Oak Valley Bancorp
Form DEF 14A
April 28, 2011

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

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant x

Filed by a Party other than the Registrant o

Check the appropriate box:

o Preliminary Proxy Statement

o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

x Definitive Proxy Statement

o Definitive Additional Materials
o Soliciting Material Pursuant to §240.14a-12

Oak Valley Bancorp
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):
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(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

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125 North Third Avenue

Oakdale, California 95361

(209) 848-2265

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

TO BE HELD ON JUNE 9, 2011

The Annual Meeting of Shareholders of Oak Valley Bancorp, a California corporation (Oak Valley or the Company), will be held at **Oak Valley Bancorp Headquarters at 338 E F Street, Oakdale, California 95361 on June 9, 2011 4 p.m. Pacific Daylight Time**, to consider and vote on the following matters:

1. The election of the following three (3) director nominees as described within the Proxy Statement:

Michael Q. Jones

Richard J. Vaughan

Christopher M. Courtney

2. The ratification of the appointment of Moss Adams, LLP as the Company s independent registered public accounting firm;

3. A non-binding advisory vote on the compensation of the Company s senior executive officers;

4. A shareholder proposal, if properly presented at the annual meeting, to require that directors be elected by cumulative vote; and

5. To transact such other business as may properly come before the Annual Meeting of Shareholders, and any adjournment or postponement.

The Board of Directors has fixed the close of business day on April 20, 2011, as the record date for the determination of shareholders entitled to notice of and to vote at the Annual Meeting.

IMPORTANT NOTICE REGARDING THE INTERNET AVAILABILITY OF PROXY MATERIAL FOR THE SHAREHOLDER MEETING TO BE HELD ON JUNE 9, 2011

This communication presents only an overview of the more complete proxy materials include the Company s 2010 Annual Report, Form 10-K (the Annual Report), Notice of Annual Meeting, and Proxy Statement, and Proxy Card (Proxy Material) which are available for the public at www.edocumentview.com/OVLY. We encourage you to access and review all of the important information contained in the Proxy Material before voting.

PLEASE NOTE YOU CANNOT VOTE BY RETURNING THIS NOTICE. To vote your shares you must vote online, by telephone, or request a paper copy of the Proxy Material to receive a physical proxy card. There is no charge to you for requesting a paper copy of the Proxy Material. Please make your request for a copy using one of the following methods as instructed below on or before May 31, 2011 to facilitate timely delivery.

Methods:	**If you are a shareholder of record:**	**If you are beneficial owner of shares held in street name:**
First Class/Registered/Certified Mail:	Computershare Investor Services 250 Royall Street Canton, MA 02021	Not available.
By Telephone:	Toll Free Telephone Number: 1-866-641-4276	Toll Free Telephone Number: 1-800-579-1639
From the Internet:	Go to www.investorvote.com, click Request Materials	Go to www.proxyvote.com by following the instructions on the screen.
By Email	Write to investorvote@computershare.com with subject line: Proxy Materials Oak Valley Bancorp.	Send a blank email to sendmaterial@proxyvote.com with your 12-Digital Control Number in the subject line.

Your Board of Director recommends that you vote **FOR** the election of each of the Director nominees listed in the Proxy Statement under **PROPOSAL 1 ELECTION OF DIRECTORS**, **FOR** the ratification of Moss Adams, LLP as the Company s independent registered public accounting firm for the fiscal year ending December 31, 2011 under **PROPOSAL 2 RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM** , **FOR** approval of a non-biding advisory vote on the compensation of the Company s Named Executive Officers under **PROPOSAL 3 NON-BINDING ADVISORY VOTE ON EXECUTIVE COMPENSATION** , and **AGAINST** the shareholder proposal regarding cumulative voting under **PROPOSAL 4 ELECTION OF DIRECTORS BY CUMULATIVE VOTING** .

By Order of the Board of Directors,

/s/ Richard A. McCarty
Richard A. McCarty
Secretary

Date: April 28, 2011

PROXY STATEMENT
OF
OAK VALLEY BANCORP

ANNUAL MEETING OF SHAREHOLDERS OF

OAK VALLEY BANCORP

TO BE HELD ON JUNE 9, 2011

GENERAL INFORMATION FOR SHAREHOLDERS

The following information is furnished in connection with the solicitation of the accompanying proxy by and on behalf of the Board of Directors of Oak Valley Bancorp (the Company) for use at the Annual Meeting of Shareholders to be held at Oak Valley Bancorp Headquarters at 338 E F Street, Oakdale**,** California 95361, on June 9, 2011, at 4 p.m.

Shareholders Entitled to Vote

Only shareholders of record at the close of business on April 20, 2011, (the Record Date) will be entitled to notice of, and to vote, at the Annual Meeting. On the Record Date, the Company had outstanding 7,713,794 shares of its common stock, of which 7,713,794 will be entitled to vote at the Annual Meeting and any adjournments thereof. This Proxy Statement (Proxy) will be first mailed to shareholders on or about April 29, 2011.

Vote By Proxy

As many of the Company s shareholders are not expected to attend the Annual Meeting in person, the Company solicits proxies so that each shareholder is given an opportunity to vote. Shares represented by a duly executed proxy in the accompanying form, received by the Board of Directors prior to the Annual Meeting, will be voted at the Annual Meeting. A shareholder executing and delivering the proxy may revoke the proxy at any time prior to exercise of the authority granted by the proxy by (i) filing with the secretary of the Company an instrument revoking it or a duly executed proxy bearing a later date; or (ii) attending the meeting and voting in person. A proxy is also revoked when written notice of the death or incapacity of the maker of the proxy is received by the Company before the vote is counted. If a shareholder specifies a choice with respect to any matter on the accompanying form of proxy, the shares will be voted accordingly. If no specification is made, the shares represented by the proxy will be voted in favor of the specified proposal.

Methods of Voting

Shareholders may vote on matters that are properly presented at the 2011 Annual Meeting in one of the following four ways:

- By submitting your vote electronically via the Internet at **www.investorvote.com;**
- By submitting your vote telephonically;
- By completing the proxy card and returning it in a pre-paid envelope provided by the Company if you request a paper copy up the Proxy Material one; or
- By attending the 2011 Annual Meeting and casting your vote in person.

For the 2011 Annual Meeting, the Company is offering registered shareholders the opportunity to vote their shares electronically through the Internet or by telephone. The telephone and Internet voting instructions are provided in the Proxy Card as well as in the Proxy Notice dated April 28, 2011. The telephone and Internet voting procedures are designed to authenticate shareholders identities, to allow shareholders to give their voting instructions, and to confirm that shareholders instructions have been recorded properly. Shareholders voting through the Internet should understand that they may bear certain costs associated with Internet access, such as usage charges from their Internet service providers.

If a shareholder choose to submit the vote by mail instead, he or she should request a paper copy of the Proxy Material, and Company will send you the proxy card along with the rest of the Proxy Material as well as a pre-paid envelope, and you need to cast your vote by signing and returning the Proxy Card in the pre-paid envelope to the Company. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before May 31, 2011 to facilitate timely delivery.

Methods:	**If you are a shareholder of record:**	**If you are beneficial owner of shares held in street name:**
First Class/Registered/Certified Mail:	Computershare Investor Services 250 Royall Street Canton, MA 02021	Not available.
By Telephone:	Toll Free Telephone Number: 1-866-641-4276	Toll Free Telephone Number: 1-800-579-1639
From the Internet:	Go to www.investorvote.com, click Request Materials	Go to www.proxyvote.com by following the instructions on the screen.
By Email	Write to investorvote@computershare.com with subject line: Proxy Materials Oak Valley Bancorp.	Send a blank email to sendmaterial@proxyvote.com with your 12-Digital Control Number in the subject line.

Method of Counting Votes

Holders of common stock of the Company are entitled to one vote for each share held. No holder of any class of stock of the corporation shall be entitled to cumulate votes in connection with any election of directors of the corporation.

The proxy holders, Ronald Martin and Roger Schrimp, both of whom are directors of the Company, will vote all shares of Common Stock represented by the proxies unless authority to vote such shares is withheld or the proxy is revoked. However, the proxy holders cannot vote the shares of the shareholder unless the shareholder signs and returns a proxy card. Proxy cards also confer upon the proxy holders discretionary authority to vote the shares represented thereby on any matter that was not known at the time this Proxy Statement was mailed, which may properly be presented for action at the Annual Meeting, including a motion to adjourn, and with respect to procedural matters pertaining to the conduct of the Annual Meeting. The total expense of soliciting the proxies in the accompanying form will be borne by the Company. While proxies are normally solicited by mail, proxies may also be solicited directly by officers, directors and employees of the Company or its subsidiary, Oak Valley Community Bank (the Bank). Such officers, directors and employees will not be compensated for this service beyond normal compensation to them.

Abstentions and broker non-votes are each included in the determination of the number of shares present and voting for the purpose of determining whether a quorum is present, and each is tabulated separately. Under

the rules that govern brokers who are voting with respect to shares held in street name, brokers have the discretion to vote such shares on routine, but not on non-routine matters. A broker non-vote occurs when a broker does not vote on a particular proposal because the broker does not receive instructions from the beneficial owner and does not have discretionary authority. Each of (i) the non-binding advisory vote on executive compensation, and (ii) the ratification of the selection of the Company s independent registered public accounting firm, is a routine item. The election of directors is a proposal on which a broker may vote only if the beneficial owner has provided voting instructions.

Unless contrary instructions are indicated on the Proxy, all shares represented by valid Proxies received pursuant to this solicitation (and not revoked before they are voted) will be voted as follows:

FOR the election of all nominees for director named herein;

FOR ratification of the selection of Moss Adams, LLP as the Company s independent registered public accounting firm;

FOR the adoption of a non-binding advisory vote approving executive compensation; and

AGAINST the shareholder proposal regarding cumulative voting.

In the event a shareholder specifies a different choice on the Proxy, his or her shares will be voted in accordance with the specification so made. In addition, such shares will, at the proxy holders discretion, be voted on such other matters, if any, which may come before the Meeting (including any proposal to adjourn the Meeting). Boxes and a designated blank space are provided on the proxy card for shareholders to mark if they wish either to abstain on one or more of the proposals or to withhold authority to vote for one or more nominees for director.

A copy of the Company s Annual Report to Shareholders for the fiscal year ended December 31, 2010 is available at www.edocumentview.com/OVLY, and is incorporated herein by reference. You may request a hard copy of the Annual Report and other Proxy Materials by contacting:

Methods:	**If you are a shareholder of record:**	**If you are beneficial owner of shares held in street name:**
First Class/Registered/Certified Mail:	Computershare Investor Services 250 Royall Street Canton, MA 02021	Not available.
By Telephone:	Toll Free Telephone Number: 1-866-641-4276	Toll Free Telephone Number: 1-800-579-1639
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By Email	Write to investorvote@computershare.com with subject line: Proxy Materials Oak Valley Bancorp.	Send a blank email to sendmaterial@proxyvote.com with your 12-Digital Control Number in the subject line.

Vote Required

Election of Directors	The three (3) nominees for director are elected by a plurality of votes cast. This means that the 3 nominees who receive the most votes will be elected. So, if you do not vote for a particular nominee, or you indicate WITHHOLD AUTHORITY to vote for a particular nominee on your proxy card, your vote will not count either for or against the nominee. Abstentions will not have any effect on the outcome of the vote. Broker non-votes will not count as a vote on the proposal and will not affect the outcome of the vote. **Our Board of Directors unanimously recommends that you vote FOR the election of each of its director nominees.**
Ratification of Selection of Independent Accountants	The affirmative vote of a majority of the shares entitled to vote present in person or by proxy at the Annual Meeting voting on this proposal is required to ratify the selection of Moss Adams LLP as our independent registered public accounting firm for 2011. **Our Board of Directors unanimously recommends that you vote FOR the proposal to ratify the appointment of Moss Adams LLP as our independent registered public accounting firm for the year ending December 31, 2011.**
Advisory Proposal on the Company s Executive Compensation	The affirmative vote of a majority of the shares entitled to vote present in person or by proxy at the Annual Meeting voting on this proposal is required to approve this proposal. A properly executed proxy marked abstain and broker non-votes will have the same effect as a negative vote. Broker non-votes do not constitute votes cast and therefore will have no effect on the approval of the proposal. **Our Board of Directors unanimously recommends that you vote FOR the adoption of an advisory resolution to approve our executive compensation as disclosed in this Proxy Statement.**
Shareholder Proposal to Require that Directors Be Elected by Cumulative Voting	The affirmative vote of a majority of the shares entitled to vote present in person or by proxy at the Annual Meeting voting on this proposal is required to approve this proposal. Abstentions are not affirmative votes and, therefore, will have the same effect as a vote against the proposal. Broker non-votes do not constitute votes cast and therefore will have no effect on the approval of the proposal. **Our Board of Directors unanimously recommends that you vote AGAINST the proposal to require that directors be elected by cumulative voting.**

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNER AND MANAGEMENT

Ownership of Securities

The following table sets forth certain information known to us with respect to the beneficial ownership of our common stock as of December 31, 2010, by:

- Each person known by us to be a beneficial owner of five percent (5%) or more of our common stock;

- Each current director, each of whom is a nominee for election as a director; and

- All current directors and executive officers as a group.

Our common stock is the only class of voting securities outstanding. Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission and includes voting and investment power with respect to the securities. Except as indicated in the notes following the table, and subject to applicable community property laws, the persons named in the table have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The percentage of beneficial ownership is based on 7,713,794 shares of common stock outstanding as of March 30, 2011. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares of our common stock subject to options held by that person that are currently exercisable or will become exercisable within 60 days following March 30, 2011 are deemed outstanding. However, these shares are not deemed outstanding for the purpose of computing the percentage ownership of any other person or entity.

	Common Stock Beneficially Owned (1) on March 30, 2011		
Beneficial Owner	**Shares Beneficially Owned**	**Vested Option Shares (2)**	**Percentage of Shares Beneficially Owned (3)**
Five Percent Shareholder: (4)			
Patrick W. Hopper	711,707		9.23%
Executive Officers and Directors:(5)			
James L. Gilbert	143,656		1.86%
Thomas A. Haidlen	191,380		2.48%
Michael Q. Jones	11,520	4,500	0.21%
Roger M. Schrimp	200,965		2.61%

Danny L. Titus	199,418		2.59%
Richard J. Vaughan	88,000		1.14%
Donald L. Barton	10,000	4,000	0.18%
Ronald C. Martin (6)	181,830	33,750	2.79%
Christopher M. Courtney	97,598	33,750	1.70%
Richard A. McCarty	1,502	22,500	0.31%
All officers and directors as a group	1,125,869	98,500	15.87%

(1) Except as otherwise noted, may include shares held by such person s spouse (except where legally separated) and minor children, and by any other relative of such person who has the same home; shares held in street name for the benefit of such person; shares held by a family or living trust as to which such person is a trustee and primary beneficiary with sole voting and investment power (or shared power with a spouse); or shares held in an Individual Retirement Account or pension plan as to which such person is the sole beneficiary.

(2) Consists of shares which the applicable individual or group has the right to acquire upon the exercise of stock options which are vested or will vest within 60 days of March 30, 2011 pursuant to the Company s Stock Plan.

(3) This percentage is based on the total number of shares of our common stock outstanding, plus the number of option shares which the applicable individual or group has the right to acquire upon the exercise of stock options which are vested or will vest within 60 days of March 30, 2011 pursuant to the Company s Stock Plan.

(4) The address for Patrick Hopper is 2624 Pebblegold Avenue, Henderson, Nevada 89074.

(5) The address for all officers and directors is c/o Oak Valley Community Bank, 125 North Third Avenue, Oakdale, California 95361.

(6) Excludes third party participant shares held by Mr. Martin in his capacity as trustee of the Company s 401(k) plan.

CORPORATE GOVERNANCE AND BOARD MATTERS

We are committed to having sound corporate governance principles, good business practices, and transparency in financial reporting. Having such principles is essential to running our business efficiently and to maintaining our integrity in the marketplace. Our Board of Directors continually reviews its governance policies and practices, as well as the requirements of the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and the listing standards of The NASDAQ Stock Market, to help ensure that such policies and practices are compliant and up to date.

Board of Directors

Board Independence

A majority of the Board of Directors consists of independent directors, as defined by the applicable rules and regulations of The NASDAQ Stock Market, as follows:

Donald L. Barton

James L. Gilbert

Thomas A. Haidlen

Michael Q. Jones

Roger M. Schrimp

Richard J. Vaughan

Danny L. Titus

The non-independent directors of the Board are Ronald C. Martin and Christopher M. Courtney, who are our Chief Executive Officer and President, respectively.

Board and Committee Meeting Attendance

During the fiscal year ended December 31, 2010, our Board of Directors held a total of twelve meetings. Each incumbent director who was a director during 2010 attended at least 75% of the aggregate of (a) the total number of such meetings; and (b) the total number of meetings held by all committees of the Board on which such director served during 2010.

Director Attendance at Annual Meetings of Shareholders

The Board believes it is important for all directors to attend the Annual Meeting of Shareholders in order to show their support for the Company and to provide an opportunity for shareholders to communicate any concerns to them. The Company s policy is to encourage, but not require, attendance by each director at the Company s Annual Meeting of Shareholders. A majority of our current directors attended our Annual Meeting of Shareholders in 2010.

Communications with the Board

The Board of Directors has established a process for shareholders to communicate with the Board of Directors or with individual directors. Shareholders who wish to communicate with the Board of Directors or with individual directors should direct written correspondence to our Corporate Secretary at our principal executive offices located at 125 North Third Avenue, Oakdale, California 95361. Any such communication must contain (i) a representation that the shareholder is a holder of record of stock of the Company; (ii) the name and address, as they appear on our books, of the shareholder sending such communication and (iii) the class and number of shares that are beneficially owned by such shareholder. Our Corporate Secretary may (but

is not required to) review all correspondence addressed to the Board, or any individual member of the Board, for any inappropriate correspondence more suitably directed to management. Communications may be deemed inappropriate for this purpose if, for example, it is reasonably apparent from the face of the correspondence that it relates principally to a customer dispute. Our policies regarding the handling of security holder communications were approved by a majority of our independent directors.

Nomination of Directors

The Board as a whole indentifies and evaluates nominees for election as directors. The Board utilizes a variety of methods for identifying and evaluating nominees for director. Although there are no specific minimum qualifications, the Board considers some or all of the following criteria in considering candidates to serve as directors:

- commitment to ethical conduct and personal and professional integrity as evidenced through the person s business associations, diversity, service as a director or executive officer or other commitment to ethical conduct and personal and professional integrity as evidenced in organizations and/or education;

- objective perspective and mature judgment developed through business experiences and/or educational endeavors;

- the candidate s ability to work with other members of the Board of Directors and management to further our goals and increase shareholder value;

- the ability and commitment to devote sufficient time to carry out the duties and responsibilities as a director;

- demonstrated experience at policy-making levels in various organizations and in the areas that are relevant to our activities;

- the skills and experience of the potential nominee in relation to the capabilities already present on the Board of Directors;

- local community involvement; and

- such other attributes, including independence, relevant in constituting a board that also satisfies the requirements imposed by the SEC and The NASDAQ Stock Market.

In addition to the factors discussed above, the Board regularly assesses the appropriate size of the Board, and whether any vacancies on the Board are expected due to retirement or otherwise. In the event that vacancies are anticipated, or otherwise arise, the Board considers various potential candidates for director. Candidates may come to the attention of the Board through current Board members, shareholders or other persons. As described above, the Board considers properly submitted shareholder nominations for candidates for the Board. Following verification of the shareholder status of persons proposing candidates, recommendations are aggregated and considered by the Board at a regularly scheduled meeting, which is generally the first or second meeting prior to the issuance of the proxy statement for our annual meeting. If any materials are provided by a shareholder with the nomination of a director candidate, such materials are forwarded to the Board.

The Board does not have a separate policy for consideration of any director candidates recommended by shareholders. Instead, the Board considers any candidate who meets the requirements for nomination by a

shareholder in the same manner as any other director candidate, based on the criteria discussed above. The Board believes that requiring that shareholder recommendations for director candidates comply with specific requirements would create an unnecessary distinction and may limit the potential pool of director candidates in our community.

Term of Office

Directors serve for a one year term or until their successors are elected. The Bylaws of the Company, as amended, authorize the Company to have a classified Board of Directors, divided into three classes, so long as the number of directors of the Company has been fixed at nine (9) or more directors. Pursuant to that provision, each year only three (3) directors then in office would be subject to nomination and election. Accordingly, each nominee director, if elected, will hold office as follows until his successor is duly elected and qualified for the following terms:

Nominee		Expiration of Term
Roger M.	Schrimp	2013
James L.	Gilbert	2013
Danny L.	Titus	2013
Ronald C.	Martin	2012
Thomas A.	Haidlen	2012
Donald L.	Barton	2012
Richard J.	Vaughan	2014(1)
Christopher M.	Courtney	2014(1)
Michael Q.	Jones	2014(1)

(1) If elected at the June 9, 2011 meeting.

The Board does not have term limits, instead preferring to rely upon the evaluation procedures described herein as the primary methods of ensuring that each director continues to act in a manner consistent with the best interests of the shareholders and the Company.

Number and Composition of Board Committees

The Board may delegate portions of its responsibilities to committees of its members. These standing committees of the Board meet at regular intervals to attend to their particular areas of responsibility. Our Board has six standing committees: Nominating Committee, Audit Committee, Loan Committee, Investment Committee, Compensation Committee and CRA Committee. An independent director, as defined by the applicable rules and regulations of The NASDAQ Stock Market, chairs the Board and its other standing committees. The chair determines the agenda, the frequency and the length of the meetings and receives input from Board members.

Committee of the Board

As of the date of this Proxy, our Board had nine (9) directors and the following six committees:

- Nominating,

- Audit,

- Loan,
- Investment,
- Compensation, and
- CRA Committee.

Executive Sessions

Independent directors meet in executive sessions throughout the year including meeting annually to consider and act upon the recommendation of the Compensation Committee regarding the compensation and performance of the chief executive officer.

Evaluation of Board Performance

A Board assessment and director self-evaluations are conducted annually in accordance with an established evaluation process and includes performance of committees. The Chairman of the Nominating Committee, who is a rotating independent director, oversees this process and reviews the assessment and self-evaluation with the full Board.

Management Performance and Compensation

The Compensation Committee reviews and approves the Chief Executive Officer s evaluation of the top management team on an annual basis. The Board (largely through the Compensation Committee) evaluates the compensation plans for senior management and other employees to ensure they are appropriate, competitive and properly reflect objectives and performance.

Director Stock Ownership Guidelines

The Board encourages each Board member to hold shares of the Company s common stock. Although the Board has not fixed any particular target holding, any director is encouraged to hold Company s common stock for his or her own investment.

Code of Ethics

The Board expects all directors, as well as officers and employees, to display the highest standard of ethics, consistent with the principles that have guided the Company over the years.

We have adopted a Code of Ethics to help ensure that the financial affairs of the Company are conducted honestly, ethically, accurately, objectively, consistent with generally accepted accounting principles and in compliance with all applicable governmental law, rules and regulations. We will disclose any amendment to, or a waiver from a provision of our Code of Ethics on our website. The Code of Ethics applies to our directors, executive officers, employees and consultants. Our Chief Executive Officer and all senior financial officers, including the Chief Financial Officer, are bound by such Code of Ethics which is posted on our Internet website at www.ovcb.com.

Reporting of Complaints/Concerns Regarding Accounting or Auditing Matters

The Company s Board of Directors has adopted procedures for receiving and responding to complaints or concerns regarding accounting and auditing matters. These procedures were designed to provide a channel of

communication for employees and others who have complaints or concerns regarding accounting or auditing matters involving the Company.

Employee concerns may be communicated in a confidential or anonymous manner to the Audit Committee of the Board. The Audit Committee Chairman will make a determination on the level of inquiry, investigation or disposal of the complaint. All complaints are discussed with the Company s senior management and monitored by the Audit Committee for handling, investigation and final disposition. The Chairman of the Audit Committee will report the status and disposition of all complaints to the Board of Directors.

INFORMATION ABOUT DIRECTORS AND EXECUTIVE OFFICERS

Executive Officers

Set forth below is certain information with respect to the executive officers of the Company:

Name	Age	Position	Officer Since*
Ronald C. Martin	64	Chief Executive Officer	2008
Christopher M. Courtney	48	President	2008
Richard A. McCarty	39	Executive Vice President, Chief Financial Officer, Chief Administrative Officer and Secretary	2008
David S. Harvey	57	Executive Vice President, Commercial Banking Group	2008
Michael J. Rodrigues	41	Executive Vice President and Chief Credit Officer	2008

* The Company was formed in 2008 as the bank holding company of Oak Valley Community Bank.

Biographical information for our senior executive officers (SEOs) who are not nominees for election is set forth below.

Ronald C. Martin has served as a director and Chief Executive Officer of the Bank since 1992. He was also the Bank s President until August 2004. He has been Oak Valley Bancorp Chief Executive Officer and a Director since May 2008. Mr. Martin began his banking career in 1977 with River City Bank in Sacramento. Between 1977 and 1987 he was employed in the Sacramento area and from December 1987 to January 1992 he served as President and Chief Executive Officer of Butte Savings in Chico, California. Mr. Martin has a B.S. in Finance from the University of Arizona. Mr. Martin is a veteran banker with a deep understanding of our local community banking needs.

Richard A. McCarty first joined Oak Valley Community Bank in 1996, and thereafter became our Executive Vice President and Chief Financial Officer in 2000, our Chief Administrative Officer in 2008 and our Secretary in February 2010. Mr. McCarty has a B.S. in Finance from California State University, Stanislaus.

Michael J. Rodrigues first joined Oak Valley Community Bank in 1997. He has been the Bank s Chief Credit Officer since 2006. Mr. Rodrigues has 18 years of diverse banking experience, joining Oak Valley Community

Bank in 1997, as a commercial lender. He has a degree in Business Finance from California Polytechnic State University, San Luis Obispo. He is also a 2006 graduate of the Pacific Coast Banking School at the University of Washington.

David S. Harvey has 30 years of commercial lending experience, joining Oak Valley Community Bank in 2002. Mr. Harvey received his B.S. Degree in Corporate Finance from CSU Northridge and later went on to get his Masters Degree in Banking and Finance from Golden Gate University in 1984.

The Board of Directors

The Board of Directors oversees our business and monitors the performance of management. In accordance with corporate governance principles, the Board does not involve itself in day-to-day operations. The directors keep themselves informed through, among other things, discussions with the Chief Executive Officer, other key executives and our principal outside advisors (legal counsel, outside auditors, and other consultants), by reading reports and other materials that we send them and by participating in Board and committee meetings.

The Company s Bylaws currently permit the number of Board members to range from seven to thirteen leaving the Board authority to fix the exact number of directors within that range. The Board has currently fixed the number of directors at nine.

Directors

Biographical information of our current directors who are not executive officers and are not nominees for election is set forth below:

Donald L. Barton, 53, has been a director of the Bank since 2006 and of Oak Valley Bancorp since 2008. Mr. Barton is the managing partner at GoldRiver Orchards, a local walnut processing operation which his family started since 1912. Previously, he was Vice President Marketing at The Wornick Company, and President at Heidi s Gourmet Desserts. Before that he had number of managerial and executive positions in the food and agribusiness industries, including positions with Cargill and HJ Heinz. Mr. Barton is a Stanford graduate and earned his MBA from Santa Clara University. Mr. Barton is an Oakdale resident. Mr. Barton adds knowledge of the local economy to the Board.

