

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

In re:

**FALLBROOK TECHNOLOGIES INC., et al.,<sup>1</sup>**

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

**RE: Docket Nos. 248, 254, and 258**

**CERTIFICATION OF COUNSEL**

On June 6, 2018, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), filed the *Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 248] (the “**Plan**”),<sup>2</sup> and proposed *Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 254].

On June 7, 2018 the Debtors filed their *Notice of Filing of Revised Proposed Findings of Fact, Conclusions of Law, and Order Confirming Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 258] (the “**Revised Order**”)

Subsequent to the filing of the Revised Order, and to resolve an informal comment thereto, the Debtors made certain revisions to the Revised Order, as reflected in the further revised order attached hereto as **Exhibit A** (the “**Further Revised Order**”).

On June 8, 2018, the Court held a hearing (the “**Confirmation Hearing**”) to consider confirmation of the Plan and entry of the Further Revised Order. At the conclusion of

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors’ principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Plan.

the Confirmation Hearing, the Court ruled that it would confirm the Plan, and instructed the Debtors to submit the Further Revised Order under certification of counsel.

For the convenience of the Court and other interested parties, attached hereto as **Exhibit B** are the changed pages from a blackline comparison of the Revised Order against the Further Revised Order.

WHEREFORE, the Debtors respectfully request that the Court enter the Further Revised Order at its earliest convenience without further notice or hearing.

Dated: June 8, 2018  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Kenneth J. Enos

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**EXHIBIT A**

**Further Revised Order**

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

In re:

**FALLBROOK TECHNOLOGIES INC., et al.**<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

**RE: Docket No. 248**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING  
DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated May 1, 2018, [D.I. 189] (the “**Original Plan**”) having been filed with this Court; and the *Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 190] (the “**Disclosure Statement**”) having been filed with this Court, together with appropriate ballots for voting on the Original Plan, all of which having been approved and sent to holders of claims in Classes 3 and 4 in accordance with the *Order (A) Approving The Disclosure Statement; (B) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, Including (I) Approving Form And Manner Of Solicitation Procedures, (II) Establishing Voting Record Date, (III) Approving Forms Of Ballot, (IV) Establishing Deadline For Receipt Of Ballots, And (V) Approving Procedures For Vote Tabulations; (C) Approving Notice Of Hearing And Objection Procedures With Respect To Confirmation Of The Plan; (D) Approving Notice And Procedures For Assumption Of Unexpired Leases And Executory Contracts Assumed Pursuant To The Plan; And (E) Granting Related*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors' principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.

*Relief* [D.I. 174] (the “**Disclosure Statement Order**”); and the *Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 248] (as amended, modified or supplemented by this Confirmation Order, the “**Plan**”)<sup>2</sup> having been filed with this Court, a copy of which is attached hereto as **Exhibit A** and a redline copy of the Plan showing the modifications from the Original Plan being attached hereto as **Exhibit B** (such modifications, the “**Plan Modifications**”); and the Debtors having filed the *Supplement to the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 225] and the *Notice of Filing of Supplements and Amendments to Plan Supplement* [D.I. 250] (together, the “**Plan Supplement**”); and the Debtors having filed their *Memorandum of Law in Support of Order Confirming Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 253] (the “**Confirmation Memorandum**”); and the Debtors having filed the *Declaration of Roy Messing in Support of Confirmation of the Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 252] (the “**Messing Declaration**”); and the Debtors having filed the *Declaration of Dean E. Colvin in Support of Confirmation of the Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 251] (the “**Colvin Declaration**”); and Debtors having filed the *Declaration of Jane Sullivan on Behalf of Epiq Bankruptcy Solutions, LLC, Regarding Voting and Tabulation of Ballots Cast of The Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 246] (the “**Voting Report**”) attesting to, and certifying the method and results of, the ballot tabulation for the holders of Claims in Class 3 (Senior Secured Claims) and Class 4 (General Unsecured Claims) (collectively, the “**Voting Classes**”) entitled to vote on the Plan; and the hearing to consider confirmation of the Plan having been held before this Court

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

on June 8, 2018 (the “**Confirmation Hearing**”) after due and sufficient notice was given to holders of Claims against, and Equity Interests in, the Debtors and other parties in interest in accordance with the Disclosure Statement Order, title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the local bankruptcy rules of this Court (the “**Local Rules**”), in each case as established by the affidavits of service, mailing, and publication filed with this Court prior to the Confirmation Hearing (collectively, the “**Notice Affidavits**”)<sup>3</sup> and upon all of the proceedings held before this Court and after full consideration of: (a) *Objection by Shareholder John M. Cogswell To The Debtors’ Disclosure Statement and Plan of Reorganization* [D.I. 178]; (b) *Objection by the United States to the Debtors’ Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 242] ((a) and (b), together, the “**Objections**”); (c) the Plan Supplement; (d) the Confirmation Memorandum; (e) the Voting Report; (f) testimony proffered or presented at the Confirmation Hearing; (g) the Messing Declaration, the Colvin Declaration and any other declarations and/or affidavits filed with this Court; (h) all other evidence proffered or adduced at, memoranda and objections filed in connection with and arguments of counsel made at, the Confirmation Hearing; and (i) the entire record of these Chapter 11 Cases; having found that the legal and factual bases set forth in the filings with the Court and presented at the Confirmation Hearing establish just cause for the relief granted herein; and having considered the Objections to the Plan and its confirmation, and the Objections being consensually resolved or withdrawn, or overruled on the merits; and after due deliberation thereon and good cause appearing therefor, this Court hereby makes and issues the following Findings of Fact and Conclusions of Law:

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<sup>3</sup> The Notice Affidavits are located at D.I. 134, 184, 196 and 202.

**Findings of Fact and Conclusions of Law**

IT IS HEREBY FOUND AND DETERMINED THAT:

A. Findings of Fact; Conclusions of Law. The findings and conclusions set forth herein, in the recitals, and in the record of the Confirmation Hearing constitute the Court's findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Bankruptcy Rules 7052 and 9014. To the extent any of the following findings of fact constitute conclusions of law, or vice versa, they are adopted as such.

B. Jurisdiction; Venue; Core Proceeding (28 U.S.C. §§ 157, 1334(a), 1408 and 1409). This Court has jurisdiction over the Chapter 11 Cases pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157(b)(2) and this Court has jurisdiction to determine whether the Plan complies with the applicable provisions of the Bankruptcy Code and should be confirmed, and to enter a final order with respect thereto. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Venue in the District of Delaware was proper as of the Petition Date and continues to be proper.

C. Chapter 11 Petitions and Joint Administration of Cases. On February 26, 2018 (the "**Petition Date**"), each Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code (the "**Chapter 11 Cases**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. In accordance with the *Order Directing Joint Administration of Related Chapter 11 Cases* [D.I. 28], the Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to

Bankruptcy Rule 1015(b). No trustee, examiner, or committee has been appointed in these Chapter 11 Cases. No statutory committee of unsecured creditors has been appointed pursuant to section 1102 of the Bankruptcy Code.

D. Judicial Notice. This Court takes judicial notice of the docket in these Chapter 11 Cases maintained by the Clerk of this Court, including, without limitation, all pleadings and other documents filed, all orders entered, all prior hearing transcripts and evidence and argument made, proffered or adduced at the hearings held before this Court during the pendency of these Chapter 11 Cases.

E. Objections Overruled. All parties have had a full and fair opportunity to be heard on all issues raised by objections to confirmation of the Plan. All unresolved objections, statements, informal objections, and reservations of rights, if any, related to confirmation of the Plan, are OVERRULED on the merits.

F. Transmittal and Mailing of Materials, Notice. As required by the Disclosure Statement Order, and as evidenced by an affidavit filed with the Court on May 4, 2018 [D.I. 196], the Debtors caused notice of the Confirmation Hearing to be published in the national edition of *The New York Times* on May 4, 2018. As required by the Disclosure Statement Order, and as evidenced by an affidavit filed with the Court on May 10, 2018 [D.I. 202], Epiq Bankruptcy Solutions, LLC timely mailed to holders of Claims in the Voting Classes, as of the Voting Record Date (as defined in the Disclosure Statement Order), solicitation packages (the “**Solicitation Packages**”) containing copies of: (a) the Disclosure Statement, including the Original Plan as an exhibit thereto; (b) the Confirmation Hearing Notice, which provided written notice of (i) the Court’s approval of the Disclosure Statement, (ii) the Voting Record Date, (iii) the Voting Deadline (i.e., 5:00 p.m. (prevailing Eastern Time) on June 1, 2018), (iv) the time,



date and place of the Confirmation Hearing, and (v) the deadline and procedures for filing objections to confirmation of the Original Plan; and (c) the appropriate Ballot. As evidenced by the Notice Affidavits, the transmittal and service of the Original Plan, the Disclosure Statement, the Ballots, and the Confirmation Hearing Notice were adequate and sufficient under the circumstances, and all parties have been given due, proper, timely, and adequate notice, and an opportunity to appear and be heard with respect thereto. The Confirmation Hearing Notice informed creditors and other parties in interest that the Confirmation Hearing could be adjourned, and informed them of how to access an electronic website with up to date information regarding the scheduling of the Confirmation Hearing. Creditors also had the ability to request that they be placed on the list of parties regarding notice pursuant to Bankruptcy Rule 2002. Accordingly, due and proper notice has been given with respect to the Confirmation Hearing and the deadlines and procedures for filing objections to confirmation of the Plan in accordance with the Scheduling Order, the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

G. Plan Modifications. Adequate and sufficient notice of the Plan Modifications has been given, and no other or further notice or re-solicitation of votes on the Plan with respect thereto is or shall be required. The Plan, as modified by the Plan Modifications, satisfies section 1127 of the Bankruptcy Code and does not require any additional postpetition disclosure or solicitation.

H. Burden of Proof. The Debtors, as proponents of the Plan, have met their burden of proving the elements of sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence.

I. Plan Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1)). As set forth below, the Plan complies with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(1) of the Bankruptcy Code:

(a) Proper Classification of Claims and Equity Interests (11 U.S.C. §§ 1122 and 1123(a)(1)). The Plan designates nine Classes of Claims and Equity Interests, aside from Claims that need not be classified, including Administrative Claims, Priority Tax Claims, DIP Facility Claims, and all United States Trustee quarterly fees (plus any interest due and payable). The Claims or Equity Interests placed in each Class are substantially similar to other Claims or Equity Interests, as the case may be, in such Class. Valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Equity Interests created under the Plan, and such Classes do not unfairly discriminate between or among holders of Claims or Equity Interests. The Convenience Class is “reasonable and necessary for administrative convenience” pursuant to section 1122(b) of the Bankruptcy Code under the circumstances of these Chapter 11 Cases. The overall classification under the Plan is reasonable and necessary to implement the Plan and is proper under the Bankruptcy Code. Thus, the Plan satisfies sections 1122 and 1123(a)(1) of the Bankruptcy Code.

(b) Specification of Unimpaired Classes (11 U.S.C. § 1123(a)(2)). The Plan specifies that Classes 1, 2, 5, 6 and 9 are Unimpaired within the meaning of section 1124 of the Bankruptcy Code, thereby satisfying section 1123(a)(2) of the Bankruptcy Code.

(c) Specification of Treatment of Impaired Classes (11 U.S.C. § 1123(a)(3)). The Plan designates each of Classes 3, 4, 7 and 8 as Impaired within the meaning of

section 1124 of the Bankruptcy Code and specifies the treatment of Claims and Equity Interests in those Classes, thereby satisfying section 1123(a)(3) of the Bankruptcy Code.

(d) No Discrimination (11 U.S.C. § 1123(a)(4)). The Plan provides for the same treatment by the Debtors for each Claim or Equity Interest in a particular Class, unless a holder of a particular Claim or Interest has agreed to less favorable treatment, which satisfies section 1123(a)(4) of the Bankruptcy Code.

(e) Implementation of Plan (11 U.S.C. § 1123(a)(5)). The Plan and the Plan Supplement provide adequate and proper means for implementation of the Plan, thereby satisfying section 1123(a)(5) of the Bankruptcy Code, including, without limitation, (i) the continued corporate existence of the Reorganized Debtors, (ii) all actions set forth in Article V of the Plan, (iii) the funding of the Plan, (iv) the cancellation of certain securities and agreements, (v) the cancellation of certain existing security interests, (vi) the composition of the board of directors and officers of Reorganized Fallbrook, (vii) the authorization, issuance, and delivery of the New Common Stock, and (viii) taking of all necessary and appropriate actions by the Debtors or Reorganized Debtors, as applicable, to effectuate the transactions under and in connection with the Plan.

(f) Charter Provisions (11 U.S.C. § 1123(a)(6)). In accordance with section 1123(a)(6) of the Bankruptcy Code, the Reorganized Fallbrook Constituent Documents, which are included in the Plan Supplement, contain provisions prohibiting the issuance of non-voting equity securities and provide for the appropriate distribution of voting power among all classes of equity securities authorized for issuance under the Plan, thereby satisfying section 1123(a)(6) of the Bankruptcy Code.

(g) Selection of Officers and Directors (11 U.S.C. § 1123(a)(7)). Section V.L of the Plan provides that on the Effective Date, the Reorganized Fallbrook Board shall consist of five members, four of which are to be appointed by the Kayne Supporting Creditors and the fifth is to be the Debtors' chief executive officer. Any subsequent Reorganized Fallbrook Board shall be elected, classified, and composed in a manner consistent with the Reorganized Fallbrook Constituent Documents and applicable non-bankruptcy law. The provisions of the Plan for the selection of directors and officers are consistent with the interests of creditors, the new equity security holders and public policy. The Debtors have identified the directors and officers of each Reorganized Debtor in the Plan Supplement to the extent such information is available. Consequently, the requirements of section 1123(a)(7) of the Bankruptcy Code have been met.

(h) Impairment/Unimpairment (11 U.S.C. § 1123(b)(1)). In accordance with section 1123(b)(1) of the Bankruptcy Code, Article IV of the Plan impairs or leaves unimpaired, as the case may be, each Class of Claims and Equity Interests.

(i) Assumption and Rejection of Executory Contracts and Unexpired Leases (11 U.S.C. § 1123(b)(2)). Article VI of the Plan addresses the assumption and rejection of executory contracts and unexpired leases, and meets the requirements of section 365(b) of the Bankruptcy Code. As required by the Disclosure Statement Order and Section VI.B of the Plan, on May 18, 2018, the Debtors filed with the Court and served on the applicable counterparties identified therein the *Notice of (I) Possible Assumption of Executory Contracts and Unexpired Leases to be Assumed Under the Plan, (II) Fixing of Cure Amounts Related Thereto and (III) Deadline to Object Thereto* [D.I. 207], which was supplemented on May 25, 2018 [D.I. 221] (collectively, the “**Cure Notice**”). The

Cure Notice, which included a schedule of cure amounts due under section 365 of the Bankruptcy Code with respect to the executory contracts and unexpired leases identified therein. Affidavits of service evidencing service of the Cure Notice were filed with the Court on May 23 and 31, 2018 [D.I. 216, 237]. There was one objection to the Debtors' assumption of executory contracts and unexpired leases contained in the Cure Notice, which was filed by Wells Fargo Equipment Leasing, Inc. [D.I. 239] (the "**Wells Objection**"). The Debtors intend to resolve the Wells Objection in accordance with Section VI.B of the Plan and the terms of this Confirmation Order.

(j) Settlement and Preservation of Claims and Causes of Action (11 U.S.C. § 1123(b)(3)). The Plan is consistent with Bankruptcy Code section 1123(b)(3). In consideration of the distributions, settlements, and other benefits provided under the Plan, the provisions of the Plan constitute a good-faith compromise of all Claims, Equity Interests, and controversies relating to the contractual, legal, and subordination rights that a holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any distribution to be made on account of such Allowed Claim or Equity Interest. The compromise and settlement of such Claims and Equity Interests embodied in the Plan is in the best interest of the Debtors, the Estates, and all holders of Claims and Equity Interests, and are fair, equitable, and reasonable. Section V.R of the Plan provides that the Reorganized Debtors will retain and be entitled to assert all Litigation Rights, after the Effective Date, which includes any Claims, suits, proceedings and Causes of Action that the Debtors or the Estates may hold against any Person, except for those that have been expressly released under the Plan. The provisions regarding the preservation of the Litigation Rights in the Plan are appropriate, fair, equitable, and

reasonable, and are in the best interest of the Debtors, the Estates, and holders of Claims and Equity Interests.

(k) Modification of Rights (11 U.S.C. § 1123(b)(5)). In accordance with section 1123(b)(5) of the Bankruptcy Code, Article IV of the Plan modifies or leaves unaffected, as the case may be, the rights of certain holders of Claims and Equity Interests.

(l) Additional Plan Provisions (11 U.S.C. § 1123(b)(6)). In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional appropriate provisions that are not inconsistent with applicable provisions of the Bankruptcy Code.

(m) The Debtors are Not Individuals (11 U.S.C. § 1123(c)). The Debtors are not individuals. Accordingly, section 1123(c) of the Bankruptcy Code is not applicable in these Chapter 11 Cases.

(n) Cure of Defaults (11 U.S.C. § 1123(d)). In accordance with section 1123(d) of the Bankruptcy Code, Article VI of the Plan provides for the satisfaction of Cure Claims associated with executory contracts or unexpired leases to be assumed pursuant to the Plan in accordance with Bankruptcy Code section 365(b). As described above, the Debtors timely filed and served their Cure Claim Notice and received one timely objection (ie, the Wells Objection), which the Debtors intend to resolve in accordance with Section VI.B of the Plan and the terms of this Confirmation Order.

J. Debtors' Compliance with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2)). The Debtors and their agents have complied in good faith with the applicable provisions of the Bankruptcy Code, thereby satisfying section 1129(a)(2) of the Bankruptcy Code. Specifically: (i) the Debtors are eligible to be debtors under section 109 of the

Bankruptcy Code and are proper proponents of the Plan under section 1121(a) of the Bankruptcy Code; (ii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, except as otherwise provided or permitted by orders of this Court; and (iii) the Debtors have complied with the applicable provisions of the Bankruptcy Code, including sections 1125 and 1126(b), the Bankruptcy Rules and applicable non-bankruptcy rules and regulations and the Scheduling Order in transmitting the Solicitation Materials and in soliciting and tabulating votes to accept or reject the Plan. The Debtors complied with applicable provisions of the Bankruptcy Code in transmitting the Confirmation Hearing Notice and otherwise satisfied section 1129(a)(2) of the Bankruptcy Code.

K. Plan Proposed in Good Faith (11 U.S.C. § 1129(a)(3)). The Debtors have proposed the Plan in good faith and not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code. In determining that the Plan has been proposed in good faith, this Court has examined the totality of the circumstances surrounding the filing of these Chapter 11 Cases, the terms of the Restructuring Support Agreement, the Plan (and the Plan Supplement) and the formulation and confirmation of the Plan. The good faith of each of the Debtors is evident from the facts and records of these Chapter 11 Cases, the Disclosure Statement and the hearing thereon, the record of the Confirmation Hearing, and other proceedings held in these Chapter 11 Cases. The Debtors negotiated the Plan (and to the extent applicable, the Plan Supplement) and participated in the Plan (and to the extent applicable, the Plan Supplement) formulation process at arms' length and in good faith. The Plan itself, and the process leading to its formation, provide independent evidence that: (i) the Debtors negotiated the Plan in good faith; (ii) the Plan serves the public interest; and (iii) the Plan provides for the fair treatment of holders of Claims and Equity Interests. Consistent with the overriding purpose

of the Bankruptcy Code, these Chapter 11 Cases were filed, and the Plan was proposed, with the legitimate and honest purpose of reorganizing the Debtors' estates and maximizing the value of the Debtors' assets.

L. Payments for Services or Costs and Expenses (11 U.S.C. § 1129(a)(4)). Except as otherwise provided or permitted by the Plan, or orders of this Court, any payment made or to be made by the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases, has been approved by, or is subject to the approval of, this Court as reasonable, thereby satisfying section 1129(a)(4) of the Bankruptcy Code.

M. Directors, Officers and Insiders (11 U.S.C. § 1129(a)(5)). The Debtors have complied with section 1129(a)(5) of the Bankruptcy Code. The identity and affiliations of the persons proposed to serve as the initial directors and officers of the Reorganized Debtors after confirmation of the Plan have been fully disclosed in the Plan Supplement, and the appointment to, or the continuation in, such offices by such persons is consistent with the interests of the Debtors' creditors and equity security holders and with public policy. The identity of any insider that will be employed or retained by the Reorganized Debtors and the nature of such insider's compensation also has been fully disclosed in the Plan Supplement.

N. No Rate Changes (11 U.S.C. § 1129(a)(6)). The Plan does not provide for any change in rates subject to governmental regulation. Thus, section 1129(a)(6) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

O. Best Interests of Creditors Test (11 U.S.C. § 1129(a)(7)). The Plan satisfies section 1129(a)(7) of the Bankruptcy Code. The liquidation analysis contained in Article XI.B of the Disclosure Statement and other evidence proffered or adduced at the Confirmation



Hearing: (i) are persuasive and credible; (ii) have not been controverted by other evidence or challenged; and (iii) establish that each holder of a Claim or Equity Interest in an Impaired Class either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

P. Acceptance or Rejection by Certain Classes (11 U.S.C. § 1129(a)(8)). Holders of Claims in the Voting Classes were the only holders of Claims entitled to vote to accept or reject the Plan pursuant to the provisions of the Bankruptcy Code. As set forth in the Missing Declaration, approximately seventy-seven percent (77%) in amount of Holders of Claims in Class 4 signed the Restructuring Support Agreement, thus committing them to vote in favor of the Plan. In addition, as set forth in the Voting Report, Holders of Claims in Classes 3 and 4 have accepted the Plan pursuant to section 1126(c) of the Bankruptcy Code. Holders of Claims in Classes 1, 2, 5, 6 and 9 are unimpaired and deemed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code. Holders of Claims in Classes 7 and 8 are conclusively deemed to have rejected the Plan (collectively, the “**Deemed Rejecting Classes**”).

Notwithstanding the lack of compliance with section 1129(a)(8) of the Bankruptcy Code with respect to the Deemed Rejecting Classes, the Plan is confirmable because, as set forth below, it satisfies section 1129(b)(1) of the Bankruptcy Code with respect to such Classes. As set forth in the Voting Report, the percentages of Holders of Claims in Classes entitled to vote on the Plan that voted to accept or reject the Plan are as follows:

<b>Plan Class of Impaired Creditors</b>	<b>Amount Accepting Plan</b> (% of Amount Voted)	<b>Amount Rejecting Plan</b> (% of Amount Voted)	<b>Number Accepting Plan</b> (% of Number Voted)	<b>Number Rejecting Plan</b> (% of Number Voted)
CLASS 3	100	0	100	0
CLASS 4	100	0	100	0

Q. Treatment of Priority Claims (11 U.S.C. § 1129(a)(9)). Article III of the Plan provides for the treatment of Administrative Claims, Priority Tax Claims and other Claims afforded specific treatment under section 1129(a)(9) of the Bankruptcy Code that satisfies the requirements of section 1129(a)(9) of the Bankruptcy Code.

R. Acceptance of At Least One Impaired Class (11 U.S.C. § 1129(a)(10)). As set forth in the Voting Report, Holders of Claims in Classes 3 and 4, each of which are Impaired under the Plan, have voted to accept the Plan in the requisite numbers and amounts without including any acceptance of the Plan by any insider. Thus, the Plan satisfies section 1129(a)(10) of the Bankruptcy Code.

S. Feasibility (11 U.S.C. § 1129(a)(11)). The evidence submitted regarding feasibility: (i) was reasonable, persuasive, accurate and credible; (ii) has not been controverted by other evidence; (iii) utilizes reasonable and appropriate methodologies and assumptions; (iv) establishes that the Reorganized Debtors will have sufficient funds available to meet obligations under the Plan; and (v) establishes that confirmation of the Plan is not likely to be followed by a liquidation or need for a further financial reorganization of the Reorganized Debtors. Accordingly, the Plan satisfies section 1129(a)(11) of the Bankruptcy Code.

T. Payment of Certain Fees (11 U.S.C. § 1129(a)(12)). The Plan satisfies section 1129(a)(12) of the Bankruptcy Code. Section III.F of the Plan provides for the payment of all fees payable by the Debtors under 28 U.S.C. § 1930.

U. Continuation of Retiree Benefits (11 U.S.C. § 1129(a)(13)). Section 1129(a)(13) of the Bankruptcy Code does not apply to the Debtors, as the Debtors are not obligated for any retiree benefits. Therefore, section 1129(a)(13) of the Bankruptcy Code is not applicable in the Chapter 11 Cases.

V. Domestic Support Obligations; Unsecured Claims Against Individual Debtors; Transfers by Non-Profit Organizations (11 U.S.C. §§ 1129(a)(14)–(16)). The Debtors have no domestic support obligations, are not individuals, and are not non-profit organizations. Therefore, sections 1129(a)(14), (15) and (16) of the Bankruptcy Code do not apply to the Chapter 11 Cases.

W. Confirmation of Plan Over Nonacceptance of Impaired Classes (11 U.S.C. § 1129(b)). As described above, the Plan satisfies all of the applicable requirements of section 1129(a) of the Bankruptcy Code other than section 1129(a)(8). Pursuant to section 1129(b)(1) of the Bankruptcy Code, the Plan may be confirmed notwithstanding the fact that not all Impaired Classes have voted to accept the Plan. Requisite numbers and amounts of Holders of Claims in Classes 3 and 4, the only Classes entitled to vote on the Plan, have voted to accept the Plan. Class 7 is a Class of unsecured Subordinated Claims that is deemed to reject. Class 8 is a Class of Equity Interests in Fallbrook that is also deemed to reject. No holders of Claims junior to the holders of the unsecured Claims in Class 7 will receive or retain any property under the Plan. Similarly, no holders of Equity Interests junior to the holders of the Parent Interests in Class 8 will receive or retain any property under the Plan. Accordingly, the requirements of section 1129(b)(2)(B)(ii) of the Bankruptcy Code are satisfied with respect to Class 7, and the Plan is fair and equitable with respect to such Class and does not unfairly discriminate against such Class. Similarly, the requirements of sections 1129(b)(2)(C)(ii) of the Bankruptcy Code is

satisfied with respect to the rejecting Class of Parent Interest holders (*i.e.*, Class 8), the Plan is fair and equitable with respect to such Class and the Plan does not unfairly discriminate against such Class. Accordingly, the Plan satisfies the requirements of section 1129(b) of the Bankruptcy Code with respect to all rejecting or Deemed Rejecting Classes and shall be confirmed notwithstanding the requirements of section 1129(a)(8) of the Bankruptcy Code.

X. Confirmation of Only One Plan (11 U.S.C. § 1129(c)). The Plan is the only plan of reorganization for each Debtor considered by this Court for confirmation, in accordance with section 1129(c) of the Bankruptcy Code.

Y. Principal Purpose (11 U.S.C. § 1129(d)). The principal purpose of the Plan is neither the avoidance of taxes nor the avoidance of section 5 of the Securities Act, and no governmental unit has objected to the confirmation of the Plan on any such grounds. The Plan, therefore, satisfies the requirements of section 1129(d) of the Bankruptcy Code.

Z. Small Business Cases (11 U.S.C. § 1129(e)). None of the Chapter 11 Cases are small business cases, as that term is defined in the Bankruptcy Code, and accordingly section 1129(e) of the Bankruptcy Code is inapplicable.

AA. Good Faith Solicitation (11 U.S.C. § 1125(e)). Based upon the record before this Court, (i) each Debtor, (ii) the DIP Agent and DIP Lenders, (iii) the New First Lien Agent and New First Lien Lenders, (iv) the New Second Lien Agent and New Second Lien Lenders, (v) the Existing Noteholders and Existing Notes Collateral Agent, (vi) the Bridge Agent and the Bridge Noteholders and (vii) with respect to each of the foregoing entities, such entity's professionals, advisors, directors, officers, and employees, but solely in the foregoing capacities and only if serving in such capacity on or after the Petition Date, together with their respective predecessors, successors, and assigns (collectively, the "**Released Parties**") participated in the formation of,

and the solicitation of votes on the Plan and activities related thereto, in each case, in good faith and in compliance with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and any applicable non-bankruptcy rules or regulations. In addition, the Released Parties participated in good faith and in compliance with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, Local Rules and applicable non-bankruptcy law in the offer, issuance, sale, or purchase of a security, offered or sold under the Plan. The Released Parties, therefore, are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and, to the extent applicable, the exculpatory and injunctive provisions set forth in Article VIII of the Plan.

