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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

March 17, 2017

Date of Report (Date of earliest event reported)



EMCORE CORPORATION

Exact Name of Registrant as Specified in its Charter

New Jersey

State of Incorporation

0-22175

Commission File Number

22-2746503

IRS Employer Identification Number

2015 W. Chestnut Street, Alhambra, CA 91803

Address of principal executive offices, including zip code

(626) 293-3400

Registrant's telephone number, including area code

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) Compensatory Arrangements of Certain Officers.

The Board of Directors (the “Board”) of EMCORE Corporation (the “Company”) previously approved, subject to stockholder approval, amendments to the EMCORE Corporation 2012 Equity Incentive Plan (the “2012 Plan”) that would, among other changes, (1) increase the limit on the aggregate number of shares of common stock that may be delivered pursuant to awards granted under the 2012 Plan by 2,400,000 shares to a new aggregate share limit of 5,301,366 shares; (2) extend the administrator's authority to grant performance-based awards (other than options or stock appreciation rights) through the first annual meeting of shareholders that occurs in 2022 (this expiration time is earlier than the general expiration date of the Amended 2012 Plan and is required under applicable tax rules); (3) increase the annual limits on the number of the different types of awards that may be granted to an individual in any fiscal year so that a participant may receive (a) a maximum of 200,000 stock options, 200,000 stock appreciation rights, 200,000 shares of restricted stock, 200,000 restricted stock units, 200,000 stock purchase rights, and 200,000 share awards in any fiscal year of the Company, (b) in connection with his or her initial service, up to an additional 400,000 stock options, 400,000 stock appreciation rights, 400,000 shares of restricted stock, 400,000 restricted stock units, 400,000 stock purchase rights, and 400,000 share awards in the fiscal year of initial service, and (c) a maximum of \$1,000,000 in cash earned in connection with the grant of performance units in any fiscal year; (4) requires all awards under the 2012 plan to provide a minimum vesting of one year, and no portion of any award may vest earlier than the first anniversary of the grant date of the award (applies to 95% of the total shares available under the 2012 Plan); (5) extend the term of the 2012 Plan until March 17, 2027; and (6) if the Company pays an ordinary cash dividend, the cash dividend will not be paid on a current basis with respect to any awards granted under the 2012 Plan that are not vested as of the record date for the ordinary cash dividend. The Company's stockholders approved the amendments to the 2012 Plan on March 17, 2017.

The following summary of the 2012 Plan is qualified in its entirety by reference to the text of the 2012 Plan, which is attached as Exhibit 10.1 and is incorporated herein by this reference.

The Compensation Committee of the Board, or, in certain instances, its designee, administers the 2012 Plan. The administrator of the 2012 Plan has broad authority under the 2012 Plan to, among other things, select participants and determine the type(s) of award(s) that they are to receive, and determine the number of shares that are to be subject to awards and the terms and conditions of awards, including the price (if any) to be paid for the shares or the award.

Persons eligible to receive awards under the 2012 Plan include officers or employees of the Company or any of its subsidiaries, directors of the Company, and certain consultants and advisors to the Company or any of its subsidiaries.

The types of awards that may be granted under the 2012 Plan include stock options, stock appreciation rights, stock purchase rights, restricted stock, restricted stock units, performance units, and share awards.

The maximum number of shares of the Company's common stock that may be delivered pursuant to awards granted under the 2012 Plan is equal to 5,301,366 (all of which may be issued with respect to incentive stock options). Shares subject to outstanding awards that are settled in cash will be available for issuance under the 2012 Plan; however any shares exchanged or withheld by the Company to satisfy any purchase price and tax withholding obligations related to options or “full value awards,” as well as the total number of shares subject to any stock appreciation rights will count against the share limit and will not be available for issuance under the 2012 Plan.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On March 17, 2017, the Board of Directors of EMCORE Corporation (the “Company”) adopted an amendment (the “Amendment”) of the Bylaws of the Company. The Amendment became effectively immediately on its adoption. The Amendment:

- established deadline notice of business or director nominations to be brought at a shareholders' meeting between 90 to 120 days prior to the first anniversary of the prior year's annual meeting. Advance notice deadline dates for the 2018 annual meeting begin on November 17, 2017 and end on December 17, 2017;
- clarify that future meetings of shareholders can be held by remote communication;
- clarify that the Chairman of the Board can call special shareholder meetings;

- a shareholders' notice of business or nominations must include:
 - description of business (and text of proposal), the reason for the business and any material interest in the business;
 - name, age, address, occupation/employment and shareholdings of each director nominee, nominee's consent to serve if elected, and other information required in a proxy statement about the nominee;
 - name, address and shareholdings of shareholder bringing business or nomination and disclosure of any arrangement that limits the shareholders' voting or economic interest in the company's shares;
 - representation of intent to solicit shareholders and attend meeting; and
 - other information required to be disclosed in a proxy statement
- broaden the scope of authority of the officer presiding over shareholders' meetings with respect to the conduct of the meeting;
- add an advance notice requirement for business brought before an annual meeting by shareholder, which (i) establishes deadline for delivery of notice, and (ii) imposes informational requirements about the shareholder and the proposed business;
- clarify that proxy authority also applies to action by written consent;
- remove limitation on the ability to count proxies at a meeting of shareholders;
- remove clause fixing the current size of the Board at nine members;
- clarify that newly appointed directors serve until the next annual meeting (and not through the term of the Class to which appointed);
- updated advance notice requirement for director nominations by shareholders to (i) establish deadline for delivery of notice, and (ii) enhance information required in the notice about the nominees and nominating shareholder;
- clarify that the Chairman of the Board can call special meetings of the Board;
- clarify the vote required for Board action at a meeting, procedures for adjourning a Board meeting if a quorum is not present, and the ability to hold Board meetings by conference call;
- reduce minimum Board committee membership to one and clarify that Board committee meetings are subject to the same procedures as Board meetings; and
- clarify that securities may be uncertificated.

Item 5.07 Submission of Matters to a Vote of Security Holders.

- (a) On March 17, 2017, the Company held its 2017 Annual Meeting of Shareholders in Pasadena, California.
- (b) Below are the voting results for the matters submitted to the Company's shareholders for a vote at the Annual Meeting:

(1) The election of the following Class A director nominees to the Company's Board, to serve a three-year term expiring in 2020. Each nominee was elected as director with the following vote:

CLASS A DIRECTOR NOMINEES			
<u>Nominee</u>	<u>Votes For</u>	<u>Withheld</u>	<u>Broker Non-Votes</u>
Ettore J. Coringrato, Jr.	15,723,995	375,765	5,669,216
Dr. Gerald J. Fine, Ph.D.	15,596,763	502,997	5,669,216

(2) A proposal to ratify the selection of KPMG LLP as the Company's independent registered public accounting firm for the fiscal year ending September 30, 2017. This proposal was approved by shareholders with 21,584,672 votes in favor, 101,492 votes against and 82,812 abstentions.

(3) A proposal to approve certain amendments to the 2012 Plan above, including increasing the number of shares of common stock available for issuance under the plan by 2,400,000 shares. This proposal was approved by shareholders with 15,106,518 votes in favor, 979,011 votes against, 14,231 abstentions and 5,669,216 broker non-votes.

(4) A proposal to approve, on an advisory basis, executive compensation of the Company's Named Executive Officers. This proposal was approved by shareholders with 15,444,063 votes in favor, 627,289 votes against, 28,408 abstentions and 5,669,216 broker non-votes.

(5) A proposal to approve, on an advisory basis, the frequency of advisory executive compensation votes. This proposal was voted on by shareholders with 14,129,436 votes in favor of every year, 42,454 votes in favor of once every two years, 1,902,059 votes in favor of once every three years and 25,811 abstentions.

The Board of Directors has elected an annual frequency of the advisory vote on executive compensation.

Item 8.01 Other Events.

In accordance with the amendments to the advance notice requirements for director nominations and other business described in Item 5.03 above, a shareholder who proposes to bring business or make nominations of persons for election to the Board of Directors at the 2018 annual meeting of shareholders must provide written notice to the Company not earlier than November 17, 2017 and not later than December 17, 2017. A shareholder's written notice must include certain information concerning the shareholder and each nominee or proposal, as specified in Article II, Section 6 of the amended Bylaws (with respect to business to be transacted at the meeting) and Article IV, Section 2 (with respect to nominations for election to the Board of Directors at the meeting), and otherwise comply with the requirements of those sections. If the date of the 2018 annual meeting of shareholders is scheduled for a day that is more than 30 days before or after the anniversary date of the 2017 annual meeting of shareholders, notice by a shareholder must be delivered not earlier than the close of business on the 120th day prior to the annual meeting and not later than the close of business on the later of the 90th day prior to the annual meeting or the 10th day following public announcement of the date of the annual meeting.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits*

Exhibit No.	Description
10.1†	EMCORE Corporation 2012 Equity Incentive Plan, as amended and restated on January 19, 2017.
10.2	By-Laws of EMCORE Corporation, as amended through March 17, 2017

† *Management contract or compensatory plan*

SIGNATURE

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

EMCORE CORPORATION

By: /s/ Jikun Kim

Name: Jikun Kim

Title: Chief Financial Officer

Dated: **March 20, 2017**

**EMCORE CORPORATION****2012 EQUITY INCENTIVE PLAN**

(As Amended and Restated Effective as of January 19, 2017)

**ARTICLE I.
PURPOSES OF THE PLAN**

The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, Directors and Consultants, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Stock Purchase Rights, Performance Units and Share Awards may also be granted under the Plan.

**ARTICLE II.
DEFINITIONS**

2.1 *Certain Definitions.* As used herein, the following definitions shall apply:

(a) “*Administrator*” means the Committee administering the Plan, in accordance with Section 4 of the Plan.

(b) “*Adjustment Event*” means any dividend payable in capital stock, stock split, share combination, extraordinary cash dividend, *recapitalization*, reorganization, merger, consolidation, split-up, spin-off, combination, exchange of shares or other similar event affecting the Common Stock.

(c) “*Affiliate*” means (i) any corporation or limited liability company in an unbroken chain of corporations or limited liability companies ending with the Company if each corporation or limited liability company owns stock or membership interests (as applicable) possessing more *than* fifty percent (50%) of the total combined voting power of all classes of stock in one of the other corporations or limited liability companies in such chain; (ii) any Subsidiary or Parent of the Company or any Affiliate of the Company; or (iii) any other entity, approved by the Committee as an Affiliate under the Plan, in which the Company or any of its Affiliates has a material equity interest.

(d) “*Applicable Laws*” means the requirements relating to the administration of equity plans under U.S. state corporate laws, U.S. *federal* and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Awards are, or will be, granted under the Plan.

(e) “*Award*” means, individually or collectively, a grant under the Plan of Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Stock Purchase Rights, Performance Units, or Share Awards.

(f) “*Award Agreement*” means the written or electronic agreement, contract, or other instrument or document evidencing or setting forth the terms and provisions applicable to each Award granted under the Plan. The Award Agreement is subject to the terms *and* conditions of the Plan, and in the event of any inconsistency or conflict between the terms of the Plan and an Award Agreement, the terms of the Plan shall govern. The terms of any plan, policy or guideline adopted by the Administrator and applicable to an Award shall be deemed incorporated in and part of the related Award Agreement. The Administrator may provide for the use of electronic, internet or other non-paper Award Agreements, and the use of electronic, internet or other non-paper means for the Participant’s acceptance of, or actions under, an Award Agreement unless otherwise expressly specified herein.

(g) “*Awarded Stock*” means the Common Stock subject to an Award.

(h) “*Beneficial Ownership*” (including correlative terms) shall have the same meaning given such term in Rule 13d-3 promulgated under the Exchange Act.

(i) “*Board*” means the Board of Directors of the Company.

(j) “*Cause*” means (as determined by the Administrator) (i) willful and continued failure to perform substantially the Participant’s material duties with the Company (other than any such failure resulting from the Participant’s incapacity as a result of physical or mental illness) after a written demand for substantial performance specifying the manner in which the Participant has not performed such duties is delivered to the Participant by the person or entity that supervises or manages the Participant, (ii) engaging in willful and serious misconduct that is injurious to the Company or any of its Subsidiaries, (iii) one or more acts of fraud or personal dishonesty resulting in or intended to result in personal enrichment at the expense of the Company or any of its Subsidiaries, (iv) substantial abusive use of alcohol, drugs or similar substances that, in the sole judgment of the Company, impairs the Participant’s job performance, (v) material violation of any Company policy that results in harm to the Company or any of its Subsidiaries or (vi) indictment for or conviction of (or plea of guilty or *nolo contendere*) to a felony or of any crime (whether or not a felony) involving moral turpitude. A “Termination for Cause,” shall include a determination by the Administrator following a Participant’s termination of employment for any other reason that, prior to such termination of employment, circumstances constituting Cause existed with respect to such Participant.

(k) “*Change in Control*” means, unless otherwise determined by the Administrator at or after the grant date, the occurrence of any of the following:

(i) an acquisition in one transaction or a series of related transactions (other than directly from the Company or pursuant to Awards granted under the Plan or other similar awards granted by the Company) of any Voting Securities by any Person, immediately after which such Person has Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the Company’s then outstanding Voting Securities; *provided, however*, in determining whether a Change in Control has occurred hereunder, Voting Securities which are acquired in a Non-Control Acquisition shall not constitute an acquisition that would cause a Change in Control;

(ii) the individuals who, immediately prior to the effective date of this Plan, are members of the Board (the “*Incumbent Board*”), cease for any reason to constitute at least a majority of the members of the Board; *provided, however*, that if the election, or nomination for election, by the Company’s common stockholders, of any new director was approved by a vote of at least a majority of the Incumbent Board, such new director shall, for purposes of the Plan, be considered as a member of the Incumbent Board; *provided further, however*, that no individual shall be considered a member of the Incumbent Board if such individual initially assumed office as a result of either an actual or threatened “Election Contest” (as described in Rule 14a-11 promulgated under the Exchange Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board (a “*Proxy Contest*”) including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest; or

(iii) the *consummation* of:

(A) a merger, consolidation or reorganization involving the Company *unless*:

(1) the stockholders of the Company, immediately before such merger, consolidation or reorganization, own, directly or indirectly, immediately following such merger, consolidation or reorganization, more than fifty percent (50%) of the combined voting power of the outstanding voting securities of the corporation resulting from such merger or consolidation or reorganization (the “*Surviving Corporation*”) in substantially the same proportion as their ownership of the Voting Securities immediately before such merger, consolidation or reorganization,

(2) the individuals who were members of the Incumbent Board immediately prior to the execution of the agreement providing for such merger, consolidation or reorganization constitute at least a majority of the members of the board of directors of the Surviving Corporation, or a corporation Beneficially Owning, directly or indirectly, a majority of the voting securities of the Surviving Corporation, and

(3) no Person, *other than* (i) the Company, (ii) any Related Entity, (iii) any employee benefit plan (or any trust forming a part thereof) that, immediately prior to such merger, consolidation or reorganization, was maintained by the Company, the Surviving Corporation, or any Related Entity or (iv) any Person who, together with its Affiliates, immediately prior to such merger, consolidation or reorganization had Beneficial Ownership of fifty percent (50%) or more of the then outstanding Voting Securities, owns, together with its Affiliates, Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the Surviving Corporation's then outstanding voting securities (a transaction described in clauses (1) through (3) above is referred to herein as a "*Non-Control Transaction*");

(B) a complete liquidation or dissolution of the Company; or

(C) the sale or other disposition of all or substantially all of the assets or business of the Company to any Person (other than a transfer to a Related Entity or the distribution to the Company's stockholders of the stock of a Related Entity or any other assets).