James L. Gilbert, 66, has been a Director of the Bank since 1991 and of Oak Valley Bancorp since 2008. Mr. Gilbert has lived in Oakdale since 1946. Mr. Gilbert is an owner and executive of A.L.Gilbert Co, a business that has been in Oakland for about 100 years. Mr. Gilbert has been involved in the feed and seed business as well as retail feed stores for four decades. Mr. Gilbert has also been engaged in and almond farming for more than 30 years. Mr. Gilbert enhances the connection between the Board and our community.

Thomas A. Haidlen, 64, has been a director of the Bank since 1991 and of Oak Valley Bancorp since 2008. Mr. Haidlen was born in Oakdale and has resided in Oakdale for over 50 years. He owns and operates the Haidlen Ford Dealership in Oakdale that was established in Oakdale in 1955. Mr. Haidlen helps connect our banking operations with the local commercial community.

Roger M. Schrimp, 69, has been a director of the Bank since 1991 and of Oak Valley Bancorp since 2008. Mr. Schrimp has practiced law in Oakdale since 1967. He is a senior partner in the Modesto Law Firm of Damrell, Nelson, Schrimp, Pallios & Ladine, and owns and operates a cattle ranch. Mr. Schrimp brings legal and financial expertise to the Board.

Danny L. Titus, 66, has been a director of the Bank since 1992 and of Oak Valley Bancorp since 2008. Mr. Titus has served as the President of Situs Investments, Inc. since 1989 which manages real estate and investments. During the period of from 1979 to 1988, Mr. Titus was the general manager of Steelgard, Inc. which manufacturers portable buildings. Mr. Titus brings investment expertise to the Board.

Board Leadership Structure

The Board of Directors is committed to maintaining an independent Board, and for many years a majority of the Board has been comprised of independent directors. It has further been the practice of the Company to separate the roles of Chief Executive Officer and Chairman of the Board in recognition of the differences between the two roles. The Chief Executive Officer is responsible for setting the strategic direction for the Company and the day-to-day leadership and performance of the Company. The Chairman of the Board facilitates communication among the independent directors and between the independent directors and the Chief Executive Officer, presides over meetings of the full Board (including executive sessions) and runs the agenda of such meetings. The Board further believes that the separation of the duties of the Chief Executive Officer and the Chairman of the Board eliminates any inherent conflict of interest that may arise when the roles are combined, and that an independent director can best provide the necessary leadership and objectivity required as Chairman of the Board.

Board Authority for Risk Oversight

The Board has ultimate authority and responsibility for overseeing risk management of the Company. The Board monitors, reviews and reacts to material enterprise risks identified by management. The Board receives specific reports from executive management on financial, credit, liquidity, interest rate, capital, operational, legal compliance and reputation risks and the degree of exposure to those risks. The Board helps ensure that management is properly focused on risk by, among other things, reviewing and discussing the performance of senior management and business line leaders.

Board committees have responsibility for risk oversight in specific areas. The Audit Committee oversees financial, accounting and internal control risk management policies. The Audit Committee also approves the independent auditor and its annual audit plan. The Audit Committee reports periodically to the Board on the effectiveness of risk management processes in place and the overall risk assessment of the Company s activities. The Compensation Committee assesses and monitors risks in the Company s compensation program. The Loan Committee reviews risks in our lending activities. The Investment Committee periodically assesses the risks of our investment portfolio.

The Committees of the Board

The Board delegates portions of its responsibilities to committees of its members. These standing committees of the Board meet at regular intervals to attend to their particular areas of responsibility. The Board has five standing committees: the Audit Committee, the Compensation Committee, the Loan Committee, the Investment Committee, and the CRA Committee.

Nominating Committee

The Nominating Committee identifies individuals qualified to become Board members and makes recommendations to the full Board of candidates for election to the Board, leads the Board in an annual review of its performance, and recommends director appointments to Board committees. The Company s Nominating Committee was established in 2010 and the committee charter (the Charter) was approved in 2010. A copy of

the Charter is included as Appendix A to this proxy statement and is available at www.sec.gov. The Nominating Committee, consisting of seven independent Directors, makes recommendations to the Board regarding the Board s composition and structure, nominations for elections of Directors and policies and processes regarding principles of corporate governance to ensure the Board s compliance with its fiduciary duties to the Company and its shareholders. The Nominating Committee reviews the qualifications of, and recommends to the Board, candidates as additions, or to fill Board vacancies, if any were to occur during the year.

The Nominating Committee determines the required selection criteria and qualifications of Director nominees based upon the Company s needs at the time nominees are considered. In general, Directors should possess the highest personal and professional ethics, integrity and values and be committed to representing the long-term interests of the Company s shareholders. In addition to the foregoing considerations, the Nominating Committee will consider criteria such as strength of character and leadership skills; general business acumen and experience; broad knowledge of the industry; number of other board seats; and, willingness to commit the necessary time to ensure an active board whose members work well together and possess the collective knowledge and expertise required by the Board. The Nominating Committee considers these same criteria for candidates regardless of whether the candidate was identified by the Nominating Committee, by shareholders, or any other source.

The goal of the Nominating Committee is to seek to achieve a balance of knowledge and experience on the Company s Board. To this end, the Nominating Committee seeks nominees with the highest professional and personal ethics and values, an understanding of the Company s business and industry, diversity of business experience, expertise and backgrounds, a high level of education, broad-based business acumen and the ability to think strategically. The composition of the current Board reflects diversity in business and professional experience, skills, and gender. The Nominating Committee reviews the effectiveness of the Charter in achieving the goals of the Nominating Committee as stated therein annually.

The members of the Nominating Committee are Messrs. Schrimp, Barton, Gilbert, Haidlen, Jones, Titus and Vaughan. Mr Gilbert is the Chairman. The Committee met 1 time in 2010. The Board has determined that all members of the Nominating Committee are independent under the applicable rules and regulations of The NASDAQ Stock Market.

Audit Committee

We have a separately-designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the 1934 Securities Exchange Act, as amended, (the Exchange Act). The Audit Committee assists the Board in fulfilling its responsibilities for general oversight of the integrity of our financial statements, our compliance with legal and regulatory requirements, the independent auditors qualifications and independence, the performance of our internal audit function and independent auditors, and risk assessment and risk management. In addition, the Audit Committee reviews and discusses the annual audited financial statements with management and the independent auditors prior to publishing the annual report and filing the Annual Report on Form 10-K with the SEC; reviews and discusses with management and the independent auditors any significant changes, significant deficiencies and material weaknesses regarding internal controls over financial reporting required by the Sarbanes-Oxley Act of 2002, oversees the internal audit function and the audits directed under its auspices, and establishes policies to ensure all non-audit services provided by the independent auditors are approved prior to work being performed. The Audit Committee also prepares the Audit Committee report for inclusion in the annual proxy statement; annually reviews the Audit Committee charter and the committee s performance; appoints, evaluates and determines the compensation of our independent auditors; reviews and approves the scope of the annual audit, the audit fee and the financial statements; reviews our disclosure controls and procedures, internal controls, internal audit function, and corporate policies with

respect to financial information and earnings guidance; oversees investigations into complaints concerning financial matters; and reviews other risks that may have a significant impact on our financial statements. The Audit Committee works closely with management as well as our independent auditors. The Audit Committee has the authority to obtain advice and assistance from, and receive appropriate funding from us for, outside legal, accounting or other advisors as the Audit Committee deems necessary to carry out its duties.

The Board of Directors has adopted a written charter for the Audit Committee. The members of the Audit Committee are Messrs. Schrimp (Chairman), Haidlen, Barton, Titus and Vaughan and the Audit Committee held 17 meetings during fiscal 2010.

The Board of Directors has determined that Mr. Schrimp has: (i) an understanding of generally accepted accounting principles and financial statements; (ii) the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves; (iii) experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by our financial statements, or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal control over financial reporting; and (v) an understanding of audit committee functions.

Therefore, the Board has determined that Mr. Schrimp meets the definition of audit committee financial expert under the applicable rules and regulations of the SEC and is financially sophisticated as defined by the applicable rules and regulations of The NASDAQ Stock Market. The designation of a person as an audit committee financial expert does not result in the person being deemed an expert for any purpose, including under Section 11 of the Securities Act of 1933. The designation does not impose on the person any duties, obligations or liability greater than those imposed on any other audit committee member or any other director and does not affect the duties, obligations or liability of any other member of the Audit Committee or Board of Directors.

The Board has determined that all members of the Audit Committee are independent as that term is defined in Rules 4200(a)(15) of The NASDAQ Stock Market Rule and Rule 10A-3(b)(1) under the Exchange Act.

The Audit Committee Report for 2010 appears on page 43 of this proxy statement.

Compensation Committee

The Compensation Committee establishes our compensation policy, determines the compensation paid to our executive officers and non-employee directors, recommends executive incentive compensation plans and equity-based plans and approves other compensation plans and retirement plans, and performs the various reviews required by the U.S. Treasury Capital Purchase Program and the regulations enacted pursuant to the American Recovery and Reinvestment Act of 2009 and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Compensation Committee approves corporate goals related to the compensation of the executive officers, evaluates the executive officers performance and compensates the executive officers based on this evaluation. Messrs. Schrimp, Barton, Gilbert, Haidlen, Jones, Titus and Vaughan are members of the Compensation Committee, and Mr. Schrimp is the Chairman of that committee. The Compensation Committee held 14 meetings during fiscal 2010. The Board has determined that all members of the Compensation Committee are independent as that term is defined in Rule 4200(a)(15) of The NASDAQ Stock Market Rules.

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Loan Committee

The Loan Committee monitors the activities of our lending function utilizing information presented to it by management at regular meetings. This includes, but is not limited to, the review of trends in outstanding credit relationships, key quality measures, significant borrowing relationships, large problem loans, industry concentrations, all significant lending policies, and the adequacy of the allowance for loan losses. The Loan Committee also reviews lending-related reports from regulators, auditors, and internal personnel.

Each member of the Board of Directors serves on the Loan Committee and Mr. Schrimp is the Chairman of the Committee. The Loan Committee held twenty-four (24) meetings during fiscal 2010.

Investment Committee

The Investment Committee reviews, identifies and classifies our assets based on credit risk, in accordance with regulatory guidelines. The Committee is also responsible for reviewing asset valuation and classification policies, as well as developing and monitoring asset disposition. In addition, the Committee reviews and monitors the Company s investment portfolio, liquidity position and the risk of our interest-earning assets in comparison to its interest-bearing liabilities.

Messrs. Courtney, Gilbert, Jones, Martin, Titus and Vaughan serve on the Investment Committee and Mr. Vaughan is the Chairman of the Committee. The Committee held four (4) meetings during fiscal 2010.

CRA Committee

The CRA Committee is responsible for oversight of our performance under the requirements of the Federal Community Reinvestment Act of 1977 and similar state law requirements. Messrs. Barton, Courtney, Gilbert, Jones, Martin, Titus serve on the CRA Committee, and Mr. Titus is the Chairman of the Committee. The CRA Committee held 4 meetings during fiscal 2010.

Section 16(a) Beneficial Ownership Reporting

Section 16(a) of the Securities Exchange Act required our officers and directors to file reports of ownership and changes of ownership with the SEC. Our officers and directors are required by SEC regulation to furnish us with copies of all Section 16(a) forms so filed. As a matter of practice, our administrative staff assists our executive officers and Directors in preparing initial ownership reports and reporting ownership changes, and typically files these reports on their behalf. Based solely on a review of the copies of the reports furnished to us, or written representations that no reports were required to be filed, we believe that during the fiscal year ended December 31, 2010 all Section 16(a) filing requirements applicable to our directors, officers, and greater than 10% beneficial owners, if any, were complied with.

Certain Relationship and Related Transactions

Some of our Directors and the companies with which they are associated are our customers, and we expect to have banking transactions with them in the future. All loans and commitments to lend were made in the ordinary course of our business and were in compliance with applicable laws. Terms, including interest rates and collateral, were substantially the same as those prevailing for comparable transactions with other persons of similar creditworthiness. These transactions do not involve credits which are different than extended to non-Board customers more than a normal risk of collectability or present other unfavorable features. We have a strong policy regarding review of the adequacy and fairness of Bank loans to directors and officers. Section 402 of the Sarbanes-Oxley Act of 2002 generally prohibits a company from extending credit, arranging for the extension of credit or renewing an extension of credit in the form of a personal loan one of its officers or

directors. There are several exceptions to this general prohibition, including loans made by an FDIC insured depository institution that is subject to the insider lending restrictions of the Federal Reserve Act. All loans to our directors and officers comply with the Federal Reserve Act and the Federal Reserve Board s Regulation O and, therefore, are excepted from the prohibitions of Section 402.

From time to time some of our Directors, directly or through affiliates, may perform services for the Bank. These activities are performed in the ordinary course of business and are subject to strict compliance to the policies outlined below. Typically, they relate to routine work to Bank properties, such as, for example, light construction or interior design work at new or exiting branches. Except for $159,000 paid in 2010 by the Company to J. Haidlen Design, a company affiliated to Mr. Haidlen and his daughter, for certain Bank branch construction and design work, none of these activities is material for purposes of Item 404(A) of Regulation S-K under the Securities Exchange Act of 1934.

Policies and Procedures for Approving Related Party Transactions

Our Board of Directors is committed to the highest levels of honesty and integrity and, as such, takes related party transactions very seriously and adheres to very strict policies and procedures that exceed typical Board practices to handle related party transaction issues.

A related party transaction is a transaction between the Company or the Bank and any related person (including any transaction requiring disclosure under Item 404 of Regulation S-K under the Securities Exchange Act of 1934). A related person means: (i) any person who is, or at any time since the beginning of the Company s last fiscal year was, a director or executive officer of the Company or the Bank or a nominee to become a director of the Company or the Bank; (ii) any person who is known to be the beneficial owner of more than 5% of any class of the Company s voting securities; (iii) any immediate family member of any of the foregoing persons, which means any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the director, executive officer, nominee or more than 5% beneficial owner, and any person (other than a tenant or employee) sharing the household of such director, executive officer, nominee or more than 5% beneficial owner; and (iv) any firm, corporation or other entity in which any of the foregoing persons is employed or is a partner or principal or in a similar position or in which such person has a 10% or greater beneficial ownership interest.

The general policy of the Board of Directors is that each Director and prospective director must disclose any related party transaction to the Board before such transaction may occur and, furthermore, that such transaction may thereafter be consummated if and only if (1) a majority of non-interested directors approves or ratifies the transaction, and (2) the transaction is on terms comparable to those that could be obtained in arm s length dealings with an unrelated third party. A non-interested director is a director who is not directly or indirectly involved in the related party transaction . A director is not deemed to be indirectly involved if the related person transaction does not involve any of his or her immediate family members.

In making its decision on whether or not to approve a transaction, the Board also considers the benefits to the Company or the Bank; the impact on a director s independence in the event the related person is a director, an immediate family member of a director or an entity in which a director is a partner, shareholder or executive officer; the availability of other sources for comparable products or services; the terms of the transaction; and the terms available to unrelated third parties or to employees generally.

In addition, the Board has also stated that it is the responsibility of each director and prospective director to disclose to the Board any relationship that may not necessarily involve a related party transaction but that could impair his or her independence or pose any conflict of interest with the Company or the Bank, including affiliations of a director or prospective director or an immediate family member (defined as a person s spouse,

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parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone, other than domestic employees) who shares such person s home, and affiliations of a director or prospective director with any Company or Bank (1) customer, supplier, distributor, dealer, reseller or other channel partner; (2) lender, outside legal counsel, investment banker or consultant; (3) significant shareholder; (4) charitable or not-for-profit institution that has received or receives donations from the Company or the Bank, or (5) competitor or other person having an interest adverse to us.

COMPENSATION DISCUSSION AND ANALYSIS

The Compensation Committee of the Board of Directors has responsibility for establishing, implementing and continually monitoring the compensation structure, policies and programs of the Company. The individuals who served as the Company s Chief Executive Officer and Chief Financial Officer during 2010, as well as the other individuals included in the Summary Compensation Table, are referred to as the named executive officers.

The Compensation Committee is responsible for assessing and approving the total compensation structure paid to the Chief Executive Officer and the other executive officers, including the named executive officers Thus, the Compensation Committee is responsible for determining whether the compensation paid to each of these executive officers is fair, reasonable and competitive, and whether it serves the interests of the Company s shareholders.

This Compensation Discussion and Analysis identifies the Company s current compensation philosophy and objectives and describes the various methodologies, policies and practices for establishing and administering the compensation programs of the named executive officers.

Overview

Even though in 2010 the economy remained challenging, we were able to increase profitability and our performance continued to exceed that of many peer institutions.

However, our stock price has not yet reflected our improved performance, especially if compared to our historical standards pre-2008. Given the difficulty in assessing the timing and pace of the recovery cycle, the Company has continued to manage executive compensation conservatively during 2010.

The objectives of the Company s executive compensation program are to align a portion of each executive officer s total compensation with the annual and long-term performance of the Company and the interests of the Company s shareholders. Consistent with our performance-based philosophy and objectives, the salaries of our named executive officers have remained unchanged in 2010, although our increased profitability was recognized by resuming year end bonuses, which were not paid in 2010. In 2011, the Compensation Committee is reviewing our compensation program to seek to achieve shareholder value and continue to motivate and retain our senior management.

The Company considered the Shareholder vote approving the Company s executive compensation for 2010 in making its proposal for 2011.

Effect of the Emergency Economic Stabilization Act of 2008 and American Recovery and Reinvestment Act of 2009

In October, 2008, the Department of the Treasury (U.S. Treasury) established the Troubled Asset Relief Program (TARP) under the Emergency Economic Stabilization Act of 2008, as amended (EESA). EESA provided immediate authority and facilities that the Secretary of the U.S. Treasury could use to restore liquidity and stability to the financial system. Section 101(a) of EESA authorizes the U.S. Treasury to establish the TARP. The U.S. Treasury implemented the Capital Purchase Program under TARP to make preferred stock investments in participating financial institutions.

On February 13, 2009, Congress enacted the American Recovery and Reinvestment Act of 2009 (ARRA), which the President signed into law on February 17, 2009. Among other things, ARRA amended in its entirety EESA Section 111, which now provides that certain entities that receive financial assistance from

U.S. Treasury under the TARP will be subject to specified executive compensation and corporate governance standards.

We participated in the TARP Capital Purchase Program in December 2008 by selling preferred stock and common stock purchase warrants to the U.S. Treasury. We participated in the TARP Capital Purchase Program so that we could continue to lend and support our current and prospective customers and further strengthen our capital base. As a result, we became subject to certain executive compensation requirements under EESA, U.S. Treasury regulations, and the contract pursuant to which we sold such preferred stock. On October 20, 2008, the U.S. Treasury issued an interim final rule under Section 111 of EESA (prior to its later amendment by ARRA) (the October 2008 Interim Final Rule). The October 2008 Interim Final Rule established the original executive compensation standards for financial institutions participating in the TARP Capital Purchase Program. These standards generally applied to our senior executive officers (SEOs).Our SEOs are the same individuals who are our named executive officers.

ARRA prescribed new executive compensation standards, and required the U.S. Treasury to establish these standards by promulgating regulations to implement Section 111. On June 15, 2009, the U.S. Treasury issued its Interim Final Rule promulgated pursuant to Section 111 of EESA as amended by ARRA (Interim Final Rule). The provisions of ARRA and the Interim Final Rule supersede the October 2008 Interim Final Rule as well as several notices of guidance issued by the U.S. Treasury before the enactment of ARRA or the Final Interim Rule. The Interim Final Rule consolidates all of the executive compensation related provisions that are specifically directed at TARP recipients into a single rule (superseding all prior rules and guidance), and utilizes the discretion granted to the U.S. Treasury under ARRA to adopt additional standards.

Key features of ARRA and the Interim Final Rule that apply to the Company are:

- *Prohibition on Bonuses.* A prohibition of the payment of any bonus, retention award, or incentive compensation to the most highly compensated employee for as long as any TARP Capital Purchase Program related obligations are outstanding. A bonus under the rules includes the issuance of stock options.

- *Restricted Stock with Cliff Vesting.* Long-term restricted stock is excluded from ARRA s bonus prohibition, but only to the extent the value of the stock does not exceed one-third of the total amount of annual compensation of the employee receiving the stock. The stock may fully vest only as the TARP Capital Purchase Program obligations have been satisfied, subject to several exemptions, and the stock must be forfeited if the employee does not continue performing substantial services for the Company for at least two years from the date of grant.

- *Golden Parachutes.* Prohibition on making any severance/golden parachute payments (defined as any payment without regard to the amount of such payment) to any SEO or any of the next five most highly compensated employees upon termination of employment for any reason (except death or disability) or any payment due to a change in control. A golden parachute payment does not include any payment made for services performed or benefits accrued.

- *Clawback.* Recovery of any bonus or other incentive payments paid to any SEO or the next 20 most highly compensated employees that were made based on financial statements or other criteria that are later found to be materially inaccurate.

• *Tax Gross-Ups.* Prohibition on the payment of any gross-up to any SEO or the next twenty most highly compensated employees. A gross-up means any reimbursement of taxes owed with respect to any compensation (except for a tax equalization agreement relating to foreign compensation).

- *SEO Compensation Plans that Encourage Unnecessary Risk-Taking.* Prohibition on executive compensation plans that encourage SEOs to take unnecessary and excessive risks that threaten the Company s value. Every six months the Compensation Committee must discuss, evaluate and review SEO compensation plans to identify and take action to limit risks that encourage focus on short-term results over long-term results.

- *Perquisites.* Annually disclose to the U.S. Treasury and Federal Reserve Board any perquisites whose total value exceeds $25,000 for the fiscal year paid to any of the five highest compensated employees.

- *Earnings Effect of Manipulation.* Prohibition on compensation plans that encourage earnings manipulation. Every six months the Compensation Committee must discuss, evaluate and review employee compensation plans to ensure they do not encourage manipulation of reported earnings to enhance employee compensation.

- *Certifications of CEO and CFO.* A requirement that the Company s Chief Executive Officer and Chief Financial Officer provide a written certification of compliance with the executive compensation restrictions in ARRA.

- *Excessive Expenditures.* Implementation of a company-wide policy regarding excessive or luxury expenditures.

The Committee believes that the foregoing restrictions on executive compensation and any further restrictions on executive compensation which may be adopted could adversely affect the Company s ability to hire, retain or motivate its executive management and other key employees, and the Company may face increased competition for such employees from financial institutions that are not participants in the TARP Capital Purchase Program.

Overview of Compensation Philosophy

Our executive compensation policy is to provide the Company s executive officers with compensation opportunities which are based upon their personal performance, the annual and long-term performance of the Company, the interests of the Company s shareholders and their contribution to that performance, and which are competitive enough to attract and retain highly skilled individuals.

The Compensation Committee believes that the most effective executive compensation programs are those that align the interests of each executive with those of the Company s shareholders. The Compensation Committee believes that a properly structured compensation program will attract and retain talented individuals and motivate them to achieve specific short-term and long-term strategic objectives. Over the years, we have been very successful in retaining a strong core group of executive officers, and we have been providing growth and value for our shareholders. For this reason, an important objective of the Compensation Committee is to ensure the compensation programs of the named executive officers are competitive as compared to similar positions within financial institutions of our size in our geographic area, so that we can continue to retain our executives and achieve our strategic objectives.

Each executive officer s compensation package is comprised of three elements: (i) base salary that is competitive with the market and reflects individual performance, (ii) annual variable performance awards payable in cash and tied to the Company s achievement of annual financial,

strategic and operational objectives in addition to individual contributions to these objectives and (iii) long-term stock-based incentive awards designed to strengthen the mutual interest of the Company s executive officers and its shareholders. As an

officer s level of responsibility increases, a greater proportion of his or her total compensation will be dependent upon the Company s financial performance and stock price appreciation rather than base salary.

Stock awards (stock options and/or restricted stock) are available to reward the long-term efforts of management and to retain management. Equity awards can also increase the ownership stake of our management in the Company, further aligning the interests of the executives with those of our shareholders. We also consider other forms of executive pay, including salary continuation benefits, as a means to attract and retain our executive officers including the named executive officers.

The Company and the Compensation Committee believe our compensation philosophy, policies and objectives outlined within this Compensation Discussion and Analysis are appropriately designed to allow us to effectively compensate our employees both during times of positive performance and in times of weak performance.

Compensation Program Objectives and Rewards

The Company s compensation and benefits programs are driven by our business environment and are designed to enable us to achieve our mission and adhere to the Company values.

The programs objectives are to foster our position as a leading community bank in our service areas; attract, engage and retain a qualified workforce; maintain an effective administrative structure in line with our growth and performance, and incentivize our employees to reach our business objectives.

The guiding principles behind our programs are to promote and maintain a high performance banking organization; continue to invest in our administration and operations; remain competitive in our marketplace for talent; and balance our compensation costs with our desire to provide value to employees and shareholders,.

We measure the success of our programs by our overall business performance and employee engagement; our ability to attract and retain key talent; our costs and business risks and return; and our ability to accommodate further growth in our organization using the existing administrative infrastructure.

All compensation and benefits for our named executive officers have, as a primary purpose, our need to attract, retain and motivate the highly talented individuals who will engage in the behaviors necessary to execute the programs objectives outlined above, and enable us to maintain and create shareholder value in a highly competitive marketplace.

Accordingly, each component of our compensation and benefits has a specific purpose designed to reward different behaviors:

- *Base salary and benefits* are designed to reward core competence in the executive role relative to skills, position and contributions to the Company; and provide fixed cash compensation with merit increases competitive with the market place.

- *Annual incentive variable cash awards* are designed to focus employees on annual financial objectives derived from the business plan that lead to long-term success; provide annual variable performance-based cash awards to reward and motivate achievement of critical annual performance metrics selected by the Compensation Committee; and foster a pay-for-performance culture that aligns our compensation programs with our overall business strategy.

- *Equity-based compensation awards* are designed to link compensation rewards to the creation of shareholder wealth; promote teamwork by tying compensation significantly to the value of our common

stock; attract the next generation of management by providing significant capital accumulation opportunities; and retain executives by providing a long-term-oriented program whose value could only be achieved by remaining with and performing with the Company.

- *A supplemental executive retirement program* facilitates our ability to attract and retain executives as we compete for talented employees in a marketplace where similar programs and plans are commonly offered.

We believe that this combination of compensation and benefits provides an appropriate mix of fixed and variable pay, balances short-term operational performance with long-term shareholder value, and encourages executive recruitment and retention.

Total compensation is generally targeted at the median of our Compensation Peer Group. We target at that level in order to retain and motivate talented individuals who can help us implement our objectives discussed above.

The requirements of EESA and ARRA and regulations by the U.S. Treasury implementing these statutes have limited our programs and our ability to offer and/or pay to our Chief Executive Officer (i) any bonus or incentive compensation (including stock options), or (ii) any severance or so-called golden parachute payments regardless of the amount of the payment or reasons for termination of employment. These limitations may make it more difficult to compete for and retain executive talent in our market areas where other banks and companies in the financial services industry do not participate in the TARP Capital Purchase Program.

While the impact of these limitations is presently unclear in terms of our compensation programs objectives, and its long term effects cannot yet be measured, it is possible that we may find ourselves at a material disadvantage against other financial institutions that are not subject to the same level of limitations on compensation.

Role of Compensation Committee in Determining Compensation

The Compensation Committee has overall responsibility and authority for approving and evaluating the compensation programs and policies pertaining to our executives, including the named executive officers. The Compensation Committee is also responsible for reviewing and submitting to the Board of Directors recommendations concerning director compensation.