BB. Satisfaction of Confirmation Requirements. Based on the foregoing, the Plan satisfies the requirements for confirmation set forth in section 1129 of the Bankruptcy Code. Upon confirmation and the occurrence of the Effective Date, the Plan shall be binding upon all holders of Claims and Equity Interests, including holders of Claims that voted to reject the Plan and the Deemed Rejecting Classes.

CC. Bankruptcy Rule 3016. The Plan is dated, and identifies the entities submitting it, thereby satisfying Bankruptcy Rule 3016(a). The Confirmation Declaration with the Clerk of this Court satisfies Bankruptcy Rule 3016(b).

DD. Bankruptcy Rule 3017. The Debtors have given proper and sufficient notice of the Confirmation Hearing, as required by Bankruptcy Rule 3017(d) and as modified by the Scheduling Order. The Solicitation Procedures, pursuant to which the Solicitation Materials were provided to the Holders of Impaired Claims, were adequate, thereby satisfying Bankruptcy Rule 3017(e).

EE. Bankruptcy Rule 3018. The solicitation of votes to accept or reject the Plan solely from the Holders of Impaired Claims satisfies Bankruptcy Rule 3018(a). The Plan was

transmitted to all parties in interest entitled to vote thereon, sufficient time was prescribed for such entities to accept or reject the Plan, and the Solicitation Procedures complied with sections 1125 and 1126 of the Bankruptcy Code, thereby satisfying Bankruptcy Rule 3018(b).

FF. Rule 9019(a) Settlement. Except as otherwise provided in the Plan and this Confirmation Order, the Plan is a settlement between and among the Debtors and their creditors and equity holders of all claims and interests against the Debtors, pending or threatened, or that were or could have been commenced against the Debtors prior to the date of entry of this Confirmation Order (other than the Reorganized Debtors' ability to prosecute objections to Claims and other retained Causes of Action to the extent preserved under the Plan) (collectively, the "**Plan Settlement**"). The Plan Settlement: (i) is a permitted means of implementing the Plan pursuant to section 1123(b)(3) of the Bankruptcy Code; (ii) is an integral element of the transactions incorporated into the Plan; (iii) confers material benefits on, and is in the best interests of the Debtors, their Estates, and holders of Claims and Interests; (iv) is fair, equitable, and well within the range of reasonableness; and (v) is consistent with sections 105, 1123, and 1129 of the Bankruptcy Code, other provisions of the Bankruptcy Code, Bankruptcy Rule 9019, and other applicable law.

GG. Exit Financing. In conjunction with the Effective Date, the Reorganized Debtors: (i)(A) shall convert the principal and accrued interest and other obligations in respect of the loans under the DIP Facility into the New First Lien Facility, (B) the \$1.25 million fee and \$500,000 in other fees due and payable to GLC Advisors & Co., LLC shall be converted on a dollar-for-dollar basis under the New First Lien Facility, and (C) expect to utilize up to \$7 million of proceeds from the New First Lien Facility as working capital after the Effective Date, in accordance with the terms and conditions set forth in the Plan Supplement; and (ii) shall satisfy

the Senior Secured Claims by providing each Holder of an Allowed Senior Secured Claim with its Pro Rata share of (X) the New Second Lien Facility (in accordance with the terms and conditions set forth in the Plan Supplement), and (Y) fifty-seven percent (57%) of the New Common Stock, as set forth in Section IV.C of the Plan. The Exit Facilities are essential elements of the Plan, necessary for confirmation and consummation of the Plan and critical to the overall feasibility of the Plan. Entry into the Exit Facilities is in the best interest of the Debtors, their estates and all holders of Claims or Interests. The Debtors have exercised reasonable business judgment in determining to enter into the Exit Facilities. The terms and conditions of both the New First Lien Facility and the New Second Lien Facility are, or will be, fair and reasonable, were, or will be, negotiated in good faith and at arm's length, and any credit extended to the Reorganized Debtors by the lenders pursuant to the New First Lien Facility shall be deemed to have been extended, made, assumed and assigned or issued in good faith. The Plan, together with the commitment for the New First Lien Facility, was negotiated between the Debtors and the counterparties thereto in good faith and at arm's-length. The terms of the Plan, including the Debtors' conversion of the DIP Facility into the New First Lien Facility, the Debtors' satisfaction of the Senior Secured Claims through the exchange of such Claims into the New Second Lien Facility and New Common Stock, and the Debtors' entry into the Exit Facilities are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. The terms of the Plan, including the Exit Facilities, are in the best interests of the Reorganized Debtors, the Debtors, and their estates, creditors and other parties in interest.

HH. Releases, Exculpations and Injunctions. Pursuant to section 1123(b)(3) of the Bankruptcy Code and Bankruptcy Rule 9019(a), the settlements, compromises, releases,

discharges, exculpations and injunctions set forth in the Plan and implemented by this Confirmation Order are fair, equitable, reasonable and in the best interests of the Debtors, the Reorganized Debtors and their Estates, creditors and equity holders. The releases of non-Debtors under the Plan are fair to holders of Claims and are necessary to the proposed reorganization, thereby satisfying the requirements of *In re Continental Airlines, Inc.*, 203 F.3d 203, 214 (3d Cir. 2000), *In re Indianapolis Downs, LLC*, 486 B.R. 286, 305 (Bankr. D. Del. 2013), and *In re Zenith Electronics Corp.*, 241 B.R. 92, 110-11 (Bankr. D. Del. 1999). The record of the Confirmation Hearing and the Chapter 11 Cases is sufficient to support the releases, exculpations and injunctions provided for in Article VIII of the Plan.

II. Retention of Jurisdiction. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, and notwithstanding the entry of this Confirmation Order or the occurrence of the Effective Date, this Court, except as otherwise provided in the Plan or herein, shall retain jurisdiction over all matters arising out of, and related to, the Chapter 11 Cases and the Plan to the fullest extent permitted by law, including, but not limited to, the matters set forth in Article IX of the Plan.

JJ. Waiver of Stay. Under the circumstances, it is appropriate that the 14-day stay imposed by the Bankruptcy Rules 3020(e) and 7062(a) be waived.

KK. Conditions Precedent to Confirmation of the Plan. Each of the conditions precedent to confirmation of the Plan, as set forth in Article XI.A. of the Plan, has been satisfied or duly waived in accordance with Article XI.C. of the Plan.

LL. Likelihood of Satisfaction of Conditions Precedent to the Effective Date. Each of the conditions precedent to the Effective Date, as set forth in Article XI.B. of the Plan, has been or is reasonably likely to be satisfied or waived in accordance with Article XI.C. of the Plan.



**DECREES**

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECREED AND DETERMINED THAT:

1. Findings of Fact; Conclusions of Law. The above-referenced recitals, findings of fact and conclusions of law are hereby incorporated by reference as though fully set forth herein and constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable herein by Bankruptcy Rule 9014. To the extent that any finding of fact is determined to be a conclusion of law, it is deemed so, and vice versa.

2. Solicitation. The solicitation of votes on the Plan complied with Bankruptcy Code sections 1125 and 1126, Bankruptcy Rules 3017 and 3018, all other provisions of the Bankruptcy Code, and all other applicable rules, laws, and regulations, and was appropriate and satisfactory, and is approved in all respects.

3. Plan Classification Controlling. The classification of Claims and Equity Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. The classifications and amounts set forth on the Ballots tendered to, or returned by, the holders of Claims in the Voting Classes: (i) were set forth on the Ballots solely for purposes of voting to accept or reject the Plan; (ii) do not necessarily represent, and in no event shall be deemed to modify or otherwise affect, the actual Allowed amount and classification of such Claims under the Plan for distribution purposes; and (iii) shall not be binding on the Debtors, their estates, or the Reorganized Debtors, except with respect to determining votes to accept or reject the Plan. The classification scheme of the Plan and the treatment of all Claims and Interests as provided thereunder are hereby approved.

4. Confirmation. The Plan, a copy of which is annexed hereto as **Exhibit A**, as supplemented by the Plan Supplement (which is incorporated by reference into, and forms an integrated part of, the Plan), and as modified by this Confirmation Order, is CONFIRMED under section 1129 of the Bankruptcy Code, as set forth herein. Each term and provision of the Plan is valid and enforceable pursuant to its terms, is integral to the Plan and this Confirmation Order and may not be deleted or modified without the Debtors' consent and is non-severable and mutually dependent.

5. Objections to the Plan and Confirmation. Any objections or responses to confirmation of the Plan and any reservation of rights contained therein that have not been withdrawn, waived or settled prior to the entry of this Confirmation Order are hereby OVERRULED on the merits and in the entirety, and all withdrawn objections or responses are hereby deemed withdrawn with prejudice.

6. Modifications to Plan; Deemed Acceptance. The Plan Modifications following the solicitation of votes thereon constitute technical changes or modifications that do not otherwise materially and adversely affect or change the treatment of any other Claim or Equity Interest. In accordance with Bankruptcy Rule 3019, the Plan Modifications do not require additional disclosure under section 1125 of the Bankruptcy Code or re-solicitation of votes under section 1126 of the Bankruptcy Code, and do not require that Holders of Claims and Equity Interests be afforded an opportunity to change previously cast acceptances or rejections of the Original Plan. In accordance with Bankruptcy Code section 1127 and Bankruptcy Rule 3019, all holders of Claims who voted to accept the Original Plan or who are conclusively presumed to have accepted the Plan are deemed to have accepted the Original Plan, as modified in the Plan.

7. Disputed Claims. From and after the Effective Date, the Reorganized Debtors shall have the right to make and to file objections to, or otherwise contest the allowance of, Claims. The right of the United States Trustee to object to the allowance of Claims, including Administrative Claims, is hereby reserved. Objections to, or other proceedings contesting the allowance of, Claims (other than Professional Fee Claims) may be litigated to judgment, settled or withdrawn, in the Reorganized Debtors' sole discretion. The Reorganized Debtors may settle any such objections or proceedings without Bankruptcy Court approval or may seek Bankruptcy Court approval without notice to any Person other than the affected claimant, the United States Trustee and any other entity whose rights are affected by the settlement.

8. Administrative Claim Bar Date. Except as set forth in the Plan, all requests for payment of Administrative Claims that accrued on or before the Effective Date (other than Professional Fee Claims, which are subject to the provisions of Section III.C of the Plan, DIP Facility Claims, or Claims by any trade creditor or customer of the Debtors whose Claim is on account of ordinary course of business goods or services provided to the Debtors during the course of the Chapter 11 Cases) must be filed and served on the Reorganized Debtors pursuant to the procedures specified in this Confirmation Order and the notice of entry of the Confirmation Order no later than the first Business Day that is thirty (30) days after the Effective Date. All Holders of Administrative Claims not paid prior to the Confirmation Date must file with this Court and serve upon the Debtors or Reorganized Debtors, as applicable, a motion requesting payment of such Administrative Claim on or before the Administrative Claims Bar Date or shall be forever barred, estopped, and enjoined from asserting such Administrative Claim against the Debtors or Reorganized Debtors or their property, and such Administrative Claims shall be deemed discharged as of the Effective Date. The notice of entry of the Confirmation Order to be

delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f) will set forth the Administrative Claims Bar Date and constitute good and sufficient notice of the Administrative Claims Bar Date. For the avoidance of doubt, the establishment of the Administrative Claims Bar Date in the Plan and this Confirmation Order does not extend the deadline established by this Court in the Bar Date Order to file Administrative Claims arising under section 503(b)(9) of the Bankruptcy Code (collectively, “**503(b)(9) Claims**”) against the Debtors and their Estates. Notwithstanding anything else in this Confirmation Order to the contrary, the U.S. Trustee shall not be required to file any proof of claim or request for payment of quarterly fees under 28 U.S.C. § 1930(a)(6) or interest under 31 U.S.C. § 3717.

9. Professional Compensation and Reimbursement Claims. All final applications for Professional Fee Claims for services rendered in connection with the Chapter 11 Cases prior to the Effective Date shall be filed with the Bankruptcy Court no later than forty-five (45) days after the Effective Date. Holders of Professional Fee Claims that are required to file and serve applications for final allowance of their Professional Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Claims against the Debtors, the Reorganized Debtors, and their respective properties, and such Professional Fee Claims shall be deemed discharged as of the Effective Date. Objections to any Professional Fee Claim must be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, the United States Trustee, the Kayne Supporting Creditors, and such other entities who are designated by the Bankruptcy Rules, this Confirmation Order, or other order of the Bankruptcy Court no later than sixty-five (65) days following the Effective Date. Objections must be served on the Reorganized Debtors, counsel for the Reorganized Debtors, the Kayne Supporting Creditors, and the Holders of Professional Fee Claims requesting payment.

Professional Fee Claims shall be paid by the Reorganized Debtors, in full in Cash, when Allowed by a Final Order of the Bankruptcy Court.

10. Withholding and Reporting Requirements. The Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions under the Plan shall be subject to any such withholding and reporting requirements. In connection with a Distribution under the Plan, the Reorganized Debtors may take whatever actions are necessary to comply with applicable U.S. federal, state, local and non-U.S. tax withholding obligations, including either withholding from Distributions a portion of the New Common Stock and selling such securities or requiring such Holder of an Allowed Claim to contribute the necessary Cash to satisfy the tax withholding obligations. The Reorganized Debtors shall be entitled to deduct any U.S. federal, state or local withholding taxes from any Cash payments made with respect to Allowed Claims, as appropriate. Any Holder of an Allowed Claim shall provide the Reorganized Debtors with information and forms required to satisfy its obligations under this section, as determined within the reasonable discretion of the Reorganized Debtors (“**Required Tax Forms**”). Any holder of an Allowed Claim that fails to provide the Reorganized Debtors with the Required Tax Forms within forty-five (45) days (or any longer period consented to by the Reorganized Debtors in writing) after a written request from the Reorganized Debtors for Required Tax Forms shall have all Distributions on account of such Allowed Claims deemed an Unclaimed Distribution as of the expiration of such period and shall have its Allowed Claim treated in accordance with Section VII.D or VII.E of the Plan. Any amounts withheld pursuant to this provision shall be deemed to have been distributed to and received by the applicable recipient for all purposes of the Plan. Notwithstanding the foregoing, each Holder of an Allowed Claim that is to receive a

Distribution under the Plan shall have the sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed on such Holder by any Governmental Unit, including income, withholding, and other tax obligations, on account of such distribution.

11. Management Incentive Plan. Pursuant to the Plan, thirty (30) percent of the New Common Stock will be reserved for issuance as incentive awards under a Management Incentive Plan, as described in the Plan and as set forth in further detail in the Plan Supplement, which shall be adopted in form and substance satisfactory to the Reorganized Fallbrook Board. For the avoidance of doubt, nothing in this Confirmation Order or in the Plan shall constitute the Bankruptcy Court's approval or endorsement of the Management Incentive Plan.

12. Documentation. On or before the Effective Date, the Debtors, with the consent of the Kayne Supporting Creditors, may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims receiving Distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of the Plan or this Confirmation Order.

13. Plan Supplement and other Essential Documents and Agreements. The form of documents comprising the Plan Supplement, any other agreements, instruments, certificates or documents related thereto and the transactions contemplated by each of the foregoing are approved, and, upon execution and delivery of the agreements and documents relating thereto by the applicable parties (and the satisfaction of applicable terms and conditions to their effectiveness), shall be in full force and effect and valid, binding and enforceable in accordance

with their terms without the need for any further action, order or approval of this Court, or other act or action under applicable law, regulation, order or rule.

14. Binding Effect. Pursuant to section 1141 of the Bankruptcy Code, effective as of the Confirmation Date, but subject to the occurrence of the Effective Date, and except as expressly provided in the Plan or this Confirmation Order, the terms of this Plan, as well as the documents and instruments contained in the Plan Supplement and this Confirmation Order, shall be binding on: (i) the Debtors; (ii) the Reorganized Debtors; (iii) all parties in interest, holders of Claims against and Equity Interests in the Debtors, whether or not such Claims or Equity Interests are Impaired under the Plan and whether or not, if Impaired, such holders of Claims or Equity Interests accepted the Plan; (iv) each person acquiring property under the Plan; (v) each non-Debtor counterparty to an executory contract or unexpired lease of any of the Debtors; (vi) any Person or entity making an appearance in the Chapter 11 Cases or any other Person in the Chapter 11 Cases; and (vii) the successors and assigns of all of the above-listed entities.

15. Discharge of Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise provided in the Plan or in this Confirmation Order, the confirmation of the Plan shall discharge the Debtors and the Reorganized Debtors from any Claim that arose before the Effective Date, whether or not such Claim is Allowed and whether or not the Holder of such Claim has voted on the Plan, and each such Holder (as well as any trustee or agent on behalf of such Holder) of a Claim or Equity Interest and any Affiliate of such Holder shall be deemed forever to have waived, released, and discharged the Debtors, to the fullest extent permitted by section 1141 of the Bankruptcy Code, of and from any and all Claims, interests, rights, and liabilities that arose prior to the Effective Date. Except as otherwise provided in the Plan, upon the Effective Date, all such Holders of

Claims and Equity Interests and their Affiliates forever shall be precluded and enjoined, pursuant to sections 105, 524, and 1141 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or cancelled Equity Interest in any Debtor or any Reorganized Debtor; *provided, however*, that, notwithstanding the foregoing, nothing in the Plan is intended to release any insurer from having to provide coverage under any policy to which the Debtors or the Reorganized Debtors and or their current or former officers, directors, employees, representatives or agents are parties or beneficiaries.

16. Injunction.

(a) General. Except as otherwise expressly provided in the Plan, this Confirmation Order, or a separate order of the Bankruptcy Court, all entities who have held, hold, or may hold Claims against the Debtors that arose before or were held as of the Effective Date, are permanently enjoined, on and after the Effective Date, from (1) commencing or continuing in any manner any action or other proceeding of any kind against the Debtors or the Reorganized Debtors, with respect to any such Claim, (2) the enforcement, attachment, collection, or recovery by any manner or means of any judgment, award, decree, or order against the Debtors or the Reorganized Debtors on account of any such claim, (3) creating, perfecting, or enforcing any encumbrance of any kind against the Debtors or the Reorganized Debtors or against the property or interests in property of the Debtors on account of any such Claim and (4) asserting any right of setoff, or subrogation of any kind against any obligation due from the debtors or the reorganized debtors or against the property or interests in property of the Debtors on account of any such Claim. Such injunction shall extend to successors of the Debtors (including, without limitation, the Reorganized Debtors) and their respective properties



and interests in property. Such injunction shall not apply in respect of ordinary course Administrative Claims.

(b) Injunction Against Interference with the Plan. Upon entry of this Confirmation Order, all holders of Claims and Equity Interests and their respective current and former employees, agents, officers, directors, principals and affiliates shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan.

17. Release of Liens. Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the applicable Reorganized Debtor and its successors and assigns. To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to the Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors, the Reorganized Debtors, or any applicable administrative agent that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

18. Preservation of All Causes of Action Not Expressly Settled or Released. Except as otherwise provided in the Plan or in any contract, instrument, release, indenture or other agreement entered into in connection with the Plan, in accordance with section 1123(b) of the Bankruptcy Code, the Reorganized Debtors shall retain all Litigation Rights. Except as expressly provided in the Plan or this Confirmation Order, nothing contained in the Plan or this Confirmation Order shall be deemed to be a waiver or relinquishment of any such Litigation Rights. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Litigation Rights that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim that are not specifically waived or relinquished by the Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

19. Cancellation of Notes, Instruments, Debentures, Common Stock and Stock Options. Except as otherwise provided in the Plan or for the purpose of evidencing a right to a Distribution, on the Effective Date and concurrently with the applicable Distributions made pursuant to the Plan, the promissory notes, share certificates (including treasury stock), Senior Secured Notes, Convertible Notes, other instruments evidencing any Claims or Equity Interests, and all other items listed in Section V.E of the Plan, shall be deemed automatically extinguished, canceled, and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates, Senior Secured Notes, Convertible Notes, and other agreements and instruments governing such Claims and Equity Interests shall be automatically discharged and released. The Holders of or parties to such canceled notes, share certificates, Senior Secured

Notes, Convertible Notes, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, Senior Secured Notes, Convertible Notes, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to the Plan.

20. Continued Corporate Existence and Vesting of Assets in Reorganized Debtors.

Each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the applicable Reorganized Debtors Constituent Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with applicable law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law, and such Reorganized Debtor's Constituent Documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor or an Affiliate of a Reorganized Debtor; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; (iv) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (v) the reincorporation of a Reorganized Debtor under the law of a jurisdiction other than the law under which the Debtor currently is incorporated. On or after the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all Assets of the Estates, including all claims, rights, and Causes of Action and any property acquired by the Debtors under or in connection with the Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. For the

avoidance of doubt, Reorganized Fallbrook shall retain all ownership, governance rights, and economic rights in FIPC currently held by Fallbrook. Subject to the terms of the Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or this Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

21. Releases.

(1) Releases by the Debtors. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent authorized by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Debtors' estates from any and all Claims, obligations, suits, judgments, damages, demands, debts, remedies, causes of action, rights of setoff, other rights, and liabilities whatsoever, including any derivative Claims asserted or that could be asserted directly or indirectly on behalf of the Reorganized Debtors, the Debtors, or the Debtors' estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all causes of action asserted or

that could possibly have been asserted on behalf of the Reorganized Debtors, the Debtors, or the Debtors' estates (whether individually or collectively) based on, relating to, or arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the Reorganized Debtors, the Chapter 11 Cases, the Debtors' in- and out-of-court restructuring efforts, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the negotiation, formulation, and preparation of the Plan, the Restructuring Support Agreement, the Plan Supplement, the Disclosure Statement, the documentation and negotiation of the Exit Facilities, and any related agreements, instruments, or other documents, any other act or omission, transaction agreement, event, or other occurrence taking place on or before the confirmation date. The foregoing release: (1) shall not apply to any express contractual or financial obligations or any rights or obligations arising under or that are part of the Plan or any agreements entered into pursuant to, in connection with, or contemplated by the Plan, (2) shall have no effect on the liability of any entity that results from any such act or omission that is determined in a final order to have constituted actual fraud, gross negligence, or willful misconduct, and (3) shall not release any Claims held by any non-Debtor. For the avoidance of doubt, the Debtors and Reorganized Debtors shall continue to honor all postpetition and post-Effective

Date obligations under the Exit Facilities, and any related agreements, instruments, or other documents.

(2) Releases by Holders of Claims. Notwithstanding anything contained in the Plan or the Disclosure Statement to the contrary, but subject to the limitations set forth in the second paragraph of this section 21(2), as of the Effective Date, the Released Parties shall be deemed to have been conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Releasing Parties from any and all Claims, obligations, suits, judgments, damages, demands, debts, remedies, Causes of Action, rights of setoff, other rights, and liabilities whatsoever, whether for tort, contract, violations of federal, provincial or state securities laws, Avoidance Actions, including any derivative Claims asserted or that could possibly have been asserted directly or indirectly on behalf of the Releasing Parties or their Affiliates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all Causes of Action asserted or that could possibly have been asserted on behalf of the Releasing Parties or their Affiliates (whether individually or collectively) or on behalf of the holder of any Claim, based on or in any way relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof), the Reorganized Debtors, the Chapter 11 Cases, the Debtors' in- and out-of-court restructuring efforts, the purchase, sale, or rescission of the purchase or sale of any security of the Debtors or the Reorganized Debtors, the subject matter of, or

the transactions or events giving rise to, any Claim or Equity Interest that is treated in the Plan, the business or contractual arrangements between the Debtors and any Released Party, the negotiation, formulation, and preparation of the Plan, the Restructuring Support Agreement, the Plan Supplement, the Disclosure Statement, the documentation and negotiation of the Exit Facilities, and any related agreements, instruments, or other documents, any other act or omission, transaction agreement, event, or other occurrence related to the Debtors or the Chapter 11 Cases taking place on or before the Confirmation Date.

Notwithstanding anything to the contrary in the foregoing, the release set forth above does not release (1) any obligation of the Debtors or the Reorganized Debtors arising under or in connection with the Exit Facilities, (2) any post-Effective Date obligations of any party or entity under the Plan or any document, instrument or agreement (including those set forth in the Plan Supplement) executed to implement the Plan (including, for the avoidance of doubt, post-Effective Date obligations arising under or in connection with the Exit Facilities, and any related agreements, instruments, or other documents), (3) the right to receive Distributions from the Debtors or the Reorganized Debtors on account of an Allowed Claim against the Debtors pursuant to the Plan, (4) any act or omission that is determined in a Final Order to have constituted actual fraud, gross negligence, or willful misconduct, or (5) any act or omission that occurs on or after the Effective Date.

22. Exculpation. Upon and effective as of the Effective Date, the Debtors and their representatives will be deemed to have solicited acceptances of the Plan in good faith and in

compliance with the applicable provisions of the Bankruptcy Code, including section 1125(e) of the Bankruptcy Code. Except with respect to any acts or omissions expressly set forth in and preserved by the Plan, the Plan Supplement, or related documents, the Exculpated Parties shall neither have, nor incur any liability to any entity for any act taken or omitted to be taken on or after the Petition Date and on or before the Effective Date in connection with, or related to formulating, negotiating, preparing, disseminating, implementing, administering, confirming, or effecting the Plan or any contract, instrument, release or other agreement or document created or entered into in connection with the Plan or any other act taken or omitted to be taken on or after the Petition Date and on or before the Effective Date in connection with or in contemplation of the restructuring of the Debtors; *provided* that the foregoing “exculpation” shall have no effect on the liability of any entity that results from any such act or omission that is determined in a final order to have constituted actual fraud, gross negligence, or willful misconduct; *provided, further,* that to the extent permitted by applicable law each Exculpated Party shall be entitled to rely upon the advice of counsel concerning his, her or its duties pursuant to, or in connection with, this plan or any other related document, instrument, or agreement. The Exculpated Parties have, and upon confirmation shall be deemed to have, participated in good faith and in compliance with the applicable provisions of the Bankruptcy Code, including with regard to the Distributions of New Common Stock pursuant to the Plan and, therefore, are not and shall not be liable at any time for the violations of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.

23. Continuation of Automatic Stay. Except as otherwise expressly provided in the Plan, this Confirmation Order or a separate Order of this Court, all injunctions or stays provided



for in the Chapter 11 Cases under sections 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect through and including the Effective Date.

24. Assumed Contracts and Leases. Immediately prior to the Effective Date, all executory contracts and unexpired leases of the Debtors and any other agreement that otherwise may have required the consent of the counterparty to its assumption, which were identified in the Schedule of Assumed Contracts and Leases, shall be deemed to have been assumed by the Debtors as of the Effective Date pursuant to sections 365 and 1123 of the Bankruptcy Code without further notice or order of this Bankruptcy Court, and the non-Debtor counterparties who have not objected to the assumption of their executory contracts or unexpired leases are deemed to have consented thereto. Each executory contract and unexpired lease assumed pursuant to Article VI of the Plan shall revest in, and be fully enforceable by, the respective Reorganized Debtor in accordance with the terms thereof, except as otherwise modified by the provisions of the Plan or by any order of this Court. The Reorganized Debtors, except as otherwise agreed by the parties or ordered by this Court, will, pursuant to the Plan, cure any and all undisputed defaults under any executory contract or unexpired lease assumed pursuant to the Plan.

25. Adequate Assurance of Future Performance. Except as otherwise provided in this Confirmation Order, the only adequate assurance of future performance of any executory contract or unexpired lease that is assumed in connection with the Plan shall be the promise of the applicable Reorganized Debtor to perform all obligations under any executory contract or unexpired lease under the Plan.

26. Cure Claims. Any counterparty to an executory contract or unexpired lease that failed to object timely to the proposed assumption or Cure Claim amount shall be deemed to

have consented to such assumption or Cure Claim amount. In the event of a dispute regarding (i) the amount of any payments to cure such a default or (ii) any other matter pertaining to assumption, the payment of Cure Claims required by Bankruptcy Code section 365(b)(1) shall be made on, or as soon as reasonably practicable after, the Effective Date, but in no event later than seven (7) calendar days after the Effective Date, except that any cure amount that is disputed as of the Effective Date shall be paid as soon as reasonably practicable after the resolution of such dispute. The Debtors shall retain their right to reject any of their executory contracts or unexpired leases, if any executory contract or lease is subject, as of the Effective Date, to an unresolved dispute concerning amounts necessary to cure any defaults, until the date that is five (5) business days after the dispute is resolved by a Final Order or agreement of the Reorganized Debtors and affected counterparty, but only if the resolution results in a cure amount higher than what was listed in the Schedule of Assumed Contracts and Leases or has not otherwise been agreed to by the Debtors.