Notwithstanding the foregoing, a Change in Control shall not be deemed to occur solely because any Person (the "*Subject Person*") acquired Beneficial Ownership of fifty percent (50%) or more of the combined voting power of the then outstanding Voting Securities as a result of the acquisition of Voting Securities by the Company which, by reducing the number of Voting Securities then outstanding, increases the proportional number of shares Beneficially Owned by the Subject Persons, *provided* that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of Voting Securities by the Company, and (1) before such share acquisition by the Company the Subject Person becomes the Beneficial Owner of any new or additional Voting Securities in a related transaction or (2) after such share acquisition by the Company the Subject Person becomes the Beneficial Owner of any new or additional Voting Securities which in either case increases the percentage of the then outstanding Voting Securities Beneficially Owned by the Subject Person, then a Change in Control shall be deemed to occur. Solely for purposes of this Change in Control definition, (x) "Affiliate" shall mean, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person; (y) any "Relative" (for this purpose, "Relative" means a spouse, child, parent, parent of spouse, sibling or grandchild) of an individual shall be deemed to be an Affiliate of such individual for this purpose; and (z) neither the Company nor any Person controlled by the Company shall be deemed to be an Affiliate of any holder of Common Stock.

(l) "*Change in Control Price*" means the price per share on a fully diluted basis offered in conjunction with any transaction resulting in a Change in Control, as determined in good faith by the Administrator as constituted before the Change in Control, if any part of the offered price is payable other than in cash.

(m) "*Code*" means the Internal Revenue Code of 1986, as amended, and the regulations and other guidance promulgated thereunder.

(n) "*Committee*" means the Compensation Committee of the Board or, if applicable, the delegate of the Compensation Committee of the Board as permitted or required herein.

(o) "*Common Stock*" means the no par value common stock of the Company and any other securities into which the Common Stock is changed or for which the Common Stock is exchanged (or, in the case of certain Restricted Stock Units, the cash equivalent thereof).

(p) "*Company*" means EMCORE Corporation, a New Jersey corporation, and any successor thereto.

(q) "*Consultant*" means any person, including an advisor, engaged by the Company or any Parent, Subsidiary or Affiliate to render services to such entity in a consulting, independent contractor or other similar role.

(r) "*Director*" means a member of the Board.

(s) "*Disability*" means, unless otherwise provided in an Award Agreement, a physical or mental disability or infirmity that prevents or is reasonably expected to prevent the performance of a Participant's employment-related duties for a period of six months or longer and, within 30 days after the Company notifies the Participant in writing that it intends to terminate his employment, the Participant shall not have returned to the performance of his employment-related duties on a full-time basis; *provided*, that (i) for purposes of Incentive Stock Options, the term "Disability" shall

have the meaning assigned to the term “Permanent and Total Disability” by Section 22(e)(3) of the Code (*i.e.*, physical or mental disability or infirmity lasting not less than 12 months), and (ii) with respect to any Award that constitutes deferred compensation subject to Section 409A of the Code, “Disability” shall have the meaning set forth in Section 409A(a)(2)(c) of the Code. The Administrator’s reasoned and good faith judgment of Disability shall be final, binding and conclusive, and shall be based on such competent medical evidence as shall be presented to it by such Participant and/or by any physician or group of physicians or other competent medical expert employed by the Participant or the Company to advise the Administrator. Notwithstanding the foregoing (but except in the case of ISOs and awards subject to Section 409A of the Code), with respect to any Participant who is a party to an employment agreement with the Company or any Parent, Subsidiary or Affiliate, “Disability” shall have the meaning, if any, specified in such Participant’s employment agreement.

(t) “*Dividend Equivalents*” means an amount equal to any dividends and distributions paid by the Company with respect to the number of shares of Common Stock subject to an Award.

(u) “*Employee*” means any person, including Officers and Directors, employed by the Company or any Parent, Subsidiary or Affiliate. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, an Affiliate, or any successor or (iii) as provided in an Award Agreement. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 181st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient to constitute “employment” by the Company.

(v) “*Exchange Act*” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(w) “*Fair Market Value*” of a share of Common Stock as of a given date shall be: (i) if the Common Stock is listed or admitted to trading on an established stock exchange (including, for this purpose, The Nasdaq Global Market that comprises part of The Nasdaq Stock Market), the closing sale price for a share of Stock on the composite tape or in Nasdaq Global Market trading as reported in *The Wall Street Journal* (or, if not so reported, such other nationally recognized reporting source as the Administrator shall select) on such date, or, if no such price is reported on such date, the most recent day for which such price is available shall be used; (ii) if the Common Stock is not then listed or admitted to trading on such a stock exchange, the closing sale price for a share of Common Stock on such date as reported by The Nasdaq Capital Market or, if not so reported, by the OTC Bulletin Board (or any successor or similar quotation system regularly reporting the market value of the Common Stock in the over-the-counter market), or, if no such price is reported for such date, the most recent day for which such price is available shall be used; or (iii) in the event neither of the valuation methods provided for in clauses (i) and (ii) above is practicable, the fair market value of a share of Common Stock determined by such other reasonable valuation method as the Administrator shall, in its discretion, select and apply in good faith as of the given date; *provided, however*, that for purposes of an ISO, such fair market value shall be determined subject to Section 422(c)(7) of the Code.

(x) “*Fiscal Year*” means the fiscal year of the Company.

(y) “*Incentive Stock Option*” means an Option designated as such and that qualifies as an incentive stock option within the meaning of Section 422 of the Code.

(z) “*Non-Control Acquisition*” - an acquisition by (i) an employee benefit plan (or a trust forming a part thereof) maintained by (A) the Company or (B) any corporation or other Person of which a majority of its voting power or its voting equity securities or equity interest is owned, directly or indirectly, by the Company (a “*Related Entity*”), (ii) the Company or any Related Entity, or (iii) any Person in connection with a Non-Control Transaction.

(aa) “*Nonstatutory Stock Option*” means an Option designated as such or an Option that does not otherwise meet the requirements of Section 422 of the Code.

(bb) “*Notice of Grant*” means a written or electronic notice evidencing certain terms and conditions of an individual Award. The Notice of Grant is part of the Award Agreement (and may be contained in the document or instrument evidencing the Award Agreement).

(cc) “*Officer*” means each person who is an officer of the Company or any Subsidiary or Parent and who is subject to the reporting requirements under Section 16(a) of the Exchange Act.

(dd) “*Option*” means a stock option granted pursuant to the Plan.

(ee) “*Optionee*” means the holder of an outstanding Option granted under the Plan.

(ff) “*Parent*” means a “parent corporation,” whether now or hereafter existing, of the Company as defined in Section 424(e) of the Code.

(gg) “*Participant*” means the holder of an outstanding Award granted under the Plan.

(hh) “*Performance Goals*” for any grant of Awards intended to qualify as “performance-based” compensation under Section 162(m) of the Code will be based upon the relative or comparative achievement of one or more of the following criteria, as determined by the Administrator: net sales; revenue; revenue growth or product revenue growth; operating income (before or after taxes); pre- or after-tax income (before or after allocation of corporate overhead and bonus); net earnings; earnings per share; net income (before or after taxes); return on equity; total shareholder return; return on assets or net assets; appreciation in and/or maintenance of share price; market share; gross profits; earnings (including adjusted pre-tax earnings, earnings before taxes, earnings before interest and taxes or earnings before interest, taxes, depreciation and amortization); economic value-added models or equivalent metrics; comparisons with various stock market indices; reductions in costs; total net cash flow; cash flow or cash flow per share (before or after dividends); return on capital (including return on total capital or return on invested capital); cash flow return on investment; improvement in or attainment of expense levels or working capital levels; operating margins, gross margins or cash margin; year-end cash; debt reductions; shareholder equity; market share; regulatory achievements; and implementation, completion or attainment of measurable objectives with respect to customer satisfaction, research, development, products or projects and recruiting and maintaining personnel.

Performance objectives may be established on a Company-wide basis or with respect to one or more Company business units or divisions, or *Subsidiaries*; and either in absolute terms, relative to the performance of one or more similarly situated companies, or relative to the performance of an index covering a peer group of companies. When establishing performance objectives for the applicable Performance Period, the Administrator may exclude any or all “extraordinary items” as determined under U.S. generally acceptable accounting principles including, without limitation, the charges or costs associated with restructurings of the Company, discontinued operations, other unusual or non-recurring items, and the cumulative effects of accounting changes, and as identified in the Company’s financial statements, notes to the Company’s financial statements or management’s discussion and analysis of financial condition and results of operations contained in the Company’s most recent report filed with the U.S. Securities and Exchange Commission pursuant to the Exchange Act; *provided*, that the Administrator shall have no discretion with respect to any Award intended to qualify as “performance-based” compensation under Section 162(m) of the Code if the exercise of such discretion or the ability to exercise such discretion would cause such Award to fail to qualify as “performance-based” compensation under Section 162(m) of the Code.

(ii) “*Performance Period*” means the time period of any Fiscal Year or such other period as determined by the Administrator in its sole discretion during which the performance objectives must be met.

(jj) “*Performance Unit*” means a Participant’s contractual right to receive a cash-denominated award, payable in cash or shares of Common Stock or a combination thereof, under the Plan at the end of a specified period of time that is forfeitable by the Participant until the completion of a specified period of future service, until the attainment of specified performance objectives, or until otherwise determined by the Administrator or in accordance with the Plan. Each Performance Unit represents an unfunded and unsecured obligation of the Company.

(kk) “*Person*” means “person” as such term is used for purposes of Section 13(d) or 14(d) of the Exchange Act, including, without limitation, any individual, corporation, limited liability company, partnership, trust, unincorporated organization, government or any agency or political subdivision thereof, or any other entity or any group of Persons.

(ll) “*Plan*” means this EMCORE Corporation 2012 Equity Incentive Plan, as the same may be interpreted by the Administrator and/or be amended from time to time.

(mm) “*Replacement Award*” means an Award made to employees of companies or businesses acquired by the Company to replace incentive awards and opportunities held by such employees prior to such acquisition.

(nn) “*Restricted Stock*” means a grant of a stated number of shares of Common Stock to a Participant under the Plan that is forfeitable by the Participant until the completion of a specified period of future service, until the attainment of specified performance objectives, and/or until otherwise determined by the Administrator or in accordance with the Plan. Additionally, Restricted Stock, if context demands, may also refer herein to shares of Common Stock acquired pursuant to a grant of Stock Purchase Rights under Section 11 of the Plan.

(oo) “*Restricted Stock Unit*” means a Participant’s contractual right to receive a stated number of shares of Common Stock or, if provided by the Administrator on or after the grant date, cash equal to the Fair Market Value of such shares of Common Stock or any combination of shares of Common Stock and cash having an aggregate Fair Market Value equal to such stated number of shares of Common Stock, under the Plan at the end of a specified period of time that is forfeitable by the Participant until the completion of a specified period of future service, until the attainment of

specified performance objectives, or until otherwise determined by the Administrator or in accordance with the Plan. Each Restricted Stock Unit represents an unfunded and unsecured obligation of the Company.

(pp) “*Rule 16b-3*” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(qq) “*Section 16(b)*” means Section 16(b) of the Exchange Act.

(rr) “*Service Provider*” means an Employee, Director or Consultant. Unless otherwise provided in an Award Agreement, a person shall *continue* to be a Service Provider even if such person ceases to be an Employee, Director or Consultant, as the case may be, but continues to provide services uninterrupted in a different position constituting a Service Provider.

(ss) “*Share*” means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

(tt) “*Share Award*” means an Award of unrestricted shares of Common Stock granted pursuant to the Plan.

(uu) “*Stock Appreciation Right*” means, with respect to shares of Common Stock, the right to receive a payment from the Company in cash and/or shares of Common Stock equal to the product of (i) the excess, if any, of the Fair Market Value of one share of Common Stock on the exercise date over a specified base price fixed by the Administrator on the grant date, multiplied by (ii) a stated number of shares of Common Stock.

(vv) “*Stock Purchase Right*” means the right to purchase Common Stock pursuant to Section 11 of the Plan, as evidenced by a Notice of Grant.

(ww) “*Subsidiary*” means a “subsidiary corporation”, whether now or hereafter existing, of the Company as defined in Section 424(f) of the Code.

(xx) “*Voting Securities*” means all the outstanding voting securities of the Company entitled to vote generally in the election of the Board.

ARTICLE III. STOCK SUBJECT TO THE PLAN

3.1 Number. Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares that are available for Awards under the Plan is 5,301,366 Shares (all of which may be the subject of Incentive Stock Options granted under the Plan). The foregoing limitation shall be adjusted proportionately in connection with any change in the Company’s capitalization as described in Section 15 of the Plan. The Shares may consist, in whole or in part, of Common Stock held in treasury or authorized but unissued shares of Common Stock, not reserved for any other purpose of reacquired Common Stock.

3.2 Canceled or Forfeited Awards, etc. Shares subject to any Award granted under the Plan (other than Replacement Awards) that for any reason are canceled, terminated, forfeited, settled in cash or otherwise settled without the issuance of Common Stock, or, with respect to Shares of Restricted Stock that are forfeited back to or repurchased by the Company, such Shares shall become available for future grant or sale under the Plan (unless the Plan has terminated); *provided*, however, that Shares that have actually been issued under the Plan under any Award shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock are repurchased by the Company at their original purchase price or are forfeited to the Company, such Shares shall become available for future grant or sale under the Plan (unless the Plan has terminated). To the extent an Award under the Plan is paid out in cash rather than stock, such cash payment shall not reduce the number of Shares available for issuance under the Plan. Replacement Awards that for any reason are canceled, terminated, forfeited, settled in cash or otherwise settled without the issuance of Common Stock after the effective date of the Plan shall not be available for grant under the Plan.