When making individual compensation decisions for named executive officers, the Compensation Committee takes many factors into account, including the executive s experience, responsibilities, management abilities and job performance, the overall performance of the Company, current market conditions and competitive pay for similar positions at comparable companies. In addition, the Compensation Committee reviews the relationship of various positions between departments, the affordability of desired pay levels and the importance of each position within the Company. These factors are considered by the Compensation Committee in a subjective manner without any specific formula or weighting.

Our Chief Executive Officer s compensation is determined solely by the Compensation Committee. Our Chief Executive Officer attends portions of the Compensation Committee meetings. Decisions relating to the Chief Executive Officer s pay are made by the Compensation Committee, without management present. The Compensation Committee reports its activities to our Board of Directors.

The Compensation Committee relies on the input and recommendations of our Chief Executive Officer when evaluating these factors relative to the compensation of other executive officers. Because the Chief Executive Officer works closely with and supervises our executive team, the Compensation Committee believes

that the Chief Executive Officer provides valuable insight in evaluating their performance. Our Chief Executive Officer provides the Compensation Committee with his assessment of the performance of each named executive officer and his perspective on the factors described above in developing his recommendations for the compensation of the other executives, including salary adjustments, incentive bonuses, annual equity grants and equity grants awarded in conjunction with promotions. The Chief Executive Officer also provides the Compensation Committee with additional information regarding the effect, if any, of market competition and changes in business strategy or priorities. The Compensation Committee discusses our Chief Executive Officer s recommendations and then approves or modifies the recommendations in collaboration with the Chief Executive Officer.

The Company Compensation Program

Market Positioning and Pay Benchmarking

The Compensation Committee targets base salary of the Chief Executive Officer and the other named executive officers around the median compensation values of Northern California based financial institutions that are similar in size to us. The data that the Compensation Committee considers are derived from reports from the California Bankers Association and from the California Department of Financial Institutions. These comparative survey data are used to benchmark executive compensation levels against banks that have executive positions with responsibilities similar in breadth and scope to ours and that compete with us for executive talent. For example, the California Department of Financial Institutions report that our Compensation Committee reviews includes 34 California banks with assets between $250 million and $1 billion or 32 Northern California banks with average assets of $372 million. With such information, the Compensation Committee reviews and analyzes compensation for each executive and makes adjustments as appropriate. The actual positioning of each named executive officer s compensation is dependent on considerations of the executive s performance, the performance of the Company and the individual business or corporate function for which the executive is responsible, the nature and importance of the position and role within the Company, the scope of the executive s responsibility (including risk management and corporate strategic initiatives), and the individual s success in promoting our core values and demonstrating leadership. We do not use any paid compensation consultants.

Pay Mix

We do not allocate between cash and non-cash compensation and short-term versus long-term compensation based on specific percentages. Instead, we believe that the compensation package for our executives should be generally in line with the prevailing market, consistent with each executive s level of impact and responsibility.

Chief Executive Officer Compensation

The Compensation Committee meets with the other independent directors each year in executive session to evaluate the performance of the Chief Executive Officer. In 2010, the Compensation Committee considered management s continuing achievement of its short- and long-term goals versus its strategic objectives as well as financial targets. Emphasis was also placed on performance factors of the Company s business units, and personal performance goals established annually by the Compensation Committee.

The Compensation Committee determined that the Chief Executive Officer s base salary in 2010 was aligned with the Company s compensation philosophy and is aligned with a comparable median salary of peer institutions.

In response to the current economic conditions affecting the Company and the financial services industry, in 2010 the Compensation Committee decided to maintain the Chief Executive Officer s annual base salary at $254,960. The Chief Executive Officer recommended that his salary should remain flat for 2011, and the Compensation Committee accepted his recommendation.

Components of Executive Officer Compensation

Base Salaries

In accordance with our compensation objectives, salaries are set and administered to reflect the value of the position in the marketplace, the career experience of the individual, and the contribution and performance of the individual.

None of the named executive officers has an employment agreement with the Company. The base salary of each named executive officer is determined annually by the Compensation Committee, in accordance with the Compensation Committee s evaluation of the Company s overall compensation programs and policies.

Base salaries for our executive officers are based on the scope of their responsibilities as well as review of competitive compensation data from peer institutions. For 2010, the Compensation Committee considered the pay practices of such institutions and data from published compensation surveys discussed above. In its review of base salaries for executive officers, the Compensation Committee concluded that the base salaries of the named executive officers were generally positioned around the median percentile. In evaluation of the base salaries in 2010 for the named executive officers, the Compensation Committee also considers the minimum, mid-range and maximum salaries paid to similarly situated positions at other comparable companies of our size in our geographic and market areas, as well as the performance levels of the named executive officer.

In response to the current economic conditions adversely affecting the Company and the financial services industry, the Compensation Committee decided to continue to maintain the salaries of the named executive officers at the 2010 levels. The Chief Executive Officer recommended that the salaries of the Chief Executive Officer, President and Chief Financial Officer should remain flat for 2011 and the Compensation Committee accepted the recommendation.

Base salary drives the formula used to determine any year end bonus payable to executive officers.

Bonuses

Traditionally, our annual incentive compensation for named executive officers has been established by the Compensation Committee upon consideration of many factors, including but not only limited to the executives performance against performance objectives. Our bonuses to executive officers would normally accrue quarterly and be payable in the quarter immediately after the accrual.

The accrual of bonuses is typically calculated as a percent of salary. Such incentive levels are designed to provide for the achievement of threshold, target and maximum performance objectives. The financial metrics, performance objectives, and the formula for computing the performance bonus are established by the Compensation Committee early in each fiscal year.

The bonus award opportunities are derived in part from comparative data and in part by the Compensation Committee s judgment on internal equity of the positions, their relative value to the Company and the desire to maintain a consistent annual incentive target for the Chief Executive Officer and the other named executive officers.

The bonus payouts for executives are targeted at when we reach our target annual financial performance. If we reach, but do not exceed, the financial plan for any given year, the incentive payout, given current salary levels, should be in line with median comparative data.

The current incentive levels assigned as a percentage of base salary are as follows:

	As a percent of base salary	
Position	**Threshold**	**Target**
Ronald C. Martin Chief Executive Officer	15%	33%
Christopher M. Courtney President	15%	40%
Richard A. McCarty Executive Vice President, Chief Financial Officer, Chief Administrative Officer and Secretary	15%	40%
David S. Harvey Executive Vice President/ Commercial Lending	15%	30%
Michael J. Rodrigues Executive Vice President/Chief Credit Officer	15%	30%

Management recommends and the Compensation Committee reviews and approves the financial metrics that must be met each year in order for awards to be paid. These financial metrics are weighted and are intended to motivate and reward eligible executives to strive for continued financial improvement of the Company, consistent with performance-based compensation and increasing shareholder value. The Compensation Committee typically identifies from three to five financial metrics which may be revised from year to year to reflect current business situations.

The financial metrics selected for 2010 related to three categories: profitability, growth and risk management. Within each category, the Compensation Committee analyzed specific financial metrics. The Compensation Committee believes return on assets and earnings per share to be valid measurements in assessing how the Company is performing from a profitability standpoint. Earnings per share reflect shareholder returns over the long term. Earnings per share are an accepted measure of growth and efficient use of capital. In addition, the Compensation Committee, concluded that, in view of the halting recovery of the economy expected to occur in 2011, management s compensation should weigh core deposit growth, since the strength of a Company s core deposit base is an indication of the Company s success in customer retention, reduction in interest rate sensitivity and liquidity stabilization. Finally, the Compensation Committee believes that asset quality measures and audit results are effective measures to monitor the Company s progress in improving its credit quality.

The Compensation Committee determines the weighting of financial metrics each year based upon recommendations from the senior management. For 2010, the Compensation Committee weighted the financial metrics as follow:

Category	Percentage Weight
Profitability	60%
Growth	20%
Risk-Management	20%

Each year, performance objectives are generally identified through our annual financial planning and budget process. Senior management develops a financial plan, and the financial plan is reviewed and approved by the Board of Directors. The Compensation Committee receives recommendations from senior management for financial performance objective ranges. The target level equated to the approved financial plan. The threshold performance level was set below the target level. In making the determination of the threshold and target levels, the Compensation Committee considered specific circumstances anticipated to be encountered by the Company during the coming year. Generally, the Compensation Committee sets the threshold and target levels such that the relative difficulty of achieving the target level is consistent from year to year. The Compensation Committee believes that targets have been and remain sufficiently challenging given the economic climate and the level of growth and improvement in the various financial metrics that would have to occur to meet the various performance objectives.

Our performance is assessed relative to performance objectives for return on assets, earnings per share, core deposit growth, loan growth and nonperforming assets to equity. These performance objectives are shown below:

Financial Metrics	Threshold	Target
Return on Assets	0.70%	1%
Earnings per Share	$0.30	$0.50
Core Deposit Growth	0%	5%
Loan Growth	-5%	0%
Nonperforming Assets to Equity	<35%	<25%

Upon completion of the fiscal year, the Compensation Committee assesses the performance of the Company for each financial metric comparing the actual fiscal year results to the pre-determined performance objectives for each financial metric calculated with reference to the pre-determined weight accorded the financial metric and an overall percentage amount for the award is calculated. In addition, the Compensation Committee has discretionary authority to include qualitative subjective measures which may increase or decrease an award up or down by an additional 15% of base salary. The positive discretion may be utilized to address completion of special projects, department initiatives, or favorable achievements reflected in regulatory exam results. The Compensation Committee may also use its discretion in adjusting financial metrics and performance objectives for unexpected economic conditions or changes in the business of the Company.

Our bonuses have traditionally been performance-based cash awards. As discussed above, however, the Company s participation in the U.S. Treasury Capital Program subjects it to various limitations on executive compensation. Among these limitations is a prohibition on the payment of bonuses to the Company s highest paid employee. Because of these limitations, bonuses may be payable solely in long-term restricted stock as defined by the U.S. Treasury. Moreover, no bonus may exceed 33% of the named executive officer s annual compensation.

In 2010, all thresholds were met and bonuses were paid, as disclosed on the Executive Compensation table on page 32.

Equity-Based Compensation

The Company currently has one equity based incentive plan, the Oak Valley Bancorp 2008 Stock Plan. The 2008 Stock Plan provides for awards in the form of incentive stocks, non-statutory stock options, stock appreciation rights, and restrictive stocks. The size of the option grant to each executive officer is set by the Compensation Committee at a level that is intended to create a meaningful opportunity for stock ownership based upon the individual s current position with the Company, the individual s personal performance in recent periods and his or her potential for future responsibility and promotion over the option term. The Compensation Committee also takes into account the number of unvested options held by the executive officer in order to maintain an appropriate level of equity incentive for that individual. The relevant weight given to each of these factors varies from individual to individual. The Compensation Committee has established certain guidelines with respect to the option grants made to the named executive officers, but has the flexibility to make adjustments to those guidelines at its discretion. The Company is authorized to issue 1,500,000 shares of its common stock under the 2008 Stock Plan, 8,630 of which have been issued as of the time of filing this Proxy.

Each of the named executive officers is eligible to receive equity compensation and, historically, equity compensation has been delivered primarily in the form of stock options. However, under the executive compensation restrictions for U.S. Treasury Capital Purchase Program participants, the issuance of stock options is prohibited under the general prohibitions on bonuses for the five highest paid employees of the Company. Although the Company could still make restricted stock grants under the 2008 Stock Plan, in 2009 and 2010 the Company did not make any equity-based incentive compensation grants to its named executive officers.

The Compensation Committee approves all awards under the 2008 Stock Plan and acts as the administrator of the 2008 Stock Plan. The Compensation Committee is responsible for determining equity grants to all staff members, including named executive officers, and in doing so considers past grants, corporate and individual performance, and recommendations of our Chief Executive Officer for staff members other than himself.

Stock option grants are made at the discretion of the Board. Each grant is designed to align the interests of the named executive officers with those of the shareholders and provide each individual with a significant incentive to manage the Company from the perspective of an owner with an equity stake in the business. Each grant allows the officer to acquire shares of the Company s common stock at a fixed price per share consistent with the market price on the grant date over a specified period of time (up to ten years). Each option becomes exercisable in a series of installments over a five year period, contingent upon the officer s continued employment with the Company. Accordingly, the option will provide a return to the executive officer only if he or she remains employed by the Company during the vesting period, and then only if the market price of the shares appreciates over the option term. We do not grant stock options with a so-called reload feature, nor do we loan funds to employees to enable them to exercise stock options.

The Compensation Committee recognizes that stock options have an impact on the profits of the Company under current accounting rules and also have a dilutive effect on the Company s shareholders. Accordingly, stock options are recognized as a scarce resource and option grants are given the same consideration as any other form of compensation. The Compensation Committee has not established definitive target levels for stock awards although it has traditionally relied on comparative data with respect to these long-term incentive awards.

We do not backdate options or grant options retroactively. In addition, we do not plan to coordinate grants of options so that they are made before announcement of favorable information, or after announcement of unfavorable information. The Company s options are granted at fair market value on a fixed date or event (the first day of service for new hires and the date of Compensation Committee approval for existing employees), with all required approvals obtained in advance of or on the actual grant date. All grants to executive officers require the approval of the Compensation Committee and the Board of Directors. Fair market value has been consistently determined as the closing price on The Nasdaq Global Select Market on the grant date. In order to ensure that its exercise price fairly reflects all material information, without regard to whether the information seems positive or negative, every grant of options is contingent upon an assurance by management that the Company is not in possession of material undisclosed information. If the Company is in a black-out period for trading under its trading policy or otherwise in possession of inside information, the date of grant is suspended until the second business day after public dissemination of the information.

The Company s general practice has been to grant options only on the annual grant date at the Compensation Committee and Board of Directors regular March meeting for current staff and at any other Compensation Committee meeting (whether a regular meeting or otherwise) held on the same date as a regularly scheduled board meeting (which are held monthly) as required to attract new staff, retain staff or recognize key specific achievements. Because of the economic downturn, particularly in the financial services industry, the Committee did not award stock options to the named executive officers in 2008, 2009 and 2010.

To date, the Compensation Committee has not authorized the issuance of restricted stock under the 2008 Stock Plan to any executive officer or any other employee, other than for 8,630 shares issued to our Chief Executive Officer in January 2011.

In connection with the Company becoming the holding company for Oak Valley Community Bank in 2008, the Company assumed all obligations for options issued under the Bank s 1998 Restated Stock Option Plan, with options to purchase shares of Company s common stock substituted for options to purchase shares of common stock of the Bank. The 1998 Restated Stock Option Plan expired in May 2008. As of March 30, 2011, there were a total of 282,385 options issued and exercisable under the 1998 Restated Stock Option Plan.

Additional information on long-term awards for executive officers is shown on the fiscal 2010 Option Values table on page 35.

401(k) Plan

The Company maintains a plan that complies with the provisions of Section 401(k) of the Internal Revenue Code. Substantially all employees are eligible to participate in this plan, and eligibility for participation commences upon hiring. The Company s executive officers are eligible to participate in this program, subject to any applicable tax laws. The Company contributes a percentage matching contribution to the same degree as all other employees. The matching contribution is 75% on all deferred amounts up to IRS limits.

Health and Welfare Benefits

The Company offers health and welfare programs to all eligible employees. The programs include medical, wellness, pharmacy, dental, vision, life insurance and accidental death and disability. The named executive officers received up to $18,000 each in 2010 for health and welfare benefits.

Salary Continuation Agreements

On August 21, 2001, the Board of Directors of Oak Valley approved salary continuation agreements (Salary Continuation Agreements) between the Bank and Messrs. Courtney and McCarty (each, an Executive). Under the Salary Continuation Agreements, Messrs. Courtney and McCarty are entitled to receive maximum annual payments of $85,000 and $65,000, respectively, for a period of 20 years following their retirement at the age of 62 (the Normal Retirement Age). The salary continuation agreements also provide that, in lieu of any other benefit under such agreements, the Company will pay the executives any benefit under the agreement to the extent the benefit would not create an excise tax under the excess parachute rules of Section 280G of the 1986 Internal Revenue Code, and to extent possible, such benefit payment shall be reduced to allow payment within the fullest extent permissible under applicable law. In the event of disability while employed with us prior to the Normal Retirement Age, each Executive will receive a benefit equal to the retirement liability balance accrued by us at the time of disability.

In the event of early termination, the Executive will receive a vested portion of his retirement liability balance accrued by the Company at the time of such early retirement. The vesting schedule is 20% per year of service beginning with the sixth year of service. In the event the Executive dies prior to termination of the Salary Continuation Agreement, the beneficiary of such Executive will receive from the Company a lump sum death benefit amount.

In December 2001, we purchased insurance policies on the lives of Messrs. Courtney and McCarty, paying the premiums for these insurance policies with one lump-sum premium payment of approximately $590,000. Under our Split Dollar Agreements and Split Dollar Policy endorsements with the Executives, the policy interests are divided between us and such Executives. We are entitled to any insurance policy death benefits remaining after payment to the Executive s beneficiary.

If an Executive under the Salary Continuation Agreement is terminated for cause, we will not pay any benefits under such Salary Continuation Agreement. For this purpose, the term cause means an Executive s gross negligence or gross neglect of duties, fraud, disloyalty, dishonesty or willful violation of law or significant bank policies in connection with the Executive s service that results in an adverse effect on Oak Valley.

In February 2008, we entered into an additional Salary Continuation Agreement (the Agreement) in the same form also for Ronald C. Martin. Under the Agreement, Mr. Martin is entitled to receive maximum annual payment of $48,000 for a period of 10 years following his retirement at the age of 67 or upon a change in control, as defined in the Agreement. In the event of disability while employed with us prior to the age of 67, Mr. Martin will receive a benefit equal to the retirement liability balance accrued by the Bank at the time of disability. In the event of early termination, Mr. Martin will receive a vested portion his retirement liability balance accrued at the time of such early retirement. The vesting schedule is 20% per year of service beginning with the first year of service. In the event of Mr. Martin dies prior to termination to termination of the Agreement, the beneficiary of Mr. Martin will receive from us a lump sum death benefit amount.

Executive Compensation Waiver

As a result of the Company s participation in the Treasury s TARP Capital Purchase Program, each named executive officer voluntarily waived any claim against the United States or the Company for any changes to their compensation or benefits that are required to comply with the regulation issued by the Department of the Treasury. The regulation may require modification of the compensation, bonus, incentive and other plans, arrangements, policies and agreements (including so-called golden parachute agreements) that the named executive officer has with the Company or in which the named executive officer participates as they

relate to the period the United States holds any equity or debt securities of the Company acquired through the TARP Capital Purchase Program.

Compensation Committee Interlock

Our Compensation Committee is comprised with Messrs. Schrimp, Barton, Gilbert, Haidlen, Jones, Martin, Titus and Vaughan. Our Compensation Committee is comprised entirely of independent directors.

Prohibition on Speculation in Company Stock

Our stock trading guidelines prohibit executives from speculating in our stock, which includes, but is not limited to, short selling (profiting if the market price of the securities decreases), buying or selling publicly traded options, including writing covered calls, and hedging or any other type of derivative arrangement that has a similar economic effect.

Tax Considerations

Section 162(m) (Section 162(m)) of the Internal Revenue Code of 1986, as amended, limits the allowable deduction for compensation paid or accrued with respect to the Chief Executive Officer and each of the four other most highly compensated executive officers of a publicly held corporation to no more than $1 million per year. Certain compensation is exempt from this deduction limitation, including performance-based compensation paid under a plan administered by a committee of outside directors, which has been approved by shareholders. The Company has not previously obtained shareholder approval of performance standards for its compensation plans or arrangements because its executives generally do not have compensation arrangements that would exceed $1 million per year.

In light of Section 162(m), it is the policy of the Compensation Committee to modify, where necessary, our executive compensation program to maximize the tax deductibility of compensation paid to our executive officers when and if the $1 million threshold becomes an issue. At the same time, the Compensation Committee also believes that the overall performance of our executives cannot in all cases be reduced to a fixed formula and that the prudent use of discretion in determining pay levels is in our best interests and those of our shareholders. Under some circumstances, the Compensation Committee s use of discretion in determining appropriate amounts of compensation may be essential. In those situations where discretion is or can be used by the Compensation Committee, compensation may not be fully deductible.

Section 409A (Section 409A) of the Internal Revenue Code of 1986, as amended, among other things, limits flexibility with respect to the time and form of payment of deferred compensation. If a payment or award is subject to Section 409A, but does not meet the requirements that exempt such amounts from taxation under such section, the recipient is subject to (i) income tax at the time the payment or award is not subject to a substantial risk of forfeiture, (ii) an additional 20% tax at that time, and (iii) an additional tax equal to the amount of interest (at the underpayment rate under the Internal Revenue Code plus one percentage point) on the underpayment that would have occurred had the award been includable in the recipient s income when first deferred, or if later, when not subject to a substantial risk of forfeiture. We have made modifications to our plans and arrangements such that payments or awards under those arrangements either are intended to not constitute deferred compensation for Section 409A purposes (and will thereby be exempt from Section 409A s requirements) or, if they constitute deferred compensation, are intended to comply with the Section 409A statutory provisions and final regulations.

Impact of Capital Purchase Program. While we are a participant in the Capital Purchase Program, no deduction will be claimed for federal income tax purposes for executive compensation that would not be

deductible if Section 162(m)(5) were to apply to the Company. This requirement effectively limits deductible compensation paid to the named executive officers to $500,000.

Accounting Considerations

Accounting considerations play an important role in the design of our executive compensation program. Accounting rules require us to expense the fair value of restricted stock awards and the estimated fair value of our stock option grants which reduces the amount of our reported profits. The Compensation Committee considers the amount of this expense in determining the amount of equity compensation awards.

Effect of Shareholder Advisory Vote

Last year, in a non-binding advisory vote, the Company s shareholders approved the Company s compensation plan for its Chief Executive Officer, Chief Financial Officer, and other three most highly paid executives. The Compensation Committee considered this when determining compensation for its senior executive officers for fiscal year 2011. The Compensation Committee will consider the results of the shareholder vote on executive compensation at the Company s 2011 annual meeting in finalizing planning 2012 compensation.

Summary of Cash and Certain Other Compensation

The following table provides certain summary information concerning the compensation earned, by our Chief Executive Officer, and the four most highly compensated executive officers for services rendered in all capacities to us for the fiscal years ended December 31, 2010 and 2009 in their respective executive officer capacities with the Company and the Bank:

Summary Compensation Table

Name and Principal Position (a)	Year (b)	Salary ($) (c)	Bonus ($) (d)(1)	Stock Awards ($) (e)	Option Awards ($) (f)	Non-Equity Incentive Plan Compensation ($) (g)	Nonqualified Deferred Compensation Earnings ($) (h)(2)	All Other Comp. ($) (i)(3)	Total ($) (j)
Ronald C. Martin	2009	$ 254,960	$ 11,875				$ 64,361	$ 23,123	$ 354,319
Chief Executive Officer	2010	$ 254,960	$ 0				$ 77,026	$ 54,283	$ 386,269
Christopher M. Courtney	2009	$ 192,750	$ 11,875				$ 38,343	$ 34,359	$ 277,327
President	2010	$ 192,750	$ 46,261				$ 40,708	$ 33,984	$ 313,703
Richard A. McCarty	2009	$ 163,825	$ 9,738				$ 29,677	$ 19,993	$ 223,233
Executive Vice President, Chief Financial Officer,	2010	$ 163,825	$ 39,317				$ 31,508	$ 15,946	$ 250,596

Chief Administrative Officer and Secretary							
David S. Harvey	2009	$ 144,200	$ 7,125		$ 33,736	$ 30,902	$ 215,963
Executive Vice President/Commercial Lending	2010	$ 144,200	$ 25,956		$ 37,676	$ 34,547	$ 242,378
Michael J. Rodrigues	2009	$ 133,250	$ 4,750		$ 7,673	$ 31,665	$ 177,338
Executive Vice President/Chief Credit Officer	2010	$ 133,250	$ 23,985		$ 8,570	$ 32,815	$ 199,269

(1) The amounts in column (d) include the following:

Amounts shown for Mr. Martin include for 2009, $11,875 representing bonus paid corresponding to 2008 bonus accrual.

Amounts shown for Mr. Courtney include (a) for 2009, $11,875 representing bonus paid corresponding to 2008 bonus accrual; and (b) for 2010, $46,261 representing bonus paid corresponding to 2009 bonus accrual.

Amounts shown for Mr. McCarty include (a) for 2009, $9,738 representing bonus paid corresponding to 2009 bonus accrual; and (b) for 2010, $39,317 representing bonus paid corresponding to 2009 bonus accrual.

Amounts shown for Mr. Harvey include (a) for 2009, $7,125 representing bonus paid corresponding to 2009 bonus accrual; and (b) for 2010, $25,956 representing bonus paid corresponding to 2009 bonus accrual.

Amounts shown for Mr. Rodrigues include (a) for 2009, $4,750 representing bonus paid corresponding to 2009 bonus accrual; and (b) for 2010, $23,985 representing bonus paid corresponding to 2009 bonus accrual.

(2) The Company did not adopt or award any new pension or retirement benefits to the named executive officers in 2010**.** The amounts shown in column (h) for 2010 represent the executive salary continuation plan accrual from December 31, 2009 to December 31, 2010. The amounts in column (h) were determined using interest rate and mortality rate assumptions consistent with those used in the Company s consolidated financial statements and include amounts which the named executive officer may not currently be entitled to receive because such amounts are not vested. Assumptions used in the calculation of these amounts are included in Note 20 to the Company s consolidated financial statements for the fiscal year ended December 31, 2010 included in the Company s Annual Report on Form 10-K filed with the SEC on March 30, 2011.

(3) The amounts shown in column (i) in 2010 include the following for each named executive:

	Common Stock Dividends Paid on Unvested Restricted Stock	Economic Value of Death Benefit of Life Insurance for Beneficiaries	401(k) Plan Company Matching Contributions	Other Insurance Benefit	Employee Stock Ownership Plan Company Contributions	Vacation	Severance	Auto Compensation
Ronald C. Martin	$	2,895	$ 13,950	$		$ 28,438	$	$ 9,000
Christopher M. Courtney	$	576	$ 10,781	$		$ 14,827	$	$ 7,800
Richard A. McCarty	$	270	$	$		$ 7,876	$	$ 7,800
David S. Harvey	$	1,300	$ 16,500	$		$ 11,647	$	$ 5,100

Michael J. Rodrigues	$ 434	$ 10,800	$	$ 16,480	$	$ 5,100

The economic value of the death benefit amounts shown above reflects the annual income imputed to each executive in connection with Company-owned split-dollar life insurance policies for which the Company has fully paid the applicable premiums. These policies are discussed under Salary Continuation Agreements .

Emergency Economic Act of 2008 and American Recovery and Reinvestment Act of 2009. All of the executive officers entered into EESA compliance agreements as of September 14, 2009 pursuant to which the payment of any amounts or any benefit to each such named executive officer is subject to the requirements of EESA and ARRA and any regulations promulgated thereunder by the U.S. Treasury so long as the U.S. Treasury owns any shares of the Company s Series A Preferred Stock.

Plan Based Awards

Stock Based Plans. The Company currently has two equity based incentive plans, the Oak Valley Community Bank 1998 Restated Stock Plan and the Oak Valley Bancorp 2008 Stock Option Plan. The 2008 Stock Plan provides for awards in the form of incentive stocks, non-statutory stock options, Stock appreciation rights, and restrictive stocks. No stock options or other stock awards were granted to the named executive officers in 2010.