27. Rejection of Executory Contracts and Unexpired Leases. This Confirmation Order shall constitute the Court's approval of the rejection of all the executory contracts and unexpired leases identified as rejected in Section VI.A of the Plan. This Confirmation Order shall constitute an order of the Court under sections 365 and 1123(b) of the Bankruptcy Code approving such contract and lease rejections. Except as otherwise provided herein, the rejection of executory contracts and unexpired leases rejected by the Debtors pursuant to this Confirmation Order shall be effective as of the Effective Date. In the event that a rejection of an executory contract or unexpired lease by any of the Debtors pursuant to the Plan results in damages to the other party or parties to such contract or lease, any Claims resulting therewith shall be governed by the procedures set forth in Article VI of the Plan. Allowed Claims arising

from the rejection of executory contracts or unexpired leases shall be treated as Class 4 – General Unsecured Claims. For the avoidance of doubt, nothing herein shall be deemed a rejection of any executory contract related to Reorganized Fallbrook’s ownership, governance rights, and economic rights in FIPC. In addition, the Employment Agreement between Michael Schrijnder and Debtor Fallbrook Technologies International Co., dated June 1, 2017, is hereby rejected effective as of the Effective Date.

28. Bar Date for Rejection Damage Claims. Any and all Claims for damages arising from the rejection of an executory contract or unexpired lease under the Plan must be filed with the Bankruptcy Court and received by the Reorganized Debtors no later than thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease. Any Claim for damages arising from the rejection of an executory contract or unexpired lease pursuant to an order, other than the Confirmation Order, will be governed by the order authorizing such rejection and will not be extended by the Plan or this Confirmation Order. Any Claims for damages arising from the rejection of an executory contract or unexpired lease that is not filed and served within such time period will be forever barred from assertion against the Debtors, their respective Estates, and the Reorganized Debtors. The Debtors and Reorganized Debtors reserve the exclusive right to object to any Rejection Damage Claims.

29. Insurance Policies. All insurance policies and insurance policy-related agreements pursuant to which any Debtor has any obligations in effect as of the date of this Confirmation Order shall be deemed and treated as executory contracts pursuant to the Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect thereafter in accordance with their respective terms. All other insurance policies and insurance policy-related agreements shall vest in the Reorganized Debtors.

30. Authorization to Take Acts Necessary to Implement Plan. Each of the Debtors and the Reorganized Debtors hereby is authorized and empowered to take such actions and to perform such acts as may be necessary, desirable or appropriate to comply with or implement the Plan, the Exit Facility Documents, the Reorganized Debtors Constituent Documents, and any other Plan documents, including the election or appointment, as the case may be, of directors and officers of the Reorganized Debtors as contemplated in the Plan, and all documents, instruments and agreements related thereto and all annexes, exhibits, and schedules appended thereto, and the obligations thereunder shall constitute legal, valid, binding and authorized obligations of each of the respective parties thereto, enforceable in accordance with their terms without the need for any stockholder or board of directors' approval. Each of the Debtors and the Reorganized Debtors hereby is authorized and empowered to take such actions, to perform all acts, to make, execute and deliver all instruments and documents, to make payments, and to pay all fees and expenses as set forth in the documents relating to the Plan and the Exit Facilities, including without limitation, the Reorganized Debtors Constituent Documents, and that may be required or necessary for its performance thereunder without the need for any stockholder or board of directors' approval. On the Effective Date, the appropriate officers of the Reorganized Debtors and members of the boards of directors of the Reorganized Debtors are authorized and empowered to issue, execute and deliver the agreements, documents, securities and instruments contemplated by the Plan and the Exit Facilities in the name of and on behalf of the Reorganized Debtors. Each of the Debtors, the Reorganized Debtors and the officers and directors thereof are authorized to take any such actions without further corporate action or action of the directors or stockholders of the Debtors or the Reorganized Debtors. On the Effective Date, or as soon thereafter as is practicable, Reorganized Fallbrook shall file its amended certificates of

incorporation with the Secretary of State of the state in which Reorganized Fallbrook is (or will be) organized, in accordance with the applicable general business law of each such jurisdiction.

31. Exit Facilities. On the Effective Date, the Debtors and/or Reorganized Fallbrook Parties are authorized, but not directed, to (i) enter into the Exit Facilities, (ii) borrow under the Exit Facilities, (iii) enter into the other Exit Facility Documents, including any notes, guarantees, collateral agreements, mortgages, or other documents or agreements delivered, executed or entered in connection therewith, (iv) grant liens and security interests to the applicable agents under the Exit Facilities, or any successor agents thereunder (collectively, the “**Exit Facility Agent**”) in substantially all of the Reorganized Fallbrook Parties’ assets, and such documents, Liens and security interests are approved and ratified, and (v) make such other modifications or amendments to the Exit Facility Documents as the Debtors, with the consent of the Kayne Supporting Creditors, and/or Reorganized Debtors and Exit Facility Agent may deem necessary or desirable in connection with the closing of the Exit Facilities and the implementation thereof. Any other Exit Facility Documents signed by the Debtors shall be binding and enforceable against the Debtors and the Reorganized Fallbrook Parties and their assets upon and after the Effective Date. All fees, costs, indemnities and expenses to be paid or reimbursed by the Debtors and/or the Reorganized Fallbrook Parties in connection with the Exit Facilities are ratified and approved. No obligation, payment, transfer, or grant of security under the Exit Facility Documents shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law or subject to any defense, reduction, recoupment, setoff, or counterclaim.

32. On the Effective Date, all of the Liens and security interests to be granted to the Exit Facility Agent, in accordance with the Exit Facility Documents, (i) shall be legal, binding,

and enforceable Liens on, and security interests in, the collateral granted thereunder in accordance with the terms of the Exit Facility Documents, (ii) shall be deemed automatically attached and perfected on the Effective Date of the Plan, subject only to such Liens and security interests as may be permitted under the Exit Facility Documents, (iii) shall not be subject to avoidance, recharacterization, or subordination (including equitable subordination) for any purposes whatsoever and neither the Liens nor the obligations created under the Exit Facility Documents shall constitute preferential transfers, fraudulent conveyances, or other voidable transfers under the Bankruptcy Code or any applicable non-bankruptcy law, and (iv) the Reorganized Fallbrook Parties granting such Liens and security interests are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary to establish and further evidence perfection of such Liens and security interests under the provisions of the applicable state, provincial, federal, or other law (whether domestic or foreign) that would be applicable in the absence of the Plan and the Confirmation Order (it being understood that perfection shall occur automatically by virtue of the entry of the Confirmation Order, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law or desirable to give notice of such Liens and security interests to third parties.

33. Exemption from Certain Transfer Taxes. To the extent permitted by applicable law, pursuant to section 1146(a) of the Bankruptcy Code, (i) the issuance, transfer, or exchange under the Plan of New Common Stock, and the security interests in favor of the lenders under the Exit Facilities, (ii) the making or assignment of any lease or sublease under this Plan, or (iii) the

making or delivery of any other instrument whatsoever, in furtherance of or in connection with the Plan shall not be subject to any stamp, real estate transfer, recording, or other similar tax.

34. Exemption from Securities Laws; Issuance of Securities. The Debtors and Reorganized Debtors are authorized to issue the securities necessary to effectuate the Plan and any distributions thereunder, including the New Common Stock, pursuant to and in accordance with section 1145 of the Bankruptcy Code. Section 1145(a)(1) of the Bankruptcy Code exempts the offer and sale of securities under a plan of reorganization from registration under section 5 of the Securities Act and state securities laws if three principal requirements are satisfied: (i) the securities are offered and sold under a plan of reorganization and are securities of the debtor, of an Affiliate participating in a joint plan with the debtor, or of a successor to the debtor under the plan; (ii) the recipients of the securities must hold a claim against, or an interest in, the debtor or such Affiliate; and (iii) the securities are issued entirely in exchange for the recipient's claims against or interests in the debtor, or are issued "principally" in such exchange and "partly" in exchange for cash or property. In addition, section 1145(a)(2) exempts from the registration under section 5 of the Securities Act and state securities laws, the offer of a security through any warrant, option, right to subscribe, or conversion privilege that was sold in the manner specified in section 1145(a)(1). The distribution of the New Common Stock under the Plan satisfies the requirements of sections 1145 of the Bankruptcy Code and are, therefore, exempt from registration under the Securities Act and state securities laws.

35. Execution By Third Parties. Each and every federal, state and local governmental agency or department is hereby authorized to accept, and lessors and holders of liens are directed to execute, any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Plan including, without limitation, documents and instruments

for recording in county and state offices where the Reorganized Debtors' certificates of incorporation or any other document that may need to be filed in order to effectuate the Plan.

36. Preparation, Delivery and Execution of Additional Documents by Third Parties.

Each holder of a Claim receiving a distribution pursuant to the Plan and all other parties in interest shall, from time to time, take any reasonable actions as may be necessary or advisable to effectuate the provisions and intent of the Plan.

37. Governmental Approvals Not Required. This Confirmation Order shall constitute all approvals and consents required, if any, by the laws, rules or regulations of any state or any other governmental authority with respect to the implementation or consummation of the Plan and any documents, instruments or agreements, and any amendments or modifications thereto, and any other acts referred to in or contemplated by the Plan, the Disclosure Statement and any documents, instruments or agreements, and any amendments or modifications thereto.

38. Notice of Entry of Confirmation Order and Effective Date. On or before five (5) Business Days after the occurrence of the Effective Date, the Reorganized Debtors shall file and mail or cause to be mailed to all holders of Claims and Interests, all parties having filed notices of appearance and requests for notice in these cases pursuant to Bankruptcy Rule 2002, all parties to executory contracts and unexpired leases with the Debtors, and all other parties in interest in the Chapter 11 Cases, including the U.S. Trustee, a notice, substantially in the form attached hereto as Exhibit C, which informs such holders of (i) the entry of this Confirmation Order, (ii) the occurrence of the Effective Date, (iii) the occurrence of the Administrative Claims Bar Date and deadline for submission of Professional Fee Claims, and (iv) such other matters as the Debtors deem appropriate; provided, however, that such notice need not be given or served under or pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or this



Confirmation Order to any Person to whom the Debtors mailed a Confirmation Hearing Notice but received such notice returned marked “undeliverable as addressed,” “moved-left no forwarding address,” “forwarding order expired,” or any similar reason unless prior to the service deadline in this paragraph the Debtors or Reorganized Debtors have been informed in writing by such Person of that Person’s new mailing address. The Notice of Confirmation and Effective Date described herein is adequate and appropriate under the particular circumstances and no other or further notice is necessary or required.

**RESOLUTION OF UNITED STATES’ OBJECTION**

39. Notwithstanding any provision to the contrary in the Plan, this Confirmation Order or any implementing Plan documents (collectively, the “**Documents**”):

- (1) As to the United States of America, its agencies, departments, or agents (collectively the “**United States**”), the discharge, release and injunction provisions contained in the Documents are not intended and shall not be construed to bar the United States from pursuing any police or regulatory action. Nothing in the Documents shall discharge, release, impair or otherwise preclude: 1) any liability to the United States that is not a Claim within the meaning of section 101(5) of the Bankruptcy Code; 2) any claim of the United States arising on or after the Effective Date; 3) any right of setoff or recoupment of the United States against any of the Debtors or Reorganized Debtors; or 4) any liability of the Debtors or Reorganized Debtors under police or regulatory statutes or regulations to any Governmental Unit (as defined by section 101(27) of the Bankruptcy Code) as the owner, lessor, lessee or operator of property or rights to property that such entity owns, operates or leases after the Effective Date. Nor shall anything

in the Documents: a) enjoin or otherwise bar the United States or any Governmental Unit from asserting or enforcing any liability described in the preceding sentence; or b) divest any court, commission, or tribunal of competent jurisdiction to determine whether any liabilities asserted by the United States or any Governmental Unit are discharged or otherwise barred by the Documents or the Bankruptcy Code. Nothing in the Documents shall: (i) release, enjoin or exculpate any non-Debtor from any liability to the United States, including, but not limited to, any liabilities arising under the Internal Revenue Code, the environmental laws, or the criminal laws, nor shall anything in the Documents enjoin the United States from bringing any claim, suit, action or other proceeding against any non-Debtors for any liability whatsoever; (ii) require the United States to file an Administrative Claim in order to receive payment for any liability described in 11 U.S.C. § 503(b)(1)(B) and (C);(iii) be construed as a compromise or settlement of any claim, cause of action or interest of the United States; (iv) require the United States to obtain Bankruptcy Court approval prior to amending any pre-petition or post-petition claim; (v) allow the Debtors or the Reorganized Debtors to assume, assign or otherwise transfer a contract, lease or any other interest of the United States without first complying with applicable non-bankruptcy law; (vi) discharge any debt described in Section 1141(d)(6) of the Bankruptcy Code; or (vii) limit the rights of the United States with respect to Section 502(j) of the Bankruptcy Code. Administrative Claims of the United States shall accrue interest and penalties as provided by non-bankruptcy law until paid in full.

- (2) To the extent the Allowed Priority Tax Claims of the United States (including any penalties, interest or additions to tax entitled to priority under the Bankruptcy Code), if any, are not paid in full in cash on the Effective Date, then such Priority Tax Claims shall accrue interest commencing on the Effective Date at the rate and method set forth in 26 U.S.C. §§ 6621 and 6622. Moreover, nothing shall effect a release, discharge or otherwise preclude any Claim whatsoever against any Debtor or the Debtors' Estates by or on behalf of the United States for any liability arising a) out of pre-petition or post-petition tax periods for which a required return has not been filed or b) as a result of a pending audit or audit that may be performed with respect to any pre-petition tax or post-petition tax return. Further, nothing shall enjoin the United States from amending any claim against any Debtor or the Debtors' Estates with respect to any tax liability a) arising out of pre-petition or post-petition tax periods for which a required tax return has not been filed or b) from a pending audit or audit that may be performed with respect to any pre-petition or post-petition tax return. Any liability arising out of pre-petition or post-petition tax periods for which a required return has not been filed or as a result of a pending audit or audit which may be performed with respect to any pre-petition or post-petition tax return shall be paid in accordance with 11 U.S.C. §§ 1129(a)(9)(A) and (C). Without limiting the foregoing but for the avoidance of doubt, nothing contained in the Documents shall be deemed to determine the tax liability of any person or entity, including, but not limited to, the Debtors and the Reorganized Debtors, nor shall the Documents be deemed to have determined the federal tax treatment of any item, distribution, or entity,

including the federal tax consequences of this Plan, nor shall anything in the Documents be deemed to have conferred jurisdiction upon the Bankruptcy Court to make determinations as to federal tax liability and federal tax treatment except as provided under 11 U.S.C. § 505.

### **ADDITIONAL PROVISIONS**

40. References to Plan Provisions. The failure specifically to include or reference any particular provision of the Plan in this Confirmation Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Plan, as supplemented by the Plan Supplement, is confirmed in its entirety and incorporated herein by this reference.

41. Confirmation Order Controlling. If there is any conflict between the Plan and this Confirmation Order, the terms of this Confirmation Order shall govern and control.

42. Exhibits/Schedules. All exhibits (i) to this Confirmation Order and (ii) to the Plan and the Plan Supplement, as such documents may have been amended, modified or superseded prior to the Effective Date, are incorporated into and constitute a part of the Plan as if set forth therein.

43. Reversal. If any or all of the provisions of this Confirmation Order are hereafter reversed, modified, vacated or stayed by subsequent order of this Court or any other court of competent jurisdiction, such reversal, modification or vacatur shall not affect the validity or enforceability of any acts, or obligations, indebtedness, liability, priority or Lien incurred or undertaken by the Debtors and the Reorganized Debtors under or in connection with the Plan prior to the Debtors' or the Reorganized Debtors' (as applicable) receipt of written notice of any such order. Notwithstanding any such reversal, modification or vacatur of this Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, this

Confirmation Order prior to the Debtors or Reorganized Debtors, as applicable, receipt of written notice of such reversal, modification or vacatur shall be governed in all respects by the provisions of this Confirmation Order, the Plan, the Plan Supplement or any amendments or modifications thereto in effect prior to the date the Debtors or Reorganized Debtors, as applicable, received such actual written notice.

44. Post-Confirmation Modifications. Subject to the limitations set forth in the Plan, and subject to the terms of the Restructuring Support Agreement, after entry of this Confirmation Order, the Debtors may, upon order of the Court, amend or modify the Plan, in accordance with Bankruptcy Code section 1127(b). Notwithstanding the foregoing, the Debtors are authorized to make appropriate technical adjustments, remedy any defect or omission, or reconcile any inconsistencies in the Plan, the documents included in the Plan Supplement, any and all exhibits to the Plan, and this Confirmation Order.

45. Applicable Non-Bankruptcy Law. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of this Confirmation Order, the Plan and the Plan Supplement or any amendments or modifications thereto shall apply and be enforceable notwithstanding any otherwise applicable non-bankruptcy law.

46. Final Order. This Confirmation Order is a final order and the period in which an appeal must be filed shall commence upon the entry hereof.

47. Effectiveness of Order. In accordance with Bankruptcy Rules 3020(e), 6004(h) and 6006(d) (and notwithstanding any other provision of the Bankruptcy Code or the Bankruptcy Rules), this Confirmation Order shall not be stayed and shall be effective and enforceable immediately upon its entry. The Debtors are authorized to consummate the Plan at any time after the entry of this Confirmation Order upon satisfaction or waiver (with the

required parties' consent) of the conditions set forth in Article XI.B. of the Plan. This Confirmation Order is and shall be deemed to be a separate order with respect to each Debtor for all purposes.

48. No Admission or Waiver. None of the filing of the Plan, any statement or provision contained within the Plan or the taking of any action by any Debtor with respect to the Plan (and Plan Supplement), the Disclosure Statement or Confirmation Order shall be or shall be deemed to be an admission or waiver of any rights of any Debtor.

49. Headings. The headings contained within this Confirmation Order are used for the convenience of the parties and shall not alter or affect the meaning of the text of this Confirmation Order.

50. Substantial Consummation. Substantial consummation of the Plan under section 1101(2) of the Bankruptcy Code shall be deemed to occur on the Effective Date.

Dated: Wilmington, Delaware  
June \_\_\_\_\_, 2018

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MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**Plan**

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

In re:

**FALLBROOK TECHNOLOGIES INC., et al.<sup>1</sup>**

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

**DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: June 6, 2018  
Wilmington, Delaware

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors' principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.



<b>I. DEFINITIONS AND CONSTRUCTION OF TERMS .....</b>	<b>2</b>
A.    Definitions.....	2
B.    Interpretation, Application of Definitions, and Rules of Construction.....	15
C.    Reference to Monetary Figures.....	16
D.    Consent Rights of Plan Support Parties .....	16
<b>II. CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS .....</b>	<b>16</b>
A.    General Rules of Classification .....	16
B.    Grouping of the Debtors for Convenience.....	16
C.    Classification of Claims and Equity Interests.....	17
<b>III. TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, DIP FACILITY CLAIMS, AND STATUTORY FEES.....</b>	<b>17</b>
A.    Administrative Claims .....	17
B.    Administrative Claims Bar Date.....	18
C.    Professional Fee Claims.....	18
D.    Priority Tax Claims.....	18
E.    DIP Facility Claims.....	19
F.    Payment of Statutory Fees .....	19
<b>IV. TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS.....</b>	<b>19</b>
A.    Class 1 – Other Priority Claims .....	19
B.    Class 2 – Other Secured Claims.....	20
C.    Class 3 – Senior Secured Claims .....	20
D.    Class 4 – General Unsecured Claims.....	21
E.    Class 5 – Convenience Claims.....	21
F.    Class 6 – Intercompany Claims .....	21
G.    Class 7 – Subordinated Claims .....	22
H.    Class 8 – Parent Interests .....	22
I.    Class 9 – Intercompany Interests .....	22
J.    Special Provision Governing Unimpaired Claims .....	22
K.    Elimination of Vacant Classes .....	23
L.    Acceptance or Rejection of this Plan .....	23
M.    Nonconsensual Confirmation.....	23
N.    Subordinated Claims .....	23
<b>V. MEANS FOR IMPLEMENTATION OF THE PLAN.....</b>	<b>24</b>
A.    Compromise of Controversies .....	24
B.    Sources of Cash for Plan Distribution .....	24
C.    Continued Corporate Existence; Dissolution of Certain Debtors.....	24
D.    Corporate Action.....	25
E.    Cancellation of Existing Securities and Agreements.....	25
F.    Intercompany Interests.....	26
G.    Cancellation of Certain Existing Security Interests .....	26
H.    Vesting of Assets .....	26

I.	Issuance of New Common Stock .....	26
J.	Section 1145 Exemption from Registration.....	27
K.	Reorganized Debtors Constituent Documents .....	27
L.	Directors and Officers of the Reorganized Debtors.....	27
M.	Exit Facility Credit Agreements .....	28
N.	Management Incentive Plan.....	28
O.	TSI Settlement .....	28
P.	Separability .....	29
Q.	Effectuating Documents; Further Transactions .....	29
R.	Preservation of Causes of Action.....	29
<b>VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES .....</b>		<b>29</b>
A.	Assumption and Rejection of Executory Contracts and Unexpired Leases .....	29
B.	Cure; Effect of Payment of Cure .....	30
C.	Rejection Damage Claims.....	31
D.	Restrictions on Assignment Void .....	31
E.	Indemnification of Directors, Officers, and Employees .....	31
F.	Employee Benefit Programs .....	32
G.	Insurance Policies .....	32
<b>VII. PROVISIONS GOVERNING DISTRIBUTIONS.....</b>		<b>33</b>
A.	Date of Distributions.....	33
B.	Delivery of Distributions .....	33
C.	Distribution of Cash.....	33
D.	Unclaimed Distributions of Cash.....	34
E.	Unclaimed Distributions of New Common Stock .....	34
F.	Saturdays, Sundays, or Legal Holidays .....	34
G.	Fractional New Common Stock and De Minimis Distributions.....	34
H.	Distributions for Claims Allowed as of the Initial Distribution Date.....	35
I.	Distributions as of the Record Date .....	35
J.	Interest on Claims .....	35
K.	Objections to and Resolution of Claims .....	35
L.	Claims Estimation.....	36
M.	Updates to Claims Register Without Objection.....	36
N.	Administrative Claims Incurred After the Confirmation Date .....	37
O.	Special Provisions Regarding Insured Claims.....	37
P.	Establishment of Reserve Amounts for Disputed General Unsecured Claims .....	37
Q.	Allowance of Disputed General Unsecured Claims .....	38
R.	Allocation of Consideration.....	38
<b>VIII. RELEASE, INJUNCTION, AND RELATED PROVISIONS .....</b>		<b>38</b>
A.	Discharge of Claims and Termination of Equity Interests; Compromise and Settlement of Claims, Equity Interests, and Controversies.....	38
B.	Releases By The Debtors .....	39
C.	Releases By Holders of Claims.....	40
D.	Exculpation .....	42

E.	Injunction .....	42
F.	Setoffs and Recoupments.....	43
G.	Release of Liens.....	43
H.	Preservation of Certain Defenses.....	44
I.	Term of Bankruptcy Injunction or Stays .....	44
J.	Preservation of Insurance.....	44
<b>IX. RETENTION OF JURISDICTION .....</b>		<b>44</b>
<b>X. MISCELLANEOUS PROVISIONS.....</b>		<b>47</b>
A.	Immediate Binding Effect.....	47
B.	Modification of this Plan .....	47
C.	Entire Agreement .....	47
D.	Governing Law .....	47
E.	Filing or Execution of Additional Documents.....	48
F.	Withholding and Reporting Requirements .....	48
G.	Exemption From Transfer Taxes .....	48
H.	Reservation of Rights.....	48
I.	Notices .....	49
J.	Exhibits/Schedules.....	50
K.	Nonseverability of Plan Provisions upon Confirmation .....	50
L.	Closing of Chapter 11 Cases; Caption Change.....	50
M.	Conflict .....	51
N.	Further Assurances.....	51
<b>XI. EFFECTIVENESS OF THE PLAN .....</b>		<b>51</b>
A.	Conditions Precedent to Confirmation.....	51
B.	Conditions Precedent to Effectiveness.....	51
C.	Waiver of Conditions.....	52
D.	Substantial Consummation .....	52
E.	Effect of Failure of Conditions .....	52
F.	Vacatur of Confirmation Order.....	53
G.	Revocation of Plan.....	53

## **INTRODUCTION**

Fallbrook Technologies Inc., Fallbrook Technologies International Co., Hodyon, Inc., and Hodyon Finance, Inc., the above-captioned debtors and debtors in possession, propose the following joint plan of reorganization under section 1121(a) of the Bankruptcy Code for the resolution of the outstanding claims against, and equity interests in, the Debtors. Capitalized terms used in this Plan and not otherwise defined shall have the meanings ascribed to such terms in Section I of this Plan.

Although proposed jointly for administrative purposes, this Plan constitutes a separate Plan for each Debtor for the resolution of outstanding Claims and Equity Interests pursuant to the Bankruptcy Code. The Debtors seek to consummate certain restructuring transactions on the Effective Date of this Plan. Each Debtor is a proponent of this Plan within the meaning of section 1129 of the Bankruptcy Code.

The classifications of Claims and Equity Interests set forth in Article II of this Plan shall be deemed to apply separately with respect to each Plan proposed by each Debtor, as applicable. This Plan does not contemplate substantive consolidation of any of the Debtors.

Reference is made to the Disclosure Statement, filed contemporaneously with this Plan, for a discussion of the Debtors' history, businesses, results of operations, historical financial information, projections, and future operations, as well as a summary and analysis of this Plan and certain related matters, including distributions to be made under this Plan.

**ALL HOLDERS OF CLAIMS ARE ENCOURAGED TO READ THIS PLAN AND THE DISCLOSURE STATEMENT IN THEIR ENTIRETY BEFORE VOTING TO ACCEPT OR REJECT THIS PLAN.**

I.

**DEFINITIONS AND CONSTRUCTION OF TERMS**

**A. Definitions**

Unless otherwise defined herein, or the context otherwise requires, the following terms shall have the respective meanings set forth below:

1. “**Administrative Claim**” means a Claim for costs and expenses of administration of the Estates pursuant to sections 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code, other than DIP Facility Claims, including: (i) the actual and necessary costs and expenses incurred after the Petition Date and through the Effective Date of preserving and operating the Estates; (ii) any indebtedness or obligations incurred or assumed by the Debtors in connection with the conduct of their businesses after the Petition Date, including for wages, salaries, or commissions for services, and payments for goods and other services and leased premises to the extent such indebtedness or obligations provided a benefit to the Estates; (iii) all Claims for the value of goods received by the Debtors within twenty (20) days before the Petition Date and that were sold to the Debtors in the ordinary course of business pursuant to section 503(b)(9) of the Bankruptcy Code; and (iv) all fees and charges assessed against the Estates pursuant to section 1930 of chapter 123 of title 28 of the United States Code.

2. “**Administrative Claims Bar Date**” means the first Business Day that is thirty (30) days after the Effective Date.

3. “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean, with respect to any Person, the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of such Person.

4. “**Allison**” means Allison Transmission, Inc.

5. “**Allowed**” means, with respect to any Claim or Equity Interest, except as otherwise provided herein: (i) a Claim or Equity Interest as to which no objection has been filed prior to the Claims Objection Deadline and that is evidenced by a Proof of Claim or Equity Interest, as applicable, timely filed by the applicable Bar Date or that is not required to be evidenced by a filed Proof of Claim or Equity Interest, as applicable, under this Plan, the Bankruptcy Code, or a Final Order; (ii) a Claim or Equity Interest that is scheduled by the Debtors as neither disputed, contingent, nor unliquidated, and as for which no Proof of Claim or Equity Interest, as applicable, has been timely filed in an unliquidated or a different amount; or (iii) a Claim or Equity Interest that is upheld or otherwise allowed (a) pursuant to this Plan, (b) in any stipulation that is approved by the Bankruptcy Court, (c) pursuant to any contract, instrument, indenture, or other agreement entered into or assumed in connection herewith, or (d) by Final Order (including any such Claim to which the Debtors had objected or which the

Bankruptcy Court had disallowed prior to such Final Order). Except as otherwise specified in this Plan or any Final Order, the amount of an Allowed Claim shall not include interest or other charges on such Claim from and after the Petition Date. Notwithstanding anything to the contrary herein, no Claim of any entity subject to section 502(d) of the Bankruptcy Code shall be deemed Allowed unless and until such entity pays in full the amount that it owes such Debtor or Reorganized Debtor, as applicable.