Without limiting the generality of the above, (i) shares of Common Stock tendered by a Participant or withheld by the Company to pay the exercise price of any Options or Stock Appreciation Rights shall not be available for grant under the Plan, (ii) shares of Common Stock tendered by a Participant or withheld by the Company to satisfy the tax withholding obligations related to any Options, Stock Appreciation Rights, or Other “full-value” Awards shall not be available for grant under the Plan, and (iii) upon settlement of Stock Appreciation Rights, the total number of shares of Common Stock subject to the Stock Appreciation Rights shall not be available for grant under the Plan (for purposes of clarity, if a Stock Appreciation Right relates to 100,000 shares and is exercised at a time when the payment due is 15,000 shares, 100,000 shares shall be counted against the Plan’s share limit). However, shares of Common Stock issued in connection with Awards that are assumed, converted or substituted pursuant to an Adjustment Event or Change in Control

(i.e., Alternative Awards), or issued in connection with Replacement Awards, shall not be counted against the maximum limitation specified in Section 3.1 above.

For purposes of this Article III, if a Stock Appreciation Right is granted in tandem with an Option so that only one may be exercised with the other being surrendered on such exercise in accordance with Article X, the number of shares subject to the tandem Option and Stock Appreciation Right award shall only be taken into account once (and not as to both Awards).

3.3 *Limit on Awards to Non-Employee Directors.* Awards that are granted during any one calendar year to any person who, on the grant date of the Award, is a non-employee Director are subject to the limits of this Section 3.3. The maximum number of shares of Common Stock subject to Awards granted during any one calendar year to an individual who, on the grant date of the Award, is a non-employee Director is the number of shares that produces a grant date fair value for the Award that, when combined with the grant date fair value of any other Awards granted during that same calendar year to that individual in his or her capacity as a non-employee Director, is \$250,000; provided that this limit is \$350,000 as to (1) a non-employee Director who is serving as the Chairman of the Board or the Lead Independent Director at the time the applicable grant is made or (2) any new non-employee Director for the calendar year in which the non-employee Director is first elected or appointed to the Board. For purposes of this Section 3.3, a “non-employee Director” is an individual who, on the grant date of the Award, is a member of the Board who is not then an Officer or Employee of the Company or one of its Subsidiaries. For purposes of this Section 3.3, “grant date fair value” means the value of the Award as of the date of grant of the Award and as determined using the equity award valuation principles applied in the Company’s financial reporting. The limits of this Section 3.3 do not apply to, and shall be determined without taking into account, any Award granted to an individual who, on the grant date of the Award, is an Officer or Employee of the Company or one of its Subsidiaries. The limits of this Section 3.3 apply on an individual basis and not on an aggregate basis to all non-employee Directors as a group.

ARTICLE IV. ADMINISTRATION OF THE PLAN

4.1 Procedure.

(a) *Administrative Body.* The Committee shall administer the Plan.

(b) *Section 162(m).* To the extent that the Administrator determines it to be desirable to qualify Awards granted hereunder as “performance-based compensation” within the meaning of Section 162(m) of the Code, the Plan shall be administered by a Committee of two or more “outside directors” within the meaning of Section 162(m) of the Code.

(c) *Rule 16b-3.* To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(d) *Other Administration.* Other than as provided above, the Plan shall be administered by the Committee, which committee shall be constituted to satisfy Applicable Laws.

(e) *Delegation.* The Committee may delegate, subject to the provisions of this Plan, EMCORE Corporation’s Incentive Stock *Option* Grant Policy and such other policies as the Committee may adopt, to any officer or group of officers, or director or group of directors of the Company (including to a subcommittee of members of the Compensation Committee of the Board) or its affiliates any portion of its authority and powers under the Plan with respect to Participants who are not Officers; *provided*, that any delegation to one or more officers of the Company shall be subject to N.J.S.A. Section 14A:8-1(4) (or successor provision). Only the Committee may select, grant, administer, or exercise any other discretionary authority under the Plan in respect of Awards granted to such Participants who are Officers.

4.2 *Powers of the Administrator.* Subject to the provisions of the Plan, the Administrator shall have the authority, in its discretion:

- (i) to determine the Fair Market Value;
- (ii) to select the Service Providers to whom Awards may be granted hereunder;
- (iii) to determine the number of shares of Common Stock to be covered by each Award granted hereunder;
- (iv) to approve forms of agreement for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Awards may be exercised, purchased or vested (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture or repurchase restrictions, any customary representations, warranties and covenants with respect to securities law matters, and any restriction or limitation regarding any Award or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to construe and interpret the terms of the Plan and Awards granted pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws or satisfying applicable foreign laws;

(viii) to modify the terms and conditions of Awards granted to Participants employed outside the United States, or take any action which it deems advisable to obtain, comply with or otherwise reflect any necessary governmental regulatory procedures, exemptions or approvals with respect to the Plan or any subplan established hereunder;

(ix) to modify or amend each Award (subject to Sections 4.4 and 17.3 of the Plan), including the discretionary authority to extend the post-termination exercisability period of Awards longer than is otherwise provided for in the Plan (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement);

(x) to allow Participants to satisfy withholding tax obligations by electing to have the Company withhold from the Shares or cash to be issued upon exercise or vesting of an Award that number of Shares or cash having a Fair Market Value equal to the amount required to be withheld. All elections by a Participant to have Shares or cash withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Award previously granted by the Administrator;

(xii) appoint accountants, actuaries, counsel, advisors and other persons that it deems necessary or desirable in connection with the administration of the Plan;

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

4.3 Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations shall be final and binding on all Participants and any other holders of Awards. The Administrator's determinations under the Plan need not be uniform and may be made by the Administrator selectively among persons who receive, or are eligible to receive, Awards under the Plan, whether or not such persons are similarly situated. To the maximum extent permitted by law, no member of the Administrator shall be liable for any action taken or decision made in good faith relating to the Plan or any Award hereunder.

4.4 Prohibition Against Repricing. Except to the extent (i) approved in advance by a majority of the shares of the Company entitled to vote generally in the election of directors or (ii) as a result of any Adjustment Event, the Administrator shall not have the power or authority to reduce, whether through amendment or otherwise, the exercise price of any outstanding Option or base price of any outstanding Stock Appreciation Right, or to grant any new Award, or make any cash payment, in substitution for or upon the cancellation of Options or Stock Appreciation Rights previously granted.

4.5 Minimum Vesting Requirement. Except as provided in the next sentence, all Awards granted under the Plan shall be subject to a minimum vesting requirement of one year, and no portion of any such Award may vest earlier than the first anniversary of the grant date of the award (the "*Minimum Vesting Requirement*"). The Minimum Vesting Requirement shall not apply to 5% of the total number of shares available under the Plan.

4.6 Dividends on Unvested Equity Awards. If the Company pays an ordinary cash dividend, the cash dividend shall not be paid on a current basis with respect to any Awards that are not vested as of the record date for the ordinary cash dividend. Nothing in this Section 4.6 shall limit or restrict the Administrator's ability (1) for Shares subject to Restricted Stock Awards, to pay the amount of the ordinary cash dividend upon (and subject to) the vesting of such Shares subject to the Restricted Stock Awards, or (2) for Restricted Stock Units or Performance Units, to credit Dividend Equivalents with respect to such Awards in the form of additional Restricted Stock Units or Performance Units, as applicable, that will be subject to the same vesting terms and conditions as the underlying Restricted Stock Units or Performance Units to which they relate, or (3) to make any adjustment pursuant to Section 15 of the Plan.

**ARTICLE V.
ELIGIBILITY**

Nonstatutory Stock Options, Stock Appreciation Rights, Stock Purchase Rights, Restricted Stock Units, Restricted Stock, Performance Units or Share Awards may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

**ARTICLE VI.
LIMITATIONS ON OPTIONS AND STOCK APPRECIATION RIGHTS**

6.1 *Generally.* Each Option shall be designated in the Award Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6.1, Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

6.2 *Individual Limitations.* The following limitations shall apply to grants of Options and Stock Appreciation Rights:

(a) No Service Provider shall be granted, in any Fiscal Year, Options to purchase more than 200,000 Shares. No Service Provider shall be granted, in any Fiscal Year, Stock Appreciation Rights covering more than 200,000 Shares.

(b) In connection with his or her initial service, a Service Provider may be granted Options to purchase up to an additional 400,000 Shares, which shall not count against the limit set forth in paragraph (a) above. In connection with his or her initial service, a Service Provider may be granted Stock Appreciation Rights covering up to an additional 400,000 Shares, which shall not count against the limit set forth in paragraph (a) above.

(c) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15 of the Plan.

(d) If an Option or Stock Appreciation Right is cancelled in the same Fiscal Year in which it was granted (other than in connection with a transaction described in Section 15 of the Plan), such cancelled Award will be counted against the limits set forth in paragraphs (a) and (b) above.

**ARTICLE VII.
TERM OF PLAN**

The Plan was originally approved by the Company's shareholders at the annual meeting of shareholders on March 9, 2012 and an amendment and restatement of the Plan was approved by the Company's shareholders at the annual meeting of shareholders on March 5, 2014 and on March 11, 2016. The amendment and restatement of the Plan provided herein is subject to shareholder approval at the annual meeting of shareholders on March 17, 2017. The Plan shall continue in effect, unless sooner terminated pursuant to this Article VII, until the tenth anniversary of the date on which shareholder approval of the Plan is last obtained.

**ARTICLE VIII.
TERM OF OPTION AND STOCK APPRECIATION RIGHTS**

The term of each Option and Stock Appreciation Right shall be stated in the Award Agreement (but no term shall be longer than ten (10) years from the date of grant). In the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Award Agreement. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Award Agreement.

ARTICLE IX.
OPTION EXERCISE PRICE AND CONSIDERATION

9.1 *Exercise Price.* The per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(a) In the case of an Incentive Stock Option

(i) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(ii) granted to any Employee other than an Employee described in paragraph (i) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(b) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(c) Notwithstanding the foregoing, and subject to the EMCORE Corporation's Incentive Stock Option Grant Policy and such other policies as the Administrator may adopt, Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a Replacement Award.

9.2 *Waiting Period and Exercise Dates.* At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised.

9.3 *Form of Consideration.* The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which (A) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

(vi) any combination of the foregoing methods of payment; or

(vii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

ARTICLE X.
EXERCISE OF OPTIONS AND STOCK APPRECIATION RIGHTS

10.1 *Procedure for Exercise; Rights as a Shareholder.* Any Option and Stock Appreciation Right granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Award Agreement. Unless the Administrator provides otherwise, vesting of Options and Stock Appreciation Rights granted hereunder shall be tolled during any unpaid leave of absence. An Option may not be exercised for a fraction of a Share.

Stock Appreciation Rights may be granted in tandem with Options which, unless otherwise determined by the Administrator at or after the grant date, shall have substantially similar terms and conditions to such Options to the extent applicable, or may be granted on a freestanding basis, not related to any Option. Stock Appreciation Rights shall be evidenced in writing, whether as part of the Award Agreement governing the terms of the Options, if any, to which such Stock Appreciation Right relates or pursuant to a separate Award Agreement with respect to freestanding Stock Appreciation Rights. Stock Appreciation Rights that are granted in tandem with an Option may only be exercised upon the surrender of the right to exercise such Option for an equivalent

number of shares of Common Stock, and may be exercised only with respect to the shares of Common Stock for which the related Option is then exercisable.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Award Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Award Agreement and the Plan.

A Stock Appreciation Right shall be deemed exercised when the Company receives written or electronic notice of exercise (in accordance with the Award Agreement) from the person entitled to exercise the Stock Appreciation Right. Upon exercise of a Stock Appreciation Right, the Participant shall be entitled to receive payment in the form, determined by the Administrator, of cash or shares of Common Stock having a Fair Market Value equal to such cash amount, or any combination of shares of Common Stock and cash having an aggregate Fair Market Value equal to such cash amount, determined by multiplying: (i) any increase in the Fair Market Value of one share of Common Stock on the exercise date over the base price fixed by the Administrator on the grant date of such Stock Appreciation Right, which may not be less than the Fair Market Value of a share of Common Stock on the grant date of such Stock Appreciation Right (except if awarded in tandem with an Option but after the grant date of such Option, then not less than the exercise price of such Option), by (ii) the number of shares of Common Stock with respect to which the Stock Appreciation Right is exercised. Notwithstanding the foregoing, on the grant date the Administrator may establish a maximum amount per share which will be payable upon exercise of a Stock Appreciation Right.

Shares issued upon exercise of an Option or Stock Appreciation Right shall be issued in the name of the Participant or, if requested by the Participant, in the name of the Participant and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) with respect to an Option or Stock Appreciation Right, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Awarded Stock, notwithstanding the exercise of such Award. The Company shall issue (or cause to be issued) such Shares promptly after the Award is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan.

10.2 Termination of Relationship as a Service Provider. If a Participant ceases to be a Service Provider, other than upon the Participant's death or Disability or termination for Cause, the Participant may exercise his or her Option or Stock Appreciation Right within such period of time as is specified in the Award Agreement to the extent that such Award is vested on the date of termination (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option or Stock Appreciation Right shall remain exercisable until the earlier of (i) the 90th day following the date of such termination or, if later, the 90th day following expiration of any blackout period then in effect with respect to such Award, and (ii) the expiration of the term of such Award. If, on the date of termination, the Participant is not vested as to his or her entire Option or Stock Appreciation Right, the Shares covered by the unvested portion of such Award shall revert to the Plan. If, after termination, the Participant does not exercise his or her Option or Stock Appreciation Right within the time specified by the Administrator, such Award shall terminate, and the Shares covered by such Award shall revert to the Plan.

10.3 For Cause Termination. If a Participant ceases to be a Service Provider due to a termination for Cause, all Options and Stock Appreciation Rights granted to such Participant which are then outstanding (whether or not exercisable on or prior to the date of such termination) shall be immediately terminate, and the Shares covered by such Awards shall revert to the Plan.

10.4 Disability of Service Provider. If a Participant ceases to be a Service Provider as a result of the Participant's Disability, the Participant may exercise his or her Option or Stock Appreciation Right within such period of time as is specified in the Award Agreement to the extent such Award is vested on the date of termination (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). In the absence of a specified time in the Award Agreement, the Option or Stock Appreciation Right shall remain exercisable for twenty-four (24) months following the Participant's termination (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). If, on the date of termination, the Participant is not vested as to his or her entire Option or Stock Appreciation Right, the Shares covered by the unvested portion of such Award shall revert to the Plan. If, after termination, the Participant does not exercise his or her Option or Stock Appreciation Right within the time specified herein, such Award shall terminate, and the Shares covered by such Award shall revert to the Plan.

10.5 Death of Service Provider. If a Participant dies while a Service Provider, the Option or Stock Appreciation Right may be exercised within such period of time as is specified in the Award Agreement (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement), by the Participant's estate or by a person who acquires the right to exercise such Award by bequest or inheritance, but only to the extent that such Award is vested on the date of death. In the absence of a specified time in the Award Agreement, the Option or Stock Appreciation Right shall remain exercisable for twenty-four (24) months following the Participant's termination (but in no event later than the expiration of the term of such Award as set forth in the Award Agreement). If, at the time of death, the Participant is not vested as to his or her entire Option or Stock Appreciation Right, the Shares covered by the unvested portion of such Award shall immediately revert to the Plan. The Option or Stock

Appreciation Right may be exercised by the executor or administrator of the Participant's estate or, if none, by the person(s) entitled to exercise such Award under the Participant's will or the laws of descent or distribution. If the Option or Stock Appreciation Right is not so exercised within the time specified herein, such Award shall terminate, and the Shares covered by such Award shall revert to the Plan.