Outstanding Equity Awards

The following table shows the number of Company shares of common stock covered by exercisable and unexercisable stock options and the number of Company unvested shares of restricted common stock held by the Company s named executive officers as of December 31, 2010.

Outstanding Equity Awards at Year End

	Option Awards					Stock Awards			
Name (a)	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (c)	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#) (d)	Options Exercise Price ($) (e)	Options Expiration Date (f)	Number of Shares or Units of Stock That Have Not Vested (#) (g)	Market Value of Shares or Units of Stock That Have Not Vested ($) (h)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#) (i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested ($) (j)
Ronald C. Martin	33,750(1)			$ 7.56	3/17/2014				
Christopher M. Courtney	33,750(2)			$ 7.56	3/17/2014				
Richard A. McCarty	22,500(3)			$ 7.56	3/17/2014				
David S. Harvey	10,562(4)			$ 4.00	6/3/2012				
	6,750(5)			$ 4.08	7/1/2012				
	11,250(1)			$ 7.56	3/17/2014				
Michael J. Rodrigues	1,687(6)			$ 3.26	3/17/2011				
	6,750(7)			$ 4.08	7/1/2012				
	11,250(8)			$ 7.56	3/17/2014				

(1) The options vested 20% annually over five years beginning on 3/17/2004 and have a term of 10 years.

(2) The options vested 20% annually over five years beginning on 3/17/2004 and have a term of 10 years.

(3) The options vested 20% annually over five years beginning on 3/17/2004 and have a term of 10 years.

(4) The options vested 20% annually over five years beginning on 6/3/2002 and have a term of 10 years.

(5) The options vested 20% annually over five years beginning on 7/1/2002 and have a term of 10 years.

(6) The options vested 20% annually over five years beginning on 3/17/2001 and have a term of 10 years.

(7) The options vested 20% annually over five years beginning on 7/1/2002 and have a term of 10 years.

(8) The options vested 20% annually over five years beginning on 3/17/2004 and have a term of 10 years.

Option Exercises and Vested Stock Awards

The following table sets forth information with regard to the exercise and vesting of stock options and vesting of shares of restricted stock for the year ended December 31, 2010, for each of the named executive officers.

Option Exercises and Stock Vested

	Option Awards		Stock Awards	
Name	Number of Shares Acquired on Exercise (#)	Value Realized upon Exercise ($)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($)
(a)	(b)	(c) (1) (2)	(d)	(e)
Ronald C. Martin	20,250	$ 32,298		$
Christopher M. Courtney		$		$
Richard A. McCarty		$		$
David S. Harvey		$		$
Michael J. Rodrigues		$		$

(1) The value realized of shares acquired on exercise was determined by subtracting the exercise price from the fair market value of the common stock on the exercise date multiplied by the number of shares acquired on exercise

(2) Options granted under our Stock Plans. Exercisable refers to those options which were both exercisable and vested while Unexercisable refers to those options which were unvested.

Salary Continuation Agreements

Company-owned split-dollar life insurance policies support the Company s obligations under each Salary Continuation Agreement. The premiums on the policies are paid by the Company. The cash value accrued on the policies supports the payment of the supplemental benefits for each participant. In the case of death of the participant, the participant s designated beneficiaries may receive up to 100% of the net-at-risk insurance (which means amount of the death benefit in excess of the cash value of the policy).

The following table shows the present value of the accumulated benefit payable to each of the named executive officers, including the number of service years credited to each named executive officer under the salary continuation agreements:

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Accumulated Benefits

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit(1)(2) ($) (d)	Payments During Last Fiscal Year ($) (e)
Ronald C. Martin		18	$ 222,764	$ 0
Christopher M. Courtney		9	$ 340,849	$ 0
Richard A. McCarty		9	$ 254,583	$ 0
David S. Harvey		2	$ 101,534	$ 0
Michael J. Rodrigues		2	$ 23,094	$ 0

(1) The amounts in column (d) were determined using interest rate and mortality rate assumptions consistent with those used in the Company s consolidated financial statements and include amounts which the named executive officer may not currently be entitled to receive because such amounts are not vested. Assumptions used in the calculation of these amounts are included in Note 20 to the Company s consolidated financial statements for the fiscal year ended December 31, 2010, included in the Company s Annual Report on Form 10-K filed with the SEC on March 30, 2011.

(2) The following vesting percentages apply to the named executive officers:

End of the year prior to termination	Ronald C. Martin	Christopher M. Courtney	Richard A. McCarty	David S. Harvey	Michael J. Rodrigues
12/31/2011	100%	100%	100%	0%	0%
12/31/2012	100%	100%	100%	0%	0%
12/31/2013	100%	100%	100%	20%	20%
12/31/2014	100%	100%	100%	40%	40%

Change of Control Arrangements and Termination of Employment

In connection with the Company s participation in the TARP Capital Purchase Program, the Company agreed that, until such time as the U.S. Treasury ceases to own the Series A Preferred Stock acquired under the program, the Company will take all necessary action to ensure that its benefit plans with respect to its senior executive officers comply with Section 111(b) of EESA and agreed to not adopt any benefit plans with respect to, or which covers, its senior executive officers that do not comply with EESA. The subsequent enactment of ARRA, and issuance of rules and regulations issued by the U.S. Treasury in June 2009, has amended, and in some cases expanded, upon provisions of Section 111(b) of EESA. These provisions prohibit any payment of golden parachutes (as defined by the U.S. Treasury regulation) to the named executive officers or the five next highly-compensated employees for departure from our Company for any reason, except for death, disability or payments for services performed or benefits accrued.

Director Compensation

This section provides information regarding the compensation policies for non-employee directors and amounts paid to these directors in 2010.

Overview

Our director compensation is designed to attract and retain qualified, independent directors to represent our shareholders on the Board and act in their best interests. The Compensation Committee, which consists solely of independent directors, has primary responsibility for reviewing and recommending any changes our director compensation program. All recommended compensation changes required approval or ratification by the full Board of Directors. Compensation for the members of our Board is reviewed periodically by the Compensation Committee.

Our Board of Directors includes two Company officers: Mr. Ronald. A. Martin, who serves as Chief Executive Officer; and Mr. Christopher M. Courtney, who serves as the President of the Company. As senior executive officers, information regarding the compensation of Mr. Martin s and Mr. Courtney s can be found in the Compensation Discussion and Analysis and the executive compensation disclosure tables provided within this Proxy.

Director Fees

Non-employee Directors receive a cash retainer in the amount of $2,000 per month. Directors who are employees do not receive any compensation for service as director.

The following table provides compensation information for the year ended December 31, 2010 for each non-employee Director of the Company at that time.

Director Compensation Table

Name (a)	Fees Earned or Paid in Cash ($) (b)	Stock Awards ($) (c)	Options Awards ($) (d)	Non-Equity Incentive Plan Compensation ($) (e)	Change in Nonqualified Deferred Compensation Earnings ($) (f)(1)	All Other Compensation ($) (g)	Total ($) (h)
Donald L. Barton	$ 24,000		$		$ 1,627	$	$ 25,627
James L. Gilbert	$ 24,000		$		$ 6,504	$	$ 30,504
Thomas A. Haidlen	$ 24,000		$		$ 4,945	$	$ 28,945
Michael Q. Jones	$ 24,000		$		$ 7,279	$	$ 31,279
Roger M. Schrimp	$ 24,000		$		$ 10,545	$	$ 34,545
Danny L. Titus	$ 24,000		$		$ 6,364	$	$ 30,364
Richard J. Vaughan	$ 24,000		$		$	$	$ 24,000

(1) The Company did not adopt or award any new pension or retirement benefits to the directors in 2010. The amounts shown in column (f) for 2010 represent the director retirement agreements accrual from December 31, 2009 to December 31, 2010. The amounts in column (f) were determined using interest rate and mortality rate assumptions consistent with those used in the Company s consolidated financial statements and include amounts which the named executive officer may not currently be entitled to receive because such amounts are not vested. Assumptions used in the calculation of these amounts are included in Note 20 to the Company s consolidated financial statements for the fiscal year ended December 31, 2010 included in the Company s Annual Report on Form 10-K filed with the SEC on March 30, 2011.

Stock Options

None of the independent directors was granted any stock options during 2010. As of December 31, 2010, the independent directors held outstanding, fully exercisable stock options to purchase the following amounts of our common stock, all with exercise prices ranging from $7.51 to $ 13.25 per share, and all with expiration dates no later than 2016.

Non-Employee Directors	**Options**
Donald L. Barton	4,000
James L. Gilbert	0
Thomas A. Haidlen	0
Michael Q. Jones	4,500
Roger M. Schrimp	0
Danny L. Titus	0
Richard J. Vaughan	0

Director Retirement Agreements; Bank-Owned Life Insurance Policies

On August 21, 2001, the Board of Directors of the Bank authorized Director Retirement Agreements with each director. The Company assumed the Director Retirement Agreements upon its reorganization with the Bank in May 2008, as the same individuals who served as directors of the bank became directors of the Company.

The Director Retirement Agreements are intended to encourage existing directors to remain directors, assuring us that we will have the benefit of the directors experience and guidance in the years ahead.

For retirement after the later of age 72 or five years of service (the Normal Retirement Age), the Director Retirement Agreements provide an annual benefit during the director s lifetime of $12,000 for 10 years. If a director retires or becomes disabled before the Normal Retirement Age, he will receive a lump-sum payment in an amount equal to the retirement liability balance accrued by the Bank at the time of early retirement or disability.

If a change in control occurs (as defined in the Director Retirement Agreements) and a director s service terminates within 24 months after the change in control, the director will receive the retirement liability balance accrued and payable to the director for retirement at the Normal Retirement Age.

In December of 2001, the Bank purchased insurance policies on the lives of its directors, paying the premiums for these insurance policies with one lump-sum premium payment of approximately $1,045,000. Although the Bank expects the policies on the directors lives to serve as a source of funds for benefits payable under the Director Retirement Agreements, the contractual entitlements arising under the Director Retirement Agreements are not funded and remain contractual liabilities of the Bank, payable upon each director s termination of service.

The policy interests are divided between us and each director. Under Bank s Split Dollar Agreements and Split Dollar Policy endorsements with the directors, we are entitled to any insurance policy death benefits remaining after payment to the director s beneficiary. We expect to recover the premium in full from its portion of the policies death benefits.

If a director is terminated for cause, we will not pay any benefits under his Director Retirement Agreement. For this purpose, the term cause means a director s gross negligence or gross neglect of duties,

fraud, disloyalty, dishonesty or willful violation of law or significant Company policies in connection with the director s service that results in an adverse effect on us.

The following table shows the present value of the accumulated benefit payable to each director who has a director compensation benefit agreement, including the number of service years credited to each director under the supplemental executive retirement plan.

Accumulated Benefits

Name (a)	Plan Name (b)	Number of Years Credited Service (#) (c)	Present Value of Accumulated Benefit(1)(2) ($) (d)	Payments During Last Fiscal Year ($) (e)
Donald L. Barton		3	$ 4,385	$
James L. Gilbert		19	$ 36,808	$
Thomas A. Haidlen		19	$ 27,795	$
Michael Q. Jones		6	$ 19,617	$
Roger M. Schrimp		19	$ 60,260	$
Danny L. Titus		18	$ 35,995	$
Richard J. Vaughan		19	$ 90,524	$

(1) The amounts in column (d) were determined using interest rate and mortality rate assumptions consistent with those used in the Company s consolidated financial statements and include amounts which the named executive officer may not currently be entitled to receive because such amounts are not vested. Assumptions used in the calculation of these amounts are included in Note 20 to the Company s consolidated financial statements for the fiscal year ended December 31, 2010, included in the Company s Annual Report on Form 10-K filed with the SEC on March 30**,** 2011.

(2) The following vesting percentages apply to the directors:

End of the year prior to termination	Donald L. Barton	James L. Gilbert	Thomas A. Haidlen	Michael Q. Jones	Roger M. Schrimp	Danny L. Titus	Richard J. Vaughan
12/31/2010	0%	100%	100%	40%	100%	100%	100%
12/31/2011	0%	100%	100%	60%	100%	100%	100%
12/31/2012	20%	100%	100%	80%	100%	100%	100%
12/31/2013	40%	100%	100%	100%	100%	100%	100%
12/31/2014	60%	100%	100%	100%	100%	100%	100%

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MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING

PROPOSAL NO. 1
ELECTION OF DIRECTORS OF THE COMPANY

The Bylaws of the Company provide that the Board will consist of not less than seven (7) and not more than thirteen (13) directors. The number of directors is set by the Board and is currently set at nine (9).

The Board of Directors proposes that the following three (3) nominees, all of whom are currently serving as Directors of the Company and the Bank, be re-elected until their successors are duly elected and qualified. Each of the nominees has consented to serve if elected. If any of them becomes unavailable to serve as a Director before the Annual Meeting, the Board may designate a substitute nominee. In that case, the persons named as proxies will vote for the substitute nominee designated by the Board. Unless you indicate on the Proxy Card that your vote should be withheld from any or all of the nominees, your proxies will be voted for the election of each of these nominees.

The following is a brief account of the business experience, including experience during the past five years, of each nominee.

Christopher M. Courtney, 48, has been the Bank s President since August of 2004 and a director since January 2007. He has been Oak Valley Bancorp President and Director since May 2008. Previously, he has served as the Bank s Chief Credit Officer and Chief Operating Officer since 1999 and 2000, respectively. Mr. Courtney has 20 years of diverse banking experience, joining Oak Valley Community Bank in 1996, as a lender, after working for a major bank, a mid-size bank and a small community bank. He graduated from Wells Fargo Bank Credit Training Program in 1989. Mr. Courtney has a B.S. in Finance and a Masters in Business Administration from California State University, Sacramento. He is also a graduate of the Pacific Coast Banking School at the University of Washington. Mr. Courtney adds banking and operations experience to the Board.

Michael Q. Jones, 65, has been a director of the Bank since 2004 and of Oak Valley Bancorp since 2008. Mr. Jones has been a resident of Sonora since 1974. Mr. Jones has served as the Chairman of California Gold Development Corporation since 1974, and has been the owner of the Prudential California Realty in Sonora since 2002. Mr. Jones brings knowledge of the real estate markets to the Board.

Richard J. Vaughan, 73, has been a director of the Bank since 1991 and of Oak Valley Bancorp since 2008. Mr. Vaughan owns Vaughan Farms, operating in Waterford and Oakdale, California. Mr. Vaughan has been involved with agribusiness since 1961. Mr. Vaughan helps the Board understand the banking needs of the local agricultural industry.

The Bylaws of the Company, as amended, authorize the Company to have a classified Board of Directors so long as the number of directors of the Company has been fixed at nine (9) or more directors. Pursuant to that provision, each year only three (3) directors then in office would be subject to nomination and election. Accordingly, each nominee director, if elected, will hold office as follows until his successor is duly elected and qualified for the following terms:

Nominees		Expiration of Term
Richard J.	Vaughan	2011(1)
Christopher M.	Courtney	2011(1)
Michael Q.	Jones	2011(1)
Directors Continuing in Office		
Roger M.	Schrimp	2013
James L.	Gilbert	2013
Danny L.	Titus	2013
Ronald C.	Martin	2012
Thomas A.	Haidlen	2012
Donald L.	Barton	2012

(1) Assuming re-election on June 9, 2011.

THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS A VOTE FOR THE ELECTION OF THESE NOMINEES AS DIRECTORS. ONLY THOSE VOTES CAST FOR ARE INCLUDED, WHILE VOTES AGAINST , ABSTENTIONS AND BROKER NON-VOTES ARE NOT INCLUDED.

PROPOSAL 2 RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The firm of Moss Adams, LLP in Stockton, California which served the Company as independent registered public accounting firm for 2010, has been selected by the Audit Committee of the Board of Directors of the Company to be the Company s independent registered public accounting firm for 2011. All Proxies will be voted FOR ratification of such selection unless authority to vote for the ratification of such selection is withheld or an abstention is noted. If the nominee should unexpectedly for any reason decline or be unable to act as independent public accountants, the Proxies will be voted for a substitute nominee to be designated by the Audit Committee.

Representatives from the accounting firm of Moss Adams, LLP will be present at the meeting, will be afforded the opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions.

Audit Fees

The following presents fees billed for the years ended December 31, 2010 and 2009 for professional services rendered by the Company s independent registered public accounting firm in connection with the audit of the Company s consolidated financial statements and fees billed by the Company s independent registered public accounting firm for other services rendered to the Company.

The following table presents fees for professional services rendered by Moss Adams LLP and billed to the Bank for the audit of the Bank s annual financial statements for the years ended December 31, 2010 and 2009, and fees for other services billed by Moss Adams during those periods:

Fees	2010	2009
Audit Fees	$ 118,500	$ 141,339
Audit-related Fees		
Tax Fees	$ 54,102	$ 47,138
All other Fees	$ 1,324	$ 4,550
Total	$ 173,926	$ 193,027

Audit Fees. Annual audit fees relate to services rendered in connection with the audit of the annual financial statements included in our annual report.

Audit-Related Fees. Audit-related services include fees for consultations concerning financial accounting and reporting matters.

Tax Fees. Tax services include fees for tax compliance, tax advice and tax planning.

All Other Fees. The increase in all other fees is primarily attributable to tax advising work in the areas of enterprise zone and costs aggregation work.

The Audit Committee has determined that the provision of services, in addition to audit services, rendered by Moss Adams and the fees paid therefore in fiscal years 2010 and 2009 were compatible with maintaining Moss Adams independence.

The Audit Committee pre-approves all auditing services and permitted non-audit services (including the fees and terms thereof) to be performed for the Company by its independent registered public accounting firm,

subject to the de minimis exceptions for non-audit services described in Section 10A(i)(1)(B) of the Exchange Act which are approved by the Audit Committee prior to the completion of the audit.

Audit Committee Report

The Audit Committee reports as follows with respect to the audit of our fiscal 2010 audited financial statements. Management is responsible for the Company s internal controls and the financial reporting process.

The Audit Committee is comprised of five independent directors and responsible for providing independent, objective oversight of the Company s accounting, financial reporting and internal controls. Members of the Audit Committee are independent as defined by SEC and NASDAQ standards. A financial expert, as defined by SEC rules, chairs the Audit Committee. The Audit Committee is responsible for the appointment, compensation, retention and oversight of the independent registered public accountants.

The Audit Committee meets and holds discussion with management and its independent registered public accountants, Moss Adams, LLP. The Audit Committee has read and discussed the audited financial statements for fiscal year 2010 with management and Moss Adams. The Chief Executive Officer and the Chief Financial Officer have certified that, based on their knowledge, the financial statements and other financial information included in the annual SEC Form 10-K report, fairly present in all material respects the financial condition, results of operations and cash flows of the Company. Also, the Audit Committee has discussed with management and Moss Adams, management s assertion of the effectiveness of the Company s internal controls as they related to financial reporting.

Discussion were also held with Moss Adams concerning matters required by the Statement on Auditing Standards No. 61 (Communication with Audit Committees). The Company s independent auditors also provided to the Audit Committee the written disclosures required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and the Audit Committee discussed with Moss Adams that firm s independence and considered the compatibility of non-audit services with Moss Adams independence.

Based on the reviews and discussions referred to above, we recommend to the Board of Directors the inclusion of the audited financial statements in the Company s Annual Report for the year ended December 31, 2010 on SEC Form 10-K.

The Audit Committee has discussed with management and Moss Adams, independence issues regarding the fees that were billed by Moss Adams during the fiscal year 2010. The Audit Committee approved audit, audit-related and tax services.

Submitted by the Audit Committee of the Board on March 30, 2011:

Roger M. Schrimp (Chairman)

Thomas A. Haidlen

Donald L. Barton

Danny L. Titus

Richard J. Vaughan

The Audit Committee report shall not be deemed incorporated by reference by any general statement incorporating by reference this proxy statement into any filing under the Securities Act of 1933 or the Securities Act of 1934, and shall not otherwise be deemed filed under these acts.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR RATIFICATION OF THE SELECTION OF MOSS ADAMS, LLP AS THE COMPANY S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM.

PROPOSAL 3 NON-BINDING ADVISORY VOTE ON EXECUTIVE COMPENSATION

As a result of our participation in the TARP Capital Purchase Program, we are subject to the provisions of the Emergency Economic Stabilization Act of 2008 (EESA), which was subsequently amended by Article VII of the American Recovery and Reinvestment Act of 2009 (ARRA) to provide additional executive compensation requirements. As a result, we are required to include in this Proxy Statement and present at the meeting a non-binding shareholder vote to approve the compensation of our named executive officers, as disclosed in this Proxy Statement pursuant to the compensation disclosure rules of the SEC. This proposal, commonly known as a say-on-pay proposal, gives shareholders the opportunity to endorse or not endorse the compensation of the Company s executives as disclosed in this Proxy Statement. The proposal will be presented at the annual meeting in the form of the following resolution:

RESOLVED, that the shareholders approve the compensation of Oak Valley Bancorp s named executive officers, as disclosed in the Compensation Discussion and Analysis, the compensation tables and related material in Oak Valley Bancorp s Proxy Statement for the 2011 annual meeting of shareholders.

This vote will not be binding on our Board of Directors or Compensation Committee and may not be construed as overruling a decision by the Board or create or imply any additional fiduciary duty on the Board. It will also not affect any compensation paid or awarded to any executive. The Compensation Committee and the Board may, however, take into account the outcome of the vote when considering future executive compensation arrangements.

The Board of Directors believes that the Company s compensation policies and procedures are centered on a pay-for-performance culture and are strongly aligned with the long-term interests of shareholders, and, accordingly, recommends a vote in favor of this proposal.

In the event this non-binding proposal is not approved by our shareholders, such a vote shall not be construed as overruling a decision by the Board of Directors or Compensation Committee, nor create or imply any additional fiduciary duty by the Board of Directors or Compensation Committee, nor shall such a vote be construed to restrict or limit the ability of our shareholders to make proposals for inclusion in proxy materials related to executive compensation. Notwithstanding the foregoing, the Board of Directors and Compensation Committee will consider the non-binding vote of our shareholders on this proposal when reviewing compensation policies and practices in the future.

Compensation Committee Report

Compensation Discussion and Analysis. The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis required by Item 401(b) of Regulation S-K with management and, based on such review and discussions, the Compensation Committee recommended to the Board that the Compensation Discussion and Analysis be included in this Proxy Statement.

Risk Assessment of Incentive Compensation Arrangements. In connection with its participation in the U.S. Treasury Capital Purchase Program, the Compensation Committee is required to meet at least every six months with the Company s senior risk officers to discuss and review the relationship between the Company s risk management policies and practices and its senior executive officers (SEOs) incentive compensation arrangements, identifying and making reasonable efforts to limit any features in such compensation arrangements that might lead to the SEOs taking unnecessary or excessive risks that could threaten the value of the Company. The Compensation Committee, on behalf of the Company,

must certify that it has completed the review and taken any necessary actions.

In response to this requirement, the Compensation Committee meets with the senior risk managers of the Company (including its Chief Executive Officer, President, Chief Financial Officer, Chief Credit Officer and Executive Vice President/Commercial Lending). The Compensation Committee discusses the overall risk structure and the significant risks identified within the Company, and discusses the process by which those present at the meeting analyze the risks associated with the executive compensation program. This process includes, among other things, a review of the Company s programs and discussions with the Compensation Committee s independent compensation consultant about the structure of the Company s overall executive compensation program. This review includes the compensation potential under the Company s incentive plans, the long-term view encouraged by the design and vesting features of the Company s long-term incentive arrangements, and the extent to which the Compensation Committee and the Company s management monitor the program. The Compensation Committee also identifies areas of enterprise risk of the Company and evaluates the degree to which participants in a plan perform functions that have the potential to significantly affect overall enterprise risk. The Compensation Committee then analyzes the extent to which design features have the potential to encourage behaviors that could significantly contribute to enterprise risk.

Our SEOs participate in the 2008 Stock Plan.

Based on its review (the most recent in March 30, 2011), the Compensation Committee has determined that the Company s executive compensation program does not encourage the SEOs to take unnecessary and excessive risks that threaten the value of the Company, and that no changes to these plans were required for this purpose.

Among the factors the Compensation Committee considered were the following:

• Vesting of stock options has historically been tied to tenure of employment and not tied to Company or individual performance. Stock options are subject to clawback provisions.

• The Compensation Committee generally targets the median of peer practice to generally limit total direct compensation.

In addition to the incentive plans in which our SEOs participate, the Company has incentive programs for other officers and branch employees which reward performance. The Compensation Committee reviewed all non-SEO programs, and concluded that none of them, considered individually or as a group, presented any material threat to our capital or earnings, encouraged taking undue or excessive risks, or encouraged manipulation or financial data in order to increase the size of an award. The rewards offered are typically based on subjective criteria and are not tied directly to Company performance. Several other plans reward loan production. Internal controls with different levels of review and approvals are designed to prevent manipulation to increase an award.

Certification. As required by the U.S. Treasury Capital Purchase Program, the Compensation Committee certifies that it has (i) reviewed with senior risk officers the SEO compensation plans and has made all reasonable efforts to ensure that these plans do not encourage SEOs to take unnecessary and excessive risks that threaten the value of the Company; (ii) reviewed with senior risk officers the Company s employee compensation plans and has made all reasonable efforts to limit any unnecessary risks these plans pose to the Company; and (iii) reviewed the Company s employee compensation plans to eliminate any features of these plans that would encourage the manipulation of reported earnings of the Company to enhance the compensation of any employee.

Compensation Committee of the Board

Roger M. Schrimp (Chairman)

Donald L. Barton

James J. Gilbert

Thomas A. Haidlen

Michael Q. Jones

Danny L. Titus

Richard J. Vaughan

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THIS PROPOSAL ON APPROVAL OF A NON-BINDING ADVISORY VOTE ON EXECUTIVE COMPENSATION.

’s executive-level experience, including his previous service as our President, Chief Executive Officer and Chairman of the Board, his extensive experience in the accounting industry, and his service on our Board from November 2010 until May 2015, give him the qualifications and skills to serve as one of our directors.

Moti Rosenberg

Moti Rosenberg, age 70, serves as one of our independent directors. He has served as an independent consultant to various companies in the design and implementation of homeland security systems in Europe and Africa since 2010. From 2004 to 2009, he served as a special consultant to Bullet Plate Ltd., a manufacturer of armor protection systems, and NovIdea Ltd., a manufacturer of perimeter and border security systems. From 2000 to 2003, Mr. Rosenberg was the general manager of ZIV U.P.V.C Products Ltd.'s doors and window factory. Mr. Rosenberg is an active reserve officer and a retired colonel from the Israeli Defense Force (IDF), where he served for 26 years and was involved in the development of weapon systems. In the IDF, Mr. Rosenberg served in various capacities, including platoon, company, battalion, and brigade commander, head of the training center for all IDF infantry, and head of the Air Force's Special Forces. Mr. Rosenberg received a B.A in History from the University of Tel Aviv and a Master of Arts in Political Science from the University of Haifa in Israel. We believe that Mr. Rosenberg’s business background give him the qualifications to serve as one of our directors.

Uri Friedlander

Mr. Friedlander, age 54, has served as Vice President, Chief Accounting officer since October, 2015. Since 1997, Mr. Fridlander has served as the Chief Financial Officer of Telkoor. From 1991 to 1997, Mr. Fridlander was the controller of I.T.L Ltd., a developer of electro optic military systems, and Q.P.S Ltd., a developer of power supplies, units of the Clal Electronics Ltd. Group. From 1986 until 1991 he served as an auditor for Lyboshitz & Kasirer (Arthur Andersen) public accountants. Mr. Friedlander earned a B.A. in accounting and economics from Tel-Aviv University.

