro rata among the Stockholders, such other security holders and the Company on the basis of the number of shares requested to be registered by them.

5. Selection of Underwriters . If any of the Registrable Securities covered by a Demand Registration Statement or a Shelf Registration Statement is to be sold in an underwritten offering, the Stockholders shall have the right to select the managing underwriter(s) to administer the offering subject to the prior approval of the Company, which approval shall not be unreasonably withheld or delayed.

6. Holdback Agreements . The Company agrees not to, and shall exercise its reasonable best efforts to obtain agreements (in the underwriters' customary form) from its directors and executive officers not to, directly or indirectly offer, sell, pledge, contract to sell (including any short sale), grant any option to purchase or otherwise dispose of any equity securities of the Company or enter into any hedging transaction relating to any equity securities of the Company during the ninety (90) days beginning on the pricing date of any underwritten offering pursuant to a Registration Statement (except as part of such underwritten registration or pursuant to registrations on Form S-4 or Form S-8 or any successor forms thereto) unless the underwriter managing the offering otherwise agrees to a shorter period.

7. Procedures.

(a) Whenever one or more Stockholders request that any Registrable Securities be registered or sold pursuant to this Agreement, the Company shall use its reasonable best efforts to effect the registration of such Registrable Securities in accordance with the intended methods of disposition thereof, and pursuant thereto the Company shall as promptly as reasonably possible:

(i) prepare and file with the SEC a Registration Statement with respect to such Registrable Securities and use its reasonable best efforts to cause such Registration Statement to become effective as soon as practicable thereafter; and before filing a Registration Statement or Prospectus or any amendments or supplements thereto (including any prospectus supplement for a shelf takedown), furnish to the Stockholders participating in such Registration Statements and the underwriter(s), if any, copies of all such documents proposed to be filed, including documents incorporated by reference in the Prospectus and, if requested by such Stockholders, the exhibits incorporated by reference, provided, that any such item which is available on the SEC's EDGAR system (or successor thereto) need not be furnished, and such Stockholders (and the underwriter(s), if any) shall have the opportunity to review and comment thereon (other than such documents incorporated by reference in the Prospectus), and the Company will not file such

Registration Statement or Prospectus or any amendment or supplement thereto in a form to which the Stockholders (and the underwriter(s), if any) reasonably objects;

(ii) prepare and file with the SEC such amendments and supplements to such Registration Statement and the Prospectus used in connection therewith as may be necessary to keep such Registration Statement effective for a period of not less than one hundred and eighty (180) days (plus the duration of any Delay Period and any Blackout Period), in the case of a Demand Registration Statement or a period of three years, in the case of a Shelf Registration Statement, or in each case such shorter period as is necessary to complete the distribution of the securities covered by such Registration Statement and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement during such period in accordance with the intended methods of disposition by such Stockholders thereof set forth in such Registration Statement and, in the case of the Shelf Registration Statement, prepare such prospectus supplements containing such disclosures as may be reasonably requested by such Stockholders or any underwriter(s) in connection with each shelf takedown; provided that the Company shall not have any obligation to include such requested disclosure if the Company reasonably expects that doing so would cause the applicable Prospectus to contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(iii) furnish to such Stockholders such number of copies of such Registration Statement, each amendment and supplement thereto, the Prospectus included in such Registration Statement (including each preliminary Prospectus) and such other documents as such Stockholders and any underwriter(s) may reasonably request in order to facilitate the disposition of the Registrable Securities, provided, however, that the Company shall have no obligation to furnish copies of a final prospectus if the conditions of Rule 172(c) under the Securities Act are satisfied by the Company;

(iv) use its reasonable best efforts to register or qualify such Registrable Securities under such other securities or blue sky laws of such jurisdictions (domestic or foreign) as such Stockholders and any underwriter(s) reasonably requests and do any and all other acts and things that may be reasonably necessary or advisable to enable such Stockholders and any underwriter(s) to consummate the disposition in such jurisdictions of the Registrable Securities (provided, that the Company will not be required to (1) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this subparagraph (iv), (2) subject itself to taxation in any such jurisdiction or (3) consent to general service of process in any such jurisdiction);