6. “**Assets**” means with respect to any Debtor, all of such Debtor’s right, title, and interest of any nature in property of any kind, wherever located, as specified in section 541 of the Bankruptcy Code.

7. “**Avoidance Actions**” means any and all avoidance, recovery, subordination, or other claims, actions, or remedies that may be brought by or on behalf of the Debtors or the Estates or other authorized parties in interest under the Bankruptcy Code or applicable non-bankruptcy law, including actions or remedies under sections 502, 510, 542, 544, 545, 547 through 553, and 724(a) of the Bankruptcy Code or under similar or related state or federal statutes and common law, including fraudulent transfer laws.

8. “**Ballot**” means the ballot form distributed with the Disclosure Statement to each Holder of Impaired Claims (other than to Holders not entitled to vote on this Plan) for, among other things, voting on the acceptance or rejection of this Plan.

9. “**Bankruptcy Code**” means title 11 of the United States Code.

10. “**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware or such other court having jurisdiction over the Chapter 11 Cases.

11. “**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure promulgated under section 2075 of title 28 of the United States Code and the general, local, and chambers rules of the Bankruptcy Court.

12. “**Bar Date**” means the applicable date on which a Proof of Claim must be filed as may be specifically fixed by an order of the Bankruptcy Court.

13. “**Bridge Note Purchase Agreement**” means that certain Bridge Note Purchase Agreement, dated May 10, 2017, among Fallbrook, as issuer, FTI International, as guarantor, and the purchasers of the Bridge Notes party thereto from time to time, as amended, supplemented, or otherwise modified from time to time.

14. “**Bridge Noteholders**” means the Holders of the Bridge Notes.

15. “**Bridge Notes Agent**” means Allison, in its capacity as the collateral agent under the Bridge Note Purchase Agreement, or its duly appointed successor.

16. “**Bridge Notes**” means Fallbrook’s Senior Secured Bridge Notes due March 2, 2018 issued pursuant to the Bridge Note Purchase Agreement.

17. **“Bridge Notes Allowed Amount”** means the aggregate allowed amount of the Bridge Notes (\$8,805,409) plus any accrued but unpaid prepetition interest and postpetition interest at the default rate.

18. **“Bridge Notes Claim”** means any Claim held by a Bridge Noteholder relating to the Bridge Notes.

19. **“Business Day”** means any day, other than a Saturday, Sunday or Legal Holiday (as defined in Bankruptcy Rule 9006(a)(6)).

20. **“Cash”** means the legal tender of the United States of America.

21. **“Causes of Action”** means any claims, interests, damages, remedies, causes of action, demands, rights, actions, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise. Causes of Action also include: (i) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law; (ii) the right to object to or otherwise contest Claims or Equity Interests; (iii) claims pursuant to sections 362, 510, 542, 543, 544 through 550, or 553 of the Bankruptcy Code; and (iv) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code.

22. **“Chapter 11 Cases”** means (i) when used with reference to a particular Debtor, the case pending for that Debtor under chapter 11 of the Bankruptcy Code and (ii) when used with reference to all Debtors, the procedurally consolidated chapter 11 cases pending for the Debtors in the Bankruptcy Court.

23. **“Claim”** means any claim, as such term is defined in section 101(5) of the Bankruptcy Code, against any of the Debtors.

24. **“Claims Agent”** means Epiq Bankruptcy Solutions, LLC, retained as the Debtors’ claims and noticing agent, or its duly appointed successor.

25. **“Claims Objection Deadline”** means the first business day that is one hundred eighty (180) days after the Effective Date, or such other later date the Bankruptcy Court may establish upon a motion by the Reorganized Debtors, which motion may be approved without notice to any party or a hearing and before or after the applicable Claims Objection Deadline.

26. **“Claims Register”** means the official register of Claims in the Chapter 11 Cases maintained by the Claims Agent.

27. **“Class”** means a class of Claims or Equity Interests as classified under this Plan.

28. “**Closing Cases**” means those certain Chapter 11 Cases, as identified in the Plan Supplement, that, as of the Effective Date, may be closed by an order of the Bankruptcy Court submitted under certification of counsel without further motion.

29. “**Collateral**” means any property or interest in property of the Estates subject to a Lien to secure the payment or performance of a Claim, which Lien has not been avoided or is not subject to avoidance under the Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable state law.

30. “**Confirmation Date**” means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Chapter 11 Cases, within the meaning of Bankruptcy Rules 5003 and 9021.

31. “**Confirmation Hearing**” means the confirmation hearing held by the Bankruptcy Court pursuant to section 1129 of the Bankruptcy Code, as such hearing may be continued from time to time.

32. “**Confirmation Order**” means an order of the Bankruptcy Court in form and substance satisfactory to the Kayne Supporting Creditors confirming this Plan pursuant to section 1129 of the Bankruptcy Code.

33. “**Convenience Claim**” means any Claim that would otherwise be classified as a General Unsecured Claim that is (i) filed in an amount of five thousand dollars (\$5,000) or less, or (ii) in an amount that has been reduced to five thousand dollars (\$5,000) by a Convenience Class Election made by the Holder of such Claim.

34. “**Convenience Class Election**” means an irrevocable election made by the Holder of a Claim that would otherwise be a General Unsecured Claim in an amount greater than five thousand dollars (\$5,000) but less than or equal to twenty thousand dollars (\$20,000) to reduce such Claim to \$5,000, and such election shall be made either, (i) on the Ballot, (ii) for any non-Debtor contract counterparty whose executory contract or lease is rejected by an order of the Bankruptcy Court, by an executed notice that is received by the Debtors or Reorganized Debtors (as applicable) no later than 30 days from the date on which the underlying contract is deemed rejected by the Debtors, or (iii) in the sole discretion of the Debtors or Reorganized Debtors (as applicable, after consulting with the Kayne Supporting Creditors), by written agreement with such Holder.

35. “**Convertible Noteholders**” means the Holders of the Convertible Notes.

36. “**Convertible Notes**” means Fallbrook’s senior subordinated convertible notes due July 2019 issued pursuant to a Convertible Notes Purchase Agreement with Fallbrook.

37. “**Convertible Notes Agent**” means Allison, in its capacity as collateral agent under the Convertible Notes Purchase Agreement, or its duly appointed successor.

38. “**Convertible Notes Claim**” means any Claim held by a Convertible Noteholder relating to the Convertible Notes.



39. “**Convertible Notes Purchase Agreement**” means the Note Purchase Agreement, dated either July 7, 2014 or August 3, 2016, among Fallbrook, as issuer, and the purchasers of the Convertible Notes party thereto from time to time, as amended, supplemented, or otherwise modified from time to time.

40. “**Cure Claim**” means all amounts, including an amount of \$0.00, required to cure any monetary defaults and pay any pecuniary losses under any executory contract or unexpired lease (or such lesser amount as may be agreed upon by the parties under an executory contract or unexpired lease) that is to be assumed by the Debtors pursuant to sections 365 or 1123 of the Bankruptcy Code.

41. “**Debtor**” means one of the Debtors, in its individual capacity as a debtor and debtor in possession in its respective Chapter 11 Case.

42. “**Debtors**” means collectively: Fallbrook; FTI International; Hodyon, Inc., a Delaware corporation; and Hodyon Finance, Inc., a Delaware corporation, as debtors and debtors in possession in the Chapter 11 Cases.

43. “**DIP Agent**” means Kayne Credit Opportunities Fund (QP), LP, or its duly appointed successor, as administrative and collateral agent under the DIP Credit Agreement.

44. “**DIP Claims New Common Stock**” means the New Common Stock to be received by the New First Lien Lenders.

45. “**DIP Credit Agreement**” means the Debtor-In-Possession Term Loan Credit Agreement, dated as of February 27, 2018, among the Debtors, the lenders thereto and the DIP Agent pursuant to which the Debtors entered into the DIP Facility, as amended, supplemented, or otherwise modified from time to time.

46. “**DIP Facility**” means the debtor-in-possession credit facility provided to Fallbrook by the DIP Lenders.

47. “**DIP Facility Claim**” means any Claim arising under or relating to the DIP Facility.

48. “**DIP Financing Orders**” means the Interim DIP Order together with the Final DIP Order.

49. “**DIP Lenders**” means the Existing Noteholders and such other Supporting Creditors, if any, that satisfy the DIP Participation Condition, pursuant to the terms of the DIP Credit Agreement.

50. “**DIP Motion**” means the Debtors’ motion seeking (i) approval of the DIP Facility and (ii) authority to use Collateral, including Cash Collateral, and grant adequate protection [Docket No. 12].

51. **“DIP Participation Condition”** means the purchase by a Plan Support Party of Existing Notes at face amount in the same pro rata percentage as such Plan Support Party’s participation in the DIP Facility.

52. **“Disclosure Statement”** means the disclosure statement for this Plan, approved by the Bankruptcy Court pursuant to the Disclosure Statement Order as containing, among other things, “adequate information” as required by sections 1125 and 1126(b) of the Bankruptcy Code.

53. **“Disclosure Statement Order”** means the *Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject the Plan, Including (A) Approving Form and Manner of Solicitation Procedures, (B) Approving Form and Notice of the Confirmation Hearing, (C) Establishing Voting Record Date and Approving Procedures for Distribution of Solicitation Packages, (D) Approving Forms of Ballot, (E) Establishing Deadline for Receipt of Ballots, and (F) Approving Procedures for Vote Tabulations; (III) Establishing Deadline and Procedures for Filing Objections to (a) Confirmation of the Plan and (B) the Debtors’ Proposed Cure Amounts for Unexpired Leases and Executory Contracts Assumed Pursuant to the Plan; and (IV) Granting Related Relief* entered on the docket of the Bankruptcy Court on April 24, 2018 [Docket No. 174].

54. **“Disputed”** means, with reference to any Claim, a Claim that has not been Allowed.

55. **“Distribution”** means any distribution in accordance with this Plan of (i) Cash, (ii) New Common Stock, (iii) rights and obligations with respect to the Exit Facilities, or (iv) other forms of consideration, as the case may be.

56. **“Dissolving Debtor”** means any Debtor, as identified in the Plan Supplement, to be dissolved after the Effective Date.

57. **“Effective Date”** means the date on which this Plan is substantially consummated in accordance with its terms and the Confirmation Order.

58. **“Equity Interest”** means any and all equity securities (as defined in section 101(16) of the Bankruptcy Code) of a Debtor, including all shares, common stock, preferred stock, or other instrument evidencing any fixed or contingent ownership interest in any Debtor, including any option, warrant, or other right, contractual or otherwise, to acquire any such interest in a Debtor, whether or not transferable and whether fully vested or vesting in the future, that existed immediately before the Effective Date.

59. **“Estates”** means the Debtors’ chapter 11 estates, individually or collectively, as is appropriate in the context, created by the commencement of and in the Chapter 11 Cases pursuant to section 541 of the Bankruptcy Code.

60. **“Exculpated Party”** means the Debtors and their current officers and directors, principals, members, partners, managers and Professionals, in each case in their capacity as such.

61. **“Existing Noteholders”** means the Holders of the Existing Notes.

62. “**Existing Notes**” means Fallbrook’s 12.00% Senior Secured Notes due 2019 issued pursuant to the Existing Notes Purchase Agreement.

63. “**Existing Notes Allowed Amount**” means the aggregate allowed amount of the Existing Notes (\$49,649,587) plus any accrued but unpaid prepetition interest and postpetition interest at the default rate.

64. “**Existing Notes Claim**” means any Claim held by an Existing Noteholder relating to the Existing Notes.

65. “**Existing Notes Collateral Agent**” means Kayne Credit Opportunities Fund (QP), LP, or its duly appointed successor, as collateral agent under the Existing Notes Purchase Agreement.

66. “**Existing Notes Purchase Agreement**” means that certain Securities Purchase Agreement, dated January 29, 2015 (as amended by that certain First Amendment to Securities Purchase Agreement dated as of August 1, 2016 and by that certain Waiver and Second Amendment to Securities Purchase Agreement dated as of May 10, 2017 and as otherwise amended, modified, or supplemented from time to time) among Fallbrook, as issuer, FTI International, as guarantor, the Existing Notes Collateral Agent, and the purchasers of the Existing Notes party thereto from time to time.

67. “**Exit Facilities**” means the New First Lien Facility and the New Second Lien Facility.

68. “**Exit Facility Credit Agreements**” means collectively the New First Lien Facility Credit Agreement together with the New Second Lien Facility Credit Agreement.

69. “**Exit Facility Documents**” means the New First Lien Facility Documents and the New Second Lien Facility Documents.

70. “**Fallbrook**” means Fallbrook Technologies Inc., a Delaware corporation.

71. “**Fallbrook Parties**” means Fallbrook together with FTI International.

72. “**Final DIP Order**” means the Final Order entered by the Bankruptcy Court in the Chapter 11 Cases approving, on a final basis, the DIP Motion [Docket No. 114].

73. “**Final Order**” means an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction, as entered on the docket of such court, the operation or effect of which has not been stayed, reversed, vacated, modified or amended, and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or seek review or rehearing has expired and as to which no appeal, petition for certiorari, or petition for review or rehearing was filed or, if filed, remains pending or subject to any right of further appeal, petition for certiorari, or petition for review or rehearing.

74. “**FIPC**” means Fallbrook Intellectual Property Company LLC, a Delaware limited liability company.

75. “**FTI International**” means Fallbrook Technologies International Co., a Nevada corporation.

76. “**General Unsecured Claim**” means a Claim against any of the Debtors that is not a DIP Facility Claim, Administrative Claim, Priority Tax Claim, Other Priority Claim, Other Secured Claim, Senior Secured Claim, Convenience Claim, Intercompany Claim, or Subordinated Claim, and shall include any Convertible Notes Claim and any Claim arising from existing or potential litigation against any of the Debtors that arose prior to the Petition Date.

77. “**Holder**” means the beneficial holder of any Claim or Equity Interest, in its capacity as such.

78. “**Impaired**” means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is impaired within the meaning of section 1124 of the Bankruptcy Code.

79. “**Indemnification Obligation**” means any post-Petition Date obligation of any of the Debtors to indemnify, reimburse, or provide contribution pursuant to charter, by-laws, contract, or otherwise; provided, however, that such term shall not include any obligation that constitutes a Subordinated Claim.

80. “**Insured Claim**” means any Claim or portion of a Claim (other than a Workers Compensation Claim) that is insured under the Debtors’ insurance policies, but only to the extent of such coverage.

81. “**Initial Distribution Date**” means the Effective Date or as soon thereafter as practicable.

82. “**Intercompany Claim**” means any Claim or Cause of Action by a Debtor or any entity that is, or was as of the Petition Date, a direct or indirect subsidiary of a Debtor against a Debtor or any entity that is, or was as of the Petition Date, a direct or indirect subsidiary of a Debtor.

83. “**Intercompany Interest**” means any Equity Interest held by one of the Debtors in any other Debtor.

84. “**Interim DIP Order**” means the order entered by the Bankruptcy Court in the Chapter 11 Cases approving, on an interim basis, the DIP Motion [Docket No. 40].

85. “**Kayne Supporting Creditors**” means those Holders of the Existing Notes that are parties to the Restructuring Support Agreement.

86. “**Lien**” has the meaning set forth in section 101(37) of the Bankruptcy Code.

87. “**Litigation Rights**” means the Causes of Action, Claims, suits, or proceedings, whether in law or in equity, whether known or unknown, that the Debtors or the Estates may hold against any Person (except to the extent such claims are expressly released under this Plan), which are to be retained by the Reorganized Debtors and identified in the Plan Supplement.

88. “**Management Incentive Plan**” means compensation to the management of Reorganized Fallbrook consisting of equity awards representing thirty percent (30%) of the New Common Stock, subject to the specific form, terms, and conditions to be determined by the Reorganized Fallbrook Board.

89. “**New Common Stock**” means the equity of Reorganized Fallbrook.

90. “**New First Lien Agent**” means Kayne Credit Opportunities Fund (QP), as agent under the New First Lien Facility.

91. “**New First Lien Facility**” means the new first lien exit facility that the Reorganized Fallbrook Parties shall enter into on the Effective Date.

92. “**New First Lien Facility Amount**” means the sum of (i) the principal and accrued interest and other obligations in respect of loans under the DIP Facility outstanding on the Effective Date, (ii) the \$1.25 million fee and \$500,000 in other fees due and payable to GLC Advisors & Co., LLC, and (iii) the incremental commitment of the Kayne Supporting Creditors to provide up to \$7 million of new working capital.

93. “**New First Lien Facility Credit Agreement**” means the senior secured credit agreement on terms satisfactory to the Debtors and the New First Lien Agent, to be made available to the Debtors or the Reorganized Debtors on the Effective Date.

94. “**New First Lien Facility Documents**” means the New First Lien Facility Credit Agreement, and all other related agreements, notes, certificates, documents, and instruments, and all exhibits, schedules, and annexes thereto entered into in connection with the New First Lien Facility Credit Agreement to be executed or delivered in connection therewith, with terms and conditions and in form and substance consistent with the terms of the Restructuring Support Agreement and otherwise satisfactory to the Debtors and the New First Lien Agent (in each case, as amended, modified, or supplemented from time to time).

95. “**New First Lien Lenders**” means the lenders under the New First Lien Facility.

96. “**New Second Lien Agent**” means Kayne Credit Opportunities Fund (QP), as agent under the New Second Lien Facility.

97. “**New Second Lien Facility**” means the new second lien term loan that the Reorganized Fallbrook Parties shall enter into on the Effective Date.

98. “**New Second Lien Facility Amount**” means the aggregate principal amount equal to ninety percent (90%) of the Senior Secured Notes Allowed Amount.

99. “**New Second Lien Facility Credit Agreement**” means the junior secured credit agreement on terms satisfactory to the Debtors and the New Second Lien Agent, to be made available to the Debtors or the Reorganized Debtors on the Effective Date.

100. “**New Second Lien Facility Documents**” means the New Second Lien Facility Credit Agreement, and all other related agreements, notes, certificates, documents, and

instruments, and all exhibits, schedules, and annexes thereto entered into in connection with the Exit Facility Credit Agreement to be executed or delivered in connection therewith, with terms and conditions and in form and substance consistent with the terms of the Restructuring Support Agreement and otherwise satisfactory to the Debtors and the New Second Lien Agent (in each case, as amended, modified, or supplemented from time to time).

101. “*New Second Lien Lenders*” means the Existing Noteholders and the Bridge Noteholders, in their capacity as lenders under the New Second Lien Term Facility.

102. “*Other Priority Claim*” means any Claim against any of the Debtors, other than an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, and a DIP Facility Claim, that is entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

103. “*Other Secured Claim*” means any Claim (other than a DIP Facility Claim and Senior Secured Claim) to the extent reflected in the Schedules or a Proof of Claim filed as a secured Claim, which is secured by a Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the Holder’s interest in such Debtor’s interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

104. “*Parent Interests*” means all Equity Interests in Fallbrook immediately prior to the Effective Date, including all options, warrants, preferred and common shares. For the avoidance of doubt, this includes the Equity Interests identified on Fallbrook’s *List of Equity Security Holders* [Docket No. 80].

105. “*Person*” means any individual, corporation, partnership, limited liability company, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, Governmental Unit (as defined in the Bankruptcy Code) or any political subdivision thereof, or any other entity.

106. “*Petition Date*” means February 26, 2018.

107. “*Plan*” means this “*Debtors’ First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*”, as it may be amended or modified from time to time in accordance with the terms hereof, together with any Plan Supplement and all addenda, exhibits, schedules or other attachments, if any.

108. “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to this Plan, which shall be filed by the Debtors no later than seven (7) calendar days before the Voting Deadline, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be acceptable in form and substance to the Kayne Supporting Creditors. The Plan Supplement shall include the following documents, among others: (i) Schedule of Assumed Contracts and Leases; (ii) Exit Facility Documents; (iii) Reorganized Debtors Constituent

Documents; (iv) list of officers and directors for the Reorganized Fallbrook Parties; (v) the Retained Causes of Action; (vi) Stockholders Agreement; (vii) the list of Dissolving Debtors; and (viii) the Management Incentive Plan.

109. “**Plan Support Parties**” means the Kayne Supporting Creditors and the Supporting Creditors.

110. “**Priority Tax Claim**” means any unsecured Claim that is entitled to a priority in right of payment under section 507(a)(8) of the Bankruptcy Code.

111. “**Professional**” means any professional employed in the Chapter 11 Cases pursuant to sections 327, 363, or 1103 of the Bankruptcy Code and to be compensated for services rendered and expenses incurred during the Chapter 11 Cases pursuant to sections 327, 328, 329, 330, 331, or 363 of the Bankruptcy Code.

112. “**Professional Fee Claim**” means an Administrative Claim Allowed for reasonable compensation of a Professional or other Person for services rendered or expenses incurred in the Chapter 11 Cases on or prior to the Effective Date.

113. “**Pro Rata**” means the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class, or the proportion that an Allowed Claim in a particular Class bears to the aggregate amount of Allowed Claims in that Class and in any other Class entitled to share in the same recovery as such Allowed Claim under this Plan.

114. “**Proof of Claim**” means a proof of Claim filed against any of the Debtors in the Chapter 11 Cases.

115. “**Quarterly Distribution Date**” means March 31, June 30, September 30, or December 31 of each year (or the next Business Day if such date is not a Business Day); *provided, however*, that the initial Quarterly Distribution Date for purposes of this Plan shall be the first Quarterly Distribution Date that is no less than thirty (30) days after the Initial Distribution Date.

116. “**Record Date**” means, for purposes of making Distributions on account of Allowed Claims, the Confirmation Date.

117. “**Re-distributed New Common Stock**” shall have the meaning ascribed in Section IV.D.2 of the Plan.

118. “**Reinstated**” means, with respect to Claims and Equity Interests, the treatment provided for in section 1124 of the Bankruptcy Code.

119. “**Released Parties**” means, collectively, (i) each Debtor, (ii) the DIP Agent and DIP Lenders, (iii) the New First Lien Agent and New First Lien Lenders, (iv) the New Second Lien Agent and New Second Lien Lenders, (v) the Existing Noteholders and Existing Notes Collateral Agent, (vi) the Bridge Agent and the Bridge Noteholders and (vii) with respect to each of the foregoing entities, such entity’s professionals, advisors, directors, officers, and employees,

but solely in the foregoing capacities and only if serving in such capacity on or after the Petition Date, together with their respective predecessors, successors, and assigns.

120. **“Releasing Parties”** means, collectively, (i) each Debtor, (ii) the DIP Agent and DIP Lenders, (iii) the New First Lien Agent and New First Lien Lenders, (iv) the New Second Lien Agent and New Second Lien Lenders, (v) the Existing Noteholders and Existing Notes Collateral Agent, (vi) the Bridge Agent and the Bridge Noteholders, (vii) the Plan Support Parties, (viii) Holders of Claims that vote to accept this Plan, and (ix) Holders of Claims that vote to reject this Plan but do not affirmatively elect to “opt out” of being a Releasing Party, and with respect to each of the entities listed above, such entity’s predecessors, successors, assigns, direct and indirect subsidiaries, affiliates, current and former officers and directors, principals, shareholders, and representatives, each solely in their capacities as such.

121. **“Remaining Case”** means any Chapter 11 Case other than the Closing Cases.

122. **“Reorganized Debtor”** means, as applicable, any of the Debtors, as reorganized.

123. **“Reorganized Debtors Constituent Documents”** means, on or after the Effective Date, collectively, the Reorganized Fallbrook Constituent Documents and (i) the amended and restated by-laws or similar governing document of each Reorganized Debtor other than Reorganized Fallbrook, and (ii) the amended and restated certificate of incorporation or other formation document of each Reorganized Debtor other than Reorganized Fallbrook, each in form and substance satisfactory to the Debtors and the Kayne Supporting Creditors.

124. **“Reorganized Fallbrook”** means Fallbrook, or any successor thereto by merger, consolidation, or otherwise, on and after the Effective Date.

125. **“Reorganized Fallbrook Board”** means the board of directors of Reorganized Fallbrook.

126. **“Reorganized Fallbrook By-Laws”** means, on or after the Effective Date, the amended and restated by-laws of Reorganized Fallbrook, a substantially final form of which, in form and substance satisfactory to the Debtors and the Kayne Supporting Creditors, shall be contained in the Plan Supplement.

127. **“Reorganized Fallbrook Certificate of Incorporation”** means, on or after the Effective Date, the amended and restated certificate of incorporation of Reorganized Fallbrook, a substantially final form of which, in form and substance satisfactory to the Debtors and the Kayne Supporting Creditors, shall be contained in the Plan Supplement.

128. **“Reorganized Fallbrook Constituent Documents”** means, collectively, the Reorganized Fallbrook By-Laws and the Reorganized Fallbrook Certificate of Incorporation, each in form and substance satisfactory to the Debtors and the Kayne Supporting Creditors.

129. **“Reorganized Fallbrook Parties”** means the Fallbrook Parties, or any successor thereto by merger, consolidation, or otherwise, on or after the Effective Date.



130. “**Restructuring Support Agreement**” means that certain Restructuring Support Agreement, dated as of February 25, 2018, between the Fallbrook Parties and the Plan Support Parties, as the same may be amended or otherwise modified in accordance with its terms, and all exhibits and schedules thereto.

131. “**Retained Causes of Action**” means all Claims and Causes of Action of the Estates that are not otherwise settled or released on or prior to the Effective Date that will be retained by the Reorganized Debtors, including any Claims or Causes of Action set forth in the Plan Supplement.

132. “**Schedule of Assumed Contracts and Leases**” means the schedule of executory contracts and unexpired leases to be assumed pursuant to this Plan to be included in the Plan Supplement, which schedule shall be acceptable in form and substance to the Kayne Supporting Creditors.

133. “**Schedules**” means the schedules of assets and liabilities, statements of financial affairs, lists of Holders of Claims and Equity Interests and related exhibits filed with the Bankruptcy Court by each of the Debtors, including any amendments or supplements thereto.

134. “**SEC**” means the Securities and Exchange Commission.

135. “**Secured Claim**” means either an Other Secured Claim or a Senior Secured Claim.

136. “**Securities Act**” means the Securities Act of 1933, as now in effect or hereafter amended, or any regulations promulgated thereunder.

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

138. “**Senior Noteholders**” means the Holders of Senior Secured Notes.

139. “**Senior Secured Claim**” means any Claim held by the Senior Noteholders relating to the Senior Secured Notes.

140. “**Senior Secured Notes**” means the Bridge Notes together with the Existing Notes.

141. “**Senior Secured Notes Allowed Amount**” means the sum of the Existing Notes Allowed Amount and the Bridge Notes Allowed Amount, which is \$58,454,996 (plus any accrued but unpaid prepetition interest and postpetition interest at the default rate).

142. “**Stockholders Agreement**” means the stockholders agreement that will govern certain matters related to the governance of Reorganized Fallbrook, be included in the Plan Supplement, and be acceptable in form and substance to the Kayne Supporting Creditors.

143. “**Subordinated Claim**” means: (i) any non-compensatory penalty claim; (ii) any Claim that is subordinated by Final Order of the Bankruptcy Court pursuant to section 510(b) or

510(c) of the Bankruptcy Code or pursuant to any other applicable law; and (iii) any Claim against the Debtors arising from the rescission of a purchase or sale of a security of the Debtors for damages arising from the purchase or sale of such security, or for reimbursement or contribution allowed under section 502 of the Bankruptcy Code on account of such Claim.

144. **“Supporting Creditors”** means the Holders of Claims against, and other interests in, the Fallbrook Parties, other than the Kayne Supporting Creditors, that are Parties (as defined in the Restructuring Support Agreement) to the Restructuring Support Agreement.

145. **“TSI”** means Tri Star Inc.

146. **“Unimpaired”** means, when used with reference to a Claim or Equity Interest, a Claim or Equity Interest that is unimpaired within the meaning of section 1124 of the Bankruptcy Code.