Involvement in Certain Legal Proceedings

Except as disclosed below, to our knowledge, none of our current directors or executive officers has, during the past ten years:

- been convicted in a criminal proceeding or been subject to a pending criminal proceeding (excluding traffic violations and other minor offenses);
- had any bankruptcy petition filed by or against the business or property of the person, or of any partnership, corporation or business association of which he was a general partner or executive officer, either at the time of the bankruptcy filing or within two years prior to that time;
- been subject to any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction or federal or state authority, permanently or temporarily enjoining, barring, suspending or otherwise limiting, his involvement in any type of business, securities, futures, commodities, investment, banking, savings and loan, or insurance activities, or to be associated with persons engaged in any such activity;
- been found by a court of competent jurisdiction in a civil action or by the SEC or the Commodity Futures Trading Commission to have violated a federal or state securities or commodities law, and the judgment has not been reversed, suspended, or vacated;
- been the subject of, or a party to, any federal or state judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated (not including any settlement of a civil proceeding among private litigants), relating to an alleged violation of any federal or state securities or commodities law or regulation, any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order, or any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
- been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

1. Mr. Ault held series 7, 24, and 63 licenses and managed four domestic hedge funds and one bond fund from 1998 through 2008. On April 26, 2012, as a result from an investigation by FINRA involving activities during 2008, Mr. Ault agreed to a settlement with FINRA in which he did not admit to any liability or violation of any laws or regulatory rules and that included restitution and a suspension from association with a FINRA member firm for a period of two years. As part of that settlement, Mr. Ault agreed that he would make restitution to certain investors. Mr. Ault did not within the prescribed time period make a restitution payment to certain of the investors as he was unable to locate all of them, nor did he forward the undistributed restitution in the state where the investor was known to have resided, as directed by FINRA.

2. Mr. Ault was CEO, President and Chairman of Zealous Holdings, Inc. that filed for bankruptcy protection under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) on February 20, 2009, in the U.S. Bankruptcy Court, Central District of California. This Chapter 11 filing was subsequently converted to a Chapter 7

filing by order of the Bankruptcy Court. Zealous Holdings, Inc. was not an entity that was entitled to a discharge under the bankruptcy code. As such Zealous Holdings, Inc. did not receive a discharge. Ultimately, Zealous Holdings, Inc. ceased doing business and was permanently closed.

3. Mr. Ault filed for bankruptcy protection under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") on December 8, 2009, in the U.S. Bankruptcy Court, Central District of California. This Chapter 13 filing was subsequently converted to a Chapter 7 filing by order of the Bankruptcy Court and months later, the petition being withdrawn and dismissed without prejudice.

Except as set forth in our discussion below in "Certain Relationships and Related Transactions," none of our directors or executive officers has been involved in any transactions with us or any of our directors, executive officers, affiliates or associates which are required to be disclosed pursuant to the rules and regulations of the SEC.

Family Relationships. Milton C. Ault, III and Kristine Ault are spouses.

Board and Committee Membership

Our Board is currently composed of five members and maintains the following three standing committees: (1) the Audit Committee; (2) the Compensation Committee; and (3) the Nominating and Governance Committee. The membership and the function of each of the committees are described below. Our Board may, from time to time, establish a new committee or dissolve an existing committee depending on the circumstances. Current copies of the charters for the Audit Committee, the Compensation Committee and the Nominating and Governance Committee can be found on our website at www.digipwr.com.

Audit Committee

Messrs. Horne, Smith, and Rosenberg currently comprise the Audit Committee of our Board. Our Board has determined that each of the current members of the Audit Committee satisfies the requirements for independence and financial literacy under the standards of the SEC and the NYSE MKT. Our Board has also determined that Mr. Horne qualifies as an "audit committee financial expert" as defined in SEC regulations and satisfies the financial sophistication requirements set forth in the NYSE MKT Rules.

The Audit Committee is responsible for, among other things, selecting and hiring our independent auditors, approving the audit and pre-approving any non-audit services to be performed by our independent auditors; reviewing the scope of the annual audit undertaken by our independent auditors and the progress and results of their work; reviewing our financial statements, internal accounting and auditing procedures, and corporate programs to ensure compliance with applicable laws; and reviewing the services performed by our independent auditors to determine if the services rendered are compatible with maintaining the independent auditors' impartial opinion.

Compensation Committee

Messrs. Horne, Smith, and Rosenberg currently comprise the Compensation Committee of our Board. Our Board has determined that each of the current members of the Compensation Committee meets the requirements for independence under the standards of the NYSE MKT. Mr. Smith serves as Chairman of the Compensation Committee.

The Compensation Committee is responsible for, among other things, reviewing and approving executive compensation policies and practices; reviewing and approving salaries, bonuses and other benefits paid to our officers, including our Chief Executive Officer and Chief Financial Officer; and administering our stock option plans and other benefit plans.

Nominating and Governance Committee

Messrs. Smith, Horne, and Rosenberg currently comprise the Nominating and Governance Committee of our Board. Our Board has determined that each of the current members of the Nominating and Governance Committee meets the requirements for independence under the standards of the NYSE MKT. Mr. Rosenberg serves as Chairman of the Nominating and Governance Committee.

The Nominating and Governance Committee is responsible for, among other things, assisting our Board in identifying prospective director nominees and recommending nominees for each annual meeting of shareholders to the Board; developing and recommending governance principles applicable to our Board; overseeing the evaluation of our Board and management; and recommending potential members for each Board committee to our Board.

The Nominating and Governance Committee considers diversity when identifying Board candidates. In particular, it considers such criteria as a candidate's broad-based business and professional skills, experiences and global business and social perspective.

In addition, the Committee seeks directors who exhibit personal integrity and a concern for the long-term interests of shareholders, as well as those who have time available to devote to Board activities and to enhancing their knowledge of the power-supply industry. Accordingly, we seek to attract and retain highly qualified directors who have sufficient time to attend to their substantial duties and responsibilities.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our executive officers and directors and persons who own more than ten percent of a registered class of our equity securities to file an initial report of ownership on Form 3 and changes in ownership on Form 4 or Form 5 with the SEC. Executive officers, directors and ten percent shareholders are also required by SEC rules to furnish us with copies of all Section 16(a) forms they file. Based solely upon our review of Forms 3, 4 and 5 received by us, or written representations from certain reporting persons, we believe that during the during current fiscal year and the year ended December 31, 2016, all such filing requirements applicable to our officers, directors and ten percent shareholders were fulfilled with the following exceptions.

During the fiscal year 2016, Messrs. Horne, Smith and Rosenberg, and Ms. Ault each inadvertently filed late one Form 4 reporting one transaction and Mr. Kohn inadvertently file three Forms 4s late reporting eight transactions.

Code of Ethics

We have adopted the Code of Ethical Conduct that applies to our principal executive officer, principal financial officer, principal accounting officer, controller or person performing similar functions (collectively, the "Financial Managers"). The Code of Ethical Conduct is designed to deter wrongdoing and to promote honest and ethical conduct and compliance with applicable laws and regulations. The full text of our Code of Ethical Conduct is published on our website at www.digipwr.com. We will disclose any substantive amendments to the Code of Ethical Conduct or any waivers, explicit or implicit, from a provision of the Code on our website or in a current report on Form 8-K. Upon request to our President and CEO, Amos Kohn, we will provide without charge, a copy of our Code of Ethical Conduct.

ITEM 11. EXECUTIVE COMPENSATION.

Summary Compensation Table

The following Summary Compensation Table sets forth all compensation earned in all capacities during the years ended December 31, 2016 and 2015, by our Chief Executive Officer ("Named Executive Officer"). Because we are a Smaller Reporting Company, we only have to report information of our Chief Executive Officer as no other officer met the definition of Named Executive Officer within the meaning of SEC rules.

Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Bonus ($)	Stock Awards ($)	Option Awards ($)(1)	Non-equity Incentive Plan Compensation ($)	Nonqualified Deferred Compensation Earnings ($)	Other Compensation ($)(2)	Total ($)
Amos Kohn	2016	$234,866	-	-	$366,409	-	-	$ 36,269	$637,564
Chief Executive Officer	2015	$215,118	-	-	$120,184	-	-	$ 43,677	$378,979

(1) Represents the equity-based compensation expenses recorded in our consolidated financial statements for the year ended December 31, 2016, based upon the option's fair value on the grant date, calculated in accordance with accounting guidance for equity-based compensation. For a discussion of the assumptions used in reaching this valuation, see Note 8 to our consolidated financial statements for the year ended December 31, 2016.

(2) The amounts in "All Other Compensation" consist of health insurance benefits, long-term and short-term disability insurance benefits, and 401K matching amounts.

Employment Agreement with Amos Kohn

On November 30, 2016, as amended on February 22, 2017, the Company entered into an employment agreement with Amos Kohn to serve as President and Chief Executive Officer with an effective date of September 22, 2016.

For his services, Mr. Kohn will be paid a salary of $300,000 per annum increasing to $350,000 per annum provided that the Company achieves revenues in the aggregate amount of at least $10,000,000 as determined in accordance with U.S. GAAP for the trailing four calendar quarters.

In addition, Mr. Kohn shall be eligible for an annual cash bonus equal to a percentage of his annual base salary based on achievement of applicable performance goals determined by the Company's compensation committee after conferring with Mr. Kohn. The target amount of Mr. Kohn's annual performance bonus shall be 25% to 50% of his then annual base salary but may be greater upon mutual agreement between Mr. Kohn and the compensation committee.

Further, Mr. Kohn is entitled to receive equity participation as follows: (i) ten-year warrants to purchase 317,460 shares of the Company's Common Stock (the "Warrant Grant") at an exercise price of $0.01 per share subject to vesting quarterly over two years effective January 1, 2017; and (ii) ten-year options to purchase 1,000,000 shares of the Company's Common Stock at an exercise price of $0.65 per share. The option to purchase 1,000,000 shares of Common Stock is subject to the following vesting schedule: (1) options to purchase 500,000 shares of Common Stock shall vest upon the effective date; (2) options to purchase 250,000 shares of Common Stock shall vest ratably over six months beginning with the first month after the effective date; and (3) options to purchase 250,000 shares of common stock shall vest ratably over twelve months beginning with the first month after the effective date. As part of the grant of the options to purchase 1,000,000 shares, Mr. Kohn forfeited options to purchase 535,000 shares of common stock previously granted to him under the Company's Incentive Share Option Plans.

In the event that Mr. Kohn is terminated by the Company without cause, or if Mr. Kohn resigns for good reason, Mr. Kohn shall be entitled to (i) all annual salary earned prior to the termination date, any earned but unpaid portion of Mr. Kohn's annual performance bonus for the year preceding in which such termination occurred and any earned but unpaid paid time off; (ii) an amount equal to 100% of Mr. Kohn's then in effect annual base salary plus an additional 1/12th of Mr. Kohn's annual base salary for each year of employment with the Company prior to such termination; (iii) an amount equal to the average of Mr. Kohn's two prior years' annual bonuses (with such average not to exceed 50% of the Mr. Kohn's annual base salary in effect at the time of termination) prorated for the portion of the year that executive was employed; (iv) accelerated vesting of all outstanding unvested stock options and other equity arrangements subject to vesting and held by Mr. Kohn through the termination date and the Company's right to repurchase Mr. Kohn's restricted stock shall cease; and (v) to the extent required by COBRA, continuation of group health benefits pursuant to the Company's standard programs or in effect at the termination date at Company expense for a period of not less than 18 months.

If Mr. Kohn is terminated without cause, or resigns for good reason within 12 months of a change of control, Mr. Kohn shall be entitled to receive: (i) payment in a lump sum of Mr. Kohn annual base salary for 24 months and any accrued, unused paid time-off; (ii) accelerated vesting of all outstanding unvested stock options and other equity arrangements subject to vesting and the Company’s right to repurchase Mr. Kohn restricted stock shall cease; and (iii) to the extent required by COBRA, continuation of group health benefits pursuant to the Company's standard programs or in effect at the termination date at the Company’s expense for a period of not less than 18 months.

Mr. Friedlander

On October 7, 2015 the Compensation Committee agree to pay Mr. Friedlander an annual payment of $58,000 (which includes compensation and business expenses and travel) and granted him 20,000 stock options under the 2012 Stock Option Plan. The options, which will have an exercise price equal to the closing price of the Company's shares on the close of business on October 7, 2015, vest over a four year period at 25% per year and expire 10 years from the date of grant. Mr. Friedlander does not have an employment contract.

Advisory Vote on Executive Compensation

At the annual meeting of shareholders on December 28, 2016, the shareholders approved, on an advisory basis, the compensation paid to the Company's named executive officers. In addition, shareholders voted, on an advisory basis, that an advisory vote on executive compensation should be held every three years.

Outstanding Equity Awards at Fiscal Year-End

The following table provides information on outstanding equity awards as of December 31, 2016 to the Named Executive Officer.

	Option Award					Stock Award			
Name	Number of securities underlying un exercised options (#) exercisable	Number of securities underlying unexercised options (#) exercisable	Equity incentive plan awards: Number of securities underlying unexercised unearned	Option exercise price ($)	Option expiration date	Number of shares or units of stock that have not vested (#)	Market value of shares or units of stock that have not vested	Equity income plan award: Number of unearned shares, units	Equity income plan awards: Market or payout value of unearned

		options (#)				vested (#)	or other rights that have not vested (#)	shares, units or other rights that have not vested ($)
Amos Kohn	687,500(1)	312,500	(1)	$ 0.65	9/22/27			
		317,460	(2)	$ 0.01	9/22/27			

(1) Effective September 22, 2016, Mr. Kohn was granted options to 1,000,000 shares of Common Stock at $0.65 per share. The options to purchase 1,000,000 shares of Common Stock are subject to the following vesting schedule: (1) options to purchase 500,000 shares of Common Stock shall vest upon the effective date; (2) options to purchase 250,000 shares of Common Stock shall vest ratably over six months beginning with the first month after the effective date; and (3) options to purchase 250,000 shares of common stock shall vest ratably over twelve months beginning with the first month after the effective date. In connection with the grant of options to purchase 1,000,000 shares of Common Stock, Mr. Kohn forfeited options to purchase 535,000 shares of common stock previously granted to him under the Company’s 2012 Plan.

(2) Represents warrants to purchase 317,460 shares of the Company's Common Stock at an exercise price of $0.01 per share subject to vesting quarterly over two years beginning January 1, 2017 granted to Mr. Kohn in connection with his employment agreement.

Director Compensation

During 2015, independent directors received $10,000 annually for serving on our Board. Directors are paid quarterly in arrears for their services. For 2016, and thereafter, the Company pays each independent director $20,000 annually, other than Mr. Smith, who will receive $30,000 annually due to anticipated additional services to be provided by Mr. Smith as a lead independent director.

On November 22, 2016, each non-employee director received options to purchase 200,000 shares of Common Stock at an exercise price of $0.70 per share. The options are subject to vesting of which one-third vested immediately and the remaining unvested options will vest equally on the subsequent anniversary dates.

The table below sets forth, for each non-employee director, the total amount of compensation related to his or her service during the year ended December 31, 2016:

Name	Fees Earned or Paid in Cash	Warrant Awards	Option Awards	Non-Equity Incentive Plan Compensation	Nonqualified Deferred Compensation Earnings	All Other Compensation	Total ($)
Robert Smith [1]	$5,000	-	$32,145 [5]	-	-	-	$37,145
Kristine Ault [2]	-		$32,145 [5]				$32,145
William B Horne [2]	$3,333		$32,145 [5]				$35,478
Moti Rosenberg	$11,666		$33,355 [5]				$45,021
Ben-Zion Diamant [3]			$24,693			$ 85,983	$110,676
Haim Yatim [4]	$13,498		$1,758				$15,256
Israel Levi [4]	$7,500		$1,758				$9,258

(1) Mr. Smith was appointed to the Board on September 22, 2016.
(2) Ms. Ault and Mr. Horne were each appointed to the Board on October 13, 2016.
(3) On September 12, 2011, our Board of Directors approved the payment of monthly consulting fees of $6,000 to Ben-Zion Diamant, our former Chairman of the Board of Directors. On March 21, 2016, the Compensation Committee and Board of Directors approved an increase to the monthly consulting fee to Mr. Diamant to $7,500 effective as of March 21, 2016. Mr. Diamant resigned as a director on September 22, 2016, but as part of a Securities Purchase Agreement by and among the Company, Philou Ventures and Telkoor, Mr. Diamant will continue to receive $7,500 for a period of 18 months from September 5, 2016.
(4) Messrs. Yatim and Levi each resigned from the board on September 22, 2016.
(5) Effective November 2016, the non-employee director received options to purchase 200,000 shares at $.70 per share with one-third of the grant to vest immediately and the remaining two-thirds to vest over the remaining two anniversary dates.

Stock Option Plans

On December 28, 2016, the shareholder approve the 2016 Stock Incentive Plan (the “2016 Stock Incentive Plan”), under which options to acquire up to 4,000,000 shares of common stock may be granted to the Company's directors, officers,

employees and consultants. The 2016 Stock Incentive Plan is in addition to the Company's current 2012 Stock Option Plan, as amended (the "2012 Plan"), which provides for the issuance of a maximum of 1,372,630 shares of the Company's common stock to be offered to the Company's directors, officers, employees, and consultants.

The purpose of both the 2016 Stock Incentive Plan and 2012 Plan is to advance the interests of the Company by providing to key employees of the Company and its affiliates, who have substantial responsibility for the direction and management of the Company, as well as certain directors and consultants of the Company, additional incentives to exert their best efforts on behalf of the Company, to increase their proprietary interest in the success of the Company, to reward outstanding performance and to provide a means to attract and retain persons of outstanding ability to the service of the Company.

As of December 31, 2016, options to purchase 2,266,000 shares of common stock were issued and outstanding, and 3,312,630 shares are available for future issuance, under collectively the 2012 Plan and the 2016 Stock Incentive Plan.

401(k) Plan

We have adopted a tax-qualified employee savings and retirement plan, or 401(k) plan, which generally covers all of our full-time employees. Pursuant to the 401(k) plan, eligible employees may make voluntary contributions to the plan up to a maximum of 5% of eligible compensation. The 401(k) plan permits, but does not require, matching contributions by Digital Power on behalf of plan participants. We match contributions at the rate of (1) $1.00 for each $1.00 contributed, up to 3% of the base salary and (2) $0.50 for each $1.00 contributed thereafter, up to 5% of the base salary. We are also permitted under the plan to make discretionary contributions. The 401(k) plan is intended to qualify under Sections 401(k) and 401(a) of the Internal Revenue Code of 1986, as amended. Contributions to such a qualified plan are deductible by the Company when made, and neither the contributions nor the income earned on those contributions is taxable to plan participants until withdrawn. All 401(k) plan contributions are credited to separate accounts maintained in trust.

Item 12. Security Ownership Of Certain Beneficial Owners And Management And Related Stockholder Matters.

Except as otherwise indicated below, the following table sets forth certain information regarding beneficial ownership of our common stock as of March 20, 2017 by (1) each of our current directors; (2) each of the named executive officers listed in the Summary Compensation Table located above in the section entitled “Executive Compensation”; (3) each person known to us to be the beneficial owner of more than 5% of the outstanding shares of our common stock based upon Schedules 13G or 13D filed with the SEC; and (4) all of our directors and executive officers as a group. As of March 20, 2017, there were 8,856,851 shares of our common stock outstanding.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. Common stock subject to options or warrants that are currently exercisable or exercisable within 60 days of the Record Date are deemed to be outstanding and to be beneficially owned by the person or group holding such options or warrants for the purpose of computing the percentage ownership of such person or group, but are not treated as outstanding for the purpose of computing the percentage ownership of any other person or group. Unless otherwise indicated by footnote, to our knowledge, the persons named in the table have sole voting and sole investment power with respect to all common stock shown as beneficially owned by them, subject to applicable community property laws. Unless otherwise indicated below, the address of each beneficial owner listed below is c/o Digital Power Corporation, 48430 Lakeview Blvd, Fremont, California 94538.

Name and address of beneficial owner	**Number of shares beneficially**	**Approximate percent of class**

	owned			
Philou Ventures, LLC				
	2,725,860		30.8	%
P.O. Box 3587 Tustin, CA 92705				
Amos Kohn	951,865	(1)	9.8	%
Uri Friedlander	5,000	(2)	*	
Robert Smith	66,667	(3)	*	
Moti Rosenberg	66,667	(4)	*	
Kristine Ault	2,794,327	(5)	31.3	%
Milton Ault, III	2,794,327	(6)	31.3	%
William Horne	66,667	(7)	*	
All directors and executive officers as a group (seven persons)	3,955,043	(8)	39.5	%
Barry W. Blank,				
	419,900		4.7	%
P.O. Box 32056, Phoenix, AZ 85064				

* Less than one percent.

(1) Includes options to purchase 812,500 shares and warrants to purchase 79,365 exercisable within 60 days of March 20, 2017.

(2) Represents options to purchase 5,000 shares of common stock that are exercisable within 60 days of March 20, 2017.

(3) Represents options to purchase 66,667 shares of common stock that are exercisable within 60 days of March 20, 2017.

(4) Represents options to purchase 66,667 shares of common stock that are exercisable within 60 days of March 20, 2017.

(5) Includes shares owned by Philou Ventures of which Ms. Ault is the Manager. Also includes options to purchase 66,667 shares of common stock that are exercisable within 60 days of March 20, 2017.

(6) Mr. Ault is the spouse of Kristine Ault. Includes 2,715,610 shares owned by Philou Ventures which may be deemed beneficially owned by Mr. Ault.

(7) Represents options to purchase 66,667 shares of common stock that are exercisable within 60 days of March 20, 2017.

(8) Include options and warrants to purchase 1,163,533 shares of common stock that are exercisable within 60 days of March 20, 2017.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

The following information sets forth certain related transactions between us and certain of our shareholder of directors. Prior to September 22, 2016, Telkoor was our largest shareholder and Telkoor's Chief Exectuive Officer, Benzi Diamant, was our Chairman of the Board. Effective September 22, 2016, Telkoor sold all of its shares of common stock of the Company to Philou Ventures, and as a result, Philou Ventures is our largest shareholder. Philou Ventures' Manager is Kristine L. Ault, one of our directors. Ms. Ault is the spouse of Milton C. Ault, III, who is our Executive Chairman of the Board.

Telkoor Telecom, Ltd.

As previously disclosed, on September 5, 2016, we entered into a securities purchase agreement with Philou Ventures, and Telkoor pursuant to which Telkoor agreed to purchase all of Telkoor's 2,714,610 shares of the common stock in the Company, constituting approximately 40.06% of the then Company's outstanding shares of common stock. In consideration for such shares, Philou agreed to pay Telkoor $1.5 million.

In conjunction with the securities purchase agreement, we entered into a rescission agreement with Telkoor in order to resolve all financial issues between the parties, including the repurchase by Telkoor of 1,136,666 shares of common stock of Telkoor beneficially owned by us for book value.

Finally, as part of the securities purchase agreement, we have agreed to pay Mr. Diamant $7,500 for a period of eighteen months from September 5, 2016 for consulting services.

Relationship with Telkoor Power Supplies Ltd.

During the years ended December 31, 2016 and 2015, we purchased approximately $0 and $594,000, respectively, of products from Telkoor Power Supplies, Ltd., a wholly-owned subsidiary of our largest then shareholder, Telkoor, of which Ben-Zion Diamant was the Chief Executive Officer and its controlling shareholder. We had no written agreement for the purchase of these products, other than purchase orders that are placed in the ordinary course of business when the products are needed. In January 2016, Telkoor sold its commercial intellectual property to Advice Electronics Ltd. As a result, of that date no further orders have been placed with Telkoor.

Purchase of IP by Digital Power Limited (“DPL”) from Telkoor Power Supplies (“TPS”)

On August 25, 2010, we and our wholly-owned subsidiary, DPL, entered into an agreement with TPS, a wholly-owned subsidiary of our largest then shareholder, Telkoor , of which Mr. Diamant is the Chief Executive Officer and controlling shareholder. Pursuant to such agreement, (1) TPS sold, assigned and conveyed to DPL all of its rights, title and interest in and to the intellectual property associated with the Compact Peripheral Component Interface 600 W AC/DC power supply series (the “Assets”) and (2) DPL granted to TPS an irrevocable license to sell the Assets in Israel on an exclusive basis. In consideration for the purchase of the Assets, DPL paid TPS $480,000. The consideration for the license provided to TPS to sell the Assets in Israel is a royalty fee of 15% of TPS's direct production costs of sales, due on a quarterly basis. In accordance with the agreement, the consideration for the IP may be reduced over a four-year period in the event annual sales for each year between 2011 and 2014 are less than a fixed threshold of units on an annual basis based upon an offset value per unit as described in the agreement. If there is a shortfall in sale of units in one annual period and in the subsequent period we sell more than the fixed unit threshold, this difference will be offset from any reduced consideration in any annual periods between 2011 and 2014. As a result of lower than anticipated sales by our DPL subsidiary of the Compact Peripheral Component Interface 600W AC/DC power supply series (CPCI 600W) through 2013, we amended our agreement with Telkoor (effective January 1, 2014 for the duration of the original agreement or until the shortfall of CPCI 600W product sales will be offset) to include additional products in addition to the original CPCI 600W product. As of December 31, 2015, the shortfall of sales of CPCI 600W products is greater than the outstanding royalties due. In January 2016, Telkoor sold its assets, including its subsidiary TPS, to Advice Electronics Ltd. Following this asset sale, the IP agreement between the Company and Telkoor was terminated.

Acquisition of Shares of Telkoor

On June 16, 2011 we acquired 1,136,666 shares of Telkoor, a then major shareholder of the Company which was listed on the Tel Aviv Stock Exchange, for $0.88 (NIS 3) per share, which represented 8.8% of the outstanding shares of Telkoor. As a result of this transaction, an existing manufacturing agreement between Digital Power and Telkoor was updated and extended. Until September 30, 2012 the investment was accounted for as an available-for-sale investment and then reclassified the accounting of the investment at cost less accumulated impairments derived from independent appraisals or available market valuations. As of December 31, 2105 the shares represented 8.4% of the outstanding shares of Telkoor which have since de-listed from the Tel Aviv Stock Exchange.

On September 22, 2016, the Company sold such shares back to Telkoor for $90,000.

Manufacturing Agreements with Telkoor and Advice Electronics Ltd.

On December 31, 2012, we entered into a Manufacturing Rights Agreement (the "Manufacturing Agreement") with Telkoor, pursuant to which among other things, Telkoor granted us the non-exclusive right to directly place purchase orders for certain products from third party manufacturers for the purpose of marketing, selling and distributing the products for telecom, industrial, medical and military market segments in North and South America in consideration for the payment of royalty fees by us to Telkoor. The royalty fees paid by us to Telkoor under the Manufacturing Agreement are between 5% and 25%, depending on the product. The Manufacturing Agreement has a term of five years from the date of signature. During the agreement, Telkoor agreed not to directly or indirectly participate or engage, or assist any other party in engaging or preparing to engage, our customers in North and South America in connection with the sale or distribution of any of the products under the Manufacturing Agreement.