(v) notify such Stockholders and any underwriter(s), at any time when a Prospectus relating thereto is required to be delivered under the Securities Act, of the occurrence of any event as a result of which the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any material fact necessary to make the statements therein not misleading, and, at the request of such Stockholders or any underwriter(s), the Company shall prepare a supplement or amendment to such Prospectus so that, as thereafter delivered to the purchasers of such

Registrable Securities, such Prospectus shall not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading;

(vi) in the case of an underwritten offering, (A) enter into such customary agreements (including underwriting agreements in customary form), (B) take all such other actions as such Stockholders or the underwriter(s) reasonably request in order to expedite or facilitate the disposition of such Registrable Securities (including, without limitation, causing senior management and other Company personnel to cooperate with such Stockholders and the underwriter(s) in connection with performing due diligence) and (C) cause its counsel to issue opinions of counsel in form, substance and scope as are customary in underwritten offerings, addressed and delivered to the underwriter(s) and such Stockholders;

(vii) in connection with each Demand Registration requested by the Demand Stockholders pursuant to Section 3 and each Fully Marketed Underwritten Offering requested by the Stockholders pursuant to Section 2, provide Full Cooperation and, in all other cases, cause members of senior management of the Company to be reasonably available to participate in, and to reasonably cooperate with the underwriter(s) in connection with customary marketing activities (including select conference calls and one-on-one meetings with prospective purchasers); provided that such activities shall not unreasonably interfere with the duties of such senior management in the ordinary course of the Company's business;

(viii) make available for inspection by such Stockholders, any underwriter participating in any disposition pursuant to such Registration Statement, and any attorney, accountant or other agent retained by such Stockholders or underwriter, all financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, managers, employees and independent accountants to supply all information reasonably requested by such Stockholders, underwriter, attorney, accountant or agent in connection with such Registration Statement;

(ix) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such Registration Statement;

(x) if requested by underwriter(s) in connection with an underwritten offering, cause to be delivered, immediately prior to the pricing of such underwritten offering and at the time of closing of the sale of Registrable Securities pursuant to such underwritten offering, letters from the Company's independent registered public accountants and any other accountants whose reports are included or incorporated by reference in such Registration Statement addressed to such Stockholders and each underwriter, if any, stating that such accountants are independent public accountants within the meaning of the Securities Act and the applicable rules and regulations adopted by the SEC thereunder, and otherwise in customary form and covering such financial and accounting matters as are customarily covered by letters of the independent registered public accountants delivered in connection with underwritten public offerings;

(xi) make generally available to its securityholders a consolidated earnings statement (which need not be audited) for the twelve (12) months beginning after the effective date of a Registration Statement as soon as reasonably practicable after the end of such period, which earnings statement shall satisfy the requirements of an earnings statement under Section 11(a) of the Securities Act; and

(xii) promptly notify such Stockholders and the underwriter or underwriters, if any:

(1) when the Registration Statement, any pre-effective amendment, the Prospectus or any Prospectus supplement or post-effective amendment to the Registration Statement has been filed and, with respect to the Registration Statement or any post-effective amendment, when the same has become effective;

(2) of any written request by the SEC for amendments or supplements to the Registration Statement or Prospectus;

(3) of the notification to the Company by the SEC of its initiation of any proceeding with respect to the issuance by the SEC of any stop order suspending the effectiveness of the Registration Statement; and

(4) of the receipt by the Company of any notification with respect to the suspension of the qualification of any Registrable Securities for sale under the applicable securities or blue sky laws of any jurisdiction.

(b) The Company represents and warrants that no Registration Statement (including any amendments or supplements thereto and Prospectuses contained therein) shall contain any untrue statement of a material fact or omit to state a material fact required to be stated therein, or necessary to make the statements therein not misleading (except that the Company makes no representation or warranty with respect to information relating to a Stockholder furnished to the Company by or on behalf of such Stockholder specifically for use therein).