ARTICLE XI. STOCK PURCHASE RIGHTS

11.1 *Grant of Stock Purchase Rights.* The Administrator, in its sole discretion, will determine the number of Shares to be granted to each Participant under Stock Purchase Rights, provided that during any Fiscal Year, no Participant will receive more than an aggregate of 200,000 Shares subject to Stock Purchase Rights. Notwithstanding the foregoing limitation, in connection with a Participant's initial service as an Employee, an Employee may be granted an aggregate of up to an additional 400,000 Shares subject to Stock Purchase Rights, which shall not count against the limit set forth in the preceding sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15 of the Plan. If an Award is cancelled in the same Fiscal Year in which it was granted (other than in connection with a transaction described in Section 15 of the Plan), the cancelled Award will be counted against the limits set forth in this Section 11.1.

11.2 *Rights to Purchase.* Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other Awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically, by means of a Notice of Grant, of the terms, conditions and restrictions related to the offer, including the number of Shares that the offeree shall be entitled to purchase, the price to be paid, and the time within which the offeree must accept such offer. The offer shall be accepted by execution of an Award Agreement in the form determined by the Administrator.

11.3 *Repurchase Option.* Unless the Administrator determines otherwise, the Award Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Award Agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Company (to the extent permitted by Applicable Laws). The repurchase option shall lapse at a rate determined by the Administrator.

11.4 *Other Provisions.* The Award Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(a) *General Restrictions.* The Administrator may set restrictions based upon the achievement of specific performance objectives (Company-wide, divisional, or individual), applicable federal or state securities laws, or any other basis determined by the Administrator in its discretion.

(b) *Section 162(m) Performance Restrictions.* For purposes of qualifying grants of Stock Purchase Rights as "performance-based compensation" under Section 162(m) of the Code, the Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals. The Performance Goals will be set by the Administrator on or before the latest date permissible to enable the Stock Purchase Rights to qualify as "performance-based compensation" under Section 162(m) of the Code. In granting Stock Purchase Rights which are intended to qualify under Section 162(m) of the Code, the Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Stock Purchase Rights under Section 162(m) of the Code (e.g., in determining the Performance Goals).

11.5 *Rights as a Shareholder.* Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a shareholder, and shall be a shareholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 15 of the Plan.

ARTICLE XII. RESTRICTED STOCK, RESTRICTED STOCK UNITS AND PERFORMANCE UNITS

12.1 *Grant.* Restricted Stock, Restricted Stock Units and Performance Units may be granted at any time and from time to time as determined by the Administrator. Each Restricted Stock, Restricted Stock Unit and Performance Unit grant shall be evidenced by an Award Agreement that shall specify such other terms and conditions as the Administrator, in its sole discretion, shall determine, including all terms, conditions, and restrictions related to the grant (and the form of payout for Restricted Stock Units and Performance Units), which, subject to Section 12.4 of the Plan, may be left to the discretion of the Administrator. The Administrator, in its sole discretion, will determine the number of Restricted Stock Units to be granted to each Participant, provided that during any Fiscal Year, no Participant will receive more than an aggregate of 200,000 Restricted Stock Units. The Administrator, in its sole discretion, will determine the number of Shares to which the Restricted Stock to be granted to each Participant pertain,

provided that during any Fiscal Year, no Participant will receive any award(s) of Restricted Stock covering more than 200,000 Shares. The Administrator, in its sole discretion, will determine the number of Performance Units to be granted to each Participant, provided that during any Fiscal Year, the maximum dollar amount of cash which may be earned in connection with the grant(s) of Performance Units may not exceed \$1,000,000. Notwithstanding the foregoing limitation, in connection with a Participant's initial service as an Employee, an Employee may be granted an aggregate of up to an additional 400,000 Restricted Stock Units, and an award(s) of Restricted Stock covering up to an additional 400,000 Shares; such Awards shall not count against the limit set forth in the preceding sentences. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15 of the Plan. If an Award is cancelled in the same Fiscal Year in which it was granted (other than in connection with a transaction described in Section 15 of the Plan), the cancelled Award will be counted against the limits set forth in this Section 12.1.

12.2 *Vesting Criteria and Other Terms.* The Administrator shall set vesting or other restriction criteria in its discretion, which, depending on the extent to which the criteria are met, will determine the number of Restricted Stock Units, Restricted Stock and Performance Units that will be paid out to the Participant. The period for which such restrictions apply are referred to herein as the "Restriction Period".

(a) The Administrator may set vesting or other restriction criteria based upon the achievement of Company-wide, departmental, business unit, or individual goals (including, but not limited to, continued employment or service, or performance objectives), applicable federal or state securities laws, or any other basis determined by the Administrator in its discretion.

(b) ***Section 162(m) Performance Restrictions.*** For purposes of qualifying grants of Restricted Stock Units, Restricted Stock and Performance Units as "performance-based compensation" under Section 162(m) of the Code, the Administrator, in its discretion, may set performance objectives based upon the achievement of Performance Goals. The Performance Goals shall be set by the Administrator on or before the latest date permissible to enable the Restricted Stock Units, Restricted Stock and Performance Units to qualify as "performance-based compensation" under Section 162(m) of the Code. In granting Restricted Stock Units, Restricted Stock and Performance Units that are intended to qualify under Section 162(m) of the Code, the Administrator shall follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the Restricted Stock Units, Restricted Stock and Performance Units under Section 162(m) of the Code (e.g., in determining the Performance Goals).

12.3 *Earning of Awards.* Upon meeting the applicable vesting or other restriction criteria for Restricted Stock Units, Restricted Stock or Performance Units, the Participant shall be entitled to receive a payout as specified in the Award Agreement. Notwithstanding the foregoing, at any time after the grant of Restricted Stock Units, Restricted Stock and Performance Units, the Administrator, in its sole discretion, may reduce or waive any vesting or other restriction criteria that must be met to receive a payout; *provided*, that the Administrator shall have no discretion to take such action with respect to any Award intended to qualify as "performance-based compensation" under Section 162(m) of the Code if the exercise of such action or the ability to exercise such action would cause such Award to fail to qualify as "performance-based compensation" under Section 162(m) of the Code.

12.4 *Provisions Applicable to Restricted Stock Units and Performance Units.*

(a) Payment of earned Restricted Stock Units and Performance Units shall be made as soon as practicable after the date(s) set forth in the Award Agreement. The Administrator, in its sole discretion, may pay earned Restricted Stock Units and Performance Units in cash, Shares, or a combination thereof. Shares represented by Restricted Stock Units that are fully paid in cash again shall be available for grant under the Plan.

(b) No shares of Common Stock will be issued at the time an Award of Restricted Stock Units or Performance Units is made, and the Company shall not be required to set aside a fund for the payment of any such Award.

(c) The Administrator shall determine whether and to what extent Dividend Equivalents will be credited to the account of a Participant receiving an Award of Restricted Stock Units. Unless and until the Company provides issuance of Shares in respect of his or her Award of Restricted Stock Units that is entered upon the records of the duly authorized transfer agent of the Company, a Participant holding outstanding Restricted Stock Units shall not be entitled to exercise any voting rights and any other rights as a stockholder with respect to the shares of Common Stock underlying such Award. Unless and until the Company provides issuance of Shares in respect of his or her Award of Performance Units that is entered upon the records of the duly authorized transfer agent of the Company, a Participant holding outstanding Performance Units shall not be entitled to exercise any voting rights and any other rights as a stockholder with respect to the shares of Common Stock payable in event of such Award.

12.5 *Cancellation.* On the date set forth in the Award Agreement, all unearned Restricted Stock Units, Restricted Stock and Performance Units shall be forfeited to the Company.

12.6 *Provisions Applicable to Restricted Stock.*

(a) Except as otherwise provided in an Award Agreement, no Restricted Stock may be sold, transferred, pledged, assigned, or otherwise alienated or hypothecated until the lapse of the Restriction Period. Thereafter, Restricted Stock may be sold, transferred,

pledged, assigned or otherwise alienated or hypothecated in compliance with all Applicable Laws, the Award Agreement and any other agreement to which the Restricted Stock is subject. The Administrator shall require that any stock certificates evidencing any Restricted Stock be held in the custody of the Secretary of the Company until the applicable Restriction Period lapses, and that, as a condition of any grant of Restricted Stock, the Participant shall have delivered a stock power, endorsed in blank, relating to the shares of Common Stock covered by such Award. Any attempt by a Participant, directly or indirectly, to offer, transfer, sell, pledge, hypothecate or otherwise dispose of any Restricted Stock or any interest therein or any rights relating thereto without complying with the provisions of the Plan shall be void and of no effect.

(b) Each certificate evidencing shares of Common Stock subject to an Award of Restricted Stock shall be registered in the name of the Participant holding such Restricted Stock and shall bear the following (or similar) legend:

“THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS (INCLUDING FORFEITURE) CONTAINED IN THE EMCORE CORPORATION 2012 EQUITY INCENTIVE PLAN AND THE RELATED AWARD AGREEMENT AND NEITHER THIS CERTIFICATE NOR THE SHARES REPRESENTED BY IT ARE ASSIGNABLE OR OTHERWISE TRANSFERABLE EXCEPT IN ACCORDANCE WITH SUCH PLAN, A COPY OF WHICH IS ON FILE WITH THE SECRETARY OF THE COMPANY.”

(c) The Administrator shall determine whether and to what extent dividends and distributions will be credited to the account of a Participant receiving an Award of Restricted Stock. A Participant holding outstanding Restricted Stock shall be entitled to exercise full voting rights and other rights as a stockholder with respect to the shares of Common Stock underlying such Award during the period in which such shares remain subject to the Restriction Period.

ARTICLE XIII.

Share Awards

Share Awards may be granted to Participants at such time or times as shall be determined by the Administrator on such terms and conditions as the Administrator may determine in its discretion. The Administrator, in its sole discretion, will determine the number of Shares covered by any Share Award to be granted to each Participant; provided, that during any Fiscal Year, no Participant will receive any Share Award(s) covering more than 200,000 Shares. Notwithstanding the foregoing limitation, in connection with a Participant's initial service as an Employee, an Employee may be granted a Share Award(s) covering up to an additional 400,000 Shares, which shall not count against the limit set forth in the preceding sentence. The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15 of the Plan. Share Awards may be made as additional compensation for services rendered by a Participant to the Company or any Parent, Subsidiary or Affiliate, or may be in lieu of cash or other compensation to which the Participant may be entitled from the Company or any Parent, Subsidiary or Affiliate.

ARTICLE XIV.

NON-TRANSFERABILITY OF AWARDS

Unless determined otherwise by the Administrator, an Award may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant. Any attempt by a Participant, directly or indirectly, to offer, transfer, sell, pledge, hypothecate or otherwise dispose of any Awards or any interest therein or any rights relating thereto other than as provided in the Plan shall be void and of no effect. If the Administrator makes an Award transferable, such Award shall contain such additional terms and conditions as the Administrator deems appropriate. Except to the extent required by law, no Award shall be subject to any lien, obligation or liability of the Participant.

ARTICLE XV.

ADJUSTMENTS UPON CHANGES IN CAPITALIZATION, CHANGE IN CONTROL

15.1 *Changes in Capitalization.* In the event of any Adjustment Event affecting the Common Stock (including, without limitation, any Adjustment Event occurring after adoption of the Plan but prior to shareholder approval of the Plan), the Administrator shall make an equitable and proportionate anti-dilution adjustment to offset any resultant change in the per-share price of the Common Stock and preserve the intrinsic value of Options and any other Awards granted under the Plan. Such mandatory adjustment may include a change in any or all of (a) the number and kind of shares of Common Stock which thereafter may be awarded or optioned and sold under the Plan (including, but not limited to, adjusting any limits on the number and types of Awards that may be made under the Plan), (b) the number and kind of shares of Common Stock subject to outstanding Awards, and (c) the grant, exercise or conversion price with respect to any Award. In addition, the Administrator may make provisions for

a cash payment to a Participant or a person who has an outstanding Award. The number of shares of Common Stock subject to any Award shall be rounded to the nearest whole number. Any such adjustment shall be consistent with Sections 424, 409A and 162(m) of the Code to the extent the Awards subject to adjustment are subject to such Sections of the Code.

15.2 Accelerated Vesting and Payment Due to Change in Control. Unless otherwise determined by the Administrator at or after the grant date, or unless the Administrator otherwise determines in the manner set forth in Section 15.4 below, upon the occurrence of a Change in Control, all Awards under the Plan will be unaffected by the Change in Control. In the sole discretion of the Administrator at or after the grant date, and without limiting the preceding sentence, the Administrator may provide the following for any Award in the event of a Change in Control: (i) Options and Stock Appreciation Rights may become immediately exercisable, (ii) the Restriction Period on all Restricted Stock, Restricted Stock Units and Performance Units may lapse immediately prior to such Change in Control, and (iii) shares of Common Stock underlying Awards of Restricted Stock Units (and, if applicable, Performance Units) may be issued to each Participant then holding such Award immediately prior to such Change in Control; *provided*, that, at the discretion of the Administrator (as constituted immediately prior to the Change in Control), each such Option, Stock Appreciation Right and/or Restricted Stock Unit may be canceled in exchange for an amount equal to the product of (A) (I) in the case of Options and Stock Appreciation Rights, the excess, if any, of the product of the Change in Control Price over the exercise price or base price for such Award, and (II) in the case of other such Awards, the Change in Control Price, multiplied by (B) the aggregate number of shares of Common Stock covered by such Award; *provided, further*, that where the Change in Control does not constitute a “change in control event” as defined under Section 409A of the Code, the shares to be issued, or the amount to be paid, for each Award that constitutes deferred compensation subject to Section 409A of the Code shall be paid at the time or schedule applicable to such Awards (assuming for these payment purposes (but not the lapsing of the Restriction Period) that no such Change in Control had occurred). Notwithstanding the foregoing, the Administrator may, in its discretion, instead terminate any outstanding Options and Stock Appreciation Rights if either (x) the Company provides holders of such Options and Stock Appreciation Rights with reasonable advance notice to exercise their outstanding and unexercised Options and Stock Appreciation Rights or (y) the Administrator reasonably determines that the Change in Control Price is equal to or less than the exercise price for such Options and Stock Appreciation Rights.