In January 2016, Telkoor sold all its commercial IP to Advice Electronics Ltd. ("Advice”), an Israeli company. As part of the agreement with Advice, we entered into a new agreement with Advice, according to which our manufacturing rights for certain Telkoor products will be granted to us through August 2017 against royalty payments to Advice, after which we will be entitled to distribute the products under our branding until December 2020.

Philou Ventures, LLC

On March 9, 2017, we entered into a Preferred Stock Purchase Agreement (the "Purchase Agreement") with Philou Ventures. Philou Ventures is the Company's largest stockholder and Kristine L. Ault, one of our directors, controls and is a Manager of Philou Ventures. Pursuant to the terms of the Purchase Agreement, Philou Ventures will invest up to $5,000,000 in us through the purchase of Series B Preferred Stock ("Preferred Stock") over the Term, as specified herein. Each share of Preferred Stock shall be purchased at $10.00 up to a maximum issuance of 500,000 shares of Preferred Stock. Philou Ventures guarantees to purchase by May 31, 2017, the greater of: (i) 100,000 shares of Preferred Stock or (ii) a sufficient number of shares of Preferred Stock to ensure that we have sufficient stockholders' equity to meet the minimum continued listing standards of the NYSE MKT. In addition, for as long as the Preferred Stock is outstanding, Philou Ventures agrees to purchase additional shares of Preferred Stock in a sufficient amount in order us to meet the NYSE MKT's minimum stockholders' equity continued listing requirement subject to the maximum number of 500,000 shares of Preferred Stock (collectively, "Guaranteed Purchases"). In addition, at any time during the Term, Philou Ventures may in its sole and absolute discretion purchase additional shares of Preferred Stock, up to the 500,000 share maximum ("Voluntary Purchases"). All consideration for Voluntary Purchases shall be delivered through a series of varying payments ("Payments") by Philou Ventures, at its sole and absolute discretion, during the period commencing on the closing date and ending 36 months therefrom (the "Term"). We have the right to request, with 90-day written notice to Philou Ventures, that Guaranteed Purchases be accelerated to meet deadlines for maintaining the minimum stockholders' equity required by the NYSE MKT. The Preferred Stock shall not be callable by us for 25 years from the closing date.

In addition, for each share of Preferred Stock purchased by Philou Ventures, Philou Ventures will receive warrants to purchase shares of common stock in a number equal to the stated value of each share of Preferred Stock of $10.00 purchased divided by $0.70 at an exercise price equal to $0.70 per share of common stock

Further, Philou Ventures shall have the right to participate our future financings under substantially the same terms and conditions as other investors in those respective financings in order to maintain its then percentage ownership interest us Philou Ventures' right to participate in such financings shall accrue and accumulate provided that it still owns at least 100,000 shares of Preferred Stock.

Finally, in order to meet the requirement of the NYSE Mkt Rule 713, Philou Ventures will not (i) vote the shares of Preferred Stock; (ii) convert such shares of Preferred Stock into shares of Common Stock or (iii) exercise its rights under the Warrant until the requirement of NYSE Mkt Rule 713 has been met at a meeting, or by the requisite written consent, of the holders of the outstanding shares of Common Stock.

On December 29, 2016, MCKEA Holdings lent us $250,000 in the form of a demand note bearing simple interest at 6.0%. Kristine L. Ault is the managing member of MCKEA Holdings, which in turn, is the member of Philou Ventures. On March 24, 2017, MCKEA Holdings cancelled the $250,000 demand note to purchase 25,000 shares of

Preferred Stock and received warrants to purchase 357,143 shares of common stock at $0.70 per share.

Avalanche International, Corp.

During the quarter ended December 31, 2016, Avalanche International, Corp. (“Avalanche”) issued to the Company two $525,000 12% Convertible Promissory Notes, with identical terms, dated October 5, 2016 and November 30, 2016. In consideration for the issuance of the Notes, the Company loaned $1,000,000 to Avalanche of which $950,000 was funded as of December 31, 2016, and the remaining $50,000 was funded on February 17, 2016. The Notes, in the aggregate principal amount of $1,050,000, include an original issue discount of $50,000. The Notes accrue simple interest at 12% per annum and are convertible into shares of Avalanche common stock at $0.74536 per share.

At any time after six months from the date of the Notes, the Company may convert the principal and interest into shares of Avalanche common stock. The conversion price of the Notes is subject to adjustment for customary stock splits, stock dividends, combinations or similar events. The Notes contain standard and customary events of default including, but not limited to failure to make payments when due under the Notes and bankruptcy or insolvency of Avalanche.

On February 22, 2017, subsequent to year-end, Avalanche issued the Company a third $525,000 12% Convertible Promissory Note (the "Third Note"). During the period from February 22, 2017 to March 3, 2017, the Company funded $172,371 pursuant to this Third Note.

Avalanche is a holding company which on March 3, 2017, entered into a share exchange agreement with MTIX and the three shareholders of MTIX. Upon the terms and subject to the conditions set forth in the share exchange agreement, Avalanche will acquire MTIX from the sellers through the transfer of all issued and outstanding ordinary shares of MTIX by the sellers to Avalanche. MTIX has developed a cost effective and environment friendly material synthesis technology for textile applications utilizing the proprietary MLSE™ system which uses a combination of high voltage plasma and laser energy to imbue fabrics with desirable technical characteristics. On March 15, 2017, the Company announced that it had entered into a $50 million purchase order with MTIX to manufacture, install and service fabric treatment machines that utilize MTIX's proprietary MLSE™ system.

Milton C. Ault, III and William Horne, two of our directors, are directors of Avalanche. In addition, based on Avalanche's Form 10-K for the year ended December 31, 2015, Philou Ventures is the largest shareholder of Avalanche. Philou Ventures is our largest shareholder, and Kristine L. Ault, Milton C. Ault, III's spouse, is the manager for Philou Ventures.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES.

Marcum LLP serves as our independent registered public accounting firm for the year ended December 31, 2016. Kost Forer Gabbay & Kasierer, a member of Ernst & Young Global ("Kost Forer") was our prior independent registered public accounting firm.

Fees and Services

The following table shows the aggregate fees billed to us for professional services by Marcum LLP and Kost Forer, respectively, for the years ended December 31, 2016 and 2015:

	2016	2015
Audit Fees	$129,545	$100,000
Audit Related Fees		
Tax Fees		
All Other Fees		
Total	$129,545	$100,000

Audit Fee. This category includes the aggregate fees billed for professional services rendered for the audits of our financial statements for the years ended December 31, 2016 and 2015, for the reviews of the financial statements included in our quarterly reports on Form 10-Q during 2016 and 2015, and for other services that are normally provided by the independent auditors in connection with statutory and regulatory filings or engagements for the relevant years.

Audit-Related Fees. This category includes the aggregate fees billed in each of the last two years for assurance and related services by the independent auditors that are reasonably related to the performance of the audits or reviews of the financial statements and are not reported above under "Audit Fees," and generally consist of fees for other engagements under professional auditing standards, accounting and reporting consultations, internal control-related matters, and audits of employee benefit plans.

Tax Fees. This category includes the aggregate fees billed in each of the last two years for professional services rendered by the independent auditors for tax compliance, tax planning and tax advice.

All Other Fees. This category includes the aggregate fees billed in each of the last two years for products and services provided by the independent auditors that are not reported above under "Audit Fees," "Audit-Related Fees," or "Tax Fees."

The Audit Committee's policy is to pre-approve all services provided by our independent auditors. These services may include audit services, audit-related services, tax services and other services. The Audit Committee may also pre-approve particular services on a case-by-case basis. Our independent auditors are required to report periodically to the Audit Committee regarding the extent of services they provide in accordance with such pre-approval.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES.

(a) Exhibits

3.1	Amended and Restated Articles of Incorporation of Digital Power Corporation (1)
3.2	Amendment to the Articles of Incorporation (1)
3.3	Amendment to the Articles of Incorporation (2)
3.4	Certificate of Determination; Series B Preferred Stock (3)
3.4	Bylaws of Digital Power Corporation (1)
10.1	Avalanche International $500,000 12% Senior Secured Note
10.2	Employment Agreement, as amended, with Amos Kohn * (5)
10.3	2012 Stock Option Plan, as amended (6)
10.4	Manufacturing and Distribution Rights Agreement, dated January 7, 2016, by and between the Company and Advice Electronics Ltd. (7)
10.6	Securities Purchase Agreement among the Company, Philou Ventures, LLC and Telkoor Telecom. (8)
10.7	Rescission Agreement with Telkoor Telecom (9)
10.8	Form of 12% Secured Convertible Note (10)
10.9	Digital Power Corporation 2016 Stock Incentive Plan (11)
10.10	Preferred Stock Securities Agreement (12)
10.11	2016 Stock Incentive Plan (13)
21.1	Digital Power Limited
23.1	Consent of Kost Forer Gabbay & Kasierer
23.2	Consent of Marcum, LLP
31.1	

31.1	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act
32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act

(1) Previously filed with the Commission on October 16, 1996 as an exhibit to the Company's Registration Statement on Form SB-2.
(2) Previously filed with the Commission as Exhibit 3.1 to the Company's Form 8-K filed December 9, 2013.
(3) Previously filed with the Commission as Exhibit 3.1 to the Company's Form 8-K filed March 9, 2017.
(4) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed on October 22, 2007.
(5) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed on December 5, 2016, as amended with such amendment filed on Form 8-K on March 27, 2017.
(6) Previously filed with the Commission as Exhibit A to the Company's DEF-14A filed on June 26, 2013.
(7) Previously filed with the Commission on Form 10-K for the year ended December 31, 2015 on March 30, 2016.

(8) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed September 9, 2016.
(9) Previously filed with the Commission as Exhibit 10.2 to the Company's Form 8-K filed September 9, 2016.
(10) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed October 27, 2016
(11) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed December 30, 2016
(12) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed on March 9, 2017.
(13) Previously filed with the Commission as Exhibit 10.1 to the Company's Form 8-K filed on December 30, 2016.

101.INS XBRL Instance Document‡
101.SCH XBRL Taxonomy Extension Schema Document‡
101.CAL XBRL Taxonomy Extension Calculation Linkbase Document‡
101.DEF XBRL Taxonomy Extension Definition Linkbase Document‡
101.LAB XBRL Taxonomy Extension Label Linkbase Document‡
101.PRE XBRL Taxonomy Extension Presentation Linkbase Document‡

Footnotes to Exhibit Index

‡ XBRL information is furnished and not filed for purpose of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934, and is not subject to liability under those sections, is not part of any registration statement or prospectus to which it relates and is not incorporated or deemed to be incorporated by reference into any registration statement, prospectus or other document.

*Management contract or compensatory plan or arrangement.

SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Dated: April 10, 2017

DIGITAL POWER CORPORATION

By: /s/ Amos Kohn
Amos Kohn
President and Chief Executive Officer
(Principal Executive Officer)

By: /s/ Uri Friedlander
V.P of Finance
(Principal Accounting Officer)

In accordance with the Exchange Act, this report has been signed below by the following person on behalf of the registrant and in the capacities indicated.

/s/ Milton C. Ault, III

Milton “Todd” Ault, III, Executive Chairman of the Board

/s/ Amos Kohn

Amos Kohn, President, Chief Executive Officer, and Director

/s/ Kristine Ault

Kristine Ault, Director

/s/ William Horne

William Horne, Director

/s/ Moti Rosenberg

Moti Rosenberg, Director

/s/ Robert O. Smith

Robert O. Smith, Director

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED FINANCIAL STATEMENTS

AS OF DECEMBER 31, 2016 AND 2015

INDEX

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Shareholders of

DIGITAL POWER CORPORATION

We have audited the accompanying consolidated balance sheet of Digital Power Corporation (the "Company") and subsidiary as of December 31, 2015, and the related consolidated statements of operations, comprehensive loss, shareholders' equity and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purposes of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company and subsidiary at December 31, 2015, and the consolidated results of its operations and its cash flows for year then ended in conformity with U.S. generally accepted accounting principles.

/s/ KOST FORER GABBAY & KASIERER
Tel-Aviv, Israel KOST FORER GABBAY & KASIERER
March 30, 2016 A Member of Ernst & Young Global

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Audit Committee of the

Board of Directors and Shareholders

Of Digital Power Corporation and Subsidiary.

We have audited the accompanying consolidated balance sheet of Digital Power Corporation and Subsidiary (the "Company") as of December 31, 2016, and the related consolidated statements of operations, comprehensive loss, changes in stockholders' equity, and cash flows for the year then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Digital Power Corporation and Subsidiary, as of December 31, 2016, and the consolidated results of its operations and its cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Marcum llp

New York, NY
April 10, 2017

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED BALANCE SHEETS

U.S. dollars in thousands

	As of December 31,	
	2016	**2015**
ASSETS		
CURRENT ASSETS		
Cash and cash equivalents	$996	$1,241
Accounts receivable, net	1,439	1,240
Accounts receivable – related party	-	77
Inventories, net	1,122	1,542
Prepaid expenses and other current assets	285	187
Total current assets	3,842	4,287
Property and equipment, net	570	709
Investments, - related parties, net of original issue discount of $45 and $0, respectively.	1,036	90
Deposits	24	13
TOTAL ASSETS	$5,472	$5,099

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED BALANCE SHEETS (continued)

U.S. dollars in thousands

	As of December 31,	
	2016	**2015**
LIABILITIES AND STOCKHOLDERS' EQUITY		
CURRENT LIABILITIES		
Accounts payable	$1,231	$937
Note payable – related party	250	-
Advances from customers and deferred revenues	-	211
Other current liabilities	398	480
Total current liabilities	1,879	1,628
Convertible notes – related party, net of unamortized issuance discount of $497	34	-
Total liabilities	1,913	1,628
COMMITMENTS		
STOCKHOLDERS' EQUITY		
Series A Redeemable Convertible Preferred Stock, no par value, - 500,000 shares authorized; 0 shares issued and outstanding at December 31, 2016 and 2015.	-	-
Preferred Stock, no par value – 1,500,000 shares authorized; 0 shares issued and outstanding at December 31, 2016 and 2015.	-	-
Common Stock, no par value – 30,000,000 shares authorized; 7,677,637 and 6,775,971 shares issued and outstanding at December 31, 2016 and 2015, respectively.	-	-
Additional paid-in-capital	16,537	14,965
Accumulated deficit	(12,158)	(11,036)
Accumulated other comprehensive loss	(820)	(458)
Total stockholder's equity	3,559	3,471
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	$5,472	$5,099

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF OPERATIONS

U.S. dollars in thousands (except per share data)

	For the Years Ended December 31,	
	2016	**2015**
Revenues	$7,596	$7,766
Cost of revenues	4,890	5,053
Gross profit	2,706	2,713
Operating expenses:		
Engineering and product development	709	894
Selling and marketing	916	1,195
General and administrative	2,300	1,627
Total operating expenses	3,925	3,716
Operating loss	(1,219)	(1,003)
Other income and expenses:		
Impairment of investment – related party	-	(110)
Other income, net	77	16
Total other income and (expenses)	77	(94)
Loss before income tax benefits	(1,142)	(1,097)
Benefit for income taxes	20	1
Net loss	$(1,122)	$(1,096)
Net loss per common share – Basic and diluted	$(0.16)	$(0.16)
Weighted average shares of common stock – Basic and diluted	6,917	6,776

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS

U.S. dollars in thousands

	For the Years Ended December 31,	
	2016	**2015**
Net Loss	$(1,122)	$(1,096)
Other comprehensive loss:		
Change in foreign currency translation adjustment	(362)	(100)
Comprehensive loss	$(1,484)	$(1,196)

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY

For the Years Ended December 31, 2016 and 2015

U.S. dollars in thousands (except share data)

	Common stock	Additional paid-in-capital	Accumulated Deficit	Other Accumulated comprehensive loss	Total stockholders' equity
Balance at January 1, 2015	6,775,971	$ 14,739	$ (9,940)	$ (358)	$ 4,441
Stock-based compensation – options	-	226	-	-	226
Comprehensive loss:					
Net loss	-	-	(1,096)	-	(1,096)
Foreign currency translation loss	-	-	-	(100)	(100)
Balance at December 31, 2015	6,775,971	14,965	(11,036)	(458)	3,471
Stock-based compensation – options	-	520	-	-	520
Stock-based compensation - warrants	-	23	-	-	23
Issuance of common stock and warrants for cash	901,666	541	-	-	541
Beneficial conversion feature in connection with convertible notes	-	329	-	-	329
Fair value warrants issued in connection with convertible notes	-	159	-	-	159
Comprehensive loss:					
Net loss	-	-	(1,122)	-	(1,122)
Foreign currency translation loss	-	-	-	(362)	(362)
Balance at December 31, 2016	7,677,637	$ 16,537	$ (12,158)	$ (820)	$ 3,559

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

CONSOLIDATED STATEMENTS OF CASH FLOWS

U.S. dollars in thousands

	For the Years Ended December 31,	
	2016	**2015**
Cash flows from operating activities:		
Net loss	$(1,122)	$(1,096)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	161	214
Amortization of debt discount	34	-
Accretion of discount on note receivable	(2)	-
Provision for bad debts	32	-
Reserve for inventory	68	9
Impairment of investment – related party	-	110
Stock-based compensation	543	226
Changes in operating assets and liabilities:		
Accounts receivable	(311)	288
Accounts receivable – related party	77	-
Inventories	209	57
Prepaid expenses and other current assets	(119)	(14)
Other assets	(11)	-
Accounts payable	322	(258)
Advances from customers and deferred revenues	(181)	-
Other current liabilities	(58)	(65)
Net cash used in operating activities	(358)	(529)
Cash flows from investing activities:		
Purchase of property and equipment	(85)	(306)
Proceeds from sale of investment – related party	90	-
Investments – related party	(1,034)	-
Net cash used in investing activities	(1,029)	(306)
Cash flows from financing activities:		
Proceeds from sales of common stock and warrants	541	-
Net proceeds from issuances of convertible notes – related party	488	-
Proceeds from short term loan – related party	250	-

Net cash provided by financing activities	1,279	-
Effect of exchange rate on cash and cash equivalents	(137)	(34)
Decrease in cash and cash equivalents	(245)	(869)
Cash and cash equivalents - Beginning of the year	1,241	2,110
Cash and cash equivalents - End of the year	$996	$1,241

The accompanying notes are an integral part of these consolidated financial statements.

DIGITAL POWER CORPORATION AND SUBSIDIARY

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

December 31, 2016 and 2015

U.S. dollars in thousands (except share and per share data)

NOTE 1: GENERAL

Digital Power Corporation (***"DPC"***) was incorporated in 1969, under the General Corporation Law of the State of California. DPC and Digital Power Limited (***"DPL"***), a wholly owned subsidiary, located in the United Kingdom (DPC and DPL collectively the "Company"), are currently engaged in the design, manufacture and sale of switching power supplies and converters. The Company has two reportable geographic segments - North America (sales through DPC) and Europe (sales through DPL).

NOTE 2: LIQUIDITY, FINANCIAL CONDITION AND MANAGEMENT'S PLANS

The Company incurred a net loss of $1,122 for the year ended December 31, 2016 and had an accumulated deficit of $12,158 at December 31, 2016 from having incurred losses since its inception. The Company had $1,963 of working capital at December 31, 2016 and used approximately $358 of cash in its operating activities during the year ended December 31, 2016. The Company has financed its operations principally through issuances of convertible debt, a promissory note and equity securities.

On September 5, 2016, the Company entered into a rescission agreement with Telkoor Telecom Ltd., a related party entity, pursuant to which the Company sold back its investment of 1,136,666 shares of common stock of Telkoor at its carrying value of $90. (See Note 7).

On October 21, 2016, the Company issued a 12% convertible secured note in the principal amount of $530 to an existing stockholder of the Company for a net proceeds of $488 (See Note 10).

On November 15, 2016, the Company sold 901,666 units for aggregate proceeds of $541, each unit consisted of a share of common stock and a warrant to purchase one share of common stock (See Note 10).

On December 29, 2016, the Company entered into an agreement with MCKEA Holdings, LLC (“MCKEA”), a related party, for a demand promissory note in the amount of $250 bearing interest at the rate of 6% per annum (See Note 9).

During the fourth quarter of 2016, the Company invested $950 in Avalanche International Corporation (“AVLP”), a related party entity, through convertible notes with an aggregate face value of $997, additionally, the Company acquired shares of common stock of AVLP for approximately $84 (see Note 7).

In February 2017, the Company issued demand promissory notes and warrants to purchase 333,333 shares of common stock at $ 0.70 per share for aggregate proceeds of $400. Further in February 2017, the holders of $400 in demand promissory notes agreed to extinguish their $400 of debt by purchasing 666,667 shares of common stock of the Company at $0.60 per share (See Note 16).

On March 9, 2017, the Company entered into a preferred stock purchase agreement with Philou Ventures LLC (“Philou”), a related party entity, pursuant to which Philou agreed to invest up to $5,000,000 in the Company through the purchase of Series B Preferred Stock over a term of 36 months (See Note 13). On March 24, 2017, Philou purchased 25,000 shares of Series B Preferred Stock pursuant to the preferred stock purchase agreement in consideration of cancellation of Company debt of $250 due to MCKEA.

On March 15, 2017, Company entered into a subscription agreement with one investor for the sale of 500,000 shares of common stock at $0.60 per share for the aggregate purchase price of $300.

In March 2017, the Company was awarded a 3-year, $50 million purchase order by MTIX Ltd. (“MTIX") to manufacture, install and service the Multiplex Laser Surface Enhancement (‘MLSE) plasma-laser system (See Note 14).

On March 28, 2017, the Company issued $270 in demand promissory notes to several investors, then on April 5, 2017, the Company canceled these promissory notes by issuing 360,000 shares of common stock at $0.75 per share, in addition, the Company also issued warrants to purchase 180,000 shares of common stock at $0.90 per share to these investors (See Note 16).

The Company expects to continue to incur losses for the foreseeable future and needs raise additional capital to continue its business development initiatives and to support its working capital requirements. Management believes that the MLSE purchase order of $50 million will be a source of revenue and generating cash flows. Management believes that the Company has access to capital resources through potential public or private issuance of debt or equity securities. If the Company is unable to raise additional capital, it may be required to curtail operations and take additional measures to reduce costs, including reducing its workforce, eliminating outside consultants and reducing legal fees in order to conserve its cash in amounts sufficient to sustain operations and meet its obligations.

Based on the above, management believes that the Company has sufficient capital resources to sustain operations through at least April 10, 2018.

NOTE 3: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Basis of Presentation

The consolidated financial statements have been prepared in accordance with United States generally accepted accounting principles (***“U.S. GAAP”***).

Principles of Consolidation

The consolidated financial statements include the accounts of DPC and its wholly-owned subsidiary, DPL. All significant intercompany accounts and transactions have been eliminated in consolidation. In addition, DPC and DPL share certain employees and various costs. Such expenses are principally paid by DPC. Due to the nature of the parent and subsidiary relationship, the individual financial position and operating results of DPC and DPL may be different from those that would have been obtained had they been autonomous.

Use of Estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates, judgments and assumptions. The Company's management believes that the estimates, judgments and assumptions used are reasonable based upon information available at the time they are made. These estimates, judgments and assumptions can affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates. Key estimates include fair value of certain financial instruments, reserve for trade receivables and inventories, carrying amounts of investments, accruals of certain liabilities, and deferred income taxes and related valuation allowance.

Foreign Currency Translation

A substantial portion of the Company’s revenues are generated in U.S. dollars (***"U.S. dollar"***). In addition, a substantial portion of the Company’s costs are incurred in U.S. dollars. Company management has determined that the U.S. dollar is the currency of the primary economic environment in which it operates.

Accordingly, monetary accounts maintained in currencies other than the U.S. dollar are re-measured into U.S. dollars in accordance with Financial Accounting Standards Board (***“FASB”***) issued Accounting Standards Codification (***“ASC”***) No. 830, *Foreign Currency Matters* (***"ASC No. 830"***). All transaction gains and losses from the re-measurement of monetary balance sheet items are reflected in the statements of operations as financial income or expenses as appropriate.

The financial statements of the DPL, whose functional currency has been determined to be its local currency, British Pound (***"GBP"***), have been translated into U.S. dollars in accordance with ASC No. 830. All balance sheet accounts have been translated using the exchange rates in effect at the balance sheet date. Statement of operations amounts have been translated using the average exchange rate in effect for the reporting period. The resulting translation adjustments are reported as other comprehensive income (loss) in the consolidated statement of comprehensive income (loss) and accumulated comprehensive income (loss) in statement of changes in stockholders' equity.

Cash and Cash Equivalents

The Company considers all highly liquid investments with a maturity of three months or less at the time of purchase to be cash equivalents. Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents. The Company's cash is maintained in checking accounts, money market funds and certificates of deposits with reputable financial institutions. These balances may, at times, exceed the U.S. Federal Deposit Insurance Corporation insurance limits. The Company has cash and cash equivalents of $736 and $868 at December 31, 2016 and 2015, respectively, in the United Kingdom (***"U.K."***). The Company has not experienced any losses on deposits of cash and cash equivalents.

Marketable Securities

The Company classifies its investments in shares of common stock of Telkoor and AVLP in accordance with ASC No. 320, *Investment in Debt and Equity Securities* (***"ASC No. 320"***) and ASC No. 325, *Investment – Other* (***"ASC No. 325"***). Marketable securities classified as "available-for-sale securities" and carried at fair value, based on quoted market prices. Unrealized gains and losses are reported in a separate component of stockholder's equity in "accumulated other comprehensive loss" in equity. When evaluating the investment for other-than-temporary impairment, the Company reviews factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and any changes thereto, and the Company's intent to sell, or whether it is more likely than not that it will be required to sell, the investment before recovery of the investment's amortized cost basis.

Equity securities that do not have readily determinable fair values (i.e., non-marketable equity securities) and are not required to be accounted for under the equity method are typically carried at cost (i.e., cost method investments), as described in ASC No. 325-20.

The Company classifies its investment in debt securities of AVLP in accordance with ASC No. 320 and ASC No. 825. Investment in convertible promissory notes in AVLP is classified as available-for-sale securities and is carried at fair value based on quoted market prices. Unrealized gains and losses are reported in a separate component of stockholder's equity in "accumulated other comprehensive loss" in equity. When evaluating the investment for other-than-temporary impairment, the Company reviews factors such as the length of time and extent to which fair value has been below cost basis, the financial condition of the issuer and any changes thereto, and the Company's intent to sell, or whether it is more likely than not that it will be required to sell, the investment before recovery of the investment's amortized cost basis. Additionally, the investment in debt securities of AVLP qualifies for application of fair value option in

accordance with ASC No. 825.

Accounts Receivable and Allowance for Doubtful Accounts

The Company's receivables are recorded when billed and represent claims against third parties that will be settled in cash. The carrying amount of the Company's receivables, net of the allowance for doubtful accounts, represents their estimated net realizable value. The Company individually reviews all accounts receivable balances and based upon an assessment of current creditworthiness, estimates the portion, if any, of the balance that will not be collected. The Company estimates the allowance for doubtful accounts based on historical collection trends, age of outstanding receivables and existing economic conditions. If events or changes in circumstances indicate that a specific receivable balance may be impaired, further consideration is given to the collectability of those balances and the allowance is adjusted accordingly. A customer's receivable balance is considered past-due based on its contractual terms. Past-due receivable balances are written-off when the Company's internal collection efforts have been unsuccessful in collecting the amount due. Based on an assessment as of December 31, 2016 and 2015, of the collectability of invoices, accounts receivable are presented net of an allowance for doubtful accounts of $32 and nil, respectively

Inventories

Inventories are stated at the lower of cost or market value. Inventory write-offs are provided to cover risks arising from slow-moving items or technological obsolescence.