(c) The Company shall make available to the Stockholders (and the underwriters, if any) (i) promptly after the same is prepared and publicly distributed, filed with the SEC, or received by the Company, one copy of each Registration Statement and any amendment thereto, each preliminary Prospectus and Prospectus and each amendment or supplement thereto, each letter written by or on behalf of the Company to the SEC or the staff of the SEC (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), and each item of correspondence from the SEC or the staff of the SEC (or other governmental agency or self-regulatory body or other body having jurisdiction, including any domestic or foreign securities exchange), in each case relating to a Shelf Registration Statement or a Demand Registration Statement, and (ii) such number of copies of a Prospectus, including a

preliminary Prospectus, and all amendments and supplements thereto and such other documents as any Stockholder or any underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities. The Company will promptly notify the Stockholders of the effectiveness of each Registration Statement or any post-effective amendment. The Company will promptly respond to any and all comments received from the SEC, with a view towards causing each Registration Statement or any amendment thereto to be declared effective by the SEC as soon as practicable and shall file an acceleration request as soon as practicable following the resolution or clearance of all SEC comments or, if applicable, following notification by the SEC that any such Registration Statement or any amendment thereto will not be subject to review.

(d) The Company may require the Stockholders to furnish to the Company any other information regarding such Stockholders and the distribution of such securities as the Company reasonably determines, based on the advice of counsel, is required to be included in any Registration Statement. Additionally, each Stockholder agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of any Registration Statement hereunder. Each Stockholder agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to a Registration Statement.

(e) Each Stockholder agrees that, upon notice from the Company of the happening of any event as a result of which the Prospectus included in such Registration Statement contains an untrue statement of a material fact or omits any material fact necessary to make the statements therein not misleading (a “Suspension Notice”), such Stockholder will forthwith discontinue disposition of Registrable Securities pursuant to such Registration Statement for a reasonable length of time not to exceed ten (10) days (thirty (30) days in the case of an event described in Section 2(d) or Section 3(d)) until such Stockholder is advised in writing by the Company that the use of the Prospectus may be resumed and is furnished with a supplemented or amended Prospectus as contemplated by Section 7(a) hereof; provided, however, that such postponement of sales of Registrable Securities by such Stockholder shall not exceed thirty (30) days in the aggregate in any six-month period. If the Company shall give the Stockholders any Suspension Notice, the Company shall extend the period of time during which the Company is required to maintain the applicable Registration Statement effective pursuant to this Agreement by the number of days during the period from and including the date of the giving of such Suspension Notice to and including the date the Stockholders either are advised by the Company that the use of the Prospectus may be resumed or receive copies of the supplemented or amended Prospectus contemplated by Section 7(a) (a “Blackout Period”). In any event, the Company shall not be entitled to deliver more than a total of two (2) Suspension Notices in any twelve (12) month period. If the Blackout Period exceeds the periods permitted by this Section 7(e), the Company will make pro rata payments to each Stockholder, as liquidated damages and not as a penalty, in an amount equal to 1.5% of the aggregate purchase price initially paid for such Registrable Securities pursuant to the Securities Purchase Agreement, for each 30-day period or pro rata for any portion thereof during which the Blackout Period exceeds the periods permitted by this Section 7(e). Such payments shall not be an exclusive remedy for such events and shall not affect the right of

the Stockholders to seek injunctive relief under this Agreement. Such payments shall be made to each Stockholder in cash no later than three (3) Business Days after the end of each 30-day period.

(f) The Company shall not permit any officer, manager, underwriter, broker or any other person acting on behalf of the Company to use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with any Registration Statement covering Registrable Securities, without the prior written consent of the Stockholders and any underwriter.

(g) In no event shall the Company be required to effect more than one underwritten offering hereunder within any six-month period, whether as a Fully Marketed Underwritten Offering pursuant to the Shelf Registration Statement or, in the event the Company is not eligible for registration under the Shelf Registration Statement, as an underwritten offering pursuant to a Demand Registration.