147. **“United States Trustee”** means the United States Trustee for the District of Delaware.

148. **“Unsecured Claims Reserve”** means New Common Stock with an aggregate value equal to 100% of the Distributions to which Holders of Disputed General Unsecured Claims would be entitled under this Plan (as of the date that the reserve is established) if such Disputed Claims were Allowed Claims, or such other amount as agreed to by the Debtors and the applicable holder of a Disputed General Unsecured Claim or as set forth in an order of the Bankruptcy Court.

149. **“Voting Deadline”** means the deadline for parties entitled to vote on this Plan to submit their votes, as set forth in the Disclosure Statement Order.

150. **“Workers Compensation Claim”** means a Claim held by an employee of the Debtors for workers compensation coverage under the workers compensation program applicable in the particular state in which the employee is employed by the Debtors.

## **B. Interpretation, Application of Definitions, and Rules of Construction**

Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include both the singular and plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine, and neuter, such meanings to be applicable to both the singular and plural forms of the terms defined. Capitalized terms in this Plan that are not defined herein shall have the same meanings assigned to such terms by the Bankruptcy Code or Bankruptcy Rules, as the case may be. The words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Plan as a whole and not to any particular section or subsection in this Plan unless expressly provided otherwise. The words “includes” and “including” are not limiting and mean that the things specifically identified are set forth for purposes of illustration, clarity or specificity and do not in any respect qualify, characterize or limit the generality of the class within which such things are included, and the words “includes” or “including” are deemed immediately followed by the phrase “without limitation.” Captions and headings to articles, sections, and exhibits to this Plan are inserted for convenience of reference only, are not a part of this Plan, and shall not be used to interpret this

Plan. The rules of construction set forth in section 102 of the Bankruptcy Code (except for section 102(5) of the Bankruptcy Code) shall apply to this Plan. In computing any period of time prescribed or allowed by this Plan, the provisions of Bankruptcy Rule 9006(a) shall apply.

**C. Reference to Monetary Figures**

All references in this Plan to monetary figures shall refer to currency of the United States of America, unless otherwise expressly provided.

**D. Consent Rights of Plan Support Parties**

Notwithstanding anything herein to the contrary, any and all consent rights of the respective parties to the Restructuring Support Agreement set forth in the Restructuring Support Agreement with respect to the form and substance of this Plan and the documents and instruments contained in the Plan Supplement, including any amendments, restatements, supplements, or other modifications to such documents, and any consents, waivers or other deviations under or from such documents, shall be incorporated herein by this reference and fully enforceable as if stated in full herein.

**II.**

**CLASSIFICATION OF CLAIMS AND EQUITY INTERESTS**

**A. General Rules of Classification**

Pursuant to section 1122 of the Bankruptcy Code, set forth below is a designation of the Classes of Claims and Equity Interests for all purposes under this Plan, including, without limitation, voting, confirmation, and Distributions. In accordance with section 1123(a)(1) of the Bankruptcy Code, DIP Facility Claims, Administrative Claims (including Professional Fee Claims), and Priority Tax Claims, as described below, have not been classified. These Claims are not entitled to vote to accept or reject this Plan. A Claim or Equity Interest is placed in a particular Class only to the extent that the Claim or Equity Interest falls within the description of that Class and is classified in other Classes to the extent that any portion of the Claim or Equity Interest falls within the description of such other Classes. A Claim or Equity Interest is also placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Equity Interest is an Allowed Claim or Allowed Interest in that Class and such Claim or Equity Interest has not been paid, released or otherwise settled prior to the Effective Date.

**B. Grouping of the Debtors for Convenience**

This Plan groups the Debtors together solely for the purposes of describing treatment under this Plan, confirmation of this Plan, and making Distributions in respect of Claims and Equity Interests. Unless set forth in this Plan, this grouping shall not affect any Debtor's status as a separate legal entity, change the organizational structure of the Debtors' business enterprise, constitute a change of control of any Debtor for any purpose, cause a merger or consolidation of any legal entities, or cause the transfer of any assets. This Plan is not premised upon and shall not cause the substantive consolidation of the Debtors or any non-Debtor affiliate, and, except as

otherwise provided by or permitted under this Plan, all Debtors shall continue to exist as separate legal entities.

### C. Classification of Claims and Equity Interests

The following table designates the Classes of Claims against and Equity Interests in the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired under this Plan, (ii) entitled to vote to accept or reject this Plan, and (iii) deemed to either accept or reject this Plan. A Claim or Equity Interest is designated in a particular Class only to the extent it falls within the description of that Class, and is classified in any other Class to the extent (if any) that a portion of such Claim or Equity Interest falls within the description of such other Class.

Class	Designation	Status	Entitled to Vote
1	Other Priority Claims	Unimpaired	No (deemed to accept)
2	Other Secured Claims	Unimpaired	No (deemed to accept)
3	Senior Secured Claims	Impaired	Yes
4	General Unsecured Claims	Impaired	Yes
5	Convenience Claims	Unimpaired	No (deemed to accept)
6	Intercompany Claims	Unimpaired	No (deemed to accept)
7	Subordinated Claims	Impaired	No (deemed to reject)
8	Parent Interests	Impaired	No (deemed to reject)
9	Intercompany Interests	Unimpaired	No (deemed to accept)

### III.

#### TREATMENT OF ADMINISTRATIVE CLAIMS, PROFESSIONAL FEE CLAIMS, PRIORITY TAX CLAIMS, DIP FACILITY CLAIMS, AND STATUTORY FEES

##### A. Administrative Claims

Except to the extent a Holder of an Allowed Administrative Claim already has been paid during the Chapter 11 Cases or such Holder agrees to less favorable treatment with respect to such Holder's Claim, each Holder of an Allowed Administrative Claim shall receive, in full satisfaction, settlement, release, and discharge of, and in exchange for, its Administrative Claim, Cash equal to the unpaid portion of its Allowed Administrative Claim, to be paid on the latest of: (i) the Effective Date, or as soon as reasonably practicable thereafter, if such Administrative Claim is Allowed as of the Effective Date; (ii) the date such Administrative Claim is Allowed, or as soon as reasonably practicable thereafter; (iii) the date such Allowed Administrative Claim becomes due and payable, or as soon as reasonably practicable thereafter; and (iv) such other date as may be agreed upon between the Holder of such Allowed Administrative Claim and the Debtors or the Reorganized Debtors, as the case may be.

**B. Administrative Claims Bar Date**

Unless a prior date has been established pursuant to the Bankruptcy Code, the Bankruptcy Rules, or a prior order of the Bankruptcy Court, the Confirmation Order will establish a bar date for filing notices, requests, Proofs of Claim, applications, or motions for allowance of Administrative Claims (other than Professional Fee Claims, DIP Facility Claims, and Claims by any trade creditor or customer of the Debtors whose Claim is on account of ordinary course of business goods or services provided to the Debtors during the course of the Chapter 11 Cases), which date shall be the Administrative Claims Bar Date. All such Holders of Administrative Claims not paid prior to the Confirmation Date must file with the Bankruptcy Court and serve upon the Debtors or Reorganized Debtors, as applicable, a motion requesting payment of such Administrative Claim on or before the Administrative Claims Bar Date or forever be barred from doing so. The notice of entry of the Confirmation Order to be delivered pursuant to Bankruptcy Rules 3020(c) and 2002(f) will set forth the Administrative Claims Bar Date and constitute good and sufficient notice of the Administrative Claims Bar Date.

**C. Professional Fee Claims**

All requests for compensation or reimbursement of Professional Fee Claims pursuant to sections 327, 328, 330, 331, 363, 503, or 1103 of the Bankruptcy Code for services rendered prior to the Effective Date shall be filed and served on the Reorganized Debtors, counsel to the Reorganized Debtors, the United States Trustee, the Kayne Supporting Creditors, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Bankruptcy Court no later than forty-five (45) days after the Effective Date. Holders of Professional Fee Claims that are required to file and serve applications for final allowance of their Professional Fee Claims and that do not file and serve such applications by the required deadline shall be forever barred from asserting such Claims against the Debtors, the Reorganized Debtors, and their respective properties, and such Professional Fee Claims shall be deemed discharged as of the Effective Date. Objections to any Professional Fee Claims must be filed and served no later than sixty-five (65) days following the Effective Date. Objections must be served on the Reorganized Debtors, counsel for the Reorganized Debtors, the Kayne Supporting Creditors, and the Holders of Professional Fee Claims requesting payment. Professional Fee Claims shall be paid by the Reorganized Debtors, in full in Cash, when Allowed by a Final Order of the Bankruptcy Court.

**D. Priority Tax Claims**

Except to the extent a Holder of an Allowed Priority Tax Claim agrees to a different treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Priority Tax Claim, each such Holder shall be paid, at the option of the Debtors, with the approval of the Kayne Supporting Creditors, (i) in the ordinary course of the Debtors' business, consistent with past practice; *provided, however*, that in the event the balance of any such Claim became due during the pendency of the Chapter 11 Cases and remains unpaid as of the Effective Date, the Holder of such Claim shall be paid in full in Cash on the Effective Date, or (ii) in installment payments over a period of time not to exceed five years after the Petition Date, pursuant to section 1129(a)(9)(C) of the Bankruptcy Code.

**E. DIP Facility Claims**

Upon the Effective Date, in satisfaction of the DIP Facility Claims, (i) the Reorganized Fallbrook Parties shall enter into the New First Lien Facility pursuant to which: (a) the principal and accrued interest and other obligations in respect of the loans under the DIP Facility outstanding on the Effective Date shall be converted on a dollar-for-dollar basis under the New First Lien Facility; (b) the \$1.25 million fee and \$500,000 in other fees due and payable to GLC Advisors & Co., LLC shall be converted on a dollar-for-dollar basis under the New First Lien Facility; and (c) the Kayne Supporting Creditors shall provide an incremental commitment of \$7 million of new working capital; and (ii) to induce the New First Lien Lenders to provide the New First Lien Facility, each of the New First Lien Lenders shall receive a commitment fee equal to their pro rata share of the DIP Claims New Common Stock, and such pro rata share shall be determined by multiplying (x) fifty-seven percent (57%) of the New Common Stock, by (y) a fraction having a numerator equal to the New First Lien Facility Amount and a denominator equal to the sum of the New First Lien Facility Amount and the New Second Lien Facility Amount.

**F. Payment of Statutory Fees**

The Debtors and the Reorganized Debtors, as applicable, shall pay, in Cash on the Effective Date, all United States Trustee quarterly fees under 28 U.S.C. § 1930(a)(6), plus any interest due and payable under 31 U.S.C. § 3717 on all disbursements, including Plan payments and disbursements in and outside the ordinary course of the Debtors' or Reorganized Debtors' business (or such amount agreed to with the United States Trustee or ordered by the Bankruptcy Court), that are outstanding as of the Effective Date, and thereafter, when due and payable for each quarter (including any fraction thereof) until the applicable Chapter 11 Cases are converted, dismissed, or closed, whichever occurs first. In addition, for the avoidance of doubt, the United States Trustee shall not be required to file any Proof of Claim for its quarterly fees.

**IV.****TREATMENT OF CLASSIFIED CLAIMS AND EQUITY INTERESTS****A. Class 1 – Other Priority Claims**

1. **Classification.** Class 1 consists of all Other Priority Claims.
2. **Treatment.** Except to the extent that a Holder of an Allowed Other Priority Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Priority Claim, each such Holder shall be paid, to the extent such Claim has not already been paid during the Chapter 11 Cases, in full in Cash in the ordinary course of business by the Debtors or the Reorganized Debtors, as applicable, on or as soon as reasonably practicable after the latest of (i) the Effective Date, (ii) the date on which such Other Priority Claim against the Debtor becomes Allowed, or (iii) such other date as may be ordered by the Bankruptcy Court.

3. **Impairment and Voting.** Class 1 is Unimpaired under this Plan. Holders of Other Priority Claims in Class 1 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**B. Class 2 – Other Secured Claims**

1. **Classification.** Class 2 consists of all Other Secured Claims.

2. **Treatment.** Except to the extent that a Holder of an Allowed Other Secured Claim agrees to a less favorable treatment, in full and final satisfaction, settlement, release, and discharge of and in exchange for each Allowed Other Secured Claim, each Other Secured Claim shall be Reinstated, or, at the option of the Debtors or the Reorganized Debtors with the consent of the Kayne Supporting Creditors, each Holder of an Allowed Other Secured Claim shall receive, either (i) Cash in the full amount of such Allowed Other Secured Claim, including any postpetition interest Allowed pursuant to section 506(b) of the Bankruptcy Code, (ii) the net proceeds of the sale or disposition of the Collateral securing such Allowed Other Secured Claim to the extent of the value of the Holder's secured interest in such Collateral, (iii) the Collateral securing such Allowed Other Secured Claim, or (iv) such other Distribution as necessary to satisfy the requirements of section 1124 of the Bankruptcy Code on account of such Allowed Other Secured Claim.

3. **Impairment and Voting.** Class 2 is Unimpaired under this Plan. Holders of Other Secured Claims in Class 2 are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**C. Class 3 – Senior Secured Claims**

1. **Classification.** Class 3 consists of all Senior Secured Claims.

2. **Allowance.** On the Effective Date, all of the Senior Secured Notes shall be cancelled. The Senior Secured Claims shall be Allowed in the Senior Secured Notes Allowed Amount.

3. **Treatment.** On the Effective Date, in full and final satisfaction, settlement, release, and discharge of and in exchange for the Senior Secured Claims, each Holder of an Allowed Senior Secured Claim shall receive its Pro Rata share of:

- a. the New Second Lien Facility;
- b. an amount of equity determined by multiplying (x) fifty-seven percent (57%) of the New Common Stock, by (y) a fraction having a numerator equal to the New Second Lien Facility Amount and a denominator equal to the sum of the New First Lien Facility Amount and the New Second Lien Facility Amount; and
- c. if Class 4 rejects the Plan, the Re-distributed New Common Stock.



4. **Impairment and Voting.** Class 3 is Impaired. Holders of the Senior Secured Claims are entitled to vote to accept or reject this Plan.

**D. Class 4 – General Unsecured Claims**

1. **Classification.** Class 4 consists of all General Unsecured Claims.

2. **Treatment.** Provided Class 4 votes to accept this Plan, on (i) the Initial Distribution Date if the Holder's General Unsecured Claim is Allowed as of the Effective Date, or (ii) the first Quarterly Distribution Date after the date such Holder's General Unsecured Claim becomes an Allowed Claim, each Holder of an Allowed General Unsecured Claim shall receive, on account of its Allowed General Unsecured Claim, its Pro Rata share of thirteen percent (13%) of the New Common Stock. If Class 4 does not vote to accept this Plan, then no Distributions shall be made on account of Claims in Class 4 and the New Common Stock otherwise allocable to Class 4 shall be re-distributed to the Holders of the Senior Secured Claims who shall receive their Pro Rata share of such re-distributed New Common Stock (the "Re-distributed New Common Stock").

On its Ballot, each Holder of a General Unsecured Claim greater than five thousand dollars (\$5,000) but less than or equal to twenty thousand dollars (\$20,000) shall be permitted to make a Convenience Class Election and reduce its Allowed Claim to \$5,000. If the Convenience Class Election is made, then such Holder shall receive, in lieu of the Distribution to Holders of Claims in Class 4, a Distribution as if the Claim is a Class 5 Convenience Claim.

3. **Impairment and Voting.** Class 4 is Impaired under this Plan. Holders of General Unsecured Claims in Class 4 are entitled to vote to accept or reject this Plan.

**E. Class 5 – Convenience Claims**

1. **Classification.** Class 5 consists of all Convenience Claims.

2. **Treatment.** Except to the extent that a Holder of a Convenience Claim agrees to a less favorable treatment, such Holder shall receive Cash equal to 100% of the amount of such Allowed Convenience Claim on or as soon as practicable after the latest of (x) the Effective Date, (y) the date that such Convenience Claim becomes Allowed, and (z) a date agreed to by the Debtors, with the consent of the Kayne Supporting Creditors, and the Holder of such Convenience Claim.

3. **Impairment and Voting.** Class 5 is Unimpaired under this Plan. Holders of Convenience Claims in Class 5 are presumed to accept this Plan.

**F. Class 6 – Intercompany Claims**

1. **Classification.** Class 6 consists of all Intercompany Claims.

2. **Treatment.** Intercompany Claims shall be cancelled, Reinstated, or compromised, as determined by the Debtors, with the consent of the Kayne Supporting Creditors.



3. **Impairment and Voting.** Class 6 Claims are Unimpaired under this Plan. Holders of Intercompany Claims are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**G. Class 7 – Subordinated Claims**

1. **Classification.** Class 7 consists of all Subordinated Claims.

2. **Treatment.** The Holders of Subordinated Claims, if any, shall neither receive Distributions nor retain any property under this Plan for or on account of such Subordinated Claims.

3. **Impairment and Voting.** Class 7 is Impaired under this Plan. Holders of Subordinated Claims are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**H. Class 8 – Parent Interests**

1. **Classification.** Class 8 consists of all Parent Interests.

2. **Treatment.** Parent Interests shall be discharged, cancelled, released, and extinguished as of the Effective Date, and Holders of Parent Interests shall neither receive any Distributions nor retain any property under this Plan for or on account of such Parent Interests.

3. **Impairment and Voting.** Class 8 is Impaired under this Plan. Holders of Parent Interests are deemed to have rejected this Plan pursuant to section 1126(g) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**I. Class 9 – Intercompany Interests**

1. **Classification.** Class 9 consists of all Intercompany Interests.

2. **Treatment.** Intercompany Interests shall be cancelled or Reinstated, as determined by the Debtors, with the consent of the Kayne Supporting Creditors.

3. **Impairment and Voting.** Class 9 is Unimpaired under this Plan. Holders of Intercompany Interests are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and, therefore, are not entitled to vote to accept or reject this Plan.

**J. Special Provision Governing Unimpaired Claims**

Except as otherwise provided in this Plan, nothing under this Plan shall affect the Debtors' or the Reorganized Debtors' rights in respect of any Unimpaired Claims, including all rights in respect of legal and equitable defenses to or setoffs or recoupments against any such Claims.

**K. Elimination of Vacant Classes**

Any Class of Claims or Equity Interests that does not have a Holder of an Allowed Claim or Allowed Equity Interest, or Claim or Equity Interest temporarily Allowed by the Bankruptcy Court, as of the date of the Confirmation Hearing shall be deemed eliminated from this Plan for purposes of voting to accept or reject this Plan and for purposes of determining acceptance or rejection of this Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

**L. Acceptance or Rejection of this Plan**

*Presumed Acceptance.* Claims in Classes 1, 2, 5 and 6, and Equity Interests in Class 9 are Unimpaired under this Plan. The Holders of such Claims and Equity Interests are conclusively presumed to have accepted this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

*Voting Classes.* Claims in Classes 3 and 4 are Impaired under this Plan, and the Holders of such Claims are entitled to vote to accept or reject this Plan. If Holders of Claims in a particular Impaired Class of Claims are given the opportunity to vote to accept or reject this Plan, but no Holders of Claims in such Impaired Class of Claims vote to accept or reject this Plan, then such Class of Claims shall be deemed to have accepted this Plan.

*Deemed Rejection of Plan.* Subordinated Claims in Class 7 and Equity Interests in Class 8 are Impaired, and Holders of such Claims and Equity Interests shall receive no Distributions. The Holders in such Classes are deemed to have rejected this Plan pursuant to section 1126(f) of the Bankruptcy Code and are not entitled to vote to accept or reject this Plan.

If a controversy arises as to whether any Claims or Equity Interests, or any Class thereof, is Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such controversy on or before the Confirmation Date.

**M. Nonconsensual Confirmation**

If less than all Impaired Classes accept this Plan, but at least one (1) Class of Claims Impaired under this Plan has accepted this Plan (and which Class's acceptance is determined without inclusion of Claims of insiders (as defined in section 101(31) of the Bankruptcy Code)), the Debtors will seek to have the Bankruptcy Court confirm this Plan under section 1129(b) of the Bankruptcy Code.

**N. Subordinated Claims**

The allowance, classification, and treatment of all Allowed Claims and Equity Interests, and the respective Distributions and treatments under this Plan, take into account and conform to the relative priority and rights of the Claims and Equity Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination or section 510(b) of the Bankruptcy Code. Pursuant to section 510 of the Bankruptcy Code, except where otherwise provided herein, the Reorganized Debtors (with the consent of the Kayne Supporting Creditors) reserve the right to

re-classify any Allowed Claim or Equity Interest in accordance with any contractual, legal, or equitable subordination rights relating thereto.

**V.**

**MEANS FOR IMPLEMENTATION OF THE PLAN**

**A. Compromise of Controversies**

As discussed further in the Disclosure Statement and as otherwise provided herein, pursuant to section 1123 of the Bankruptcy Code and Bankruptcy Rule 9019, and in consideration for the classification, Distributions, releases, and other benefits provided under this Plan, upon the Effective Date, the provisions of this Plan shall constitute a good-faith compromise and settlement of Claims and Equity Interests and controversies resolved pursuant to this Plan. Distributions made to Holders of Allowed Claims in any Class are intended to be final.

**B. Sources of Cash for Plan Distribution**

Except as otherwise provided in this Plan or Confirmation Order, all Cash required for the payments to be made hereunder shall be obtained from the Debtors' and the Reorganized Debtors' operations and Cash balances and, if necessary, proceeds of the New First Lien Facility.

**C. Continued Corporate Existence; Dissolution of Certain Debtors**

Except as otherwise provided in this Plan, each of the Debtors, as Reorganized Debtors, shall continue to exist on and after the Effective Date as a separate legal entity with all of the powers available to such legal entity under applicable law and pursuant to the Reorganized Debtors Constituent Documents, without prejudice to any right to alter or terminate such existence (whether by merger or otherwise) in accordance with such applicable law. On or after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Reorganized Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law, and such Reorganized Debtor's Constituent Documents, as such Reorganized Debtor may determine is reasonable and appropriate, including, without limitation, causing: (i) a Reorganized Debtor to be merged into another Reorganized Debtor or an Affiliate of a Reorganized Debtor; (ii) a Reorganized Debtor to be dissolved; (iii) the legal name of a Reorganized Debtor to be changed; (iv) the closure of a Reorganized Debtor's Chapter 11 Case on the Effective Date or any time thereafter; or (v) the reincorporation of a Reorganized Debtor under the law of a jurisdiction other than the law under which the Debtor currently is incorporated.

After the Effective Date, without the need for further action on the part of the Bankruptcy Court and without the need for further corporate action or action of the boards of directors or shareholders of the Reorganized Debtors, to the extent not previously dissolved, the Dissolving Debtors shall be dissolved pursuant to applicable state law and the Dissolving Debtors shall not be required to pay any taxes or fees to cause such dissolution. Any officer of the Reorganized Debtors is authorized to execute and file on behalf of the Dissolving Debtors all documents

necessary and proper to effectuate and consummate the dissolution of the Debtors in accordance with the laws of the states in which they are formed.

#### **D. Corporate Action**

Upon the Effective Date, all actions contemplated by this Plan shall be deemed authorized, approved, and directed in all respects, including: (i) selection of the directors and officers of the Reorganized Debtors; (ii) the distribution of the New Common Stock as provided herein; (iii) the execution and entry into the Exit Facilities and the Exit Facility Documents; and (iv) all other actions contemplated by this Plan (whether to occur before, on, or after the Effective Date) and all such actions taken or caused to be taken shall be deemed to have been authorized and approved by the Bankruptcy Court.

All matters provided for in this Plan involving the corporate structure of the Debtors or the Reorganized Debtors, and any corporate action required by the Debtors or the Reorganized Debtors in connection with this Plan shall be deemed to have timely occurred and shall be in effect and shall be authorized and approved in all respects, without any requirement of further action by the security Holders, directors, or officers of the Debtors or the Reorganized Debtors or otherwise.

On or (as applicable) before the Effective Date, the appropriate officers of the Debtors or the Reorganized Debtors, as applicable, shall be authorized and, as applicable, directed to issue, execute, and deliver the agreements, documents, securities, certificates of incorporation, operating agreements, and instruments contemplated by this Plan (or necessary or desirable to effect the transactions contemplated by this Plan) in the name of and on behalf of the Reorganized Debtors, including the New Common Stock, the Exit Facility Documents, and any and all agreements, documents, securities, and instruments relating to the foregoing. The authorizations and approvals contemplated by this Section V.D shall be effective notwithstanding any requirements under non-bankruptcy law.

#### **E. Cancellation of Existing Securities and Agreements**

Except as otherwise provided in this Plan or for the purpose of evidencing a right to a Distribution, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Plan, the promissory notes, share certificates (including treasury stock), Senior Secured Notes, Convertible Notes, other instruments evidencing any Claims or Equity Interests, and all options, warrants, calls, rights, puts, awards, commitments or any other agreements of any character to acquire such Equity Interests shall be deemed automatically extinguished, canceled, and of no further force and effect, without any further act or action under any applicable agreement, law, regulation, order or rule, and the obligations of the Debtors under the notes, share certificates, Senior Secured Notes, Convertible Notes, and other agreements and instruments governing such Claims and Equity Interests shall be automatically discharged and released. The Holders of or parties to such canceled notes, share certificates, Senior Secured Notes, Convertible Notes, and other agreements and instruments shall have no rights arising from or relating to such notes, share certificates, Senior Secured Notes, Convertible Notes, and other agreements and instruments or the cancellation thereof, except the rights provided pursuant to this Plan.

**F. Intercompany Interests**

To the extent an Intercompany Interest is not cancelled pursuant to this Plan, on the Effective Date and without the need for any further corporate action or approval of any board of directors, management, or shareholders of any Debtor or Reorganized Debtor, as applicable, such Intercompany Interest shall be unaffected by this Plan and continue in place following the Effective Date.

**G. Cancellation of Certain Existing Security Interests**

Upon the full payment or other satisfaction of an Allowed Other Secured Claim, or promptly thereafter, the Holder of such Allowed Other Secured Claim shall deliver to the Debtors or Reorganized Debtors, as applicable, any Collateral or other property of a Debtor held by such Holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Other Secured Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or *lis pendens*, or similar interests or documents and the Reorganized Debtors shall be authorized but not directed to file or record such termination statements, instruments of satisfaction, or releases of security interests in any applicable jurisdiction.

**H. Vesting of Assets**

Except as otherwise provided in this Plan, on and after the Effective Date, all Assets of the Estates, including all claims, rights, and Causes of Action and any property acquired by the Debtors under or in connection with this Plan, shall vest in each respective Reorganized Debtor free and clear of all Claims, Liens, charges, other encumbrances, and interests. For the avoidance of doubt, Reorganized Fallbrook shall retain all ownership, governance rights, and economic rights in FIPC. Subject to the terms of this Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by this Plan or the Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

**I. Issuance of New Common Stock**

Shares of New Common Stock shall be authorized under the Reorganized Fallbrook Certificate of Incorporation, and shares of New Common Stock shall be issued on the Effective Date and distributed as soon as practicable thereafter in accordance with this Plan. All of the New Common Stock issuable in accordance with this Plan, when so issued, shall be duly authorized, validly issued, fully paid, and non-assessable. The issuance of the New Common Stock is authorized without the need for any further corporate action and without any further action by any Holder of a Claim or Equity Interest.

The New Common Stock will not be listed on a national securities exchange, the Reorganized Debtors will not be reporting companies under the Securities Exchange Act, and the Reorganized Debtors shall not be required to and will not file reports with the SEC or any other governmental entity after the Effective Date. To prevent the Reorganized Debtors from becoming subject to the reporting requirements of the Securities Exchange Act, except in connection with a public offering, the Reorganized Debtors Constituent Documents may impose certain trading restrictions, and the New Common Stock will be subject to certain transfer and other restrictions pursuant to the Reorganized Debtors Constituent Documents designed to maintain the Reorganized Debtors as private, non-reporting companies.

#### **J. Section 1145 Exemption from Registration**

Pursuant to section 1145 of the Bankruptcy Code, the issuance of the New Common Stock is exempt from the registration requirements of the Securities Act, and any State or local law requiring registration for offer or sale of a security.

#### **K. Reorganized Debtors Constituent Documents**

On, or as soon as practicable after, the Effective Date, the Reorganized Debtors shall (i) make any and all filings that may be required in connection with the Reorganized Debtors Constituent Documents with the appropriate governmental offices and or agencies and (ii) take any and all other actions that may be required to render the Reorganized Debtors Constituent Documents effective.