15.3 Timing of Payments. Payment of any amounts calculated in accordance with Section 15.2 above shall be made in cash or, if determined by the Administrator (as constituted immediately prior to the Change in Control), in shares of the common stock of the New Employer having an aggregate fair market value equal to such amount and shall be payable in full, as soon as reasonably practicable, but in no event later than 30 days, following the Change in Control (subject to the payment timing restrictions contained in the second proviso of the first sentence of Section 15.2). For purposes hereof, the fair market value of one share of common stock of the New Employer shall be determined by the Administrator (as constituted immediately prior to the consummation of the transaction constituting the Change in Control), in good faith.

15.4 Alternative Awards. Notwithstanding the above, unless otherwise determined by the Administrator at or after the grant date, no cancellation, termination, acceleration of exercisability or vesting, lapse of any Restriction Period or settlement or other payment shall occur with respect to any outstanding Award, if the Administrator (as constituted immediately prior to the consummation of the transaction constituting the Change in Control) reasonably determines, in good faith, prior to the Change in Control that such outstanding Awards shall be honored or assumed, or new rights substituted therefor (such honored, assumed or substituted Award being hereinafter referred to as an “*Alternative Award*”) by the New Employer, provided, that any Alternative Award must:

- (i) be based on shares of Common Stock that are traded on an established U.S. securities market or another public market determined by the Administrator prior to the Change in Control;

- (ii) provide the Participant (or each Participant in a class of Participants) with rights and entitlements substantially equivalent to or better than the rights, terms and conditions applicable under such Award, including, but not limited to, an identical or better exercise or vesting schedule and identical or better timing and methods of payment (including liquidity rights with respect to shares of Common Stock received in settlement of such Award);

- (iii) have substantially equivalent economic value to such Award (determined at the time of the Change in Control);

- (iv) have terms and conditions which provide that in the event that the Participant suffers an involuntary termination without Cause within two years following the Change in Control, any conditions on the Participant’s rights under, or any restrictions on transfer or exercisability applicable to, each such Award held by such Participant shall be waived or shall lapse, as the case may be; and

- (v) not result in adverse tax consequences to the Participant under Section 409A of the Code.

**ARTICLE XVI.
DATE OF GRANT**

The date of grant of an Award shall be, for all purposes, the date on which the Administrator makes the determination granting such Award, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Participant within a reasonable time after the date of such grant.

**ARTICLE XVII.
AMENDMENT AND TERMINATION OF THE PLAN**

17.1 *Amendment and Termination.* Subject to Section 17.2 below, the Board or Committee may at any time amend, alter, suspend or terminate the Plan.

17.2 *Shareholder Approval.* The Company shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws, and the adoption of any such amendment shall be contingent on such approval.

17.3 *Effect of Amendment or Termination.* No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Administrator. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination. Notwithstanding the foregoing, the Board or Committee or Administrator may take such actions as it deems appropriate to ensure that the Plan and any Awards may comply with any tax, securities or other applicable law. Nothing herein shall restrict the Administrator's ability to exercise its discretionary authority as provided in the Plan. Subject to other applicable provisions of the Plan, all Awards made under the Plan prior to such termination of the Plan shall remain in effect until such Awards have been satisfied or terminated in accordance with the Plan and the terms of such Awards. Except as otherwise determined by the Board, termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Awards granted under the Plan prior to the date of such termination. Following a Change in Control, no action shall be taken under the Plan that will cause any Award that has previously been determined to be (or is determined to be) subject to Section 409A of the Code to fail to comply in any respect with Section 409A of the Code without the written consent of the Participant.

17.4 *Expiration of Grant Authority for "Performance-Based Compensation."* As required pursuant to Section 162(m) of the Code and the regulations promulgated thereunder, the Administrator's authority to grant new Awards that are intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code (other than Options or Stock Appreciation Rights) shall terminate upon the first meeting of the Company's stockholders that occurs in the fifth year following the year in which the Company's shareholders last approved the Plan, subject to any subsequent extension that may be approved by shareholders.

**ARTICLE XVIII.
CONDITIONS UPON ISSUANCE OF SHARES**

18.1 *Legal Compliance.* Shares shall not be issued pursuant to the exercise of an Award unless the exercise of such Award and the issuance and delivery of such Shares (or with respect to certain Restricted Stock Units, the cash equivalent thereof) shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance. The Company shall not be obligated by virtue of any provision of the Plan to recognize the exercise or settlement of any Award or to otherwise sell or issue shares of Common Stock in violation of any such Applicable Laws, and any postponement of the exercise or settlement of any Award under this provision shall not extend the term of such Awards. Neither the Company nor its directors or officers shall have any obligation or liability to a Participant with respect to any Award (or shares of Common Stock issuable thereunder) that shall lapse because of such postponement.

18.2 *Investment Representations.* As a condition to the exercise of an Award, the Company may require the person exercising such Award to represent and warrant at the time of any such exercise or receipt that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

**ARTICLE XIX.
INABILITY TO OBTAIN AUTHORITY**

The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares (or with respect to certain Restricted Stock

Units, the cash equivalent thereof) hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares (or with respect to certain Restricted Stock Units, the cash equivalent thereof) as to which such requisite authority shall not have been obtained.

ARTICLE XX. RESERVATION OF SHARES

The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

ARTICLE XXI. MISCELLANEOUS PROVISIONS

21.1 *Beneficiary Designation.* Each Participant under the Plan may, from time to time, name any beneficiary or beneficiaries (who may be named contingently or successively) to whom any benefit under the Plan is to be paid or by whom any right under the Plan is to be exercised in case of his or her death. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Administrator, and will be effective only when filed by the Participant in writing with the Administrator during his or her lifetime. In the absence of any such designation, benefits remaining unpaid at the Participant's death shall be paid to or exercised by the Participant's surviving spouse, if any, or otherwise to or by his or her estate.

21.2 *No Guarantee of Employment or Participation.* Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Parent, Subsidiary or Affiliate to terminate any Participant's employment at any time, nor to confer upon any Participant any right to continue in the employ of the Company or any Parent, Subsidiary or Affiliate (regardless of whether such termination results in (1) the failure of any Award to vest; (2) the forfeiture of any unvested or vested portion of any Award; and/or (3) any other adverse effect on the individual's interests under the Plan). No Service Provider shall have a right to be selected as a Participant, or, having been so selected, to receive any future Awards.

21.3 *Tax Withholding.* The Company shall have the right and power to deduct from all amounts paid to a Participant in cash or shares (whether under this Plan or otherwise) or to require a Participant to remit to the Company promptly upon notification of the amount due, an amount (which may include shares of Common Stock) to satisfy the minimum federal, state or local or foreign taxes or other obligations required by law to be withheld with respect thereto with respect to any Award under this Plan. In the case of any Award satisfied in the form of shares of Common Stock, no shares of Common Stock shall be issued unless and until arrangements satisfactory to the Administrator shall have been made to satisfy the statutory minimum withholding tax obligations applicable with respect to such Award. The Company may defer payments of cash or issuance or delivery of Common Stock until such requirements are satisfied. Without limiting the generality of the foregoing, the Company shall have the right to retain, or the Administrator may, subject to such terms and conditions as it may establish from time to time, permit Participants to elect to tender, shares of Common Stock (including shares of Common Stock issuable in respect of an Award) to satisfy, in whole or in part, the amount required to be withheld (provided that such amount shall not be in excess of the minimum amount required to satisfy the statutory withholding tax obligations).

21.4 *Indemnification.* To the maximum extent provided by law and by the Company's Certificate of Incorporation and/or By-Laws, each person who is or shall have been a member of the Administrator or of the Board shall be indemnified and held harmless by the Company against and from any loss, cost, liability or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit or proceeding to which he or she may be made a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive and shall be independent of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or By-laws, by contract, as a matter of law, or otherwise.

21.5 *No Limitation on Compensation.* Nothing in the Plan shall be construed to limit the right of the Company to establish other plans or to pay compensation to its Service Providers, in cash or property, in a manner which is not expressly authorized under the Plan.

21.6 *Deferrals.* The Administrator may postpone the exercising of Awards, the issuance or delivery of Common Stock under any Award or any action permitted under the Plan to prevent the Company or any Parent, Subsidiary or Affiliate from being denied a Federal income tax deduction with respect to any Award other than an Award of Incentive Stock Options or to the extent required or permitted by applicable law. The Administrator may also require or permit Participants to elect to defer the issuance of Common Stock or the settlement of Awards in cash under such rules and procedures as it may establish under the Plan.

The Administrator may also provide that deferred settlements include the payment or crediting of interest or other earnings on the deferral amounts, or the payment or crediting of dividend equivalents where the deferred amounts are denominated in shares of Common Stock.

21.7 409A Compliance. The Plan is intended to be administered in a manner consistent with the requirements, where applicable, of Section 409A of the Code. Where reasonably possible and practicable, the Plan shall be administered in a manner to avoid the imposition on Participants of immediate tax recognition and additional taxes pursuant to such Section 409A. Notwithstanding the foregoing, neither the Company nor the Administrator shall have any liability to any person in the event such Section 409A applies to any such Award in a manner that results in adverse tax consequences for the Participant or any of his beneficiaries or transferees.

Solely for purposes of determining the time and form of payments due under any Award that is considered nonqualified deferred compensation under Section 409A of the Code and that is not otherwise exempt from Section 409A of the Code, a Participant shall not be deemed to have incurred a termination of employment (or other term of similar import) unless and until he shall incur a "separation from service" within the meaning of Section 409A of the Code. Notwithstanding any other provision in this Plan, if as of Participant's separation from service, the Participant is a "specified employee" as determined by the Company, then to the extent any amount payable under any Award that is considered nonqualified deferred compensation under Section 409A of the Code and that is not otherwise exempt from Section 409A of the Code, for which payment is triggered by Participant's separation from service (other than on account of death), and that under the terms of the Award would be payable prior to the six-month anniversary of the Participant's separation from service, such payment shall be delayed until the earlier to occur of (a) the six-month anniversary of such separation from service or (b) the date of the Participant's death.

21.8 Governing Law. The Plan shall be construed in accordance with and governed by the laws of the State of New Jersey without reference to principles of conflict of laws which would require application of the law of another jurisdiction, except to the extent that the corporate law of the State of New Jersey specifically and mandatorily applies.

21.9 Severability; Blue Pencil. In the event that any one or more of the provisions of this Plan shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected thereby. If, in the opinion of any court of competent jurisdiction such covenants are not reasonable in any respect, such court shall have the right, power and authority to excise or modify such provision or provisions of these covenants as to the court shall appear not reasonable and to enforce the remainder of these covenants as so amended.

21.10 No Impact On Benefits. Except as may otherwise be specifically stated under any employee benefit plan, policy or program, no amount payable in respect of any Award shall be treated as compensation for purposes of calculating a Participant's right under any such plan, policy or program. No amount payable in respect of any Award pursuant to an Award shall be deemed part of a Participant's regular, recurring compensation for purposes of any termination, indemnity or severance pay laws.

21.11 No Constraint on Corporate Action. Nothing in this Plan shall be construed (i) to limit, impair or otherwise affect the Company's right or power to make adjustments, reclassifications, reorganizations or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its business or assets or (ii) to limit the right or power of the Company, or any Parent, Subsidiary or Affiliate to take any action which such entity deems to be necessary or appropriate.

21.12 Headings and Captions. The headings and captions herein are provided for reference and convenience only, shall not be considered part of this Plan, and shall not be employed in the construction of this Plan.

21.13 No Trust or Fund Created. Neither the Plan nor any Award shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company and a grantee or any other person. To the extent that any grantee or other person acquires a right to receive payments from the Company pursuant to an Award, such right shall be no greater than the right of any unsecured general creditor of the Company.

21.14 Fractional Shares. No fractional shares of Common Stock shall be issued or delivered pursuant to the Plan or any Award, and the Administrator shall determine whether cash, other securities or other property shall be paid or transferred in lieu of any fractional shares, or whether such fractional shares or any rights thereto shall be canceled, terminated or otherwise eliminated.

21.15 Code Section 83(b) Elections. The Company, its Affiliates and the Administrator have no responsibility for any Participant's election, attempt to elect or failure to elect to include the value of a Restricted Stock Award or other Award subject to Section 83 of the Code in the participant's gross income for the year of payment pursuant to Section 83(b) of the Code. Any participant who makes an election pursuant to Section 83(b) of the Code will promptly provide the Administrator with a copy of the election form.

21.16 No Obligation to Exercise Awards; No Right to Notice of Expiration Date. The grant of an Award of an Option, Stock Appreciation Right or Stock Purchase Right will impose no obligation upon the Participant to exercise the Award. The

Company, its Affiliates and the Administrator have no obligation to inform a Participant of the date on which any Award lapses except in the Award Agreement.

21.17 *Right to Offset.* Notwithstanding any provisions of the Plan to the contrary, and to the extent permitted by Applicable Laws, the Company may offset any amounts to be paid to a Participant (or, in the event of the Participant's death, to his beneficiary or estate) under the Plan against any amounts that such Participant may owe to the Company or its Affiliates.

21.18 *Furnishing Information.* A Participant will cooperate with the Administrator by furnishing any and all information requested by the Administrator and take such other actions as may be requested in order to facilitate the administration of the Plan and the payments of benefits hereunder, including but not limited to taking such physical examinations as the Administrator may deem necessary when eligibility or entitlement to any compensation or benefit based on Disability is at issue.

21.19 *Clawback Policy.* The Awards granted under the Plan are subject to the terms of the Company's recoupment, clawback or similar policy as it may be in effect from time to time, as well as any similar provisions of applicable law, any of which could in certain circumstances require repayment or forfeiture of Awards or any shares of Common Stock or other cash or property received with respect to the Awards (including any value received from a disposition of the shares).

21.20 *Administrator Discretion.* Notwithstanding Section 4.5, the Minimum Vesting Requirement shall not limit or restrict the Administrator's discretion to accelerate the vesting of any Award in circumstances it determines to be appropriate (whether in connection with a transaction, termination of employment or for any other reason).



**BY-LAWS
OF
EMCORE CORPORATION
As Amended Through March 17, 2017**

ARTICLE I

OFFICES

1. Principal Place of Business. The principal place of business of EMCORE Corporation (the “Corporation”) is 2015 Chestnut Street, Alhambra, California 91803.
2. Other Places of Business. Branch or subordinate places of business or offices may be established at any time by the Board of Directors of the Corporation (the “Board”) at any place or places where the Corporation is qualified to do business.

ARTICLE II

SHAREHOLDERS

1. Annual Meeting. The annual meeting of shareholders shall be held at a time fixed by the Board, upon not less than ten nor more than sixty days written notice of the time, place (or the means of remote communication, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting), and purpose of the meeting at the corporate offices, or at such other time and place, if any, as shall be specified in the notice of meeting, in order to elect directors of the Corporation (“Directors”) and transact such other business as shall come before the meeting.
2. Special Meetings. A special meeting of shareholders may be called for any purpose by the Chairman of the Board, by the chief executive officer or by a majority of the Board acting as a body. A special meeting shall be held upon not less than ten nor more than sixty days written notice of the time, place (or the means of remote communication, if any, by which shareholders and proxy holders may be deemed to be present in person and vote at such meeting) and purpose of the meeting.