8. Registration Expenses.

(a) All expenses incident to the Company's performance of or compliance with this Agreement, including, without limitation, all registration and filing fees (including SEC registration fees and FINRA filing fees), fees and expenses of compliance with securities or blue sky laws, listing application fees, printing expenses, transfer agent's and registrar's fees, cost of distributing Prospectuses in preliminary and final form as well as any supplements thereto, and fees and disbursements of counsel for the Company and all accountants and other Persons retained by the Company (but not including any underwriting discounts or commissions or transfer taxes, if any, attributable to the sale of Registrable Securities), shall be borne by the Company. In addition, the Company shall pay its internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit or quarterly review and the expenses and fees for listing the securities to be registered on each securities exchange on which they are to be listed.

(b) In connection with each registration initiated hereunder (whether a Demand Registration, Shelf Registration Statement or a Piggyback Registration), the Company shall pay, or shall reimburse the Stockholders for, the reasonable fees and disbursements of one law firm chosen by the Stockholders as their counsel.

(c) The obligation of the Company to bear the expenses described in Section 8(a) and to pay or reimburse the Stockholders for the expenses described in Section 8(b) shall apply irrespective of whether a registration, once properly demanded, if applicable, becomes effective, is withdrawn or suspended, is converted to another form of registration and irrespective of when any of the foregoing shall occur.

9. Indemnification.

(a) The Company shall indemnify, to the fullest extent permitted by law, each Stockholder and its officers, directors, employees and Affiliates and each Person who controls a Stockholder (within the meaning of the Securities Act) against all losses, claims,

damages, liabilities and expenses arising out of or based upon any untrue or alleged untrue statement of material fact contained in any Registration Statement, Prospectus or preliminary Prospectus or any “issuer free writing prospectus” (as defined in Securities Act Rule 433) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading or any violation or alleged violation by the Company of the Securities Act, the Exchange Act or applicable “blue sky” laws, except insofar as the same are made in reliance and in conformity with information relating to a Stockholder furnished in writing to the Company by such Stockholder expressly for use therein. In connection with an underwritten offering, the Company shall indemnify such underwriter(s), their officers, employees and directors and each Person who controls such underwriter(s) (within the meaning of the Securities Act) to the same extent as provided above with respect to the indemnification of the Stockholders.

(b) In connection with any Registration Statement in which a Stockholder is participating, such Stockholder shall furnish to the Company in writing such information as the Company reasonably determines, based on the advice of counsel, is required to be included in any such Registration Statement or Prospectus, and shall indemnify, to the fullest extent permitted by law, the Company, its officers, employees, directors, Affiliates, and each Person who controls the Company (within the meaning of the Securities Act) against all losses, claims, damages, liabilities and expenses arising out of or based upon any untrue or alleged untrue statement of material fact contained in the Registration Statement, Prospectus, preliminary Prospectus, any “free writing prospectus” (as defined in Securities Act Rule 433) or any amendment thereof or supplement thereto or any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein not misleading, but only to the extent that the same are made in reliance and in conformity with information relating to such Stockholder furnished in writing to the Company by such Stockholder expressly for use therein.

(c) Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification and (ii) unless in such indemnified party’s reasonable judgment a conflict of interest between such indemnified and indemnifying parties may exist with respect to such claim, permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party. If such defense is assumed, the indemnifying party shall not be subject to any liability for any settlement made by the indemnified party without its consent (but such consent will not be unreasonably withheld). An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim shall not be obligated to pay the fees and expenses of more than one counsel (in addition to any local counsel) for all parties indemnified by such indemnifying party with respect to such claim, unless in the reasonable judgment of any indemnified party there may be one or more legal or equitable defenses available to such indemnified party that are in addition to or may conflict with those available to another indemnified party with respect to such claim. Failure to give prompt written notice shall not release the indemnifying party from its obligations hereunder.

(d) The indemnification provided for under this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the indemnified party or any officer, director or controlling Person of such indemnified party and shall survive the transfer of securities.