#### **L. Directors and Officers of the Reorganized Debtors**

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of the Reorganized Fallbrook Board shall be disclosed in the Plan Supplement. On the Effective Date, the Reorganized Fallbrook Board shall consist of five (5) members: the chief executive officer and four (4) individuals designated by the Kayne Supporting Creditors. Each member of the Reorganized Fallbrook Board shall assume such position upon the Effective Date. Any subsequent Reorganized Fallbrook Board shall be elected, classified, and composed in a manner consistent with the Reorganized Debtors Constituent Documents and applicable non-bankruptcy law.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the identity and affiliations of each of the officers of Reorganized Fallbrook identifiable as of the Effective Date, as well as the nature of any compensation for such individuals, shall be disclosed in the Plan Supplement. Such officers shall serve in accordance with applicable non-bankruptcy law and, as applicable, existing officer employment agreements, which subject to the diligence of the Kayne Supporting Creditors, shall be assumed under this Plan to be effective as of the Effective Date; *provided, however*, that any stock options set forth in such agreements shall be replaced with shares under the Management Incentive Plan.

The existing officers and directors of the Debtors, other than Fallbrook, shall initially serve in their respective capacities as officers and directors of the applicable Reorganized Debtors unless otherwise provided in the Plan Supplement.

**M. Exit Facility Credit Agreements**

On the Effective Date, the Reorganized Debtors shall be authorized to enter into the Exit Facility Credit Agreements without the need for any further corporate action. The entry of the Confirmation Order shall be deemed approval of the Exit Facility Credit Agreements (including the transactions contemplated thereby, and all actions to be taken, undertakings to be made, and obligations to be incurred by the Reorganized Debtors in connection therewith, including the payment of all fees, indemnities, and expenses provided for therein) and authorization for the Reorganized Debtors to enter into and execute the Exit Facility Credit Agreements, and such other Exit Facility Documents as the lenders under the Exit Facilities may reasonably require, subject to such modifications as the Reorganized Debtors may deem to be reasonably necessary to consummate the Exit Facility Credit Agreements. The Reorganized Debtors may use the Exit Facility Credit Agreements for any purpose permitted thereunder, including the funding of obligations under this Plan.

Upon the date the Exit Facility Credit Agreements become effective: (i) the Debtors and the Reorganized Debtors are authorized to execute and deliver the Exit Facility Documents and perform their obligations thereunder, including, without limitation, the payment or reimbursement of any fees, expenses, losses, damages, or indemnities; (ii) the Exit Facility Documents shall constitute the legal, valid, and binding obligations of the Reorganized Debtors that are parties thereto, enforceable in accordance with their respective terms; and (iii) no obligation, payment, transfer, or grant of security under the Exit Facility Documents shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or under any applicable law or subject to any defense, reduction, recoupment, setoff, or counterclaim. The Debtors and the Reorganized Debtors, as applicable, and the other persons granting any Liens and security interests to secure the obligations under the Exit Facility Documents are authorized to make all filings and recordings, and to obtain all governmental approvals and consents necessary or desirable to establish and further evidence perfection of such Liens and security interests under the provisions of any applicable federal, state, provincial, or other law (whether domestic or foreign) (it being understood that perfection shall occur automatically by virtue of the occurrence of the Effective Date, and any such filings, recordings, approvals, and consents shall not be required), and will thereafter cooperate to make all other filings and recordings that otherwise would be necessary under applicable law to give notice of such Liens and security interests to third parties.

**N. Management Incentive Plan**

On and after the Effective Date, the Management Incentive Plan shall be adopted by the Reorganized Fallbrook Board. Nothing in the Plan (including Section V.D) or the Confirmation Order shall constitute the Bankruptcy Court's approval or endorsement of the Management Incentive Plan.

**O. TSI Settlement**

This Plan shall constitute a good-faith compromise and settlement of Claims that TSI has against the Debtors. On the Effective Date, Reorganized Fallbrook and TSI shall enter into an amended Manufacturing and Supply Agreement, which shall be satisfactory to Reorganized Fallbrook, TSI, and the Kayne Supporting Creditors. In full and final satisfaction of TSI's

unpaid prepetition Claims, the Debtors agree that TSI shall have an Allowed General Unsecured Claim against Fallbrook in the amount of \$5,800,000. In addition, TSI shall have an Allowed Administrative Claim for goods and services TSI provided to, and that are received by, the Debtors or their indicated final shipping destination after the Petition Date. The Claims identified in this paragraph shall be TSI's only Claims against the Debtors in the Chapter 11 Cases.

**P. Separability**

Notwithstanding the combination of separate plans of reorganization for the Debtors set forth in this Plan for purposes of economy and efficiency, this Plan constitutes a separate chapter 11 plan for each Debtor. Accordingly, if the Bankruptcy Court does not confirm this Plan with respect to one or more Debtors, it may still confirm this Plan with respect to any other Debtor that satisfies the confirmation requirements of section 1129 of the Bankruptcy Code with the consent of the Kayne Supporting Creditors.

**Q. Effectuating Documents; Further Transactions**

On and after the Effective Date, the Reorganized Debtors, and the officers and members of the boards of directors thereof, are authorized to and may issue, execute, deliver, file, and record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of this Plan and the securities issued pursuant to this Plan in the name of and on behalf of the Reorganized Debtors, and without the need for any approvals, authorization, or consents except for those expressly required pursuant to this Plan.

**R. Preservation of Causes of Action**

Except as expressly set forth in this Plan, the Reorganized Debtors shall retain all Litigation Rights. Except as expressly provided in this Plan or the Confirmation Order, nothing contained in this Plan or the Confirmation Order shall be deemed to be a waiver or relinquishment of any such Litigation Rights. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such Litigation Rights that the Debtors had immediately prior to the Petition Date as fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights respecting any Claim that are not specifically waived or relinquished by this Plan may be asserted after the Effective Date to the same extent as if the Chapter 11 Cases had not been commenced.

**VI.**

**TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**A. Assumption and Rejection of Executory Contracts and Unexpired Leases**

Except as otherwise provided herein or in any contract, instrument, release, indenture, or other agreement or document entered into in connection with this Plan, as of the Effective Date, all executory contracts and unexpired leases governed by section 365 of the Bankruptcy Code to



which any of the Debtors are parties are hereby rejected except for any executory contract or unexpired lease that (i) previously has been assumed or rejected by the Debtors in the Chapter 11 Cases, (ii) previously expired or terminated pursuant to its own terms, (iii) is specifically identified on the Schedule of Assumed Contracts and Leases, (iv) is related to Reorganized Fallbrook's ownership, governance rights, and economic rights in FIPC, or (v) is the subject of a separate motion to assume or reject such executory contract or unexpired lease filed by the Debtors under section 365 of the Bankruptcy Code prior to the Confirmation Hearing. The Debtors reserve the right to amend the Schedule of Assumed Contracts and Leases at any time prior to the Effective Date, subject to the consent of the Kayne Supporting Creditors.

If an executory contract under which the Debtor is a licensor of a right to intellectual property, as that term is defined in section 101(35A) of the Bankruptcy Code, is rejected under the Plan, then the non-Debtor licensee shall file any Claim for damages arising under that contract pursuant to Section VI.C of this Plan and shall provide the Debtors or Reorganized Debtors (as applicable) with written notice, within thirty (30) days of the effective date of the rejection, of the licensee's election under section 365(n)(1) of the Bankruptcy Code. In the event the licensee files a rejection damages Claim, then such Claim shall be treated in accordance with Section VI.C of this Plan.

#### **B. Cure; Effect of Payment of Cure**

Except to the extent that different treatment has been agreed to by the non-Debtor party or parties to any executory contract or unexpired lease to be assumed pursuant to Section VI.A hereof, not less than fifteen (15) Business Days prior to the Confirmation Hearing, the Debtors shall, pursuant to the provisions of sections 1123(a)(5)(G) and 1123(b)(2) of the Bankruptcy Code, and consistent with the requirements of section 365 of the Bankruptcy Code, file and serve a notice with the Bankruptcy Court listing the Cure Claims, if any, of all executory contracts or unexpired leases to be assumed. The parties to such executory contracts or unexpired leases to be assumed by the Debtors shall have ten (10) Business Days from service of such pleading to object to the Cure Claims listed by the Debtors. If there are any objections filed with respect thereto, the Bankruptcy Court shall conduct a hearing to consider such Cure Claims and any objections thereto. The Debtors shall retain their right to reject any of their executory contracts or unexpired leases, if any executory contract or lease is subject, as of the Effective Date, to an unresolved dispute concerning amounts necessary to cure any defaults, until the date that is five (5) business days after the dispute is resolved by a Final Order or agreement of the Reorganized Debtors and affected counterparty, but only if the resolution results in a cure amount higher than what was listed in the Schedule of Assumed Contracts and Leases or has not otherwise been agreed to by the Debtors. Payment of the Cure Claims fixed in accordance with this paragraph shall be paid by the Debtors or Reorganized Debtors, as the case may be, as a condition to assumption of the underlying contracts and unexpired leases pursuant to the terms of this Plan. Such amount shall be paid on, or as soon as reasonably practicable after, the Effective Date, but in no event later than seven (7) calendar days after the Effective Date, except that any cure amount that is disputed as of the Effective Date shall be paid as soon as reasonably practicable after the resolution of such dispute.

Assumption of any executory contract or unexpired lease pursuant to this Plan, or otherwise, shall result in the full release and satisfaction of any Claims or defaults whether

monetary or nonmonetary, including defaults of provisions restricting the change in control or ownership interest composition or other bankruptcy-related defaults, arising under any assumed executory contract or unexpired lease at any time on or before the Effective Date.

### **C. Rejection Damage Claims**

Any and all Claims for damages arising from the rejection of an executory contract or unexpired lease under this Plan must be filed with the Bankruptcy Court and received by the Reorganized Debtors no later than thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease. Any Claim for damages arising from the rejection of an executory contract or unexpired lease pursuant to an order other than the Confirmation Order will be governed by the order authorizing such rejection and will not be extended by this Plan or the Confirmation Order. Any Claims for damages arising from the rejection of an executory contract or unexpired lease that is not filed and served within such time period will be forever barred from assertion against the Debtors, their respective Estates, and the Reorganized Debtors. All Allowed Claims arising from the rejection of executory contracts or unexpired leases shall be treated as General Unsecured Claims.

### **D. Restrictions on Assignment Void**

Any executory contract or unexpired lease assumed under this Plan shall remain in full force and effect to the benefit of the Reorganized Debtors in accordance with its terms, notwithstanding any provision in such executory contract or unexpired lease (including those of the type described in section 365(b)(2) of the Bankruptcy Code) that prohibits, restricts, or conditions such transfer or assignment, including based on any change of control provision. To the maximum extent permitted under section 365 of the Bankruptcy Code, any provision that prohibits, restricts, or conditions the assignment or transfer of any such executory contract or unexpired lease, terminates, or modifies such executory contract or unexpired lease or allows the counterparty to such executory contract or unexpired lease to terminate, modify, recapture, impose any penalty, condition renewal or extension, or modify any term or condition thereof (including on account of any change of control provision) on any such transfer or assignment, constitutes an unenforceable anti-assignment provision and is void and of no force or effect.

No sections or provisions of any executory contract or unexpired lease that purport to provide for additional payments, penalties, charges, rent acceleration, or other financial accommodations in favor of the non-Debtor third party thereto shall have any force and effect with respect to the transactions contemplated hereunder, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and are otherwise unenforceable under section 365(e) of the Bankruptcy Code.

### **E. Indemnification of Directors, Officers, and Employees**

Indemnification Obligations owed to directors, officers, and employees of the Debtors (or the estates of any of the foregoing) who served or were employed by the Debtors as of or after the Petition Date, excluding claims resulting from gross negligence, willful misconduct, breach of fiduciary duty, or intentional tort, shall be deemed to be, and shall be treated as though they

are, executory contracts that are assumed pursuant to section 365 of the Bankruptcy Code under this Plan.

#### **F. Employee Benefit Programs**

Except as otherwise provided herein and except for any employee equity or equity-based compensation or incentive plan, on and after the Effective Date, the Reorganized Debtors may (i) honor, in the ordinary course of business, any contracts, agreements, policies, programs, and plans for, among other things, compensation (other than equity-based compensation related to Equity Interests), health care benefits, disability benefits, deferred compensation benefits, travel benefits, savings, severance benefits, retirement benefits, welfare benefits, workers' compensation insurance and accidental death and dismemberment insurance for the directors, officers, and employees of any of the Debtors who served in such capacity at any time, and (ii) honor, in the ordinary course of business, Claims of employees for accrued vacation time arising before the Petition Date; *provided, however*, that the Debtors' or Reorganized Debtors' performance under any employment agreement will not entitle any person to any benefit or alleged entitlement under any policy, program, or plan that has expired or been terminated before the Effective Date, or restore, reinstate, or revive any such benefit or alleged entitlement under any such policy, program, or plan. Nothing herein shall limit, diminish, or otherwise alter the Reorganized Debtors' Litigation Rights, or other rights with respect to any such contracts, agreements, policies, programs, and plans.

Notwithstanding the foregoing, the change of control provisions (including without limitation any right of such a participant to terminate employment for "good reason" and any Company funding obligation) shall not be triggered under any employment agreement, severance plan or agreement, benefit plan, or deferred compensation plan, in each case solely as a result of (i) the Debtors' emergence from chapter 11 of the Bankruptcy Code as contemplated by this Plan, (ii) the execution and delivery of the Restructuring Support Agreement, or (iii) the consummation of the transactions provided in the Restructuring Support Agreement and or this Plan (or otherwise contemplated by the Restructuring Support Agreement and or this Plan to occur prior to or on or about the Effective Date).

#### **G. Insurance Policies**

All insurance policies pursuant to which any Debtor has any obligations in effect as of the date of the Confirmation Order shall be deemed and treated as executory contracts pursuant to this Plan and shall be assumed by the respective Debtors and Reorganized Debtors and shall continue in full force and effect thereafter in accordance with their respective terms. All other insurance policies shall vest in the Reorganized Debtors.

## VII.

### PROVISIONS GOVERNING DISTRIBUTIONS

#### A. Date of Distributions

Except as otherwise provided in this Plan, any Distribution to be made hereunder shall be made on the Initial Distribution Date. Any payment or act required to be made or done hereunder on a day that is not a Business Day shall be made on the next succeeding Business Day.

#### B. Delivery of Distributions

Except as otherwise provided herein, Distributions shall be made by the Reorganized Debtors or their designee to the Holders of Allowed Claims in all Classes at the addresses set forth on the Schedules, unless such addresses are superseded by Proofs of Claim or transfers of claim filed pursuant to Bankruptcy Rule 3001 by the Record Date (or at the last known addresses of such Holders if the Debtors or the Reorganized Debtors have been notified in writing of a change of address). The Reorganized Debtors shall be permitted, without further order of the Bankruptcy Court, to appoint, employ, or contract with any entities to assist in or make the Distributions required hereunder.

Unless otherwise directed, the Reorganized Debtors designate the following:

1. all Distributions on account of the Bridge Notes Claims will be made to the Bridge Notes Agent, who shall be deemed to be the Holder of the Bridge Notes Claims solely for purposes of making Distributions under this Plan;
2. all Distributions on account of the Convertible Notes Claims will be made to the Convertible Notes Agent, who shall be deemed to be the Holder of the Convertible Notes Claims solely for purposes of making Distributions under this Plan;
3. all Distributions on account of DIP Facility Claims will be made to the DIP Agent, who shall be deemed to be the Holder of the DIP Facility Claims solely for purposes of making Distributions under this Plan; and
4. all Distributions on account of the Existing Notes Claims will be made to the Existing Notes Collateral Agent, who shall be deemed to be the Holder of the Existing Notes Claims solely for purposes of making Distributions under this Plan.

#### C. Distribution of Cash

Any Distribution of Cash by the Reorganized Debtors pursuant to this Plan shall be made at the option and in the sole discretion of the Reorganized Debtors by (i) a check drawn on, or (ii) wire transfer from, a domestic bank selected by the Reorganized Debtors.

**D. Unclaimed Distributions of Cash**

Any Distribution of Cash under this Plan that is unclaimed after one hundred and eighty (180) days after it has been delivered (or attempted to be delivered) shall become the property of the Reorganized Debtor against which such Claim was Allowed notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the Holder of such unclaimed Allowed Claim to such Distribution or any subsequent Distribution on account of such Allowed Claim shall be extinguished and forever barred.

**E. Unclaimed Distributions of New Common Stock**

Any Distribution of New Common Stock under this Plan on account of an Allowed Senior Secured Claim or Allowed General Unsecured Claim that is unclaimed after ninety (90) days after it has been delivered (or attempted to be delivered) shall be deemed forfeited and such shares of New Common Stock shall be cancelled notwithstanding any state or other escheat or similar laws to the contrary, and the entitlement by the Holder of such unclaimed Allowed Claim to such Distribution or any subsequent Distribution on account of such Allowed Claim shall be extinguished and forever barred.

**F. Saturdays, Sundays, or Legal Holidays**

If any payment, Distribution, or act under this Plan is required to be made or performed on a date that is not a Business Day, then the making of such payment or the performance of such act may be completed on the next succeeding Business Day, and shall be deemed to have been completed as of the required date.

**G. Fractional New Common Stock and De Minimis Distributions**

Notwithstanding any other provision in this Plan to the contrary, no fractional interests of New Common Stock shall be issued or distributed pursuant to this Plan. Whenever any Distribution of a fraction of a share of New Common Stock would otherwise be required under this Plan, the actual Distribution made shall reflect a rounding of such fraction to the nearest whole share (up or down), with half shares or less being rounded down and fractions in excess of a half of a share being rounded up. If two or more Holders are entitled to equal fractional entitlements and the number of Holders so entitled exceeds the number of whole shares, as the case may be, which remain to be allocated, the Reorganized Debtors shall allocate the remaining whole shares to such Holders by random lot or such other impartial method as the Reorganized Debtors deem fair, in the Reorganized Debtors' sole discretion. Upon the allocation of all of the whole New Common Stock authorized under this Plan, all remaining fractional portions of the entitlements shall be canceled and shall be of no further force and effect.

The Debtors or the Reorganized Debtors, as the case may be, shall not be required to, but may, in their sole and absolute discretion, make Distributions to any Holder of a Claim of Cash in amount less than \$25. In addition, the Debtors and the Reorganized Debtors shall not be required to, but may in their sole and absolute discretion, make any payment on account of any Claim in the event that the costs of making such payment exceeds the amount of such payment.

**H. Distributions for Claims Allowed as of the Initial Distribution Date**

On the Initial Distribution Date, the Reorganized Debtors shall distribute Cash, New Common Stock, or Collateral or interests therein, as the case may be, to the Holders of Allowed Claims as contemplated herein.

**I. Distributions as of the Record Date**

As of the close of business on the Record Date, the Claims Register shall be closed, and there shall be no further changes in the record Holders of any Claims. The Debtors and the Reorganized Debtors shall have no obligation to, but may, in their sole and absolute discretion, recognize any transfer of any Claims occurring after the Record Date. The Debtors and the Reorganized Debtors shall instead be entitled to recognize and deal for purposes under this Plan with only those record Holders stated on the Claims Register as of the close of business on the Record Date.

**J. Interest on Claims**

Unless expressly provided in this Plan, the Confirmation Order, the DIP Financing Orders, or any contract, instrument, release, settlement, or other agreement entered into in connection with this Plan or required by the Bankruptcy Code (including without limitation sections 506(b) and 1129(b) of the Bankruptcy Code), post-petition interest shall not accrue on or after the Petition Date on account of any Claim. Without limiting the generality of the foregoing, interest shall not be paid upon any Disputed Claim in respect of the period from the Petition Date to the date a final Distribution is made thereon if, and after, such Disputed Claim becomes an Allowed Claim.

**K. Objections to and Resolution of Claims**

From and after the Effective Date, the Reorganized Debtors shall have the right to make and to file objections to, or otherwise contest the allowance of, Claims. The right of the United States Trustee to object to the allowance of Claims, including Administrative Claims, is hereby reserved. Unless otherwise ordered by the Bankruptcy Court, objections to, or other proceedings concerning the allowance of, Claims shall be filed and served upon the Holders of the Claims as to which the objection is made, or otherwise commenced, as the case may be, as soon as practicable, but in no event later than the Claims Objection Deadline. Objections to Professional Fee Claims shall be filed and served in accordance with Section III.C of this Plan.

Objections to, or other proceedings contesting the allowance of, Claims (other than Professional Fee Claims) may be litigated to judgment, settled or withdrawn, in the Reorganized Debtors' sole discretion. The Reorganized Debtors may settle any such objections or proceedings without Bankruptcy Court approval or may seek Bankruptcy Court approval without notice to any Person other than the affected claimant, the United States Trustee and any other entity whose rights are affected by the settlement.

Unless an order of the Bankruptcy Court specifically provides for a later date, any Proof of Claim filed after the applicable Bar Date relating to any Claim shall be automatically

disallowed as a late filed Claim, without any action by the Reorganized Debtors, unless and until the party filing such Claim obtains the written consent of the Reorganized Debtors to file such Proof of Claim late or obtains an order of the Bankruptcy Court upon written motion on notice to the Reorganized Debtors that permits the filing of the Proof of Claim. In the event any Proof of Claim is permitted to be filed after the Claims Objection Deadline, the Reorganized Debtors shall have one hundred eighty (180) days from the date of such order or agreement to object to such Claim, which deadline may be extended by the Bankruptcy Court on motion of the Reorganized Debtors without a hearing or notice to any party. Amendments to previously filed Proofs of Claim shall not be permitted after the Confirmation Date unless the holder of such Proof of Claim has obtained authorization pursuant to a prior order of the Bankruptcy Court.

EXCEPT AS PROVIDED HEREIN OR OTHERWISE AGREED TO BY THE DEBTORS OR THE REORGANIZED DEBTORS, AS APPLICABLE, ANY AND ALL HOLDERS OF PROOFS OF CLAIM FILED AFTER THE APPLICABLE BAR DATE SHALL NOT BE TREATED AS CREDITORS FOR PURPOSES OF VOTING AND DISTRIBUTION PURSUANT TO BANKRUPTCY RULE 3003(c)(2) UNLESS ON OR BEFORE THE VOTING DEADLINE OR THE CONFIRMATION DATE, AS THE CASE MAY BE, SUCH LATE PROOFS OF CLAIM ARE DEEMED TIMELY FILED BY A FINAL ORDER OF THE BANKRUPTCY COURT.

#### **L. Claims Estimation**

The Debtors, prior to the Effective Date, or the Reorganized Debtors, following the Effective Date, may request that the Bankruptcy Court estimate any disputed, contingent, or unliquidated Claim to the extent permitted by section 502(c) of the Bankruptcy Code regardless of whether the Debtors (prior to the Effective Date) or the Reorganized Debtors (following the Effective Date) have previously objected to such Claim or whether the Bankruptcy Court has ruled on any such objection. Except as set forth below with respect to reconsideration under section 502(j) of the Bankruptcy Code, in the event the Bankruptcy Court estimates any Disputed Claim, contingent Claim, or unliquidated Claim, that estimated amount shall constitute either the Allowed amount of such Claim or a maximum limitation on such Claim for all purposes under this Plan, including for purposes of Distributions. If the estimated amount constitutes a maximum limitation on such Claim, the Reorganized Debtors may elect to pursue any supplemental proceedings to object to any ultimate Distribution on account of such Claim. Notwithstanding section 502(j) of the Bankruptcy Code, in no event shall any Holder of a Claim that has been estimated pursuant to section 502(c) of the Bankruptcy Code or otherwise be entitled to seek such reconsideration on or before twenty-one (21) days after the date on which such Claim is estimated. All of the aforementioned Claims and objection, estimation, and resolution procedures are cumulative and not exclusive of one another. Claims may be estimated and subsequently compromised, settled, withdrawn, or resolved by any mechanism approved by the Bankruptcy Court.

#### **M. Updates to Claims Register Without Objection**

Any Claim that has been paid or satisfied, in whole or in part, or any Claim that has been amended or superseded, may be marked as satisfied, in whole or in part, or amended (as applicable) on the Claims Register by the Claims Agent at the direction of the Debtors or

Reorganized Debtors, as applicable, without a Claims objection having to be filed and without any further notice to or action, order, or approval of the Bankruptcy Court; *provided* that the Debtors or the Reorganized Debtors, as applicable, shall provide 30 days' notice of any of the foregoing modifications to the Claims Register to the Holder of any affected Claims during which period the Holder may object thereto.

**N. Administrative Claims Incurred After the Confirmation Date**

Administrative Claims incurred by the Debtors after the Effective Date (except for Professional Fee Claims), may be paid by the Reorganized Debtors in the ordinary course of business and without application or Bankruptcy Court approval, subject to any agreements with any Claim Holders.

**O. Special Provisions Regarding Insured Claims**

Distributions to each Holder of an Insured Claim shall be in accordance with the treatment provided under this Plan for General Unsecured Claims; *provided, however*, that the maximum amount of any Distribution on account of an Allowed Insured Claim shall be limited to an amount equal to the applicable self-insured retention or deductible under the relevant insurance policy; *further, provided, however*, that, to the extent a Holder has an Allowed Insured Claim, the amount of which exceeds the total coverage available from the relevant insurance policies of the Debtors or Reorganized Debtors, such Holder shall have an Allowed General Unsecured Claim in the amount by which such Allowed Insured Claim exceeds the coverage available from the relevant Debtors' or Reorganized Debtors' insurance policies. Nothing in this section shall constitute a waiver of any Litigation Rights the Debtors or Reorganized Debtors may hold against any Person, including the Debtors' or Reorganized Debtors' insurance carriers. Nothing in this section is intended to, shall, or shall be deemed to preclude any Holder of an Allowed Insured Claim from seeking and/or obtaining payment or other recovery from any insurer of the Debtors in addition to (but not in duplication of) any Distribution such Holder may receive under this Plan; *provided, however*, that the Debtors and the Reorganized Debtors do not waive, and expressly reserve their rights to assert that any insurance coverage is property of the Estates to which they are entitled.

This Plan shall not expand the scope of, or alter in any other way, the rights and obligations of the Debtors' or Reorganized Debtors' insurers under their policies, and the Debtors' and Reorganized Debtors' insurers shall retain any and all defenses to coverage that such insurers may have, including the right to contest and/or litigate with any party, including the Debtors and the Reorganized Debtors, the existence, primacy, and/or scope of available coverage under any alleged applicable policy. This Plan shall neither operate as a waiver of any other Claims that the Debtors' or Reorganized Debtors' insurers have asserted or may assert in any Proof of Claim nor the Debtors' or Reorganized Debtors' rights and defenses with respect to any such Proof of Claim.

**P. Establishment of Reserve Amounts for Disputed General Unsecured Claims**

To effect Distributions to Holders of Allowed General Unsecured Claims in a timely manner, within twenty-one (21) days after the Effective Date, the Reorganized Debtors shall file



a motion for order establishing a reserve with respect to unliquidated and/or Disputed General Unsecured Claims for Distribution purposes; *provided, however*, that the Reorganized Debtors shall not be required to establish any reserve for any unliquidated or Disputed Claims that the Reorganized Debtors believe, in their reasonable discretion, would receive a Distribution of Cash under this Plan once such Claim is Allowed. No later than ten (10) days after entry of an order approving the motion, Reorganized Fallbrook shall establish the Unsecured Claims Reserve.

New Common Stock held in the Unsecured Claims Reserve shall be held by the Reorganized Debtors in trust for the benefit of Holders of Allowed General Unsecured Claims. New Common Stock held in the Unsecured Claims Reserve shall not constitute property of the Reorganized Debtors or any of them, subject to the provisions of this Article. The Reorganized Debtors shall pay, or cause to be paid, out of any dividends paid on account of New Common Stock held in the Unsecured Claims Reserve, any tax imposed on the Unsecured Claims Reserve by any Governmental Unit with respect to income generated by New Common Stock held in the Unsecured Claims Reserve and any costs associated with maintaining the Unsecured Claims Reserve. Any New Common Stock held in the Unsecured Claims Reserve after all General Unsecured Claims have been Allowed or disallowed shall be transferred by the Reorganized Debtors (as applicable), in a supplemental Distribution, Pro Rata, to the Holders of Allowed General Unsecured Claims, *provided, however*, that to the extent such Pro Rata allocation results in a Distribution of less than one share of New Common Stock to over fifty percent (50%) of Holders of Allowed Unsecured Claims otherwise entitled to such Distribution, the Reorganized Debtors shall have no obligation to make such Distribution and all then-undistributed New Common Stock shall be canceled and the entitlement of any Person thereto shall be extinguished and forever barred.