Cost of inventories is determined as follows:

Raw materials, parts and supplies - using the "first-in, first-out" method.

Work-in-progress and finished products - on the basis of direct manufacturing costs with the addition of indirect manufacturing costs.

The Company periodically assesses its inventories valuation in respect of obsolete and slow moving items by reviewing revenue forecasts and technological obsolescence. When inventories on hand exceed the foreseeable demand or become obsolete, the value of excess inventory, which at the time of the review was not expected to be sold, is written off.

During the years ended December 31, 2016 and 2015, the Company recorded inventory write-offs of $84 and $9, respectively, within the cost of revenue.

Property and Equipment, Net

Property and equipment as well as an intangible asset are stated at cost, net of accumulated depreciation and amortization. Repairs and maintenance costs are expensed as incurred. Depreciation and amortization are calculated using the straight-line method over the estimated useful lives of the assets, at the following annual rates:

	Useful lives (in years)
Computer, software and related equipment	3 - 5
Office furniture and equipment	5 - 10
Leasehold improvements	Over the term of the lease of the life of the asset,

whichever
is shorter

Long-Lived Assets

The long-lived assets of the Company are reviewed for impairment in accordance with ASC No. 360, *Property, Plant, and Equipment*, whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. As of December 31, 2016 and 2015, no impairment charges were necessary.

Revenue Recognition

The Company generates revenues from the sale of its products through a direct and indirect sales force.

Revenues from products are recognized in accordance with ASC No. 605, *Revenue Recognition*, when the following criteria are met: persuasive evidence of an arrangement exists, delivery has occurred, the seller's price to the buyer is fixed or determinable, no further obligation exists and collectability is reasonably assured.

Generally, the Company does not grant a right of return. However, certain distributors are allowed, in the six months after the initial stock purchase, to rotate stock that has not been sold for other products. Revenues subject to stock rotation rights are deferred until the products are sold to the end customer or until the rotation rights expire.

Service revenues are deferred and recognized on a straight-line basis over the term of the service agreement. Service revenues are immaterial in proportion to the Company's revenues.

Warranty

The Company offers a warranty period for all of its products. Warranty periods range from one to two years depending on the product. The Company estimates the costs that may be incurred under its warranty and records a liability in the amount of such costs at the time product revenue is recognized. Factors that affect the Company's warranty liability include the number of units sold, historical rates of warranty claims and cost per claim. The Company periodically assesses the adequacy of its recorded warranty liability and adjusts the amounts as necessary.

As of December 31, 2016 and 2015, the Company has accrued warranty liability of $86 and $94, respectively.

Income Taxes

The Company determines its income taxes under the asset and liability method in accordance with FASB ASC No. 740, *Income Taxes*, which requires recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the financial statements or tax returns. Under this method, deferred tax assets and liabilities are based on the differences between the financial statement and tax bases of assets and liabilities using enacted tax rates in effect for the fiscal year in which the differences are expected to reverse. Deferred tax assets are reduced by a valuation allowance to the extent management concludes it is more likely than not that the assets will not be realized. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the fiscal years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the Statements of Income and Comprehensive Income in the period that includes the enactment date.

The Company accounts for uncertain tax positions in accordance with ASC No. 740-10-25**.** ASC No. 740-10-25 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC No. 740-10-25, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. To the extent that the final tax outcome of these matters is different than the amount recorded, such differences impact income tax expense in the period in which such determination is made. Interest and penalties, if any, related to accrued liabilities for potential tax assessments are included in income tax expense. ASC No. 740-10-25 also requires management to evaluate tax positions taken by the Company and recognize a liability if the Company has taken uncertain tax positions that more likely than not would not be sustained upon examination by applicable taxing authorities. Management of the Company has evaluated tax positions taken by the Company and has concluded that as of December 31, 2016 and 2015, there are no uncertain tax positions taken, or expected to be taken, that would require recognition of a liability that would require disclosure in the financial statements.

Common Stock Purchase Warrants and Other Derivative Financial Instruments

The Company classifies Common Stock purchase warrants and other free standing derivative financial instruments as equity if the contracts (i) require physical settlement or net-share settlement or (ii) give the Company a choice of net-cash settlement or settlement in its own shares (physical settlement or net-share settlement). The Company classifies any contracts that (i) require net-cash settlement (including a requirement to net cash settle the contract if an event occurs and if that event is outside the control of the Company), (ii) give the counterparty a choice of net-cash settlement or settlement in shares (physical settlement or net-share settlement), or (iii) contain reset provisions as either an asset or a liability. The Company assesses classification of its freestanding derivatives at each reporting date to determine whether a change in classification between assets and liabilities is required. The Company determined that certain freestanding derivatives, which principally consist of issuance of warrants to purchase shares of common in connection with convertible notes, units and to employers of the Company, satisfy the criteria for classification as equity instruments as these warrants do not contain cash settlement features or variable settlement provision that cause them to not be indexed to the Company’s own stock.

Stock-Based Compensation

The Company accounts for stock-based compensation in accordance with ASC 718 "Compensation – Stock Compensation" ("ASC 718").

ASC 718 requires companies to estimate the fair value of equity-based payment awards on the date of grant using an option-pricing model. The value of the portion of the award that is ultimately expected to vest is recognized as an expense over the requisite service periods in the Company's consolidated statements of operations.

The Company estimates the fair value of stock options granted under ASC 718 using the Black-Scholes option-pricing model that uses the following assumptions.

Expected volatility is based on historical volatility that is representative of future volatility over the expected term of the options. The expected term of options granted was determined based on the simplified method, which is calculated as the midpoint between the vesting date and the end of the contractual term of the option. The Company uses the simplified method as it has determined that sufficient data is not available to develop an estimate of the expected option term based upon historical participant behavior. The risk free interest rate is based on the yield of U.S. Treasury bonds with equivalent terms. The dividend yield is based on the Company's historical and future expectation of dividends payouts. The Company has not paid cash dividends historically and has no plans to pay cash dividends in the foreseeable future.

The Company recognizes share-based compensation expenses for the value of its awards based on the straight line method over the requisite service period of each of the awards.

During the years 2016 and 2015, the Company estimated the fair value of stock options granted using the Black-Scholes option pricing model with the following weighted average assumptions

	2016		**2015**	
Weighted average fair value	$0.46		$0.44	
Dividend yield	0%		0%	
Expected volatility	97.7% -	98.2%	87.6% -	88.3%
Risk-free interest rate	1.26% -	1.77%	1.60% -	1.91%
Expected life (years)	5		5.5 -	7

Convertible Instruments

The Company accounts for hybrid contracts that feature conversion options in accordance with applicable GAAP. ASC No. 815 *Derivatives and Hedging Activities*, ("ASC 815") requires companies to bifurcate conversion options from their host instruments and account for them as freestanding derivative financial instruments according to certain criteria. The criteria includes circumstances in which (a) the economic characteristics and risks of the embedded derivative instrument are not clearly and closely related to the economic characteristics and risks of the host contract, (b) the hybrid instrument that embodies both the embedded derivative instrument and the host contract is not re-measured at fair value under otherwise applicable GAAP with changes in fair value reported in earnings as they occur and (c) a separate instrument with the same terms as the embedded derivative instrument would be considered a derivative instrument.

Conversion options that contain variable settlement features such as provisions to adjust the conversion price upon subsequent issuances of equity or equity linked securities at exercise prices more favorable than that featured in the hybrid contract generally result in their bifurcation from the host instrument.

The Company accounts for convertible instruments, when the Company has determined that the embedded conversion options should not be bifurcated from their host instruments, in accordance with ASC 470-20 “Debt with Conversion and Other Options” (“ASC 470-20”). Under ASC 470-20 the Company records, when necessary, discounts to convertible notes for the intrinsic value of conversion options embedded in debt instruments based upon the differences between the fair value of the underlying common stock at the commitment date of the note transaction and the effective conversion price embedded in the note. The Company accounts for convertible instruments (when the Company has determined that the embedded conversion options should be bifurcated from their host instruments) in accordance with ASC 815.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, long term deposits and trade receivables.

Cash and cash equivalents are invested in banks in the U.S. and in the UK. Such deposits in the United States may be in excess of insured limits and are not insured in other jurisdictions.

Trade receivables of the Company and its subsidiary are mainly derived from sales to customers located primarily in the U.S. and in Europe. The Company performs ongoing credit evaluations of its customers and to date has not experienced any material losses. An allowance for doubtful accounts is determined with respect to those amounts that the Company and its subsidiary have determined to be doubtful of collection

Comprehensive Loss

The Company reports comprehensive loss in accordance with ASC 220, "Comprehensive Income". This Statement establishes standards for the reporting and presentation of comprehensive loss and its components in a full set of general purpose financial statements. Comprehensive loss generally represents all changes in equity during the period except those resulting from investments by, or distributions to, stockholders. The Company determined that its items of other comprehensive loss relates to changes in foreign currency translation adjustments.

Fair value of Financial Instruments

In accordance with ASC 820, “Fair Value Measurements and Disclosures”, fair value is defined as the exit price, or the amount that would be received for the sale of an as set or paid to transfer a liability in an orderly transaction between market participants as of the measurement date.

The guidance also establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs are inputs that market participants would use in valuing the asset or liability and are developed based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company’s assumptions about the factors that market participants would use in valuing the asset or liability. The guidance establishes three levels of inputs that may be used to measure fair value:

Level 1:	Quoted market prices in active markets for identical assets or liabilities.
Level 2:	Other observable inputs other than Level 1 prices such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data.
Level 3:	Unobservable inputs reflecting the reporting entity’s own assumptions.

The carrying amounts of financial instruments carried at cost, including cash and cash equivalents, trade receivables and trade receivable – related party, investments, notes receivable, trade payables and trade payables – related party approximate their fair value due to the short-term maturities of such instruments.

As of December 31, 2016, the fair value of the Company's investments was $1,036 ($90 as of December 31, 2015). Investments as of December 31, 2016 were concentrated in AVLP. The Company's investment in AVLP is comprised of convertible promissory notes of $952, net of unamortized discount and marketable equity securities of $84 which are classified as available-for-sale investments. For investments in marketable equity securities, the Company took into consideration general market conditions, the duration and extent to which the fair value is below cost, and the Company’s ability and intent to hold the investment for a sufficient period of time to allow for recovery of value in the foreseeable future. As a result of this analysis, the Company has determined that its cost basis in Avalanche equitable securities approximates the current fair value

Consistent with the guidance at ASC 835, the Company’s presumption is that the fair value of its convertible promissory notes in Avalanche have a present value equivalent to the cash proceeds exchanged. Further, the discount shall be reported in the balance sheet as a direct deduction from the face amount of the convertible promissory notes. Thus, the Company has determined that the amortized cost of its convertible promissory notes approximates fair value and are subject to a periodic impairment review. The interest income, including amortization of the discount arising at acquisition, for the convertible promissory notes are included in earnings. In the future, if the Company does not expect to recover the entire amortized cost basis, the Company shall recognize other-than-temporary impairments in other comprehensive income (loss).

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

The following table sets forth the Company’s financial instruments that were measured at fair value on a recurring basis by level within the fair value hierarchy:

	Fair Value Measurement at December 31, 2016			
	Total	**Level 1**	**Level 2**	**Level 3**
Investments – AVLP – a related party controlled by Philou, a majority shareholder of the Company	$1,036	$ 84	$952	$ -

	Fair Value Measurement at December 31, 2015			
	Total	**Level 1**	**Level 2**	**Level 3**
Investment – Telkoor – a related party, the Company's majority shareholder until September 22, 2016	$90	$ -	$ -	$ 90

As of December 31, 2015, the Company valued the investment in Telkoor for $90.

The following table sets forth a summary of the changes in the fair value of the Company's Level 3 financial instruments for the years ended December 31, 2016 and 2015, which are treated as investments, as follows:

	2016	**2015**
Balance at the beginning of year	$90	$207
Impairment	-	(110)
Effect of exchange rate	-	(7)
Disposition of investments	(90)	-
Balance at the end of year	$-	$90

Debt Discounts

The Company accounts for debt discount according to ASC No. 470-20, *Debt with Conversion and Other Options*. Debt discounts are amortized through periodic charges to interest expense over the term of the related financial instrument using the effective interest method. During the years ended December 31, 2016 and 2015, the Company recorded amortization of debt discounts of $2 and nil, respectively

Net Loss per Share

Net loss per share is computed by dividing the net loss to common stockholders by the weighted average number of common shares outstanding. The calculation of the basic and diluted earnings per share is the same for all periods presented, as the effect of the potential common stock equivalents is anti-dilutive due to the Company's net loss position for all periods presented. The Company has included 317,460 warrants, with an exercise price of $.01, in its earnings per share calculation for the year ended December 31, 2016. Anti-dilutive securities consisted of the following at December 31:

	2016	**2015**
Stock options	2,256,000	1,146,000
Warrants	1,431,666	-
Convertible notes	963,636	-
Total	4,651,302	1,146,000

Recently Issued and Adopted Accounting Standards

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board, (FASB), or other standard setting bodies and adopted by the Company as of the specified effective date. Unless otherwise discussed, the impact of recently issued standards that are not yet effective will not have a material impact on the Company's consolidated financial position or results of operations upon adoption.

In October 2016, the FASB issued updated guidance related to the recognition of income tax consequences of an intra-entity transfer of an asset other than inventory. This guidance will be effective for the first quarter of tax year 2018; however, early adoption is permitted. The Company is evaluating the impact that this guidance will have its consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, *"Statement of Cash Flows (Topic 230)"* ("ASU 2016-15"), which seeks to reduce the existing diversity in practice in how certain cash receipts and cash payments are presented and classified in the statement of cash flows. For public entities, Update 2016-15 becomes effective for fiscal years beginning after

December 15, 2017, including interim periods within those fiscal years, with early adoption permitted. The Company is currently evaluating the provisions of Update 2016-15 and assessing the impact, if any, it may have on its consolidated financial position, results of operations, cash flows or financial statement disclosures.

In March 2016, the FASB issued ASU 2016-09, *"Compensation - Stock Compensation (Topic 718)"* ("ASU 2016-09"), which seeks to simplify accounting for share-based payment transactions including income tax consequences, classification of awards as either equity or liabilities, and the classification on the statement of cash flows. For public entities, Update 2016-09 becomes effective for fiscal years beginning after December 15, 2016, including interim periods within those fiscal years, with early adoption permitted. The Company has not yet determined the effect that ASU 2016-09 will have on its consolidated financial position, results of operations or financial statement disclosures.

In March 2016, the FASB issued guidance that involves several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. This guidance will be effective for the first quarter of tax year 2017; however, early adoption is permitted. The Company is evaluating the impact that this guidance will have on its consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, *"Leases"*. The new standard provides guidance intended to improve financial reporting about leasing transaction. The ASU affects all companies that lease assets such as real estate, airplanes and manufacturing equipment. The ASU will require companies that lease assets to recognize on the balance sheet the assets and liabilities for the rights and obligations created by those leases. The new standard will take effect for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. Early adoption is permitted. The Company has not determined the potential effects of this ASU on its consolidated financial statements.

In January 2016, the FASB issued ASU 2016-01, *"Recognition and Measurement of Financial Assets and Liabilities"*("ASU 2016-01"). ASU 2016-01 requires equity investments (excluding equity method investments and investments that are consolidated) to be measured at fair value with changes in fair value recognized in net income. Equity investments that do not have a readily determinable fair value may be measured at cost, adjusted for impairment and observable price changes. The ASU also simplifies the impairment assessment of equity investments, eliminates the disclosure of the assumptions used to estimate the fair value that is required to be disclosed for financial instruments measured at cost on the balance sheet and requires the exit price to be used when measuring fair value of financial instruments for disclosure purposes. Under ASU 2016-01, changes in fair value (resulting from instrument-specific credit risk) will be presented separately in other comprehensive income for liabilities measured using the fair value option and financial assets and liabilities will be presented separately by measurement category and type either on the balance sheet or in the financial statement disclosures. ASU 2016-01 is effective for fiscal years beginning after December 15, 2017, and interim periods within those fiscal years. The Company has not yet determined the effect that ASU 2016-01 will have on its consolidated financial position, results of operations, or financial statement disclosures.

In August 2014, the FASB issued ASU 2014-15, *"Presentation of Financial Statements-Going Concern (Subtopic 205-40): Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern."* The amendments is this ASU are intended to provide guidance on the responsibility of reporting entity management. Specifically, this ASU provides guidance to management related to evaluating whether there is substantial doubt about the reporting entity's ability to continue as a going concern and about related financial statement note disclosures. Although the presumption that a reporting entity will continue to operate as a going concern is fundamental to the preparation of financial statements, prior to the issuance of this ASU, there was no guidance in U.S. generally accepted accounting principles (U.S. GAAP) related to the concept. Due to the lack of guidance in U.S. GAAP, practitioners and their clients often faced challenges in determining whether, when, and how a reporting entity should disclose the relevant information in its financial statements. As a result, the FASB issued this guidance to require management evaluation and potential financial statement disclosures. This ASU will be effective for financial statements with periods ending after December 15, 2016. The Company adopted the ASU during the fiscal year and corrected in this report.

In May 2014, the FASB issued ASU 2014-09, *"Revenue from Contracts with Customers (Topic 606)"* ("ASU 2014-09"). ASU 2014-09 supersedes the revenue recognition requirements in ASC Topic 605, *"Revenue Recognition"* and some cost guidance included in ASC Subtopic 605-35, *"Revenue Recognition - Construction-Type and Production-Type Contracts."* The core principle of ASU 2014-09 is that revenue is recognized when the transfer of goods or services to customers occurs in an amount that reflects the consideration to which the Company expects to be entitled in exchange for those goods or services. ASU 2014-09 requires the disclosure of sufficient information to enable readers

of the Company's financial statements to understand the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts. ASU 2014-09 also requires disclosure of information regarding significant judgments and changes in judgments, and assets recognized from costs incurred to obtain or fulfill a contract. ASU 2014-09 provides two methods of retrospective application. The first method would require the Company to apply ASU 2014-09 to each prior reporting period presented. The second method would require the Company to retrospectively apply ASU 2014-09 with the cumulative effect recognized at the date of initial application. ASU 2014-09 will be effective for the Company beginning in fiscal 2019 as a result of ASU 2015-14, *"Revenue from Contracts with Customers (Topic 606): Deferral of the Effective Date,"* which was issued by the FASB in August 2015 and extended the original effective date by one year. The Company is currently evaluating the impact of adopting the available methodologies of ASU 2014-09 and 2015-14 upon its financial statements in future reporting periods. The Company has not yet selected a transition method. The Company is in the process of evaluating the new standard against its existing accounting policies, including the timing of revenue recognition, and its contracts with customers to determine the effect the guidance will have on its financial statements and what changes to systems and controls may be warranted.

There have been four new ASUs issued amending certain aspects of ASU 2014-09, ASU 2016-08, *"Principal versus Agent Considerations (Reporting Revenue Gross Versus Net),"* was issued in March, 2016 to clarify certain aspects of the principal versus agent guidance in ASU 2014-09. In addition, ASU 2016-10, *"Identifying Performance Obligations and Licensing,"* issued in April 2016, amends other sections of ASU 2014-09 including clarifying guidance related to identifying performance obligations and licensing implementation. ASU 2016-12, *"Revenue from Contracts with Customers - Narrow Scope Improvements and Practical Expedients"* provides amendments and practical expedients to the guidance in ASU 2014-09 in the areas of assessing collectability, presentation of sales taxes received from customers, noncash consideration, contract modification and clarification of using the full retrospective approach to adopt ASU 2014-09. Finally, ASU 2016-20, *"Technical Corrections and Improvements to Topic 606, Revenue from Contracts with Customers,"* was issued in December 2016, and provides elections regarding the disclosures required for remaining performance obligations in certain cases and also makes other technical corrections and improvements to the standard. With its evaluation of the impact of ASU 2014-09, the Company will also consider the impact on its financial statements related to the updated guidance provided by these four new ASUs.

The Company has considered all other recently issued accounting standards and does not believe the adoption of such standards will have a material impact on its consolidated financial statements.

NOTE 4: INVENTORIES

At December 31, 2016 and 2015, inventories consist of:

	2016	**2015**
Raw materials, parts and supplies	$271	$336
Work-in-progress	238	191
Finished products	613	1,015
Total inventories	$1,122	$1,542

NOTE 5: PROPERTY AND EQUIPMENT, NET

At December 31, 2016 and 2015, property and equipment consist of:

	2016	**2015**
Computer, software and related equipment	$1,652	$1,726

Office furniture and equipment	240	257
Leasehold improvements	699	771
	2,591	2,754
Accumulated depreciation and amortization	(2,021)	(2,045)
Property and equipment, net	$570	$709

For the years ended December 31, 2016 and 2015, depreciation and amortization expense amounted to $161 and $214, respectively.

NOTE 6: INTANGIBLE ASSET, NET

On August 25, 2010, the Company entered into an agreement with Telkoor Power Supplies Ltd. ("TPS"), a subsidiary of Telkoor, pursuant to which, (i) TPS sold, assigned and conveyed to the Company all of its rights, title and interest in and to the intellectual property associated with the Compact Peripheral Component Interface 600 W AC/DC power supply series (the “Assets” or “IP”) and (ii) the Company granted to TPS an irrevocable license to sell the Assets in Israel on an exclusive basis. The IP was purchased in order to decrease lead time and costs of the production process. In consideration for the purchase of the IP, the Company paid TPS an amount of $480. The consideration for the right to sell the Assets in Israel will be paid to the Company as a yearly royalty fee of 15% of TPS's direct production costs of sales.

TPS will provide the Company training and technical support, if necessary, for a period of 60 months in order to enable the Company to properly and effectively use the IP to manufacture the Assets. In accordance with the agreement, the consideration for the IP may be reduced over a four-year period in the event that annual sales for each year between 2011 and 2014 are less than a fixed threshold of units on an annual basis based on an offset value per unit as described in the agreement. If there is a shortfall in sale of units in one annual period and in the subsequent period the Company sells more than the fixed unit threshold, this difference will be offset from any reduced consideration in any annual periods between 2011 and 2014. As a result of lower than anticipated sales by the Company of the Compact Peripheral Component Interface 600 W AC/DC power supply series (CPCI 600W) through 2013, the Company amended its agreement with Telkoor (effective January 1, 2014 for the duration of the original agreement or until the shortfall of CPCI 600W product sales will be offset) to include additional products in addition to the original CPCI 600W product. The Company will not be required to make any royalty payments to Telkoor under the manufacturing agreement with Telkoor until the shortfall of CPCI 600W product sales will be offset. As of December 31 2015 the remaining shortfall balance was $86. During the year 2016, the Company paid royalties to Advice, Telkoor refunded $40 from this amount by services to the Company and the balance cancelled with the recession agreement. (See Note 7)

The useful life of the IP has been determined to be five years and the amortization method is the straight-line method, as management considers this method as the most appropriate.

	December 31, 2016	**2015**
Beginning balance of IP	$480	$480
Accumulated amortization	(480)	(480)
Ending balance of IP	$-	$-

Amortization expense was $0 and $66 for the years ended December 31, 2016 and December 31, 2015, respectively.

NOTE 7: INVESTMENTS – RELATED PARTIES

Avalanche International Corporation (AVLP)

Investments in AVLP at December 31, 2016 consist of:

Balance at January 1, 2016	$-
Investment in convertible promissory notes of AVLP - Gross	997
Original issue discount	(47)
Accretion of discount	2
Investment in convertible promissory note of AVLP - Net	952
Investment in common stock of AVLP	84
Balance at December 31, 2016	$1,036

During the last quarter of 2016, the Company made certain strategic investments in AVLP, a related party controlled by Philou, an existing majority stockholder. The Company's investments in AVLP consist of convertible promissory notes bearing interest of 12% per annum purchased at a 5% discount and shares of common stock of AVLP.

On October 5, 2016 and November 30, 2016, the Company entered into two 12% Convertible Promissory Note agreements ("Notes Receivable") in the principal amount of $525 each, net of a 5% original issue discount ($25 each) with interest payable at 12% per annum. All principal and accrued interest shall be due for payment on or before two years from the origination dates of each note. At any time after six months, the Company has the right, at its option, to convert all or any portion of the principal and accrued interest into shares of common stock of AVLP at $0.74536 per share, subject to adjustment. The principal amount of each note is convertible into 704,357 shares common stock of AVLP.

During the last quarter of 2016, the Company invested $950 pursuant to Notes Receivable and remaining balance of $50 was invested on February 17, 2017.

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The original issue discount of $50 on the Notes Receivable is being amortized as interest income through the maturity date using the interest rate method. The original issue discount on the Note Receivable is amortized as interest income through the maturity date using the interest method, the Company recorded $2 interest income for the discount accretion.

As of December 31, 2016 the Company recorded contractual interest receivables of $13.

On February 22, 2017, subsequent to year-end, AVLP issued the Company a third $525 12% Convertible Promissory Note (the “Third Note”) with original issue discount of 5%. During the period from February 22, 2017 to April 5, 2017, the Company funded $457 pursuant to this Third Note.

The Company has classified the all the above noted Notes, it holds in AVLP, as Available-for-Sale securities, subject to the guidance in ASC 320. The Convertible Promissory Notes qualify for application of the Fair Value Option Subsections of Subtopic 320-10 and 825-10.

At December 31, 2016, the closing market price of AVLP’s common Stock was $0.45. Subsequent to year-end, the closing market price of AVLP’s common stock was in the range of $0.25 and $0.45 and due to the illiquidity and significant volatility of AVLP’s common stock, the Company has determined that its cost basis in AVLP common stock approximates the current fair value.

The Company has concluded that indicators of impairment, including those described in ASC 320-10-35-27, do not currently exist for the Company’s investment in AVLP’s Notes.

In addition the Company purchased at the market 250,900 shares of Avalanche at total cost of $84. The investment is accounted under the fair value -method in accordance with ASC 320-10.

Based upon the closing market price at December 31, 2016, and most recently at March 30, 2017 ($0.30), the Company has concluded that its investment in shares of AVLP common stock is not impaired.

Telkoor Telecom Ltd. (Telkoor)

Investment in Telkoor at December 31, 2016 and 2015 consists of:

	2016	**2015**
Balance at January 1, 2016	$90	$207
Impaired	-	(110)
Exchange rate	-	(7)
Disposed/(sold)	(90)	-
Balance at December 31, 2016	$-	$90

On June 16, 2011, the Company acquired 1,136,666 shares of Telkoor, the Company's major shareholder at the time, and an Israeli company listed in the Tel Aviv stock exchange (at such time) for $1,000, which represented 8.8% of the outstanding shares of Telkoor. As a result of this transaction, an existing manufacturing agreement between the Company and Telkoor was updated and extended.

The Company recorded an impairment of its investment in Telkoor of $0 and $110 for the years ended December 31 2016 and 2015, respectively. On September 5, 2016, the Company entered into a Securities Purchase Agreement (the "Agreement") with Philou, and Telkoor pursuant to which the Philou purchased all of the Telkoor 2,714,610 shares of the common stock invested in the Company, constituting approximately 40.06% of the Company's then outstanding shares of common stock for a consideration of $1.5 million to Telkoor.

Pursuant to the Agreement, the Company entered into a Rescission Agreement with the Telkoor in order to resolve all financial issues between the parties, including the repurchase by the Seller of 1,136,666 shares of common stock in Seller beneficially owned by the Company for their book value.

The closing of the transactions under the Agreement and the Rescission Agreement occurred on September 22, 2016.