3. Action Without Meeting. The shareholders may act without a meeting if, prior or subsequent to such action, each shareholder who would have been entitled to vote upon such action shall consent in writing to such action. Such written consent or consents shall be filed in the minute book.

4. Quorum. The presence at a meeting in person or by proxy of the holders of shares entitled to cast a majority of the votes shall constitute a quorum.

5. Organization. The chief executive officer, or in the absence of the chief executive officer, president or such vice president as may be designated by the chief executive officer, shall preside at all meetings of the shareholders. If all are absent, any other officer designated by the Board shall preside. If no officer so designated is present, the shareholders present in person or represented by proxy may elect one of their number to preside. The secretary shall act as secretary at all meetings of the shareholders; but in the absence of the secretary, the presiding officer may appoint any person to act as secretary of the meeting. The person presiding at the meeting shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting and to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of an agenda or order of business for the meeting, establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

6. Nature of Business at Annual Meeting of Shareholders.

(a) No business may be transacted at an annual meeting of shareholders, other than business that is (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (ii) otherwise properly before the annual meeting by or at the direction of the Board (or any duly authorized committee thereof) or (iii) otherwise properly brought before the annual meeting by any shareholder of the Corporation who is a shareholder of record of the Corporation on the date the notice provided for in this Section 6 is delivered to the secretary of the Corporation who is entitled to vote at such annual meeting and who complies with the notice procedures set forth in this Section 6.

(b) For any business to be properly brought before an annual meeting of shareholders pursuant to clause (iii) of Subsection 6(a), the shareholder must have given timely notice thereof in writing, delivered or mailed by first class mail, postage prepaid, to the secretary of the Corporation and any such proposed business must constitute a proper matter for shareholder action. To be timely, a shareholder's notice must be delivered to or mailed and received by the secretary at the principal executive offices of the Corporation not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than 30 days before or after such anniversary date, notice by the shareholder must be so delivered not earlier than the close of business on the one 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation). In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above. To be in proper form, such shareholder's notice shall set forth (A) as to each matter such shareholder proposes to bring before the annual meeting, (i) a brief description of the business desired to be brought before the annual meeting, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these

by-laws (these “By-Laws”), the language of the proposed amendment), (iii) the reasons for conducting such business at the annual meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; and (B) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder and such beneficial owner as of the date of the notice, (iii) a description of any agreement, arrangement or understanding with respect to the proposal between or among such person, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) involving such shareholder or beneficial owner that is in effect as of the date of the shareholder’s notice, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from share price changes for, or increase or decrease the voting power of, such shareholder or such beneficial owner, with respect to securities of the Corporation, and the class or series and number of shares of the Corporation’s capital stock that relate to such agreements, arrangements or understandings, (v) a description of any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship in effect as of the date of the notice pursuant to which such shareholder or such beneficial owner has or shares a right to vote or direct any third party to vote any shares of capital stock of the Corporation, (vi) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such annual meeting and intends to appear in person or by proxy at the meeting to propose such business, (vii) a representation whether the shareholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation’s outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies or votes from shareholders in support of such proposal, and (viii) any other information relating to such shareholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the proposal pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The foregoing notice requirements of this Subsection 6(b) shall be deemed satisfied by a shareholder with respect to business if the shareholder has notified the Corporation of the intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such shareholder’s proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. Notwithstanding the foregoing provisions of this Subsection 6(b), unless otherwise required by law, if the shareholder (or a qualified representative of the shareholder) does not appear at the annual meeting of shareholders to present the proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 6, to be considered a “qualified representative” of the shareholder, a person must be a duly authorized officer, manager, partner or occupy a similar position with such shareholder or must be authorized by a writing executed by such shareholder to act as proxy at the meeting of shareholders and such person must produce such writing, or a reliable reproduction thereof, at the meeting of shareholders.

(c) The person presiding at the meeting may, if the facts warrant, determine and declare to the meeting that business was not properly brought before the annual meeting in accordance with the foregoing procedures, and if he should so determine, he shall so declare to the meeting and such business shall not be transacted.

ARTICLE III

VOTING AND ELECTIONS

1. Voting. Except as otherwise provided in the certificate of incorporation of the Corporation (the "Certificate of Incorporation"), each holder of shares with voting rights shall be entitled to one vote for each such share registered in his or her name on the books of the Corporation on such date as may be fixed pursuant to Section 3 as the record date. Whenever any action, other than the election of Directors, is to be taken by vote of the shareholders, it shall be authorized by a majority of the votes cast at a meeting of shareholders by the holders of shares entitled to vote thereon, unless a greater percentage is required by statute, the Certificate of Incorporation or these "By-Laws".

2. Voting Lists. The officer or agent having charge of the stock transfer books for shares of the Corporation shall make a complete list of shareholders entitled to vote at a shareholders' meeting or any adjournment thereof. A list required by this Section 2 may consist of cards arranged alphabetically or any equipment which permits the visual display of the information required. Such list shall be arranged alphabetically within each class, series or group of shareholders maintained by the Corporation for convenience of reference, with the address of, and the number of shares held by, each shareholder; be produced (or available by means of a visual display) at the time and place of the meeting; be subject to the inspection of any shareholder for reasonable periods during the meeting; and be prima facie evidence of the identity of the shareholders entitled to examine such list or to vote at any meeting. If the requirements of this Section 2 have not been complied with, the meeting shall, on the demand of any shareholder in person or by proxy, be adjourned until the requirements are complied with. Failure to comply with the requirements of this Section 2 shall not affect the validity of any action taken at such meeting prior to the making of such demand.

3. Fixing Record Date. (a) The Board may fix, in advance, a date as the record date for determining the Corporation's shareholders with regard to any corporate action or event and, in particular, for determining the shareholders who are entitled to:

- i. notice of or to vote at any meeting of shareholders or any adjournment thereof;
- ii. give a written consent to any action without a meeting; or
- iii. receive payment of any dividend or allotment of any right.

The record date may in no case be more than sixty days prior to the shareholders' meeting or other corporate action or event to which it relates. The record date for a shareholders' meeting may not be less than ten days before the date of the meeting. The record date to determine shareholders to give a written consent may not be more than sixty days before the date fixed for tabulation of the consents or, if no date has been fixed for tabulation, more than sixty days before the last day on which consents received may be counted.

(b) If no record date is fixed,

- i. the record date for a shareholders' meeting shall be the close of business on the day next preceding the day on which notice is given, or, if no notice is given, the day next preceding the day on which the meeting is held; and
- ii. the record date for determining shareholders for any other purpose shall be at the close of business on the day on which the resolution of the Board relating thereto is adopted.

(c) The record date for determining shareholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by this act, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to (i) its registered office in New Jersey, (ii) its principal place of business, or (iii) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of shareholders are recorded.

(d) When a determination of shareholders of record for a shareholders' meeting has been made as provided in this Section 3, such determination shall apply to any adjournment thereof, unless the Board fixes a new record date under this Section 3 for the adjourned meeting.

4. Inspectors of Election. The Board may, in advance of any shareholders' meeting, or of the tabulation of written consents of shareholders without a meeting, appoint one or more inspectors to act at the meeting or any adjournment thereof or to tabulate such consents and make a written report thereof. If inspectors to act at any meeting of shareholders are not so appointed or shall fail to qualify, the person presiding at a shareholders' meeting may, and on the request of any shareholder entitled to vote thereat shall, make such appointment.

Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. No person shall be elected a Director in an election for which he or she has served as an inspector.

The inspectors shall determine the number of shares outstanding and the voting power of each, the shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes or consents, determine the result, and do such acts as are proper to conduct the election or vote with fairness to all shareholders. If there are three or more inspectors, the act of a majority shall govern. On request of the person presiding at the meeting or any shareholder entitled to vote thereat, the inspectors shall make a report in writing of any challenge, question or matter determined by them. Any report made by them shall be prima facie evidence of the facts therein stated, and such report shall be filed with the minutes of the meeting.

5. Proxies. (a) Every shareholder entitled to vote at a shareholder meeting or to express consent without a meeting may authorize another person or persons to act for him or her by proxy. Every proxy shall be executed by the shareholder or his or her agent, but a proxy may be given by telegram, cable, telephonic transmission, or any other means of electronic communication so long as that telegram, cable, telephonic transmission or other means of electronic communication either sets forth or is submitted with information from which it can be determined that the proxy was authorized by the shareholder or his agent.

(a) No proxy shall be valid after eleven months from the date of its execution unless a longer time is expressly provided therein. A proxy shall be revocable at will unless it states that it is irrevocable and is coupled with an interest either in the stock itself or in the Corporation. A proxy shall not be revoked by the death or incapacity of the shareholder, but the proxy shall continue in force until revoked by the personal representative or guardian of the shareholder.

(b) The presence at a meeting of any shareholder who has given a proxy shall not revoke the proxy unless the shareholder (i) files written notice of the revocation with the secretary of the meeting prior to the voting of the proxy or (ii) votes the shares subject to the proxy by written ballot. A person named as proxy of a shareholder may, if the proxy so provides, substitute another person to act in his or her place,

including any other person named as proxy in the same proxy. The substitution shall not be effective until an instrument effecting it is filed with the secretary of the Corporation.

(c) Each person holding a proxy shall either file the proxy with the secretary of the meeting or the inspectors at the start of the meeting or shall submit the proxy to the inspectors together with his or her ballot, as determined by the presiding officer.

ARTICLE IV

BOARD OF DIRECTORS

1. Election; Term of Office; Removal; Vacancies; Independence.

(a) Election. The number of Directors constituting the entire Board shall be not less than six nor more than twelve, as fixed from time to time by the vote of not less than 66 2/3% of the entire Board; provided, however, that the number of Directors shall not be reduced so as to shorten the term of any Director at the time in office. The phrase "66 2/3% of the entire Board" shall be deemed to refer to 66 2/3% of the number of Directors constituting the Board as provided in or pursuant to this Subsection 1(a), without regard to any vacancies then existing.

(b) Classification; Term of Office; Vacancies. The Board shall be divided into three classes, as nearly equal in number as the then total number of Directors constituting the entire Board permits. The initial term of office of the first class expired at the 2002 Annual Meeting of Shareholders. The initial term of office of the second class expired at the 2001 Annual Meeting of Shareholders. The initial term of office of the third class expired at the 2000 Annual Meeting of Shareholders. The Directors elected at an annual meeting of shareholders to succeed those whose terms then expire shall be identified as being Directors of the same class as the Directors whom they succeed, and each of them shall hold office until the third succeeding annual meeting of shareholders and until such Director's successor shall have been elected and qualified. Starting as of June 1, 2007, Independent Directors (as hereinafter defined) may serve on the Board for no more than ten consecutive years. After serving for ten consecutive years during any period after June 1, 2007, an Independent Director must step down from the Board for at least one year before seeking re-election to the Board. Any vacancies in the Board for any reason, and any created Directorships resulting from any increase in the number of Directors, may be filled by the vote of not less than 66 2/3% of the members of the Board then in office, although less than a quorum, and any Directors so chosen shall hold office until the next annual meeting of shareholders and until their successors shall be elected and qualified. No decrease in the number of Directors shall shorten the term of any incumbent Director. Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of preferred stock of the Corporation ("Preferred Stock") shall have the right, voting separately as a class, to elect one or more Directors, the then authorized number of Directors shall be increased by the number of Directors so to be elected, and the terms of the Director or Directors elected by such holders shall expire at the next succeeding annual meeting of shareholders.

(c) Removal. Notwithstanding any other provisions of these By-Laws, any Director, or the entire Board, may be removed at any time, but only for cause and only by the affirmative vote of the holders of 80% or more of the outstanding shares of capital stock entitled to vote generally in the election of Directors (considered for this purpose as one class) cast at a meeting of the shareholders called for that purpose. Notwithstanding the foregoing, and except as otherwise required by law, whenever the holders of any one or more series of Preferred Stock shall have the right, voting separately as a class, to elect one or more

Directors, the provisions of this Subsection 1(c) shall not apply with respect to the Director or Directors elected by such holders of Preferred Stock.

(d) Independence of Directors. A majority of the members of the Board will be independent. The Corporation defines an “Independent Director” in accordance with the NASDAQ listing requirements and these By-Laws. For purposes of these By-Laws, an “Independent Director” will mean a Director who:

- i. is not, and in the past three years has not been, employed by the Corporation or any of its subsidiaries or affiliates;
- ii. does not receive, and in the past three years has not received, any remuneration an advisor, consultant or legal counsel to the Corporation or any of its subsidiaries, affiliates, executive officers or other Directors;
- iii. does not have, and in the past three years has not had, any contract or agreement with the Corporation or any of its subsidiaries or affiliates pursuant to which the Director performed or agreed to perform any personal services for the Corporation;
- iv. does not have, and in the past three years has not had, any business relationship or engaged in any transaction with the Corporation or any of its subsidiaries or affiliates other than his or her service as a Director;
- v. is not, and in the past three years has not been, affiliated with, or employed by any present or former independent auditor of the Corporation or any of its subsidiaries or affiliates;
- vi. is not, and in the past three years has not been, a director or executive officer of any company for which any executive officer of the Corporation serves as a director; and
- vii. is not a Family Member of a person who is not independent pursuant to subsections (i)-(vi) above. For purposes of this Subsection 1(e), “Family Member” means a person’s spouse, parents, children and siblings, whether by blood, marriage, adoption, or anyone residing in such person’s home.

2. Nominations.

(a) Subject to the rights of any holders of Preferred Stock, only persons who are nominated in accordance with the procedures in this Section 2 shall be eligible for election as Directors of the Corporation. Nominations of persons for election to the Board pursuant to this Section 2 may be made at any annual meeting of shareholders, or at any special meeting of shareholders called for the purpose of electing Directors. Nominations for the election of Directors may be made (i) by or at the direction of the Board (or any duly authorized committee thereof), or (ii) by any shareholder of the Corporation (or group of shareholders in the case of any nomination pursuant to Subsection 2(c)) who is a shareholder of record of the Corporation on the date the notice provided for in this Section 2 is delivered to the Corporation who is entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 2.