**Q. Allowance of Disputed General Unsecured Claims**

Each Holder of a Disputed General Unsecured Claim that becomes an Allowed General Unsecured Claim subsequent to the Initial Distribution Date shall receive a Pro Rata share of the Unsecured Claims Reserve on the next Quarterly Distribution Date.

**R. Allocation of Consideration**

The aggregate consideration to be distributed to the Holders of Allowed Claims in each Class under this Plan shall be treated as first satisfying an amount equal to the stated principal amount of the Allowed Claim for such Holders, and any remaining consideration as satisfying accrued, but unpaid, interest and costs, if any, and attorneys' fees, where applicable.

**VIII.**

**RELEASE, INJUNCTION, AND RELATED PROVISIONS**

**A. Discharge of Claims and Termination of Equity Interests; Compromise and Settlement of Claims, Equity Interests, and Controversies**

Pursuant to and to the fullest extent permitted by section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in this Plan, the Distributions, rights, and

treatment that are provided in this Plan shall be in full and final satisfaction, settlement, release, and discharge, effective as of the Effective Date, of all Equity Interests and Claims of any nature whatsoever, including any interest accrued on Claims from and after the Petition Date, whether known or unknown, against, liabilities of, Liens on, obligations of, rights against the Debtors, the Reorganized Debtors, or any of their assets or properties, regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims, including demands, liabilities, and Causes of Action that arose before the Effective Date, any contingent or non-contingent liability on account of representations or warranties issued on or before the Effective Date, and all debts of the kind specified in sections 502(g), 502(h), or 502(i) of the Bankruptcy Code, in each case whether or not: (i) a Proof of Claim or Equity Interest is filed or deemed filed pursuant to section 501 of the Bankruptcy Code; (ii) a Claim or Equity Interest is Allowed; or (iii) the Holder of such Claim or Equity Interest has accepted this Plan. The Confirmation Order shall be a judicial determination of the discharge of all Claims and Equity Interests subject to the Effective Date occurring, except as otherwise expressly provided in this Plan. For the avoidance of doubt, nothing in this Section VIII.A shall affect the rights of Holders of Claims and Equity Interests to seek to enforce this Plan, including the Distributions to which Holders of Allowed Claims are entitled under this Plan.

Pursuant to Bankruptcy Rule 9019 and in consideration for the Distributions and other benefits provided pursuant to this Plan, the provisions of this Plan shall constitute a good-faith compromise of all Claims, Equity Interests, and controversies relating to the contractual, legal, and subordination rights that a Holder of a Claim or Equity Interest may have with respect to any Allowed Claim or Equity Interest, or any Distribution to be made on account of such Allowed Claim or Equity Interest. The entry of the Confirmation Order shall constitute the Bankruptcy Court's approval of the compromise or settlement of all such Claims, Equity Interests, and controversies, as well as a finding by the Bankruptcy Court that such compromise or settlement is in the best interests of the Debtors, the Estates, and Holders of Claims and Equity Interests and is fair, equitable, and reasonable. In accordance with the provisions of this Plan, pursuant to Bankruptcy Rule 9019, without any further notice to or action, order, or approval of the Bankruptcy Court, after the Effective Date, the Reorganized Debtors may compromise and settle Claims against the Debtors and the Estates and Causes of Action against other entities.

## **B. Releases By The Debtors**

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS PLAN TO THE CONTRARY, AS OF THE EFFECTIVE DATE, AND TO THE FULLEST EXTENT AUTHORIZED BY APPLICABLE LAW, FOR GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY CONFIRMED, THE RELEASED PARTIES ARE DEEMED RELEASED AND DISCHARGED BY THE DEBTORS, THE REORGANIZED DEBTORS, AND THE DEBTORS' ESTATES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, CAUSES OF ACTION, RIGHTS OF SETOFF, OTHER RIGHTS, AND LIABILITIES WHATSOEVER, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR THAT COULD BE ASSERTED DIRECTLY OR INDIRECTLY ON BEHALF OF THE REORGANIZED DEBTORS, THE DEBTORS, OR THE DEBTORS' ESTATES, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN,**

**FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, AND ANY AND ALL CAUSES OF ACTION ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED ON BEHALF OF THE REORGANIZED DEBTORS, THE DEBTORS, OR THE DEBTORS' ESTATES (WHETHER INDIVIDUALLY OR COLLECTIVELY) BASED ON, RELATING TO, OR ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS (INCLUDING THE MANAGEMENT, OWNERSHIP, OR OPERATION THEREOF), THE REORGANIZED DEBTORS, THE CHAPTER 11 CASES, THE DEBTORS' IN- AND OUT-OF-COURT RESTRUCTURING EFFORTS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THIS PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE NEGOTIATION, FORMULATION, AND PREPARATION OF THIS PLAN, THE RESTRUCTURING SUPPORT AGREEMENT, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE DOCUMENTATION AND NEGOTIATION OF THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, ANY OTHER ACT OR OMISSION, TRANSACTION AGREEMENT, EVENT, OR OTHER OCCURRENCE TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE.**

**THE FOREGOING RELEASE: (1) SHALL NOT APPLY TO ANY EXPRESS CONTRACTUAL OR FINANCIAL OBLIGATIONS OR ANY RIGHTS OR OBLIGATIONS ARISING UNDER OR THAT ARE PART OF THIS PLAN OR ANY AGREEMENTS ENTERED INTO PURSUANT TO, IN CONNECTION WITH, OR CONTEMPLATED BY THIS PLAN, (2) SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED ACTUAL FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, AND (3) SHALL NOT RELEASE ANY CLAIMS HELD BY ANY NON-DEBTOR. FOR THE AVOIDANCE OF DOUBT, THE DEBTORS AND REORGANIZED DEBTORS WILL CONTINUE TO HONOR ALL POSTPETITION AND POST-EFFECTIVE DATE OBLIGATIONS UNDER THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS.**

**C. Releases By Holders of Claims**

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS PLAN OR THE DISCLOSURE STATEMENT TO THE CONTRARY, BUT SUBJECT TO THE LIMITATIONS SET FORTH IN THE SECOND PARAGRAPH OF THIS SECTION VIII.C, AS OF THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE DEEMED TO HAVE BEEN CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED BY THE RELEASING PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, CAUSES OF ACTION, RIGHTS OF SETOFF, OTHER RIGHTS, AND LIABILITIES WHATSOEVER,**

**WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL, PROVINCIAL OR STATE SECURITIES LAWS, AVOIDANCE ACTIONS, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED DIRECTLY OR INDIRECTLY ON BEHALF OF THE RELEASING PARTIES OR THEIR AFFILIATES, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, AND ANY AND ALL CAUSES OF ACTION ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED ON BEHALF OF THE RELEASING PARTIES OR THEIR AFFILIATES (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM, BASED ON OR IN ANY WAY RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS (INCLUDING THE MANAGEMENT, OWNERSHIP, OR OPERATION THEREOF), THE REORGANIZED DEBTORS, THE CHAPTER 11 CASES, THE DEBTORS' IN- AND OUT-OF-COURT RESTRUCTURING EFFORTS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THIS PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE NEGOTIATION, FORMULATION, AND PREPARATION OF THIS PLAN, THE RESTRUCTURING SUPPORT AGREEMENT, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE DOCUMENTATION AND NEGOTIATION OF THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, ANY OTHER ACT OR OMISSION, TRANSACTION AGREEMENT, EVENT, OR OTHER OCCURRENCE RELATED TO THE DEBTORS OR THE CHAPTER 11 CASES TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE (1) ANY OBLIGATION OF THE DEBTORS OR THE REORGANIZED DEBTORS ARISING UNDER OR IN CONNECTION WITH THE EXIT FACILITIES, (2) ANY POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY OR ENTITY UNDER THIS PLAN OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT (INCLUDING THOSE SET FORTH IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN (INCLUDING, FOR THE AVOIDANCE OF DOUBT, POST-EFFECTIVE DATE OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS), (3) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTORS OR THE REORGANIZED DEBTORS ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTORS PURSUANT TO THIS PLAN, (4) ANY ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED ACTUAL FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, OR (5) ANY ACT OR OMISSION THAT OCCURS ON OR AFTER THE EFFECTIVE DATE.**

**D. Exculpation**

**UPON AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE DEBTORS AND THEIR REPRESENTATIVES WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THIS PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING SECTION 1125(e) OF THE BANKRUPTCY CODE.**

**EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY ACT TAKEN OR OMITTED TO BE TAKEN ON OR AFTER THE PETITION DATE AND ON OR BEFORE THE EFFECTIVE DATE IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THIS PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THIS PLAN OR ANY OTHER ACT TAKEN OR OMITTED TO BE TAKEN ON OR AFTER THE PETITION DATE AND ON OR BEFORE THE EFFECTIVE DATE IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; PROVIDED THAT THE FOREGOING “EXCULPATION” SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED ACTUAL FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; PROVIDED, FURTHER, THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THIS PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.**

**THE EXCULPATED PARTIES HAVE, AND UPON CONFIRMATION SHALL BE DEEMED TO HAVE, PARTICIPATED IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING WITH REGARD TO THE DISTRIBUTIONS OF NEW COMMON STOCK PURSUANT TO THIS PLAN AND, THEREFORE, ARE NOT AND SHALL NOT BE LIABLE AT ANY TIME FOR THE VIOLATIONS OF ANY APPLICABLE LAW, RULE, OR REGULATION GOVERNING THE SOLICITATION OF ACCEPTANCES OR REJECTIONS OF THIS PLAN OR SUCH DISTRIBUTIONS MADE PURSUANT TO THIS PLAN.**

**E. Injunction**

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PLAN, THE CONFIRMATION ORDER, OR A SEPARATE ORDER OF THE BANKRUPTCY COURT, ALL ENTITIES WHO HAVE HELD, HOLD, OR MAY HOLD CLAIMS AGAINST THE DEBTORS THAT AROSE BEFORE OR WERE HELD AS OF THE**

**EFFECTIVE DATE, ARE PERMANENTLY ENJOINED, ON AND AFTER THE EFFECTIVE DATE, FROM (1) COMMENCING OR CONTINUING IN ANY MANNER ANY ACTION OR OTHER PROCEEDING OF ANY KIND AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS, WITH RESPECT TO ANY SUCH CLAIM, (2) THE ENFORCEMENT, ATTACHMENT, COLLECTION, OR RECOVERY BY ANY MANNER OR MEANS OF ANY JUDGMENT, AWARD, DECREE, OR ORDER AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS ON ACCOUNT OF ANY SUCH CLAIM, (3) CREATING, PERFECTING, OR ENFORCING ANY ENCUMBRANCE OF ANY KIND AGAINST THE DEBTORS OR THE REORGANIZED DEBTORS OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF THE DEBTORS ON ACCOUNT OF ANY SUCH CLAIM AND (4) ASSERTING ANY RIGHT OF SETOFF, OR SUBROGATION OF ANY KIND AGAINST ANY OBLIGATION DUE FROM THE DEBTORS OR THE REORGANIZED DEBTORS OR AGAINST THE PROPERTY OR INTERESTS IN PROPERTY OF THE DEBTORS ON ACCOUNT OF ANY SUCH CLAIM. SUCH INJUNCTION SHALL EXTEND TO SUCCESSORS OF THE DEBTOR (INCLUDING, WITHOUT LIMITATION, THE REORGANIZED DEBTORS) AND THEIR RESPECTIVE PROPERTIES AND INTERESTS IN PROPERTY. SUCH INJUNCTION SHALL NOT APPLY IN RESPECT OF ORDINARY COURSE ADMINISTRATIVE CLAIMS.**

**F. Setoffs and Recoupments**

Except as otherwise provided herein, each Reorganized Debtor, pursuant to the Bankruptcy Code (including section 553 therein), applicable bankruptcy or non-bankruptcy law, or as may be agreed to by the Holder of an Allowed Claim, may set off or recoup against any Allowed Claim and the Distributions to be made pursuant to this Plan on account of such Allowed Claim, any Claims, rights, and Causes of Action of any nature that the applicable Debtor or Reorganized Debtor may hold against the Holder of such Allowed Claim, to the extent such Claims, rights, or Causes of Action have not been otherwise compromised or settled on or prior to the Effective Date (whether pursuant to this Plan, a Final Order, or otherwise); provided that neither the failure to effect such a setoff or recoupment nor the allowance of any Claim pursuant to this Plan shall constitute a waiver or release by such Reorganized Debtor of any such Claims, rights, and Causes of Action.

In no event shall any Holder of Claims be entitled to set off or recoup any Claim against any Claim, right, or Cause of Action of a Debtor or a Reorganized Debtor, as applicable, unless such Holder has timely filed a Proof of Claim with the Bankruptcy Court preserving such setoff or recoupment in such Proof of Claim and sought appropriate relief from the Bankruptcy Court.

**G. Release of Liens**

Except as otherwise provided herein or in any contract, instrument, release, or other agreement or document created pursuant to this Plan, on the Effective Date and concurrently with the applicable Distributions made pursuant to this Plan, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the Estates shall be fully released and discharged, and all of the right, title, and interest of any Holder of such mortgages, deeds of trust,



Liens, pledges, or other security interests shall revert to the applicable Reorganized Debtor and its successors and assigns.

To the extent that any Holder of a Secured Claim that has been satisfied or discharged in full pursuant to this Plan, or any agent for such Holder, has filed or recorded publicly any Liens and/or security interests to secure such Holder's Secured Claim, then as soon as practicable on or after the Effective Date, such Holder (or the agent for such Holder) shall take any and all steps requested by the Debtors, the Reorganized Debtors, or any applicable administrative agent that are necessary or desirable to record or effectuate the cancellation and/or extinguishment of such Liens and/or security interests, including the making of any applicable filings or recordings, and the Reorganized Debtors shall be entitled to make any such filings or recordings on such Holder's behalf.

#### **H. Preservation of Certain Defenses**

The releases by non-Debtors and injunction provided in this Plan shall not be deemed a waiver or relinquishment of any equitable or legal defense that an entity held against the Debtors immediately prior to the Petition Date, with respect to any Cause of Action commenced by the Debtors prior to the Effective Date or the Reorganized Debtors after the Effective Date, as the case may be, against such entity; *provided* that the releases and injunction provided in this Plan shall be deemed a waiver or relinquishment of any right of setoff or recoupment or any other monetary claim to the extent such right or claim was not properly preserved through the timely filing of a Proof of Claim.

#### **I. Term of Bankruptcy Injunction or Stays**

Unless otherwise provided in this Plan or in the Confirmation Order, all injunctions or stays in effect in the Chapter 11 Cases pursuant to sections 105 or 362 of the Bankruptcy Code or any order of the Bankruptcy Court, and extant on the Confirmation Date (excluding any injunctions or stays contained in this Plan or the Confirmation Order) shall remain in full force and effect until the Effective Date. All injunctions or stays contained in this Plan or the Confirmation Order shall remain in full force and effect in accordance with their terms.

#### **J. Preservation of Insurance**

The Debtors' discharge and release from all Claims as provided herein, except as necessary to be consistent with this Plan, shall not diminish or impair the enforceability of any insurance policy that may cover Claims against the Debtors, the Reorganized Debtors (including, without limitation, its officers and directors) or any other person or entity.

### **IX.**

#### **RETENTION OF JURISDICTION**

Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over all matters arising out of, or

related to, the Chapter 11 Cases and this Plan pursuant to sections 105(a) and 1142 of the Bankruptcy Code, including jurisdiction to:

1. Allow, disallow, determine, liquidate, classify, estimate, or establish the priority, secured or unsecured status, or amount of any Claim or Equity Interest, including the resolution of any request for payment of any Administrative Claim and the resolution of any and all objections to the secured or unsecured status, priority, amount, or allowance of Claims or Equity Interests;

2. Decide and resolve all matters related to the granting and denying, in whole or in part, any applications for allowance of compensation or reimbursement of expenses to Professionals authorized pursuant to the Bankruptcy Code or this Plan;

3. Resolve any matters related to: (i) the assumption, assumption and assignment, or rejection of any executory contract or unexpired lease to which a Debtor is party or with respect to which a Debtor may be liable and to hear, determine, and, if necessary, liquidate, any Cure Claims arising therefrom, including Cure Claims pursuant to section 365 of the Bankruptcy Code; (ii) any potential contractual obligation under any executory contract or unexpired lease that is assumed; and (iii) any dispute regarding whether a contract or lease is or was executory or expired;

4. Ensure that Distributions to Holders of Allowed Claims are accomplished pursuant to the provisions of this Plan;

5. Adjudicate, decide, or resolve any motions, adversary proceedings, contested or litigated matters, and any other matters, and grant or deny any applications involving a Debtor that may be pending on the Effective Date;

6. Adjudicate, decide, or resolve any and all matters related to the Retained Causes of Action;

7. Adjudicate, decide, or resolve any and all matters related to section 1141 of the Bankruptcy Code;

8. Resolve any cases, controversies, suits, or disputes that may arise in connection with the General Unsecured Claims;

9. Enter and implement such orders as may be necessary or appropriate to execute, implement, or consummate the provisions of this Plan and all contracts, instruments, releases, indentures, and other agreements or documents created in connection with this Plan or the Disclosure Statement;

10. Enter and enforce any order for the sale of property pursuant to sections 363, 1123, or 1146(a) of the Bankruptcy Code;

11. Resolve any cases, controversies, suits, disputes, or Causes of Action that may arise in connection with the interpretation or enforcement of this Plan or any entity's obligations incurred in connection with this Plan;



12. Issue injunctions, enter and implement other orders, or take such other actions as may be necessary or appropriate to restrain interference by any entity with enforcement of this Plan;

13. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the releases, injunctions, and other provisions contained in this Plan and enter such orders as may be necessary or appropriate to implement such releases, injunctions, and other provisions;

14. Resolve any cases, controversies, suits, disputes, or Causes of Action with respect to the repayment or return of Distributions and the recovery of additional amounts owed by the Holder of a Claim or Equity Interest for amounts not timely repaid;

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

16. Determine any other matters that may arise in connection with or relate to this Plan, the Disclosure Statement, the Confirmation Order, or any contract, instrument, release, indenture, or other agreement or document created in connection with this Plan or the Disclosure Statement;

17. Enter an order or final decree concluding or closing a Chapter 11 Case;

18. Adjudicate any and all disputes arising from or relating to Distributions under this Plan;

19. Consider any modifications of this Plan, to cure any defect or omission, or to reconcile any inconsistency in any Bankruptcy Court order, including the Confirmation Order;

20. Determine requests for the payment of Claims entitled to priority pursuant to section 507 of the Bankruptcy Code;

21. Hear and determine disputes arising in connection with the interpretation, implementation, or enforcement of this Plan or the Confirmation Order, including disputes arising under agreements, documents, or instruments executed in connection with this Plan (other than any dispute arising after the Effective Date under, or directly with respect to, the Exit Facilities, which such disputes shall be adjudicated in accordance with the terms of the Exit Facility Documentation);

22. Hear and determine matters concerning state, local, and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;

23. Hear and determine all disputes involving the existence, nature, or scope of the Debtors' discharge, including any dispute relating to any liability arising out of the termination of employment, regardless of whether such termination occurred prior to or after the Effective Date;

24. Enforce all orders previously entered by the Bankruptcy Court; and

25. Hear any other matter not inconsistent with the Bankruptcy Code.

**X.**

**MISCELLANEOUS PROVISIONS**

**A. Immediate Binding Effect**

Notwithstanding Bankruptcy Rules 3020(e), 6004(g), or 7062 or otherwise, upon the occurrence of the Effective Date, the terms of this Plan and the documents and instruments contained in the Plan Supplement shall be immediately effective and enforceable and deemed binding upon the Debtors, the Reorganized Debtors, any and all Holders of Claims and Equity Interests (irrespective of whether Holders of such Claims or Equity Interests are deemed to have accepted this Plan), all Entities that are parties to or are subject to the settlements, compromises, releases, discharges, and injunctions described in this Plan, each entity acquiring property under this Plan, and any and all non-Debtor parties to e/s and unexpired leases. The Confirmation Order shall contain a waiver of any stay of enforcement otherwise applicable, including pursuant to Bankruptcy Rule 3020(e) and 7062.

**B. Modification of this Plan**

Subject to the limitations contained in this Plan, the Debtors reserve the right, in accordance with the Bankruptcy Code, the Bankruptcy Rules, and the Restructuring Support Agreement, and with the consent of the Kayne Supporting Creditors: (i) to amend or modify this Plan prior to the entry of the Confirmation Order, including amendments or modifications to satisfy section 1129(b) of the Bankruptcy Code; and (ii) after the entry of the Confirmation Order, the Debtors or the Reorganized Debtors, as the case may be, may, upon order of the Bankruptcy Court, amend or modify this Plan, in accordance with section 1127(b) of the Bankruptcy Code and the Restructuring Support Agreement, or remedy any defect or omission or reconcile any inconsistency in this Plan in such manner as may be necessary to carry out the purpose and intent of this Plan.

Entry of the Confirmation Order shall mean that all modifications or amendments to this Plan since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or re-solicitation under Bankruptcy Rule 3019.

**C. Entire Agreement**

On the Effective Date, this Plan and the Plan Supplement supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into this Plan.

**D. Governing Law**

Unless a rule of law or procedure is supplied by federal law (including the Bankruptcy Code and Bankruptcy Rules) or unless otherwise specifically stated, the laws of the State of Delaware, without giving effect to the principles of conflict of laws, shall govern the rights, obligations, construction, and implementation of this Plan, any agreements, documents,

instruments, or contracts executed or entered into in connection with this Plan (except as otherwise set forth in those agreements, in which case the governing law of such agreement shall control), and corporate governance matters; provided that corporate governance matters relating to Debtors or Reorganized Debtors, as applicable, not incorporated in Delaware shall be governed by the laws of the state of incorporation of the applicable Debtor or Reorganized Debtor, as applicable.

#### **E. Filing or Execution of Additional Documents**

On or before the Effective Date, the Debtors, with the consent of the Kayne Supporting Creditors, may file with the Bankruptcy Court such agreements and other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of this Plan. The Debtors or Reorganized Debtors, as applicable, and all Holders of Claims receiving Distributions pursuant to this Plan and all other parties in interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

#### **F. Withholding and Reporting Requirements**

In connection with this Plan and all instruments issued in connection therewith and Distributions thereon, the Reorganized Debtors shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority and all Distributions hereunder shall be subject to any such withholding and reporting requirements. Any Holder of an Allowed Claim shall provide the Reorganized Debtors with information and forms required to satisfy its obligations under this section, as determined within the reasonable discretion of the Reorganized Debtors ("Required Tax Forms"); any Holder of an Allowed Claim that fails to provide the Reorganized Debtors with Required Tax Forms within forty-five (45) days (or any longer period consented to by the Reorganized Debtors in writing) after a written request from the Reorganized Debtors for Required Tax Forms shall have all Distributions on account of such Allowed Claims deemed an Unclaimed Distribution as of the expiration of such period and shall have its Allowed Claim treated in accordance with Section VII.D or VII.E of this Plan.

#### **G. Exemption From Transfer Taxes**

Pursuant to section 1146(a) of the Bankruptcy Code, (i) the issuance, transfer, or exchange under this Plan of New Common Stock, and the security interests in favor of the lenders under the Exit Facilities, (ii) the making or assignment of any lease or sublease under this Plan, or (iii) the making or delivery of any other instrument whatsoever, in furtherance of or in connection with this Plan shall not be subject to any stamp, real estate transfer, recording, or other similar tax.

#### **H. Reservation of Rights**

This Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. None of the filing of this Plan, any statement or provision contained in this Plan, or the taking of any action by any Debtor with respect to this Plan, the Disclosure

Statement, or the Plan Supplement shall be or shall be deemed to be an admission or waiver of any rights of any Debtor with respect to the Holders of Claims or Equity Interests prior to the Effective Date.

### I. Notices

After the Effective Date, any pleading, notice, or other document required by this Plan to be served on or delivered to the Reorganized Debtors shall also be served on:

<b>Debtors</b>	<b>Counsel to the Debtors</b>
Fallbrook Technologies Inc. 505 Cypress Creek Road Suite L Cedar Park, Texas 78613. Attn: Jeffrey A. Birchak, Esq.	Shearman & Sterling LLP 599 Lexington Avenue New York, New York 10022 Attn: Ned S. Schodek, Esq. Jordan A. Wishnew, Esq.  and  Young Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, Delaware 19801 Attn: Pauline K. Morgan, Esq. Kenneth J. Enos, Esq. Jaime Luton Chapman, Esq.
<b>United States Trustee</b>	<b>Counsel to the Kayne Supporting Creditors</b>
Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn: Benjamin A. Hackman, Esq.	Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019-6099 Attn: Rachel C. Strickland, Esq. Paul V. Shalhoub, Esq. Richard Choi, Esq.  and  Richards, Layton & Finger, P.A. One Rodney Square 920 North King Street Wilmington, DE 19801 Attn: Mark D. Collins, Esq. Michael J. Merchant, Esq. Joseph C. Barsalona II, Esq.

Entities that would like to continue to receive documents pursuant to Bankruptcy Rule 2002, after the Effective Date, must file a renewed request with the Bankruptcy Court. After the Effective Date, the Reorganized Debtors are authorized to limit the list of entities receiving documents pursuant to Bankruptcy Rule 2002 to (a) those entities who have filed such renewed requests and (b) those entities whose rights are affected by such documents.

**J. Exhibits/Schedules**

All exhibits and schedules to this Plan and the Plan Supplement are incorporated into and constitute a part of this Plan as if set forth herein.

**K. Nonseverability of Plan Provisions upon Confirmation**

If, prior to Confirmation, any term or provision of this Plan is held by the Bankruptcy Court to be invalid, void, or unenforceable, the Bankruptcy Court shall have the power to alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted; *provided* that any such alteration or interpretation shall be reasonably satisfactory to the Debtors and the Kayne Supporting Creditors. Notwithstanding any such holding, alteration, or interpretation, the remainder of the terms and provisions of this Plan will remain in full force and effect and will in no way be affected, impaired, or invalidated by such holding, alteration, or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this Plan, as it may have been altered or interpreted in accordance with the foregoing, is: (i) valid and enforceable pursuant to its terms; (ii) integral to this Plan and may not be deleted or modified without the consent of the Debtors; and (iii) nonseverable and mutually dependent.

**L. Closing of Chapter 11 Cases; Caption Change**

The Reorganized Debtors shall, promptly after the full administration of the Chapter 11 Cases, file with the Bankruptcy Court all documents required by Bankruptcy Rule 3022 and any applicable order of the Bankruptcy Court to close the Chapter 11 Cases, *provided*, as of the Effective Date, the Reorganized Debtors may submit separate orders to the Bankruptcy Court under certification of counsel closing each of the Closing Cases and changing the caption of the Chapter 11 Cases accordingly, *provided further* that matters concerning Claims may be heard and adjudicated in a Remaining Case regardless of whether the applicable Claim is against a Debtor in a Closing Case. Nothing in this Plan shall authorize the closing of any case *nunc pro tunc* to a date that precedes the date any such order is entered. Any request for *nunc pro tunc* relief shall be made on motion served on the United States Trustee, and the Bankruptcy Court shall rule on such request after notice and a hearing. Upon the filing of a motion to close the last Remaining Case, the Reorganized Debtors shall file a final report with respect to all of the Chapter 11 Cases pursuant to Local Rule 3022-1(c).

**M. Conflict**

To the extent that any provision of the Disclosure Statement, the Plan Supplement, or any other order (other than the DIP Financing Orders and the Confirmation Order) referenced in this Plan (or any exhibits, appendices, supplements, or amendments to any of the foregoing) conflict with or are in any way inconsistent with any provision of this Plan, this Plan shall govern and control. To the extent that any provision in this Plan conflicts with or is in any way inconsistent with any provision of the Confirmation Order, the Confirmation Order shall govern and control.

**N. Further Assurances**

The Debtors, Reorganized Debtors, all Holders of Claims or Equity Interests receiving Distributions pursuant to this Plan, and all other parties-in-interest shall, from time to time, prepare, execute, and deliver any agreements or documents and take any other actions as may be necessary or advisable to effectuate the provisions and intent of this Plan or the Confirmation Order.