(e) If the indemnification provided for in or pursuant to this Section 9 is due in accordance with the terms hereof, but is held by a court to be unavailable or unenforceable in respect of any losses, claims, damages, liabilities or expenses referred to herein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified Person as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that result in such losses, claims, damages, liabilities or expenses as well as any other relevant equitable considerations. The relative fault of the indemnifying party on the one hand and of the indemnified Person on the other shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party, and by such party's relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. In no event shall the liability of a Stockholder be greater in amount than the amount of net proceeds received by such Stockholder upon such sale.

10. Rule 144 . The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder, and it will take such further action as the Stockholders may reasonably request to make available adequate current public information with respect to the Company meeting the current public information requirements of Rule 144(c) under the Securities Act, to the extent required to enable the Stockholders to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (i) Rule 144 under the Securities Act, as such Rule 144 may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of the Stockholders, the Company will deliver to the Stockholders a written statement as to whether it has complied with such information and requirements.

11. Transfer of Registration Rights.

(a) Each Stockholder may in its sole discretion transfer all or any portion of its then-remaining registration rights under Sections 2 through 10 of this Agreement to (i) any Affiliate of such Stockholder or (ii) any transferee who would satisfy the definition of a "Demand Stockholder" as a result of the acquisition of Purchased Shares (other than pursuant to an effective Registration Statement) (each, a "Permitted Transferee"). Any transfer of registration rights pursuant to this Section 11(a) shall be effective upon receipt by the Company of (x) written notice from the Stockholder stating the name and address of any Permitted Transferee and identifying the amount of Registrable Securities with respect to which the rights under this Agreement are being transferred and the nature of the rights so transferred and (y) a joinder, in the form attached

as Exhibit A hereto (the “Joinder”), providing that the Permitted Transferee shall be bound by and shall fully comply with the terms of this Agreement (including the provisions of this Section 11) or another written agreement from the transferee to be bound by the terms of this Agreement. The Company agrees to execute any Joinder promptly upon receipt. In connection with any such transfer, the term “Stockholders” as used in this Agreement shall, where appropriate to assign such rights to such Permitted Transferee, be deemed to include the Permitted Transferee. The Stockholders and such Permitted Transferees may exercise the registration rights hereunder in such proportion (not to exceed the then-remaining registration rights hereunder) as they shall agree among themselves.

(b) After such transfer, the transferring Stockholder shall retain its rights under this Agreement with respect to all other Registrable Securities owned by such Stockholder. Upon request of the transferring Stockholder, the Company shall execute a Joinder or another registration rights agreement with such Permitted Transferee or a proposed transferee substantially similar to this Agreement.

12. Conversion of Other Securities. If a Stockholder offers Registrable Securities by forward sale, or any options, rights, warrants or other securities issued by it or any other Person that are offered with, convertible into or exercisable or exchangeable for any Registrable Securities, the Registrable Securities subject to such forward sale or underlying such options, rights, warrants or other securities shall be eligible for registration pursuant to Sections 2, 3 and 4 of this Agreement.

13. Miscellaneous.

(a) Notices. All notices, requests, consents and other communications required or permitted hereunder shall be in writing and shall be hand delivered or mailed postage prepaid by registered or certified mail or by e-mail:

If to the Company:

Internap Corporation
1 Enterprise Ave. N.
Secaucus, NJ 07094
Attention: Richard P. Diegnan
Email: rdiegnan@inap.com

with a copy to (which shall not constitute notice):

Jenner & Block LLP
353 North Clark Street
Chicago, IL 60654
Attention: Thomas A. Monson
Email: tmonson@jenner.com

If to the Initial Stockholder, to the address set forth for each such Initial Stockholder on its signature page hereto.

If to a Permitted Transferee, to the address of such Permitted Transferee set forth in the transfer documentation provided to the Company;

or at such other address as such party each may specify by written notice to the others, and each such notice, request, consent and other communication shall for all purposes of the Agreement be treated as being effective or having been given when delivered personally or transmitted by email, upon one Business Day after being deposited with a courier if delivered by courier, or, if sent by mail, at the earlier of its receipt or 72 hours after the same has been deposited in a regularly maintained receptacle for the deposit of United States mail, addressed and postage prepaid as aforesaid.