(b) Nominations for election to the Board of Directors which are not made by the Board shall be made by timely notice thereof in writing, delivered or mailed by first class mail, postage prepaid, to the secretary of the Corporation. To be timely, a shareholder’s notice must be delivered to or mailed and received by the secretary at the principal executive offices of the Corporation (i) in the case of an annual meeting of

shareholders, not later than the close of business on the 90th day, nor earlier than the close of business on the 120th day, prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than 30 days before or after such anniversary date, notice by the shareholder must be so delivered not earlier than the close of business on the one 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation); and (ii) in the case of a special meeting of shareholders called for the purpose of electing Directors, not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by the Corporation and of the nominees proposed by the Board to be elected as Directors at such meeting. In no event shall the public announcement of an adjournment or postponement of a meeting of shareholders commence a new time period (or extend any time period) for the giving of a shareholder's notice as described above. To be in proper form, such shareholder's notice shall set forth (A) as to each person whom the shareholder proposes for election as a Director, (i) the name, age, and business address of each nominee proposed in such notice, (ii) the principal occupation or employment of each such nominee, (iii) the number of shares of capital stock which are beneficially owned by each such nominee, (iv) such other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, and (v) such person's written consent to being named in the proxy statement as a nominee and to serving as a Director if elected; and (B) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the proposal is made (i) the name and address of such person, (ii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such shareholder and such beneficial owner as of the date of the notice, (iii) a description of any agreement, arrangement or understanding with respect to the nomination between or among such person, any of their respective affiliates or associates, and any others acting in concert with any of the foregoing, including the nominee, (iv) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, warrants, convertible securities, stock appreciation or similar rights, hedging transactions, and borrowed or loaned shares) involving such shareholder or beneficial owner that is in effect as of the date of the shareholder's notice, whether or not such instrument or right shall be subject to settlement in underlying shares of capital stock of the Corporation, the effect or intent of which is to mitigate loss to, manage risk or benefit from share price changes for, or increase or decrease the voting power of, such shareholder or such beneficial owner, with respect to securities of the Corporation, and the class or series and number of shares of the Corporation's capital stock that relate to such agreements, arrangements or understandings, (v) a description of any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship in effect as of the date of the notice pursuant to which such shareholder or such beneficial owner has or shares a right to vote or direct any third party to vote any shares of capital stock of the Corporation, (vi) a representation that the shareholder is a holder of record of stock of the Corporation entitled to vote at such annual meeting and intends to appear in person or by proxy at the meeting to propose such business, (vii) a representation whether the shareholder or the beneficial owner, if any, intends or is part of a group which intends (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (B) otherwise to solicit proxies or votes from shareholders in support of such nomination, and (viii) any other information relating to such shareholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder. The Corporation may require any proposed

nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a Director of the Corporation. Notwithstanding the foregoing provisions of this Subsection 2(b), unless otherwise required by law, if the shareholder (or a qualified representative of the shareholder) does not appear at the meeting of shareholders to present the nomination, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2, to be considered a “qualified representative” of the shareholder, a person must be a duly authorized officer, manager, partner or occupy a similar position with such shareholder or must be authorized by a writing executed by such shareholder to act as proxy at the meeting of shareholders and such person must produce such writing, or a reliable reproduction thereof, at the meeting of shareholders.

(c) For a nominee for election to the Board proposed by a shareholder or group of shareholders holding 20% or more of the outstanding capital stock of the Corporation, the Corporation shall include such nominee in the Corporation’s proxy solicitation materials, provided that such shareholder or group of shareholders has complied with the notice and other procedures set forth in this Section 2. For a nominee for election to the Board proposed by a shareholder or group of shareholders holding less than 20% of the outstanding shares of capital stock of the Corporation, the Corporation shall not be required to include such nominee in the Corporation’s proxy solicitation materials regardless of whether such shareholder or group of shareholders has complied with the notice and other procedures set forth in this Section 2. For purposes of this Subsection 2(c), “group” shall mean any group of persons and/or entities formed for the purpose of acquiring, holding, voting or disposing of voting securities that would be required under Section 13(d) of the Exchange Act and the rules and regulations thereunder to file a statement on Schedule 13D with the Securities and Exchange Commission as a “person” within the meaning of the Section 13(d)(3) of the Exchange Act.

(d) The person presiding at the meeting may, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedures, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

3. Regular Meetings. A regular meeting of the Board shall be held without notice immediately following and at the same place as the annual shareholders’ meeting for the purposes of electing officers and conducting such other business as may come before the meeting. The Board, by resolution, may provide for additional regular meetings which may be held without notice, except advance notice, as described in Section 4 below, shall be provided to Directors not present at the time of the adoption of the resolution.

4. Special Meetings. A special meeting of the Board may be called at any time by the Chairman of the Board, the chief executive officer or a majority of the members of the Board for any purpose. Such meeting shall be held upon one day’s notice if given orally (either by telephone or in person) or by telegraph, e-mail or facsimile transmission, or by three days notice if given by depositing the notice in the United States mails, postage prepaid. Such notice shall specify the time and place of the meeting.

5. Action Without Meeting. The Board may act without a meeting if, prior or subsequent to such action, each member of the Board shall consent in writing to such action. Such written consent or consents shall be filed in the minute book.

6. Quorum and Manner of Acting. Except as otherwise provided in these By-Laws, the Certificate of Incorporation or by law, one-half of the entire Board shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting

of the time and place of the adjourned meeting (provided the period of adjournment does not exceed 10 days in any one adjournment), until a quorum shall be present.

7. Meetings by Means of Conference Telephone. Except as otherwise provided in these By-Laws, the Certificate of Incorporation or by law, members of the Board may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 shall constitute presence in person at such meeting.

8. Committees. The Board, by resolution adopted by a majority of the entire Board, may appoint from among its members an executive committee and one or more other committees, each of which shall consist of one or more directors of the Corporation. To the extent provided in such resolution, each such committee shall have and may exercise all the authority of the Board, except that no such committee shall (a) make, alter or repeal any By-Law; (b) elect any Director, or remove any officer or Director; (c) submit to shareholders any action that requires shareholders' approval; or (d) amend or repeal any resolution theretofore adopted by the Board which by its terms is amendable or repealable only by the Board.

The Board, by resolution adopted by a majority of the entire Board, may (a) fill any vacancy in any such committee; (b) appoint one or more Directors to serve as alternate members of any such committee, to act in the absence or disability of members of any such committee with all the powers of such absent or disabled members; (c) abolish any such committee at its pleasure; (d) remove any Director from membership on such committee at any time, with or without cause; and (e) establish as a quorum for any such committee less than a majority of the entire committee, but in no case less than the greater of two persons or one-third of the entire committee.

Actions taken at a meeting of any such committee shall be reported to the Board at its next meeting following such committee meeting; except that, when the meeting of the Board is held within two days after the committee meeting, such report shall, if not made at the first meeting, be made to the Board at its second meeting following such committee meeting.

Unless otherwise provided by the Board, meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of this Article IV applicable to meetings and actions of the Board.

9. Compensation of Directors. The Board, by the affirmative vote of a majority of Directors in office and irrespective of any personal interest of any of them, shall have authority to establish reasonable compensation of Directors for services to the Corporation as Directors, officers or otherwise.

10. Chairman of the Board. The Board shall elect a Chairman of the Board from among the Directors. The Board shall designate the Chairman as either a non-executive Chairman of the Board, or an executive Chairman of the Board. The Chairman of the Board shall preside at meetings of the Board and in general shall perform all duties incident to the office of Chairman of the Board and such other duties as from time to time may be assigned to him by the Board of Directors.

ARTICLE V

WAIVERS OF NOTICE

Any notice required by these By-Laws, by the Certificate of Incorporation, or by applicable law, including the New Jersey Business Corporation Act may be waived in writing by any person entitled to

notice. The waiver or waivers may be executed either before or after the event with respect to which notice is waived. Each Director or shareholder attending a meeting without protesting, prior to its conclusion, the lack of proper notice shall be deemed conclusively to have waived notice of the meeting.

ARTICLE VI

OFFICERS

1. Election. At its regular meeting following the annual meeting of shareholders, the Board shall elect a chief executive officer, a president, a treasurer and a secretary, and it may elect such other officers, including one or more vice presidents, as it shall deem necessary. One person may hold two or more offices. The chief executive officer shall be a Director of the Corporation. Each officer shall hold office until the end of the period for which such officer was elected, and until his or her successor has been elected and has qualified, unless he or she is earlier removed.

2. Duties and Authority of Chief Executive Officer. Subject only to the authority of the Board, and except as otherwise provided in these By-Laws, the chief executive officer shall have responsibility for the business and affairs of the Corporation. Unless otherwise directed by the Board, all other executive officers, including the president, shall be subject to the authority and supervision of the chief executive officer. The chief executive officer may enter into and execute in the name of the Corporation contracts or other instruments in the regular course of business or contracts or other instruments not in the regular course of business which are authorized, either generally or specifically, by the Board. The chief executive officer shall preside at shareholder meetings. Except as otherwise provided in these By-Laws, the chief executive officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation.

3. Duties and Authority of President. Subject only to the authority of the chief executive officer and the Board, the president shall have responsibility for the business and affairs of the Corporation. Unless otherwise directed by the Board, all other non-executive officers shall be subject to the authority and supervision of the president. The president may enter into and execute in the name of the Corporation contracts or other instruments in the regular course of business or contracts or other instruments not in the regular course of business which are authorized, either generally or specifically, by the Board. Except as otherwise provided in these By-Laws, the president shall have the general powers and duties of management usually vested in the office of president of a corporation. Following the annual meeting of shareholders in 2008, the president shall also be the chief executive officer and shall have the duties and authority described in Section 2 of this Article V.

4. Duties and Authority of Vice Presidents. Each vice president shall perform such duties and have such authority as from time to time may be delegated to him by the chief executive officer, the president or by the Board. The Board shall have the authority to append such prefixes as "executive," "senior" and "assistant" to any vice president's title as it shall determine. In the absence of the chief executive officer and the president or in the event of the president's death, inability, or refusal to act, such vice president as shall have been designated by the Board or, in the absence of such designation, by the chief executive officer, shall perform the duties and be vested with the authority of the president.

5. Duties and Authority of Treasurer. The treasurer shall have the custody of the funds and securities of the Corporation and shall keep or cause to be kept regular books of account for the Corporation. The treasurer shall perform such other duties and possess such other powers as are incident to that office or as shall be assigned by the chief executive officer, president or the Board.

6. Duties and Authority of Secretary. The secretary shall cause notices of all meetings to be served as prescribed in these By-Laws and shall keep or cause to be kept the minutes of all meetings of the shareholders and the Board. The secretary shall have charge of the seal of the Corporation. The secretary shall perform such other duties and possess such other powers as are incident to that office or as are assigned by the chief executive officer, president or the Board.

7. Vacancies. Any vacancy in any office may be filled by the Board.

8. Removal and Resignation. Any officer may be removed, either with or without cause, by the Board or by any officer upon whom the power of removal has been conferred by the Board. An officer elected by the shareholders may be removed, with or without cause, only by vote of the shareholders but his or her authority to act as an officer may be suspended by the Board for cause. Removal of an officer shall be without prejudice to the officer's contract rights, if any. Election or appointment of an officer shall not of itself create contract rights. Any officer may resign at any time by giving written notice to the Board, the chief executive officer or the president. A resignation shall take effect on the date of the receipt of the notice or at any later time specified therein and, unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

ARTICLE VII

CAPITAL STOCK AND OTHER SECURITIES

1. Issuance of Capital Stock and Other Securities. Each share of the capital stock of the Corporation shall be represented by certificates or, in accordance with the applicable provisions of the New Jersey Business Corporation Act, shall be uncertificated shares. Certificates of any class of capital stock and certificates representing any other securities of the Corporation shall be signed by the Chairman of the Board, chief executive officer, president, or any vice president and, at the Corporation's option, may be countersigned by the secretary, any assistant secretary, the treasurer or any assistant treasurer. The signature of each officer may be an engraved or printed facsimile. If an officer or transfer agent or registrar whose facsimile signature has been placed upon certificates ceases to hold the official capacity in which he or she signed, the certificates may continue to be used. The certificates may, but need not, be sealed with the seal of the Corporation, or a facsimile of the seal. The certificates shall be countersigned and registered in whatever manner the Board may prescribe.

2. Lost, Stolen and Destroyed Certificates. In case of lost, stolen or destroyed certificates, new certificates or uncertificated shares may be issued to take their place upon receipt by the Corporation of a bond of indemnity and under whatever regulations may be prescribed by the Board. The giving of a bond of indemnity may be waived.

3. Transfer of Securities. The shares of the capital stock or any other registered securities of the Corporation shall be transferable on the books of the Corporation by the holder thereof or by that person's authorized agent upon (a) surrender for cancellation to the relevant transfer agent of an outstanding certificate or certificates for the same number of shares or other security with an assignment and authorization to transfer endorsed thereon or attached thereto, duly executed, together with such proof of the authenticity of the signature and of the power of the assignor to transfer the securities as the Corporation or its agents may require or (b) in the case of uncertificated shares, upon receipt of proper transfer instructions from the holder thereof or that person's authorized agent or upon presentation of proper evidence of assignment and

authorization to transfer, duly executed, together with such proof of the authenticity of the signature and of the power of the assignor to transfer the securities as the Corporation or its agents may require.

4. Fractional Shares. The Corporation may, but shall not be required to, issue certificates for fractions of a share where necessary to effect authorized transactions, or the Corporation may pay in cash the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined, or it may issue scrip in registered or bearer form over the manual or facsimile signature of an officer of the Corporation or of its agent, exchangeable as therein provided for full shares, but such scrip shall not entitle the holder to any rights of a shareholder except as therein provided.

ARTICLE VIII

AMENDMENTS TO AND EFFECT OF BY-LAWS; FISCAL YEAR; SEAL; CHECKS; CONTRACTS; RECORDS

1. Force and Effect of By-Laws. These By-Laws are subject to the provisions of the applicable law, including the New Jersey Business Corporation Act, and the Certificate of Incorporation, as it may be amended from time to time. If any provision in these By-Laws is inconsistent with a provision in that Act or the Certificate of Incorporation, the provision of that Act or the Certificate of Incorporation shall govern.

2. Amendments to By-Laws. These By-Laws may be altered, amended or repealed by the shareholders or the Board in accordance with the terms of the Certificate of Incorporation, these By-laws and applicable law. Any By-Law adopted, amended or repealed by the shareholders may be amended or repealed by the Board, unless the resolution of the shareholders adopting such By-Law expressly reserves to shareholders the right to amend or repeal it.

3. Fiscal Year. The fiscal year of the Corporation shall begin on the first day of October of each year.

4. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its incorporation, and the words "Corporate Seal New Jersey". The corporate seal may be used by causing it or a facsimile thereof to be impressed or reproduced on a document or instrument, or affixed thereto. Except to the extent required by applicable law or by resolution of the Board, no contract, instrument or other document executed by or on behalf of the Corporation, or to which the Corporation is otherwise a party, shall be required to bear the corporate seal.

5. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness, issued in the name of or payable to the Corporation, shall be signed or endorsed by the person or persons and in such manner, manually or by facsimile signature, as shall be determined from time to time by the Board.

6. Execution of Contracts. The Board may authorize any officer or officers, employee or employees, or agent or agents of the Corporation, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. The authority may be general or confined to specific instances.