**XI.**

**EFFECTIVENESS OF THE PLAN**

**A. Conditions Precedent to Confirmation**

It shall be a condition to Confirmation that the following conditions shall have been satisfied in full or waived pursuant to Section XI(C):

1. The Bankruptcy Court shall have approved the Disclosure Statement as containing adequate information with respect to this Plan within the meaning of section 1125 of the Bankruptcy Code on a date that is no more than 64 days after the Petition Date.
2. Each of the DIP Financing Orders shall have been entered, shall be in full force and effect, and, with respect to the Final DIP Order, shall be a Final Order.
3. The Confirmation Order shall have been entered by the Bankruptcy Court no more than 106 days after the Confirmation Date.
4. The Plan Supplement and any related documentation shall be acceptable to the Debtors and the Kayne Supporting Creditors.

**B. Conditions Precedent to Effectiveness**

This Plan shall not become effective unless and until it has been confirmed and the following conditions have been satisfied in full or waived pursuant to Section XI(C):

1. The Confirmation Order shall have been entered, shall be in full force and effect, and shall be a Final Order, which shall have occurred no later than 121 days after the Petition Date.
2. The Reorganized Debtors Constituent Documents shall have been duly executed.

3. The New Common Stock to be issued shall be consistent with this Plan.

4. All conditions to the effectiveness of the Exit Facilities shall have been satisfied.

5. All actions, documents, certificates, and agreements necessary to implement this Plan shall have been effected or executed and delivered to the required parties and, to the extent required, filed with the applicable Governmental Units in accordance with applicable laws. All conditions precedent to the effectiveness of such documents and agreements shall have been satisfied or waived pursuant to the terms thereof (or will be satisfied and waived substantially concurrently with the occurrence of the Effective Date).

6. All material authorizations, consents, regulatory approvals, rulings, or documents that are necessary to implement and effectuate this Plan and the transactions contemplated herein shall have been obtained.

7. The Restructuring Support Agreement shall not have been terminated in accordance with its terms as to all parties thereto and remains in full force and effect.

**C. Waiver of Conditions**

The Debtors (with the consent of the Kayne Supporting Creditors) or the Reorganized Debtors, as applicable, may waive any of the conditions to the Effective Date set forth above at any time, without any notice to parties in interest and without any further notice to or action, order, or approval of the Bankruptcy Court, and without any formal action other than a proceeding to confirm this Plan. The failure of the Debtors or Reorganized Debtors, as applicable, to exercise any of the foregoing rights shall not be deemed a waiver of such rights or any other rights, and each such right shall be deemed an ongoing right, which may be asserted at any time.

**D. Substantial Consummation**

“Substantial Consummation” of this Plan, as defined in 11 U.S.C. § 1101(2), shall be deemed to occur on the Effective Date.

**E. Effect of Failure of Conditions**

In the event that the Effective Date does not occur on or before ninety (90) days after the Confirmation Date, upon notification submitted by the Debtors (with the consent of the Kayne Supporting Creditors so long as the Restructuring Support Agreement has not been terminated) to the Bankruptcy Court, (i) the Confirmation Order shall be vacated, (ii) no Distributions shall be made, (iii) the Debtors and all Holders of Claims and Equity Interests shall be restored to the *status quo ante* as of the day immediately preceding the Confirmation Date as though the Confirmation Date had never occurred, and (iv) the Debtors’ obligations with respect to the Claims and Equity Interests shall remain unchanged and nothing contained in this Plan shall constitute or be deemed a waiver or release of any Claims or Equity Interests by or against the Debtors or any other person or to prejudice in any manner the rights of the Debtors or any person in any further proceedings involving the Debtors unless extended by Bankruptcy Court order.

**F. Vacatur of Confirmation Order**

If a Final Order denying confirmation of this Plan is entered, or if the Confirmation Order is vacated, then this Plan shall be null and void in all respects, and nothing contained in this Plan shall: (i) constitute a waiver or release of any Claims against or Equity Interests in the Debtors; (ii) prejudice in any manner the rights of the Holder of any Claim against, or Equity Interest in, the Debtors; (iii) prejudice in any manner any right, remedy, or claim of the Debtors; or (iv) be deemed an admission against interest by the Debtors.

**G. Revocation of Plan**

Subject to the conditions to the Effective Date, the Debtors reserve the right, with the consent of the Kayne Supporting Creditors (only so long as the Restructuring Support Agreement has not been terminated), to revoke or withdraw this Plan prior to the entry of the Confirmation Order and to file subsequent plans of reorganization. If the Debtors revoke or withdraw this Plan, or if entry of the Confirmation Order or the Effective Date does not occur, or if the Restructuring Support Agreement terminates as to all parties thereto in accordance with its terms, then: (i) this Plan shall be null and void in all respects; (ii) any settlement or compromise embodied in this Plan, assumption or rejection of executory contracts or unexpired leases effected under this Plan, and any document or agreement executed pursuant hereto shall be deemed null and void; and (iii) nothing contained in this Plan, the Disclosure Statement, or any Confirmation Order shall: (a) constitute a waiver or release of any claims by or against, or any Equity Interests in, such Debtor or any other entity; (b) prejudice in any manner the rights of the Debtors or any other entity; or (c) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtors or any other entity.



Dated: June 6, 2018

**FALLBROOK TECHNOLOGIES INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**FALLBROOK TECHNOLOGIES INTERNATIONAL CO.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**HODYON, INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**HODYON FINANCE, INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**EXHIBIT B**

**Plan Redline**

**(Changed Pages Only)**

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

In re:

**FALLBROOK TECHNOLOGIES INC., et al.<sup>1</sup>**

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

**DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

Dated: ~~May 1,~~ June 6, 2018  
Wilmington, Delaware

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*Counsel to the Debtors and Debtors in Possession*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors' principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.

I.	Issuance of New Common Stock	26
J.	Section 1145 Exemption from Registration	27
K.	Reorganized Debtors Constituent Documents	27
L.	Directors and Officers of the Reorganized Debtors	27
M.	Exit Facility Credit Agreements	28
N.	Management Incentive Plan	28
O.	TSI Settlement	28
P.	Separability	29
Q.	Effectuating Documents; Further Transactions	29
R.	Preservation of Causes of Action	29
<b>VI. TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES</b>		<b>29</b>
A.	Assumption and Rejection of Executory Contracts and Unexpired Leases	29
B.	Cure; Effect of Payment of Cure	30
C.	Rejection Damage Claims	31
D.	Restrictions on Assignment Void	31
E.	Indemnification of Directors, Officers, and Employees	31
F.	Employee Benefit Programs	32
G.	Insurance Policies	32
<b>VII. PROVISIONS GOVERNING DISTRIBUTIONS</b>		<del>32</del> <b>33</b>
A.	Date of Distributions	<del>32</del> <b>33</b>
B.	Delivery of Distributions	33
C.	Distribution of Cash	33
D.	Unclaimed Distributions of Cash	<del>33</del> <b>34</b>
E.	Unclaimed Distributions of New Common Stock	34
F.	Saturdays, Sundays, or Legal Holidays	34
G.	Fractional New Common Stock and De Minimis Distributions	34
H.	Distributions for Claims Allowed as of the Initial Distribution Date	<del>34</del> <b>35</b>
I.	Distributions as of the Record Date	35
J.	Interest on Claims	35
K.	Objections to and Resolution of Claims	35
L.	Claims Estimation	36
M.	Updates to Claims Register Without Objection	36
N.	Administrative Claims Incurred After the Confirmation Date	37
O.	Special Provisions Regarding Insured Claims	37
P.	Establishment of Reserve Amounts for Disputed General Unsecured Claims	37
Q.	Allowance of Disputed General Unsecured Claims	38
R.	Allocation of Consideration	38
<b>VIII. RELEASE, INJUNCTION, AND RELATED PROVISIONS</b>		<b>38</b>
A.	Discharge of Claims and Termination of Equity Interests; Compromise and Settlement of Claims, Equity Interests, and Controversies	38
B.	Releases By The Debtors	39
C.	Releases By Holders of Claims	40
D.	Exculpation	<del>41</del> <b>42</b>

- E. Injunction ..... 42
- F. Setoffs and Recoupments ..... 43
- G. Release of Liens ..... 43
- H. Preservation of Certain Defenses ..... 44
- I. Term of Bankruptcy Injunction or Stays ..... 44
- J. Preservation of Insurance ..... 44
- IX. RETENTION OF JURISDICTION ..... 44**
- X. MISCELLANEOUS PROVISIONS ..... 4647**
- A. Immediate Binding Effect ..... 4647
- B. Modification of this Plan ..... 47
- C. Entire Agreement ..... 47
- D. Governing Law ..... 47
- E. Filing or Execution of Additional Documents ..... 4748
- F. Withholding and Reporting Requirements ..... 48
- G. Exemption From Transfer Taxes ..... 48
- H. Reservation of Rights ..... 48
- I. Notices ..... 4849
- J. Exhibits/Schedules ..... 4950
- K. Nonseverability of Plan Provisions upon Confirmation ..... 50
- L. Closing of Chapter 11 Cases; Caption Change ..... 50
- M. Conflict ..... 5051
- N. Further Assurances ..... 5051
- XI. EFFECTIVENESS OF THE PLAN ..... 51**
- A. Conditions Precedent to Confirmation ..... 51
- B. Conditions Precedent to Effectiveness ..... 51
- C. Waiver of Conditions ..... 52
- D. Substantial Consummation ..... 52
- E. Effect of Failure of Conditions ..... 52
- F. Vacatur of Confirmation Order ..... 5253
- G. Revocation of Plan ..... 5253

instruments, and all exhibits, schedules, and annexes thereto entered into in connection with the Exit Facility Credit Agreement to be executed or delivered in connection therewith, with terms and conditions and in form and substance consistent with the terms of the Restructuring Support Agreement and otherwise satisfactory to the Debtors and the New Second Lien Agent (in each case, as amended, modified, or supplemented from time to time).

101. “*New Second Lien Lenders*” means the Existing Noteholders and the Bridge Noteholders, in their capacity as lenders under the New Second Lien Term Facility.

102. “*Other Priority Claim*” means any Claim against any of the Debtors, other than an Administrative Claim, a Professional Fee Claim, a Priority Tax Claim, and a DIP Facility Claim, that is entitled to priority in payment as specified in section 507(a)(3), (4), (5), (6), (7), or (9) of the Bankruptcy Code.

103. “*Other Secured Claim*” means any Claim (other than a DIP Facility Claim and Senior Secured Claim) to the extent reflected in the Schedules or a Proof of Claim filed as a secured Claim, which is secured by a Lien on, or security interest in, property of such Debtor, or that has the benefit of rights of setoff under section 553 of the Bankruptcy Code, but only to the extent of the value of the Holder’s interest in such Debtor’s interest in such property, or to the extent of the amount subject to setoff, which value shall be determined as provided in section 506 of the Bankruptcy Code.

104. “*Parent Interests*” means all Equity Interests in Fallbrook immediately prior to the Effective Date, including all options, warrants, preferred and common shares. For the avoidance of doubt, this includes the Equity Interests identified on Fallbrook’s *List of Equity Security Holders* [Docket No. 80].

105. “*Person*” means any individual, corporation, partnership, limited liability company, association, indenture trustee, organization, joint stock company, joint venture, estate, trust, Governmental Unit (as defined in the Bankruptcy Code) or any political subdivision thereof, or any other entity.

106. “*Petition Date*” means February 26, 2018.

107. “*Plan*” means this “*Debtors’ [First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code](#)*”, as it may be amended or modified from time to time in accordance with the terms hereof, together with any Plan Supplement and all addenda, exhibits, schedules or other attachments, if any.

108. “*Plan Supplement*” means any compilation of documents and forms of documents, agreements, schedules, and exhibits to this Plan, which shall be filed by the Debtors no later than seven (7) calendar days before the Voting Deadline, and additional documents filed with the Bankruptcy Court prior to the Effective Date as amendments to the Plan Supplement, each of which shall be consistent in all respects with, and shall otherwise contain, the terms and conditions set forth on the exhibits attached hereto, where applicable, and, without limiting the foregoing, shall be acceptable in form and substance to the Kayne Supporting Creditors. The Plan Supplement shall include the following documents, among others: (i) Schedule of Assumed

**C. Releases By Holders of Claims**

**NOTWITHSTANDING ANYTHING CONTAINED IN THIS PLAN OR THE DISCLOSURE STATEMENT TO THE CONTRARY, BUT SUBJECT TO THE LIMITATIONS SET FORTH IN THE SECOND PARAGRAPH OF THIS SECTION VIII.C. AS OF THE EFFECTIVE DATE, THE RELEASED PARTIES SHALL BE DEEMED TO HAVE BEEN CONCLUSIVELY, ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY, AND FOREVER RELEASED AND DISCHARGED BY THE RELEASING PARTIES FROM ANY AND ALL CLAIMS, OBLIGATIONS, SUITS, JUDGMENTS, DAMAGES, DEMANDS, DEBTS, REMEDIES, CAUSES OF ACTION, RIGHTS OF SETOFF, OTHER RIGHTS, AND LIABILITIES WHATSOEVER, WHETHER FOR TORT, CONTRACT, VIOLATIONS OF FEDERAL, PROVINCIAL OR STATE SECURITIES LAWS, AVOIDANCE ACTIONS, INCLUDING ANY DERIVATIVE CLAIMS ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED DIRECTLY OR INDIRECTLY ON BEHALF OF THE RELEASING PARTIES OR THEIR AFFILIATES, WHETHER LIQUIDATED OR UNLIQUIDATED, FIXED OR CONTINGENT, MATURED OR UNMATURED, KNOWN OR UNKNOWN, FORESEEN OR UNFORESEEN, EXISTING OR HEREAFTER ARISING, IN LAW, EQUITY, OR OTHERWISE, AND ANY AND ALL CAUSES OF ACTION ASSERTED OR THAT COULD POSSIBLY HAVE BEEN ASSERTED ON BEHALF OF THE RELEASING PARTIES OR THEIR AFFILIATES (WHETHER INDIVIDUALLY OR COLLECTIVELY) OR ON BEHALF OF THE HOLDER OF ANY CLAIM, BASED ON OR IN ANY WAY RELATING TO, OR IN ANY MANNER ARISING FROM, IN WHOLE OR IN PART, THE DEBTORS (INCLUDING THE MANAGEMENT, OWNERSHIP, OR OPERATION THEREOF), THE REORGANIZED DEBTORS, THE CHAPTER 11 CASES, THE DEBTORS' IN- AND OUT-OF-COURT RESTRUCTURING EFFORTS, THE PURCHASE, SALE, OR RESCISSION OF THE PURCHASE OR SALE OF ANY SECURITY OF THE DEBTORS OR THE REORGANIZED DEBTORS, THE SUBJECT MATTER OF, OR THE TRANSACTIONS OR EVENTS GIVING RISE TO, ANY CLAIM OR EQUITY INTEREST THAT IS TREATED IN THIS PLAN, THE BUSINESS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE DEBTORS AND ANY RELEASED PARTY, THE NEGOTIATION, FORMULATION, AND PREPARATION OF THIS PLAN, THE RESTRUCTURING SUPPORT AGREEMENT, THE PLAN SUPPLEMENT, THE DISCLOSURE STATEMENT, THE DOCUMENTATION AND NEGOTIATION OF THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS, ANY OTHER ACT OR OMISSION, TRANSACTION AGREEMENT, EVENT, OR OTHER OCCURRENCE RELATED TO THE DEBTORS OR THE CHAPTER 11 CASES TAKING PLACE ON OR BEFORE THE CONFIRMATION DATE.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE FOREGOING, THE RELEASE SET FORTH ABOVE DOES NOT RELEASE (1) ANY OBLIGATION OF THE DEBTORS OR THE REORGANIZED DEBTORS ARISING UNDER OR IN CONNECTION WITH THE EXIT FACILITIES, (2) ANY POST-EFFECTIVE DATE OBLIGATIONS OF ANY PARTY OR ENTITY UNDER THIS PLAN OR ANY DOCUMENT, INSTRUMENT OR AGREEMENT (INCLUDING**

THOSE SET FORTH IN THE PLAN SUPPLEMENT) EXECUTED TO IMPLEMENT THIS PLAN (INCLUDING, FOR THE AVOIDANCE OF DOUBT, POST-EFFECTIVE DATE OBLIGATIONS ARISING UNDER OR IN CONNECTION WITH THE EXIT FACILITIES, AND ANY RELATED AGREEMENTS, INSTRUMENTS, OR OTHER DOCUMENTS), (3) THE RIGHT TO RECEIVE DISTRIBUTIONS FROM THE DEBTORS OR THE REORGANIZED DEBTORS ON ACCOUNT OF AN ALLOWED CLAIM AGAINST THE DEBTORS PURSUANT TO THIS PLAN, (4) ANY ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED ACTUAL FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, OR (5) ANY ACT OR OMISSION THAT OCCURS ON OR AFTER THE EFFECTIVE DATE.

#### D. Exculpation

UPON AND EFFECTIVE AS OF THE EFFECTIVE DATE, THE DEBTORS AND THEIR REPRESENTATIVES WILL BE DEEMED TO HAVE SOLICITED ACCEPTANCES OF THIS PLAN IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING SECTION 1125(e) OF THE BANKRUPTCY CODE.

EXCEPT WITH RESPECT TO ANY ACTS OR OMISSIONS EXPRESSLY SET FORTH IN AND PRESERVED BY THIS PLAN, THE PLAN SUPPLEMENT, OR RELATED DOCUMENTS, THE EXCULPATED PARTIES SHALL NEITHER HAVE, NOR INCUR ANY LIABILITY TO ANY ENTITY FOR ANY ~~PREPETITION OR POSTPETITION~~ ACT TAKEN OR OMITTED TO BE TAKEN ON OR AFTER THE PETITION DATE AND ON OR BEFORE THE EFFECTIVE DATE IN CONNECTION WITH, OR RELATED TO FORMULATING, NEGOTIATING, PREPARING, DISSEMINATING, IMPLEMENTING, ADMINISTERING, CONFIRMING, OR EFFECTING THIS PLAN OR ANY CONTRACT, INSTRUMENT, RELEASE OR OTHER AGREEMENT OR DOCUMENT CREATED OR ENTERED INTO IN CONNECTION WITH THIS PLAN OR ANY OTHER ~~PREPETITION OR POSTPETITION~~ ACT TAKEN OR OMITTED TO BE TAKEN ON OR AFTER THE PETITION DATE AND ON OR BEFORE THE EFFECTIVE DATE IN CONNECTION WITH OR IN CONTEMPLATION OF THE RESTRUCTURING OF THE DEBTORS; *PROVIDED* THAT THE FOREGOING “EXCULPATION” SHALL HAVE NO EFFECT ON THE LIABILITY OF ANY ENTITY THAT RESULTS FROM ANY SUCH ACT OR OMISSION THAT IS DETERMINED IN A FINAL ORDER TO HAVE CONSTITUTED ACTUAL FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT; *PROVIDED*, FURTHER, THAT TO THE EXTENT PERMITTED BY APPLICABLE LAW EACH EXCULPATED PARTY SHALL BE ENTITLED TO RELY UPON THE ADVICE OF COUNSEL CONCERNING HIS, HER OR ITS DUTIES PURSUANT TO, OR IN CONNECTION WITH, THIS PLAN OR ANY OTHER RELATED DOCUMENT, INSTRUMENT, OR AGREEMENT.

THE EXCULPATED PARTIES HAVE, AND UPON CONFIRMATION SHALL BE DEEMED TO HAVE, PARTICIPATED IN GOOD FAITH AND IN COMPLIANCE WITH THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, INCLUDING WITH REGARD TO THE DISTRIBUTIONS OF NEW COMMON STOCK



Dated: ~~May 1,~~June 6, 2018

**FALLBROOK TECHNOLOGIES INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**FALLBROOK TECHNOLOGIES INTERNATIONAL CO.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**HODYON, INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**HODYON FINANCE, INC.**

By: /s/ Roy Messing  
Name: Roy Messing  
Title: Chief Restructuring Officer

**EXHIBIT C**

**Effective Date Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

FALLBROOK TECHNOLOGIES INC., et al.<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

Re: Docket No. [●]

**NOTICE OF (I) ENTRY OF CONFIRMATION ORDER,  
(II) OCCURRENCE OF EFFECTIVE DATE, AND (III) RELATED BAR DATES**

**TO: ALL PARTIES IN INTEREST**

**PLEASE TAKE NOTICE THAT:**

1. **Confirmation of Plan.** On June [●], 2018, the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**") entered its *Order Confirming Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* (the "**Confirmation Order**"). Unless otherwise defined herein, capitalized terms used in this Notice shall have the meanings ascribed to such terms in the *Debtors' Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code*, dated June 6, 2018 (the "**Plan**"). Copies of this Confirmation Order and the Plan may be obtained by accessing <http://dm.epiq11.com/fallbrook>.

2. **Effective Date.** The Effective Date of the Plan occurred on [●], 2018. Each of the conditions precedent to consummation of the Plan enumerated in Section XI.B of the Plan have been satisfied and/or waived as provided in Section XI.C of the Plan.

3. **Release, Exculpation, and Injunction.** Pursuant to the Confirmation Order, the release, injunction, and exculpation provisions in Article VIII of the Plan are now in full force and effect.

4. **Bar Date for Administrative Expense Claims.** In accordance with Section III.B of the Plan, except as otherwise provided by a Final Order previously entered by the Bankruptcy Court (including the Bar Date Order), unless previously filed, requests for payment of Administrative Claims, other than requests for payment of Professional Fee Claims, DIP Facility Claims, and Claims by any trade creditor or customer of the Debtors whose Claim is on account of ordinary course of business goods or services provided to the Debtors during the course of the Chapter 11 Cases, must be filed and served on the Debtors or the Reorganized Debtors, as applicable, no later than [●], 2018 (the "**Administrative Claims Bar Date**"). Absent further order of the Bankruptcy Court, Holders of Administrative Claims that are required to file and serve a request for payment of such Administrative Claims that do not file and serve such a request by the Administrative Claims Bar Date shall be forever barred, estopped, and enjoined from asserting such Administrative Claims against the Debtors or the Estates, and such Administrative Claims shall be deemed compromised, settled, and released as of the Effective Date.

5. **Bar Date for Professional Claims.** In accordance with the Section III.C of the Plan, Professionals asserting Professional Fee Claims for services rendered before the Effective Date must file and serve on the Reorganized Debtors, counsel to the Reorganized Debtors, the United States Trustee, the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors' principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.

Kayne Supporting Creditors, and such other entities who are designated by the Bankruptcy Rules, the Confirmation Order, or other order of the Bankruptcy Court an application for final allowance of such Professional Fee Claim no later than the [●], 2018 (the “**Professional Fees Bar Date**”). Objections to any applications of Retained Professionals must be filed by [●], 2018, which objection date may be extended by application to the Bankruptcy Court.

6. **Bar Date for Rejection Damages Claims.** As of the Effective Date, all executory contracts and unexpired leases governed by section 365 of the Bankruptcy Code to which any of the Debtors are parties were rejected under the Plan as of the Effective Date except for any executory contract or unexpired lease that (i) previously had been assumed or rejected by the Debtors in the Chapter 11 Cases, (ii) previously expired or terminated pursuant to its own terms, (iii) is specifically identified on the Schedule of Assumed Contracts and Leases, or (iv) is the subject of a separate motion to assume or reject such executory contract or unexpired lease filed by the Debtors under section 365 of the Bankruptcy Code prior to the Effective Date. The Schedule of Assumed Contracts and Leases was filed on the Effective Date at Docket No. [●].<sup>2</sup>

In accordance with Section VI.C of the Plan, Claims arising out of the rejection of an executory contract or unexpired lease pursuant to the Plan must be filed with the Bankruptcy Court and served upon the Reorganized Debtors no later than [●], 2018, which is thirty (30) days after the effective date of the rejection of such executory contract or unexpired lease (“**Rejection Bar Date**”). Absent further order of the Bankruptcy Court, Holders of such Claims that do not file such Claims by the Rejection Bar Date shall be forever barred, estopped, and enjoined from asserting such Claims against the Debtors, the Estates, and the Reorganized Debtors.

If an executory contract under which the Debtor is a licensor of a right to intellectual property, as that term is defined in section 101(35A) of the Bankruptcy Code, is rejected under the Plan, then the non-Debtor licensee also shall provide the Reorganized Debtors with written notice by the Rejection Bar Date of the licensee’s election under section 365(n)(1) of the Bankruptcy Code.

Dated: [●], 2018

Wilmington, Delaware

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*Co-Counsel to the Debtors and Debtors in Possession*

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<sup>2</sup> The Debtors shall retain their right to reject any of their executory contracts or unexpired leases, if any executory contract or lease is subject, as of the Effective Date, to an unresolved dispute concerning amounts necessary to cure any defaults, until the date that is five (5) business days after the dispute is resolved by a Final Order or agreement of the Reorganized Debtors and affected counterparty, but only if the resolution results in a cure amount higher than what was listed in the Schedule of Assumed Contracts and Leases or has not otherwise been agreed to by the Debtors.

**EXHIBIT B**

**Changed Pages**

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

In re:

**FALLBROOK TECHNOLOGIES INC., et al.**<sup>1</sup>

Debtors.

Chapter 11

Case No. 18-10384 (MFW)

Jointly Administered

**RE: Docket No. 248**

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER CONFIRMING  
DEBTORS' FIRST AMENDED JOINT PLAN OF REORGANIZATION  
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE**

The *Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code*, dated May 1, 2018, [D.I. 189] (the “**Original Plan**”) having been filed with this Court; and the *Disclosure Statement for Debtors' Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [D.I. 190] (the “**Disclosure Statement**”) having been filed with this Court, together with appropriate ballots for voting on the Original Plan, all of which having been approved and sent to holders of claims in Classes 3 and 4 in accordance with the *Order (A) Approving The Disclosure Statement; (B) Establishing Procedures For Solicitation And Tabulation Of Votes To Accept Or Reject The Plan, Including (I) Approving Form And Manner Of Solicitation Procedures, (II) Establishing Voting Record Date, (III) Approving Forms Of Ballot, (IV) Establishing Deadline For Receipt Of Ballots, And (V) Approving Procedures For Vote Tabulations; (C) Approving Notice Of Hearing And Objection Procedures With Respect To Confirmation Of The Plan; (D) Approving Notice And Procedures For Assumption Of Unexpired Leases And Executory Contracts Assumed Pursuant To The Plan; And (E) Granting Related Relief* [D.I. 174] (the “**Disclosure Statement Order**”); and the *Debtors' First Amended Joint*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Fallbrook Technologies Inc. (7116); Fallbrook Technologies International Co. (7837); Hodyon, Inc. (1078); and Hodyon Finance, Inc. (5973). The Debtors' principal offices are located at 505 Cypress Creek Road, Suite L, Cedar Park, Texas 78613.<sup>1</sup>

avoidance of doubt, Reorganized Fallbrook shall retain all ownership, governance rights, and economic rights in FIPC [currently held by Fallbrook](#). Subject to the terms of the Plan, on and after the Effective Date, the Reorganized Debtors may operate their businesses and may use, acquire, and dispose of property and prosecute, compromise, or settle any Claims (including any Administrative Claims) and Causes of Action without supervision of or approval by the Bankruptcy Court and free and clear of any restrictions of the Bankruptcy Code or the Bankruptcy Rules other than restrictions expressly imposed by the Plan or this Confirmation Order. Without limiting the foregoing, the Reorganized Debtors may pay the charges that they incur on or after the Effective Date for Professionals' fees, disbursements, expenses, or related support services without application to the Bankruptcy Court.

21. Releases.

(1) Releases by the Debtors. Notwithstanding anything contained in the Plan to the contrary, as of the Effective Date, and to the fullest extent authorized by applicable law, for good and valuable consideration, the adequacy of which is hereby confirmed, the Released Parties are deemed released and discharged by the Debtors, the Reorganized Debtors, and the Debtors' estates from any and all Claims, obligations, suits, judgments, damages, demands, debts, remedies, causes of action, rights of setoff, other rights, and liabilities whatsoever, including any derivative Claims asserted or that could be asserted directly or indirectly on behalf of the Reorganized Debtors, the Debtors, or the Debtors' estates, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, and any and all causes of action asserted or