(b) No Waivers. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

(c) Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. If the Company's outstanding Common Stock is converted into or exchanged or substituted for other securities issued by any other Person, as a condition to the effectiveness of a merger, consolidation, reclassification, share exchange or other transaction pursuant to which such conversion, exchange, substitution or other transaction takes place, such other Person shall automatically become bound hereby with respect to such other securities constituting Registrable Securities and, if requested by the Stockholders or a Permitted Transferee, shall further evidence such obligation by executing and delivering to the Stockholders and Permitted Transferees a written agreement to such effect in form and substance satisfactory to such Stockholder.

(d) Governing Law. The internal laws, and not the laws of conflicts (other than Section 5-1401 of the General Obligations Law of the State of New York), of New York shall govern the enforceability and validity of this Agreement, the construction of its terms and the interpretation of the rights and duties of the parties.

(e) Exclusive Jurisdiction. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby may only be brought in any federal or state court located in the County and State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in Section 13(a) shall be deemed effective service of process on such party.

(f) Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(g) Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts (including by facsimile) and by different parties hereto in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. This Agreement shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto.

(h) Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes and replaces all other prior agreements, written or oral, among the parties hereto with respect to the subject matter hereof.

(i) Captions. The headings and other captions in this Agreement are for convenience of reference only and shall not be used in interpreting, construing or enforcing any provision of this Agreement.

(j) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

(k) Amendments. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to or departures from the provisions hereof may not be given, without the written consent of (i) the Company and (ii) the Stockholders collectively then holding Purchased Shares representing more than 50% of the total number of Purchased Shares then held by the Stockholders.

(l) Equitable Relief. The parties hereto, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of their respective rights under this Agreement. Each party acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the other party. Each party acknowledges that the remedy at law for a breach of its obligations under this Agreement will be inadequate and agrees, in the event of a breach or threatened breach by such party of the provisions of this Agreement, that the other party hereto shall be entitled, in addition to all other available remedies at law or in equity, to an

injunction or injunctions restraining, preventing or curing any breach of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity of showing economic loss and without any bond or other security being required.

[Signature Page Follows]

above. IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written

INTERNAP CORPORATION

By: /s/ Peter D. Aquino

Name: Peter D. Aquino

Title: President & Chief Executive Officer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above.

THE GABELLI SMALL CAP GROWTH FUND

By: /s/ David Goldman

Name: David Goldman

Title: Gabelli Funds, LLC

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above.

Avenir Corporation, on behalf of certain
advisory accounts

By: /s/ Peter C. Keefe

Name: Peter C. Keefe

Title: Executive Chairman

[Signature Page to Registration Rights Agreement]

above. IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written

Park West Partners International, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Address:

Park West Asset Management LLC

900 Larkspur Landing Circle, Suite 165

Larkspur, CA 94939

Phone: (415) 524-2900

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above.

Park West Investors Master Fund, Limited

By: Park West Asset Management LLC

Its: Investment Manager

By: /s/ Grace Jimenez

Name: Grace Jimenez

Title: Chief Financial Officer

Address:

Park West Asset Management LLC

900 Larkspur Landing Circle, Suite 165

Larkspur, CA 94939

Phone: (415) 524-2900

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above.

Nineteen77 Global Multi-Strategy Alpha (Levered) Master Limited

By: UBS O'Connor LLC, as investment advisor

By: /s/Andrew Hollenbeck / Nicholas Vagra

Name: Andrew Hollenbeck / Nicholas Vagra

Title: Manager, General Counsel / Manager, Chief Operating Officer

[Signature Page to Registration Rights Agreement]

IN WITNESS WHEREOF, this Registration Rights Agreement has been duly executed by each of the parties hereto as of the date first written above.