7. Records. The Corporation shall keep books and records of account and minutes of the proceedings of the shareholders, Board and such committees as the Board may determine. Such books, records and minutes may be kept outside the State of New Jersey. The Corporation shall keep at its principal

office, its registered office, or at the office of its registrar and transfer agent, a record or records containing the names and addresses of all shareholders, the number, class and series of shares held by each and the dates when they respectively became the owners of record thereof. Any of the foregoing books, minutes or records may be in written form or in any other form capable of being converted into readable form within a reasonable time.

Any person who shall have been a shareholder of record of the Corporation for at least six months immediately preceding his demand, or any person holding, or so authorized in writing by the holders of, at least five percent of the outstanding shares of any class or series, upon at least five days' written demand shall have the right for any proper purpose to examine in person or by agent or attorney, during usual business hours, the minutes of the proceedings of the shareholders and record of shareholders and to make extracts therefrom at the places where the same are kept.

ARTICLE IX

INDEMNIFICATION

1. General. The Corporation shall indemnify an Indemnitee (as hereinafter defined) against Liabilities (as hereinafter defined) and advance Expenses (as hereinafter defined) to an Indemnitee to the fullest extent permitted by applicable law and as provided in this Article IX. An Indemnitee shall be entitled to the indemnification provided in this Section 1, if, by reason of his being or having been an Officer/Director (as hereinafter defined), he is, or is threatened to be made, a party to any threatened, pending, or completed Proceeding (as hereinafter defined). Pursuant to this Section 1, an Indemnitee shall be indemnified against Expenses and Liabilities actually incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein.

2. Advancement of Expenses. The Corporation shall advance all Expenses incurred by or on behalf of an Indemnitee in connection with any Proceeding upon the receipt by the Corporation of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by the Indemnitee or refer to invoices or bills for Expenses furnished or to be furnished directly to the Corporation, and shall include or be preceded or accompanied by an undertaking by or on behalf of the Indemnitee to repay any Expenses advanced unless it shall ultimately be determined pursuant to Section 5 of this Article IX that the Indemnitee is entitled to be indemnified against such Expenses.

3. Indemnification for Expenses of a Witness. Notwithstanding any other provision of this Article IX, to the extent that an Indemnitee is, by reason of his being or having been an Officer/Director, a witness in any Proceeding in which such Indemnitee is not also a party, the Corporation shall indemnify such witness against all Expenses actually incurred by him or on his behalf in connection therewith.

4. Limitation on Indemnity. No indemnification shall be made to any Indemnitee pursuant to this Article IX to the extent that, in connection with the relevant Proceeding, a judgment or other final adjudication adverse to the Indemnitee establishes that his acts or omissions (a) were in breach of such Indemnitee's duty of loyalty to the Corporation or its shareholders, as defined in subsection (3) of N.J.S. 14A:2-7, (b) were not in good faith or involved a knowing violation of law, or (c) resulted in the receipt by such Indemnitee of an improper personal benefit. In the event of any such finding, the Indemnitee shall promptly disgorge and pay over to the Corporation any amounts theretofore paid to such Indemnitee pursuant to this Article IX, including any advance of Expenses pursuant to Section 2 of this Article IX. The termination of any Proceeding or of any claim, issue or matter therein by judgment, order, settlement or conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself adversely affect the right of an Indemnitee

to indemnification or create a presumption that an Indemnitee did not act in good faith or that an Indemnitee had reasonable cause to believe that his conduct was unlawful.

5. Procedure for Determination of Entitlement to Indemnification.

(a) To obtain indemnification under this Article IX, an Indemnitee shall submit to the Corporation a written request for indemnification, and provide for the furnishing to the Corporation of such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification. The secretary shall, promptly upon receipt of such a request for indemnification, advise the Board in writing that the Indemnitee has requested indemnification.

(b) Upon written request by an Indemnitee for indemnification pursuant to Subsection 5(a) of this Article IX, a written determination with respect to the Indemnitee's entitlement thereto shall be made: (i) if a Change in Control (as hereinafter defined) shall have occurred, by Independent Counsel (as hereinafter defined); (ii) if a Change in Control shall not have occurred, (A) by the Board by a majority vote of a quorum consisting of Disinterested Directors (as hereinafter defined), or (B) by a majority vote of a quorum of Disinterested Directors on a Committee of the Board authorized by the Board to make such determination, or (C) by Independent Counsel. If it is so determined that the Indemnitee is entitled to indemnification, payment to the Indemnitee shall be made in a timely fashion. An Indemnitee shall cooperate with the person, persons or entity making such determination with respect to the Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by an Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Corporation (irrespective of the determination as to an Indemnitee's entitlement to indemnification).

(c) In the event the determination of entitlement is to be made by Independent Counsel pursuant to Subsection 5(b) of this Article IX, the Independent Counsel shall be selected as provided in this Subsection 5(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Board or a Committee thereof authorized by the Board to make such selection, and the Corporation shall give written notice to the Indemnitee advising him of the identity of the Independent Counsel so selected. If a Change of Control shall have occurred, the Independent Counsel shall be selected jointly by the Indemnitee and the Board or a Committee thereof authorized by the Board to make such determination. In the event that the Board or such a Committee thereof cannot agree with the Indemnitee on the choice of Independent Counsel, such Independent Counsel shall be selected by the Board or a Committee thereof from among the New York City law firms having more than 100 attorneys. The Corporation shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Subsection 5(b) of this Article IX, and the Corporation shall pay all reasonable fees and expenses incident to the procedures of this Subsection 5(c), regardless of the manner in which such Independent Counsel was selected or appointed.

6. Presumptions and Effect of Certain Proceedings.

(a) If a Change in Control shall have occurred, in making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall presume that an Indemnitee is entitled to indemnification under this Article if the Indemnitee has submitted a request for indemnification in accordance with Subsection 5(a) of this Article IX, and the Corporation shall

have the burden of proof to overcome that presumption in connection with the making by any person, persons or entity of any determination contrary to that presumption.

(b) If the person, persons or entity empowered or selected under Section 5 of this Article IX to determine whether an Indemnitee is entitled to indemnification shall not have made such determination in a timely fashion after receipt by the Corporation of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and the Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by the Indemnitee of a material fact, or an omission of a material fact necessary to make the Indemnitee's statement not materially misleading, in connection with the request for indemnification (which shall have been proven by clear and convincing evidence), or (ii) a prohibition of such indemnification under applicable law.

(c) Every Indemnitee shall be presumed to have relied upon this Article IX in serving or continuing to serve as an Officer/Director.

7. Indemnification of Estate; Standards for Determination. If an Indemnitee is deceased and would have been entitled to indemnification under any provision of this Article IX, the Corporation shall indemnify the Indemnitee's estate and his spouse, heirs, administrators and executors. When the Board, Committee thereof or Independent Counsel acting in accordance with Section 5 of this Article IX is determining the availability of indemnification under this Article IX and when an Indemnitee is unable to testify on his own behalf by reason of his death or mental or physical incapacity, said Board, Committee or Independent Counsel shall deem the Indemnitee to have satisfied applicable standards set forth in the relevant section or sections of this Article IX unless it is affirmatively demonstrated by clear and convincing evidence that indemnification is not available thereunder.

8. Limitation of Actions and Release of Claims. No legal action shall be brought and no cause of action shall be asserted by or on behalf of the Corporation or its Affiliates (as hereinafter defined) against an Indemnitee, his spouse, heirs, executors or administrators after the expiration of two years from the date the Indemnitee ceases (for any reason) to serve as an Officer/Director, and any claim or cause of action of the Corporation or its Affiliates shall be extinguished and deemed released unless asserted by filing of a legal action within such two-year period.

9. Other Rights and Remedies of Indemnitee.

(a) The Corporation shall purchase and maintain on behalf of Indemnites such insurance covering such Liabilities and Expenses arising from actions or omissions of an Indemnitee in his capacity as an Officer/Director as is obtainable and is reasonable and appropriate in cost and amount.

(b) In the event that (i) a determination is made pursuant to Section 5 of this Article IX that an Indemnitee is not entitled to indemnification under this Article IX, (ii) advancement of Expenses is not timely made pursuant to Section 2 of this Article IX, (iii) the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Subsection 5(b) of this Article IX and such determination shall not have been made and delivered in a written opinion in a timely fashion after receipt by the Corporation of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 3 of this Article IX in a timely fashion after receipt by the Corporation of a written request therefor, or (v) payment of indemnification is not made in a timely fashion after a determination has been made that an Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Article IX, the Indemnitee shall be entitled to an adjudication in the Superior Court of the State of New Jersey, or in any other court of competent jurisdiction, of his entitlement to such indemnification or

advancement of Expenses. Alternatively, the Indemnitee, at his option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the rules of the American Arbitration Association. The Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration in a timely manner following the date on which the Indemnitee first has the right to commence such Proceeding pursuant to this Subsection 9(b). The Corporation shall not oppose the Indemnitee's right to exercise his rights under this Subsection 9(b).

(c) In the event that a determination shall have been made pursuant to Section 5 of this Article that an Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 9 shall be conducted in all respects as a de novo trial or arbitration on the merits, and the Indemnitee shall not be prejudiced by reason of that adverse determination. If a Change of Control shall have occurred, in any judicial proceeding or arbitration commenced pursuant to this Section 9 the Corporation shall have the burden of proving that the Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be.

(d) If a determination shall have been made or deemed to have been made pursuant to Section 5 of this Article IX that an Indemnitee is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 9, absent (i) a misstatement by the Indemnitee of a material fact, or an omission of a material fact necessary to make the Indemnitee's statement not materially misleading, in connection with the request for indemnification (which shall have been proven by clear and convincing evidence), or (ii) a prohibition of such indemnification under applicable law.

(e) The Corporation shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 9 that the procedures and presumptions of this Article are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Corporation is bound by all the provisions of this Article IX.

(f) In the event that an Indemnitee, pursuant to this Section 9, seeks a judicial adjudication of or an award in arbitration to enforce his rights under, or to recover damages for breach of, this Article, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any and all expenses (of the types described in the definition of Expenses in Section 12 of this Article IX) actually incurred by him in such judicial adjudication or arbitration, but only if he prevails therein. If it shall be determined in said judicial adjudication or arbitration that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of Expenses sought, the Expenses incurred by the Indemnitee in connection with such judicial adjudication or arbitration shall be appropriately prorated.

10. Non-Exclusivity; Survival of Rights; Subrogation.

(a) The rights of indemnification and to receive advancement of Expenses as provided by this Article shall not be deemed exclusive of any other rights to which an Indemnitee may at any time be entitled under applicable law, the Certificate of Incorporation, the certificate of incorporation or other similar organizational document of any Affiliate of the Corporation, the By-Laws, the by-laws or other similar organizational document of any Affiliate of the Corporation, any agreement, any insurance policy maintained or issued directly or indirectly by the Corporation or any Affiliate of the Corporation, a vote of shareholders, a resolution of Disinterested Directors, or otherwise. No amendment, alteration or repeal of this Article or of any provision hereof shall be effective as to any Indemnitee with respect to any action taken or omitted by such Indemnitee as an Officer/Director prior to such amendment, alteration or repeal. The provisions of

this Article IX shall continue as to an Indemnitee whose status as an Officer/Director has ceased and shall inure to the benefit of his heirs, executors and administrators.

(b) In the event of any payment under this Article IX, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Corporation to bring suit to enforce such rights.

(c) The Corporation shall not be liable under this Article IX to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that the Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

11. Severability. If any provision or provisions of this Article shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article (including without limitation, each portion of any subsection of this Article IX containing any such provision held to be invalid, illegal or unenforceable that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article (including, without limitation, each portion of any subsection of this Article IX containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

12. Definitions. For purposes of this Article IX:

(a) “Affiliate” or “Associate” shall have the same meaning as in Rule 405 under the Securities Act of 1933, as amended.

(b) “Change in Control” shall mean either:

i. a change in the membership of the Board such that one-third or more of its members were neither recommended nor elected to the Board by a majority of those of its members (A) who are not Affiliates or Associates or representatives of a beneficial owner described in clause (ii) below or (B) who were members of the Board prior to the time the beneficial owner became such; or

ii. The attainment of “beneficial ownership” (as defined in Rule 13d-3 under the Exchange Act, as Rule 13d-3 was in existence on the date hereof) by any person, corporation or other entity, or any group, including, associates or affiliates of such beneficial owner, of more than 10% of the voting power of all classes of capital stock, other than by any such entity that held more than such percentage as of the date hereof.

(c) “Corporate Agent” means a person who is or was a director, officer, employee, agent or fiduciary of the Corporation or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Corporation, but shall not include any Officer/Director.

(d) “Disinterested Director” means a Director who is not and was not a party to the Proceeding in respect of which indemnification is sought by an Indemnitee.

(e) “Expenses” means all reasonable costs, disbursements and counsel fees.

(f) “Indemnitee” means any person who is, or is threatened to be made, a witness in, or a party to, any Proceeding by reason of his being or having been an Officer/Director.

(g) “Independent Counsel” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Corporation or the Indemnitee or, following a Change in Control, any person acquiring control or any beneficial owner referred to in clause (ii) of Section 12(b) of this Article or any Affiliate or Associate of any such person or beneficial owner, in any matter material to any such person, or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the Indemnitee in an action to determine the Indemnitee’s rights under this Article IX.

(h) “Liabilities” shall mean amounts paid or incurred in satisfaction of settlements, judgments, awards, fines and penalties.

(i) “Officer/Director” shall mean any officer of the Corporation or any Director.

(j) “Proceeding” includes any action, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding whether civil, criminal, administrative or investigative, except one initiated by an Indemnitee pursuant to Section 9 of this Article IX to enforce his rights under this Article IX.

13. Notices. Any notice, request or other communication required or permitted to be given to the Corporation under this Article IX shall be in writing and either delivered in person or sent by telex, telegram or certified or registered mail, postage prepaid, return receipt requested, to the secretary of the Corporation and shall be effective only upon receipt by the secretary.

14. Amendments. This Article IX may be amended or repealed only by action of the Board approved by the favorable vote of a majority of the votes cast by shareholders entitled to vote thereon at a meeting of shareholders for which proxies are solicited in accordance with then applicable requirements of the Securities and Exchange Commission, except that (i) the Board, without shareholder approval, may make technical amendments that do not substantively affect the rights of an Indemnitee hereunder and (ii) following a Change of Control, as defined in clause (ii) of Subsection 12(b) of this Article IX, there shall also be required for approval of any such amendment or repeal the favorable vote of a majority of the votes cast by persons other than the beneficial owners referred to in clause (ii) of Section 12(b) of this Article IX and their Affiliates and Associates.

15. Indemnification of Corporate Agents. The Corporation may at the discretion of the Board indemnify any Corporate Agent to the fullest extent permitted by applicable law; provided, that the Corporation shall in any event indemnify a Corporate Agent to the extent required by applicable law. The procedures to be followed in the event of such indemnification shall be such as may be determined by the Board in its discretion; provided, that in the event any procedures are mandated by applicable law, such procedures shall be followed.