O'Connor Global Multi-Strategy Alpha Master Limited

By: UBS O'Connor LLC, as investment advisor

By: /s/Andrew Hollenbeck / Nicholas Vagra

Name: Andrew Hollenbeck / Nicholas Vagra

Title: Manager, General Counsel /

Manager, Chief Operating Officer

[Signature Page to Registration Rights Agreement]

**FORM OF JOINDER
JOINDER AGREEMENT
TO
REGISTRATION RIGHTS AGREEMENT**

, 20

Reference is made to that certain Registration Rights Agreement, dated as of February 22, 2017, by and among Internap Corporation, a Delaware corporation (the “**Company**”), and the Initial Stockholders (as amended from time to time, the “**Registration Rights Agreement**”). Capitalized terms used herein but not defined herein shall have the meanings set forth in the Registration Rights Agreement. This Joinder Agreement is being delivered to the Company in accordance with Section 11(a) of the Registration Rights Agreement.

By executing and delivering this Joinder Agreement, [●], confirms to and agrees to (i) become a party to the Registration Rights Agreement as a Stockholder and (ii) be bound by, and comply with, the terms and provisions of the Registration Rights Agreement applicable to Stockholders thereunder.

By executing and delivering this Joinder Agreement, the Company, (i) acknowledges that this Joinder Agreement is satisfactory to fulfill all requirements for the acceptance of [●] as Stockholder pursuant to Section 11(a) of the Registration Rights Agreement and (ii) confirms [●] is hereby admitted as a Stockholder of the Company.

This Joinder Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which shall together constitute one and the same instrument.

This Joinder Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Joinder Agreement to be executed as of the date first above written.

Stockholder :

[•]

By:

Name:

Title:

Company

Internap Corporation, a Delaware corporation

By:

Name:

Title:



February 22, 2017

Internap Corporation Raises \$43 Million in Common Equity Private Placement

- **Net proceeds to be used to reduce debt**
- **Management reaffirms 2016 and 2017 financial guidance**
- **Fourth quarter 2016 results to be reported on March 9, 2017**

ATLANTA, Feb. 22, 2017 /PRNewswire/ — Internap Corporation (NASDAQ: INAP) (“INAP” or the “Company”), a leading technology provider of high-performance Internet infrastructure services, today announced a private placement of approximately 23.8 million shares of its common stock at a price of \$1.81 per share, for aggregate gross proceeds of approximately \$43 million. The funding in the private placement is provided by a group of investors that include affiliates of or funds managed by GAMCO Investors, Inc. and accounts advised by Avenir Corporation. The settlement date for the transaction is February 27, 2017.

The Company will use the net proceeds of the offering to repay a portion of its term loan indebtedness. The equity offering and debt repayment will enable the Company to meet conditions under the Third Amendment and Waiver to Credit Agreement dated as of January 26, 2017 that among other things eases restrictions on the interest coverage ratio and leverage coverage ratio covenants. The Company expects this to provide it with additional operating flexibility as it continues to implement its business plan.

“The confidence demonstrated by our investors in the future of INAP is extremely motivating to the entire management team as we continue our comprehensive operations improvement initiative,” said Peter D. Aquino, President and Chief Executive Officer. “The speed with which our new team is moving to right-size our business and invest in sales and marketing to capture strong market demand for Colocation and Cloud services is impressive. The next steps in the 2017 transformation of the new INAP is to approach the market as two pure plays, complete our debt refinancing, and begin to consider strategic opportunities to bolster our organic growth.”

INAP reaffirms guidance for 2016, consisting of revenue of \$297 million to \$300 million, adjusted EBITDA of \$81 million to \$83 million, and capital expenditures of \$47 million to \$50 million, and its guidance for 2017, consisting of revenue of \$275 million to \$285 million, adjusted EBITDA of \$84 million to \$87 million and capital expenditures of approximately \$42 million.

Jefferies LLC served as the placement agent for the offering. Jenner & Block LLP acted as legal counsel to the Company, and White & Case LLP acted as legal counsel to Jefferies LLC.

Fourth Quarter 2016 Conference Call Information:

Internap Corporation will release fourth quarter 2016 financial results before market open on Thursday, March 9, 2017. At 8:30 a.m. ET the same day, senior management will host a conference call presentation to discuss the results.

The call can be accessed by dialing 877-334-0775. International callers should dial 631-291-4567. Listeners may connect to the simultaneous webcast, which will include accompanying presentation slides, on the Investor Relations section of the INAP website. An online archive of the webcast presentation will be available for one month following the call. An audio-only replay will be accessible from Thursday, March 9, 2017 at 11:30 a.m. ET through Thursday, March 16, 2017 at 855-859-2056 using replay code 62423127. International callers can listen to the archived event at 404-537-3406 with the same code.

About INAP

Internap Corporation (NASDAQ: INAP) is a leading technology provider of internet infrastructure through both Colocation Business and Enterprise Services (including network connectivity, IP, bandwidth, and Managed Hosting), and Cloud Services (including enterprise-grade AgileCLOUD 2.0, Bare-Metal Servers, and SMB iWeb platforms). INAP’s global high-capacity network connects 15 company-controlled Tier 3-type data centers in major markets in North America, 34 wholesale partnered facilities, and points of presence in 26 central business districts around the world. INAP continues to transform since its inception in 1996, meeting customer demand for custom solutions and high-touch state-of-the-art colocation and cloud products and services. INAP now operates a premium business model that also provides high-power density colocation, low-latency bandwidth, and public and private cloud platforms in an expanding internet infrastructure industry.

For more information, visit www.inap.com.

Forward-Looking Statements

This press release contains forward-looking statements. These forward-looking statements include statements related to our initiatives regarding sales and marketing; our strategy to align into pure-play businesses; initiatives regarding balance sheet recapitalization and strategic opportunities; and our expectations for 2016 and 2017 revenues, adjusted EBITDA and capital expenditures. Our ability to achieve these forward-looking statements is based on certain assumptions, including our ability to execute on our business strategy, leveraging of multiple routes to market, expanded brand awareness for high-performance Internet infrastructure services and customer churn levels. These assumptions may prove to be inaccurate in the future. Because such forward-looking statements are not guarantees of future performance and involve risks and uncertainties, there are important factors that could cause our actual results to differ materially from those in the forward-looking statements. These factors include our ability to execute on our business strategy and drive growth; our ability to maintain current customers and obtain new ones, whether in a cost-effective manner or at all; the robustness of the IT infrastructure services market; our ability to achieve or sustain profitability; our ability to expand margins and drive higher returns on investment; our ability to sell into new and existing data center space; the actual performance of our IT infrastructure services; our ability to correctly forecast capital needs, demand planning and space utilization; our ability to respond successfully to technological change and the resulting competition; the availability of services from Internet network service providers or network service providers providing network access loops and local loops on favorable terms, or at all; failure of third party suppliers to deliver their products and services on favorable terms, or at all; failures in our network operations centers, data centers, network access points or computer systems; our ability to provide or improve Internet infrastructure services to our customers; our ability to protect our intellectual property; market conditions and the terms of any issuance of equity or debt securities or the refinancing or amendment of our indebtedness; risks related to our indebtedness, including our substantial amount of debt, our ability to incur debt and increases in interest rates or in our borrowing margins; our ability to meet the financial and other covenants contained in our credit agreement; as well as other factors discussed in our filings with the Securities and Exchange Commission. Given these risks and uncertainties, investors should not place undue reliance on forward-looking statements as a prediction of actual results. We undertake no obligation to update, amend or clarify any forward-looking statement for any reason.

Non-GAAP Financial Measures

Because of the forward-looking nature of the Company's forecasts of adjusted EBITDA, specific quantifications of the amounts that would be required to reconcile a pre-tax income or loss are not available. The Company believes that there is a degree of volatility with respect to certain of the Company's GAAP measures which preclude the Company from providing accurate forecast of GAAP to non-GAAP reconciliations. Based on the above, the Company believes that providing estimates of the amounts that would be required to reconcile the range of the non-GAAP adjusted EBITDA would imply a degree of precision that would be confusing or misleading to investors.

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