Equity securities that do not have readily determinable fair values (i.e. non-marketable equity securities) and are not required to be accounted for under the equity method are typically carried at cost (i.e., cost method investments), as described in ASC 325-20. The Company carried its investment in Telkoor's shares at historical cost, net of impairment charges in accordance with ASC 325-20 "Investments in Other".

NOTE 8: OTHER CURRENT LIABILITIES

Other current liabilities at December 31, 2016 and 2015 consist of:

	2016	**2015**
Accrued payroll and payroll taxes	$128	$105
Warranty liability	86	95
Other accrued expenses	184	280
Total	$398	$480

NOTE 9: DEMAND NOTE PAYABLE – RELATED PARTY

On December 29, 2016, the Company entered into an agreement with MCKEA, an entity of which a Board member is the managing member and of which it is the member of the Company's largest shareholder, for a demand promissory

note (“Note”) in the amount of $250 bearing interest at the rate of 6% per annum on unpaid principal and shall be due and payable upon demand of payment by MCKEA. Note may be prepaid, in whole or in part, without penalty, at the option of the Company and without the consent of MCKEA. As of December 31, 2016, no interest was accrued on the Note. Subsequent to December 31, 2016, Note was converted in the Company’s preferred stock (See Note 16).

NOTE 10: CONVERTIBLE NOTE – RELATED PARTY

Balance at January 1, 2016	$-
Proceeds from convertible note	530
Unamortized debt discounts	(484)
Unamortized financing cost	(12)
Balance at December 31, 2016	$34

On October 21, 2016, the Company, entered into a 12% Convertible Secured Note (“Convertible Note) in the principal amount of $530 and was sold to an existing stockholder of the Company for $500, bearing interest at 12% simple interest on the principal amount, is secured by all the assets of the Company, and is due on October 20, 2019. Interest only payments are due on a quarterly basis and the principal may be converted into shares of the Company’s common stock at $0.55 per share. Subject to certain beneficial ownership limitations, the noteholder may convert the principal amount of the Convertible Note at any time into common stock. The conversion price of the Convertible Note is subject to adjustment for customary stock splits, stock dividends, combinations or other standard anti-dilution events.

The Convertible Note contains standard and customary events of default including, but not limited to failure to make payments when due under the Convertible Note agreement and bankruptcy or insolvency of the Company.

Upon 30 days' notice, the Company has the right to prepay the Convertible Note. In addition, provided that the closing price for a share of the Company's common stock exceeds $3.00 per share for 30 consecutive trading days, the Company has the right to compel the noteholder to convert the principal amount into shares of common stock at the contractual conversion price.

As additional consideration, the investor received a three-year warrant to purchase 265,000 shares of common stock each at an exercise price of $0.80 and a three-year warrant to purchase 265,000 shares of common stock each at an exercise price of $0.90 (collectively "Warrants"). Warrants are exercisable commencing six months after the issuance date and are subject to certain beneficial ownership limitations. The exercise price of the Warrants is subject to adjustment for customary stock splits, stock dividends, combinations and other standard anti-dilution events. The Warrants may be exercised for cash or on a cashless basis. The Warrants has a call feature that permits the Company to force redemption at $0.001 per share in the event the closing price for a share of the Company's common stock exceeds $3.00 for 30 consecutive trading days.

The Company computed the fair value of these warrants using the Black-Scholes option pricing model and allocated $159 of the proceeds to additional paid-in capital.

The beneficiary conversion feature (BCF) embedded in the Debenture is accounted for under ASC Topic *470 – De*bt. At issuance, the estimated fair value of the BCF totaled $332. The BCF was allocated from the net proceeds of the Debenture after allocating relative fair value of warrants and limited to remaining net proceeds available for BCF. The BCF is recorded as additional debt discount is being amortized to interest expense over the term of the Debenture using the effective interest method. The valuation of the BCF was calculated based on effective conversion price compared with the market price of common stock on the date of issuance of Convertible Note.

The Company recorded total debt discount in the amount of $518 based on the relative fair values of the Warrants of $159, BCF of $329 and original issue discount (OID) of $30. The debt discount is being amortized as non-cash interest expense over the term of the debt. In addition, the Company incurred $13 of debt issuance costs which is also being amortized as non-cash interest expense over the term of the debt. During the year ended December 31, 2016, non-cash interest expense of $34 was recorded as amortization of debt discount and debt financing cost.

As of December 31, 2016, the Company has recorded accrued interest of $12 on Convertible Note obligation.

NOTE 11: COMMITMENTS

Lease commitments

In November 2012, the Company signed an operating lease agreement for the US headquarters for a period of 7 years with an option to extend for additional 5 years. In September 2009, the Company's subsidiary signed a new agreement for a lease in respect of the UK facility for a period of 15 years with an option to cancel the lease after 10 years on September 2019.

Future non-cancellable rental commitments under operating leases are as follows:

Year Ended December 31,	
2017	$291
2018	295
2019	219
2020	139
2021	139
2022 to 2024	383
Total	$1,466

Total rent expense for the years ended December 31, 2016 and 2015 was approximately $294 and $299, respectively.

NOTE 12: STOCKHOLDERS' EQUITY

Preferred Stock

There are authorized Preferred stock in the amount of 500,000 shares of Series A cumulative Redeemable Convertible Preferred shares ("Series A"), and an additional 1,500,000 Preferred shares that have been authorized, but the rights, preferences, privileges and restrictions on these shares have not been determined. The Company's Board of Directors is authorized to create a new series of preferred shares and determine the number of shares, as well as the rights, preferences, privileges and restrictions granted to or imposed upon any series of preferred shares. As of December 31, 2016, there were no preferred shares issued or outstanding.

Common Stock

Common stock confer upon the holders the rights to receive notice to participate and vote in the general meeting of shareholders of the Company, to receive dividends, if and when declared, and to participate in a distribution of surplus of assets upon liquidation of the Company.

On November 15, 2016, the Company entered into subscription agreements (the "Subscription Agreements") with nine accredited investors. Pursuant to the terms of the Subscription Agreements, the Company sold 901,666 units ("Units") at $0.60 for an aggregate purchase price of approximately $541,000. Each unit consists of one share of common stock and one warrant to purchase one share of common stock (the "Warrant Shares") at an exercise price of $0.80.

According to the agreement, the Company registered all of the shares of common stock then issued as part of the Units and Warrant Shares then issued and issuable upon exercise of the Warrant Shares. The Subscription Agreement provides that, until November 15, 2017, Investors who purchased at least $100,000 have the right to participate in the purchase of up to 50% of the securities offered by the Company in any future financing transactions, with limited exceptions.

The Warrants entitle the holders to purchase, in the aggregate, up to 901,666 shares of Common Stock at an exercise price of $0.80 per share for a period of three years. The Warrant Shares are exercisable upon the six month anniversary of the issuance date. The exercise price of the Warrant Shares is subject to adjustment for stock splits, stock dividends, combinations and other standard anti-dilution events. The Warrant Shares may be exercised for cash or, upon the failure to maintain an effective registration statement, on a cashless basis.

The Warrant Shares do not require a net cash-settlement or provide the holder with a choice of net-cash settlement. The Warrant Shares also do not contain a variable settlement provision. Accordingly, the Company classified the

Warrant Shares as equity instruments.

Stock Option Plans

Under the Company's Digital Power 2016 and 2012 (As Amended) ("Incentive Share Option Plan"), options may be granted to employees, officers, consultants, service providers and directors of the Company.

As of December 31, 2016, the Company authorized according to the Incentive Share Option Plan the grant of options to officers, management, other key employees and others of up to 5,372,630 options for the Company's common stock. The maximum term of the options is ten years from the date of grant. As of December 31, 2016, an aggregate of 3,322,630 of the Company's options are still available for future grant.

The options granted generally become fully vested after four years. Any options that are forfeited or cancelled before expiration become available for future grants.

The options outstanding as of December 31, 2016 have been classified by exercise price, as follows:

Exercise Price	*Options Outstanding as of December 31, 2016*	*Weighted Average Remaining Contractual Term (Years)*	*Weighted Average Exercise Price*	*Option Exercisable as of December 31, 2016*	*Weighted Average Exercise Price of Options Exercisable*
$0.65 - $0.70	1,865,000	9.76	$ 0.67	996,667	$ 0.66
$1.10 - $1.32	25,000	6.84	$ 1.28	15,000	$ 1.25
$1.51 - $1.69	366,000	5.57	$ 1.60	316,000	$ 1.59
	2,256,000	9.05	$ 0.83	1,327,667	$ 0.89

The total stock-based compensation expense related to all of the Company’s equity based awards, including non-employee options recognized for the years ended December 31, 2016 and 2015 is comprised as follows:

	2016	**2015**
Cost of revenues	$6	$7
Engineering and product development	17	20
Selling and marketing	5	6
General and administrative	492	193
Total stock-based compensation	$520	$226

A summary of option activity under the Company's stock option plans as of December 31, 2016 and 2015 and changes during the years then ended are as follows:

	Amount of	**Weighted**	**Weighted**	**Aggregate**

	Options	Average Exercise Price	Average remaining Contractual Term (Years)	Intrinsic Value
Balance at January 1, 2015	1,262,763	$ 1.57	7.65	
Granted	155,000	0.67		
Forfeited	(261,000)	1.29		
Expired	(10,763)	0.70		
Balance at December 31, 2015	1,146,000	1.52	6.74	
Granted	1,800,000	0.67		
Forfeited	(650,000)	1.59		
Expired	(40,000)	1.16		
Balance outstanding at December 31, 2016	2,256,000	$ 0.83	9.08	$ -
Exercisable at December 31, 2016	1,327,667	$ 0.89	8.64	$ -

The aggregate intrinsic value in the table above represents the total intrinsic value (the difference between the Company's closing stock price on December 31, 2016, $0.65 and the exercise price, multiplied by the number of in-the-money-options).

As of December 31, 2016, there was $492 of unrecognized compensation cost related to non-vested stock-based compensation arrangements granted under the Company's stock option plans. That cost is expected to be recognized over a weighted average period of 1.81 years.

Options Issued to Non-Employees

As of December 31, 2015, the Company's had options outstanding to purchase 142,500 shares of common stock to non-employees. During the year ended December 31, 2016, options to purchase 102,500 shares of common stock were forfeited and 40,000 options were expired.

Warrants

Warrants Issued to Executive Officer

In connection with executive employment agreement, on November 3, 2016, the Company issued to its Chief Executive Officer a ten-year warrant to purchase 317,460 shares of the Company's common stock (the "Warrant "), at an exercise price of $0.01 per share subject to vesting. The Warrant shall be subject to vesting of which warrants to purchase 39,682 shares shall vest beginning on January 1, 2017, and on the first date of each quarter thereafter through July 1, 2018, with warrants to purchase 39,686 shares to vest on October 1, 2018. The fair value of the Warrant using the Black-Scholes option pricing model was $188, which was amortized ratably over a period of two years out of which $23 was recorded as stock-based compensation in general and administrative expenses during the year ended December 31, 2016.

	Amount of Warrants	**Weighted Average Exercise Price**	**Weighted Average remaining Contractual Term (Years)**	**Aggregate Intrinsic Value**
Balance at January 1, 2016	-	-	-	-
Granted	317,460	$ 0.01		
Forfeited	-			
Expired				
Balance outstanding at December 31, 2016	317,460	$ 0.01	9.8	$ 203
Exercisable at December 31, 2016	-	-		-

The aggregate intrinsic value in the table above represents the total intrinsic value (the difference between the Company's closing stock price on December 31, 2016, $0.65 and the exercise price, multiplied by the number of in-the-money warrants).

NOTE 13: INCOME TAXES

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and income tax purposes. Significant components of the Company's deferred tax assets are as follows:

	December 31,	
	2016	2015
Deferred tax asset:		
Net operating loss	$2,206	$2,233
Reserves and allowances	295	225
Tax Credit carryforward	153	153
Property and equipment	194	142
Total deferred tax asset	2,848	2,753
Valuation allowance	(2,848)	(2,753)
Deferred tax asset, net	$—	$—

The Company had Federal and state net operating loss carryforwards of approximately $5,334 and $3,622, respectively, available to offset future taxable income, expiring at various times from December 31through December 31, 2036. In accordance with Section 382 of the Internal Revenue Code, the future utilization of the Company's net operating loss to offset future taxable income may be subject to an annual limitation as a result of ownership changes that may have occurred previously or that could occur in the future. The Company has not yet determined whether such an ownership change has occurred; however, the Company will be completing a Section 382 analysis regarding the limitation of the net operating loss.

In assessing the realization of deferred tax assets, management considers whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which temporary differences representing net future deductible amounts become deductible. Management considers the scheduled reversal of deferred tax assets, projected future taxable income and tax planning strategies in making this assessment. After consideration of all of the information available and due to the last five years significant losses there is substantial doubt related to the Company's ability to utilize its deferred tax assets, the Company recorded a full valuation allowance of the deferred tax asset. For the year ended December 31, 2016, the valuation allowance has increased by $95.

The 2013 through 2016 tax years remain open to examination by the Internal Revenue Service (***"IRS"***) and the 2012 through 2016 tax years remain open to examination by the California Franchise Tax Board (***"FTB"***). The IRS and FTB have the authority to examine those tax years until the applicable statute of limitations expires.

As of December 31, 2016, the Company's foreign subsidiary had accumulated losses for income tax purposes in the amount of approximately $906. All of the Company's international accumulated losses were generated in the United Kingdom, which has a statutory tax rate of 20%. These net operating losses may be carried forward and offset against taxable income in the future for an indefinite period. The Company has not recognized a U.S. deferred income tax asset on non-U.S. losses because the Company plans to indefinitely reinvest such earnings outside the U.S. Remittances of non-U.S. earnings, if any, are based on estimates and judgments of projected cash flow needs, as well as the working capital and investment requirements of the Company's non-U.S. and U.S. operations. Material changes in the Company's estimates of cash, working capital, and investment needs could require repatriation of indefinitely reinvested non-U.S. earnings, which would be subject to U.S. income taxes and applicable non-U.S. income and withholding taxes.

The net income tax benefit consists of the following:

	December 31,	
	2016	2015
Current		

Foreign	$(20)	$ (1)
Federal	—	—
State	—	—
Income tax (benefit)	$(20)	$ (1)

The Company's effective tax rates were (1.7%) and (0.1%) for the years ended December 31, 2016 and 2015, respectively. During the year ended December 31, 2016, the effective tax rate differed from the U.S. federal statutory rate primarily due to the change in the valuation allowance and the issuance of incentive stock options to the Company's employees. The reconciliation of income tax attributable to operations computed at the U.S. Federal statutory income tax rate of 34% to income tax expense is as follows:

	Year Ended December 31,	
	2016	2015
Tax benefit at U.S. Federal statutory tax rate	(34.0%)	(34.0%)
Increase (decrease) in tax rate resulting from:		
Stock compensation expense	12.1 %	—
Taxes in respect of prior years	9.1 %	0.2 %
Increase in valuation allowance	8.3 %	28.0 %
Nondeductible meals & entertainment expense and other	4.4 %	7.2 %
State taxes, net of federal benefit	0.3 %	—
Foreign rate differential	(0.2%)	(1.5%)
Foreign R&D credit	(1.7%)	—
Effective tax rate	(1.7%)	(0.1%)

The Company accounts for uncertain tax positions in accordance with ASC No. 740-10-25. ASC No. 740-10-25 addresses the determination of whether tax benefits claimed or expected to be claimed on a tax return should be recorded in the financial statements. Under ASC No. 740-10-25, the Company may recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefit to be recognized is measured as the largest amount of benefit that is greater than fifty percent likely of being realized upon ultimate settlement. To the extent that the final tax outcome of these matters is different than the amount recorded, such differences impact income tax expense in the period in which such determination is made. Interest and penalties, if any, related to accrued liabilities for potential tax assessments are included in income tax expense. ASC No. 740-10-25 also requires management to evaluate tax positions taken by the Company and recognize a liability if the Company has taken uncertain tax positions that more likely than not would not be sustained upon examination by applicable taxing authorities. Management of the Company has evaluated tax positions taken by the Company and has concluded that as of December 31, 2016 and 2015, there are no uncertain tax positions taken, or expected to be taken, that would require recognition of a liability that would require disclosure in the financial statements.

NOTE 14: RELATED PARTY TRANSACTIONS

a. On September 5, 2016, the Company entered into a Securities Purchase Agreement with Philou, and Telkoor pursuant to which the Philou purchased all of the Telkoor's 2,714,610 shares of the common stock in the Company,

constituting approximately 40.06% of the Company's then outstanding shares of common stock. In consideration for such shares, the Philou paid Telkoor $1.5 million.

Pursuant to the Securities Purchase Agreement, the Company entered into a Rescission Agreement with the Telkoor in order to resolve all financial issues between the parties, including the repurchase by the Telkoor of 1,136,666 shares of common stock in Telkoor owned by the Company for $90, which was equal to the carrying amount of the investment.

The closing of the transactions under the Securities Purchase Agreement and the Rescission Agreement occurred on September 22, 2016.

Philou is the Company's largest stockholder. Kristine Ault, a director of the Company, is managing member of MCKEA, which in turn, is the member of Philou. Kristine Ault's spouse is Milton Ault who is Executive Chairman of the Board of the Directors of the Company.

In addition, on March 9, 2017, the Company entered into a Preferred Stock Purchase Agreement with Philou. Pursuant to the terms of the Preferred Stock Purchase Agreement, Philou may invest up to $5,000 in the Company through the purchase of Series B Preferred Stock over a specified term.

b. In anticipation of the acquisition of MTIX by AVLP and the expectation of future business generated by the Company from a strategic investment into AVLP, the Company entered into three 12% Convertible Promissory Note agreements with AVLP in the principal amount of $525 each, including a 5% original issue discount. After six months, the Company has a right, at its option, to convert all or any portion of the principal and accrued interest into shares of common stock of AVLP at $0.74536 per share

During the last quarter of 2016, the Company invested $950 pursuant to 12% Convertible Promissory Notes and another $507 was invested on the first quarter of 2017. (The remaining balance to invest is $43).

Further, the Company has acquired 250,900 shares of AVLP Common Stock in the open market for $85.

AVLP, a Nevada corporation, is a holding company currently engaged in acquiring and/or developing businesses in which AVLP maintains a controlling interest. AVLP anticipates that its subsidiaries will be engaged in a number of diverse business activities. AVLP currently has two subsidiaries, Smith and Ramsay Brands, LLC (“SRB”) and Restaurant Capital Group, LLC (“RCG”). SRB was formed on May 19, 2014, and RCG was formed on October 22, 2015. AVLP is quoted under the symbol “AVLP” on the OTC Pink sheets operated by OTC Markets Group, Inc.

Philou is AVLP’s controlling shareholder. Mr. Ault is Chairman of AVLP’s Board of Directors and Mr. William B. Horne is the Chief Financial Officer of AVLP. Mr. Horne is also the audit committee chairman of the Company.

On October 24, 2016, AVLP entered into a letter of intent to acquire MTIX, an advanced materials and processing Technology Company located in Huddersfield, West Yorkshire, UK. On October 26, 2016, pursuant to the term of the letter of intent, AVLP made an initial payment of $50 towards the purchase of MTIX.

On March 3, 2017, AVLP entered into a Share Exchange Agreement with MTIX and the three current shareholders of MTIX. Upon the terms and subject to the conditions set forth in the Share Exchange Agreement, AVLP will acquire MTIX from the MTIX shareholders through the transfer of all issued and outstanding ordinary shares of MTIX (the “MTIX Shares”) by the MTIX shareholders to AVLP in exchange for the issuance by AVLP of: (a) 7% secured convertible promissory notes in the aggregate principal face amount of $9,500 to the MTIX shareholders in pro rata amounts commensurate with their current respective ownership percentages of MTIX’s ordinary shares, (b) (i) $500 in cash, $50 of which was paid on October 26, 2016, and (ii) 100,000 shares of AVLP’s newly designated shares of Class B Convertible Preferred Stock to the principal shareholder of MTIX.

On the closing date, the fully-diluted AVLP shares shall be 52,128,325 shares of common stock, assuming that (i) the MTIX promissory notes are convertible into shares of AVLP Common Stock at a conversion price of $0.50 per share, (ii) the shares of AVLP Class B Convertible Preferred Stock are convertible into shares of AVLP Common Stock at a conversion rate of $0.50 per share and (iii) the issuance of stock options to purchase an aggregate of 531,919 shares of

AVLP Common Stock to the members of the MTIX management group.

During March 2017, the Company was awarded a 3-year, $50 million purchase order by MTIX to manufacture, install and service the MLSE plasma-laser system.

c. On December 29, 2016, the Company received a $250 short term loan from MCKEA, the member of Philou. Ms. Ault, a director of the Company, is the managing member of MCKEA. On March 24, 2017, the $250 loan was cancelled in consideration for the issuance of 25,000 shares of Series B preferred stock of the Company to Philou.

d. On September 22, 2016, the Company entered into consulting agreement with Mr. Ault to assist the Company in developing a business strategy, identifying new business opportunities, developing a capital raising program and implementing of a capital deployment program. For his services Mr. Ault will be paid a monthly fee of $15 from November 1, 2016 through June 30, 2017 and may be renewed.

e. On October 21, 2016, the Company entered into a 12% convertible secured note in the principal amount of $530 with Mr. Barry Blank, an existing stockholder of the Company, for $500 due on October 20, 2019. The principal amount of 12% convertible secured note may be convertible into shares of the Company's common stock at $0.55 per share, subject to certain beneficial ownership limitations Mr. Blank may convert the principal amount of the convertible note at any time into common stock.

Mr. Blank owns 419,900 shares of the common stock of the Company, constituting approximately 5.02% of the Company's outstanding shares of common stock. The 12% convertible secured note will convert into 963,636 shares of common stock which represent 20.5% of the Company's outstanding shares of common stock without regard to an beneficial ownership limitation.

As additional consideration, Mr. Blank received a three-year warrant to purchase 265,000 shares of common stock each at an exercise price of $0.80 and a three-year warrant to purchase 265,000 shares of common stock each at an exercise price of $0.90.

f. On March 9, 2017, the Company entered into a Preferred Stock Purchase Agreement with Philou. Pursuant to the terms of the Preferred Stock Purchase Agreement, Philou may invest up to $5,000,000 in the Company through the purchase of Series B Preferred Stock over the 36 months.

g. On March 24, 2017, Philou purchased 25,000 shares of Series B Preferred Stock (Note 16).

NOTE 15: SEGMENT CUSTOMERS AND GEOGRAPHICAL INFORMATION

The Company has two reportable geographic segments; see Note 1 for a brief description of the Company's business.

The following data presents the revenues, expenditures and other operating data of the Company's geographic operating segments and presented in accordance with ASC 280.

	Year Ended December 31, 2016			
	DPC	DPL	Eliminations	Total
Revenues	$4,552	$3,044	$ -	$7,596
Inter-segment revenues	145	-	(145)	-

Total revenues	$4,697	$3,044	$ (145)	$7,596
Depreciation and amortization expenses	$75	$86	$ -	$161
Operating income (loss)	$(1,110)	$(109)	$ -	$(1,219)
Other income, net				77
Income taxes				20
Net loss				$(1,122)
Capital expenditures for segment assets for the year ended December 31, 2016	$32	$53	$ -	$85
Identifiable assets as of December 31, 2016	$3,152	$2,320	$ -	$5,472

	Year Ended December 31, 2015			
	DPC	DPL	Eliminations	Total
Revenues	$3,833	$3,933	$ -	$7,766
Inter-segment revenues	371	-	(371)	-
Total revenues	$4,204	$3,933	$ (371)	$7,766
Depreciation and amortization expenses	$74	$139	$ -	$213
Operating income (loss)	$(1,086)	$83	$ -	$(1,003)
Impairment of investment				(110)
Other income, net				16
Income taxes				1
Net loss				$(1,096)
Capital expenditures for segment assets for the year ended December 31, 2015	$58	$248	$ -	$306
Identifiable assets as of December 31, 2015	$2,384	$2,715	$ -	$5,099

The following table provides the percentage of total revenues attributable to a single customer from which 10% or more of total revenues are derived:

For the year ended December 31,2016

	Total Revenues by Major Customers (in thousands)	Percentage of Total Company Revenues
Customer A	$ 1,328	17 %
Customer B	$ 750	10 %

For the year ended December 31,2015

	Total Revenues by Major Customers (in thousands)	Percentage of Total Company Revenues	
Customer A	$ 853	11	%
Customer B	$ 1,809	23	%

Revenue from customer A was attributable to DPC and revenue from Customer B attributable to DPL.

For the years ended December 31, 2016 and 2015, total revenues from external customers divided on the basis of the Company's product lines are as follows:

	2016	2015
Revenues:		
Commercial products	$5,307	$4,802
Defense products	2,289	2,964
Total revenues	$7,596	$7,766

Financial data relating to geographic areas:

The Company’s total revenues are attributed to geographic areas based on the location.

The following table presents total revenues for the years ended December 31, 2016 and 2015. Other than as shown, no foreign country contributed materially to revenues or long-lived assets for these periods:

	2016	2015
North America	$4,541	$3,435
Europe (including UK)	1,845	1,704
Asia	255	768
Australia	123	42
South America	81	3
South Korea	751	1,814
Total revenues	$7,596	$7,766

NOTE 16: SUBSEQUENT EVENTS

In February 2017, the Company issued $400 in demand promissory notes and five year warrants to purchase 333,333 shares of common stock at $ 0.70, per share.

In February 16, 2017, the holder of the $100 in demand promissory notes agreed to cancel its demand promissory note for the purchase of 166,667 shares of Common Stock at $0.60 per share.

In February 23, 2017, the holders of the $300 in demand promissory notes agreed to cancel their demand promissory notes to purchase of 500,000 shares of Common Stock at $0.60 per share.

On March 9, 2017, the Company entered into a Preferred Stock Purchase Agreement with Philou, the majority stockholder of the Company and of which Kristine Ault, a director of the Company, is the managing member of

MCKEA which, in turn, is the Manager of Philou. Pursuant to the terms of the Preferred Stock Purchase Agreement, Philou may invest up to $5,000,000 in the Company through the purchase of Series B Preferred Stock over the term of 36 months.

In addition, for each share of Series B Preferred Stock purchased, Philou will receive warrants to purchase shares of common stock in a number equal to the stated value of each share of Series B Preferred Stock of $10.00 purchased divided by $0.70 at an exercise price equal to $0.70 per share of common stock

Further, Philou shall have the right to participate in the Company's future financings under substantially the same terms and conditions as other investors in those respective financings in order to maintain its then percentage ownership interest in the Company. Philou's right to participate in such financings shall accrue and accumulate provided that it still owns at least 100,000 shares of Series B Preferred Stock.

On March 15, 2017, Company entered into a subscription agreement with an investor for the sale of 500,000 shares of common stock at $0.60 per share for the aggregate purchase price of $300.

On March 24, 2017, Philou purchased 25,000 shares of Series B Preferred Stock pursuant to the Preferred Stock Purchase Agreement in consideration of the cancellation of the Company debt due to an affiliate of Philou in the amount of $250.

On March 28, 2017, the Company issued $270 in demand promissory notes to several investors. These demand promissory notes bear interest at the rate of 6% per annum. On April 5, 2017, the Company canceled these promissory notes by issuing 360,000 shares of common stock at $0.75 per share. In addition, the Company also issued warrants to purchase 180,000 shares of common stock at $0.90 per share to these investors.

Exhibit 10.1

DIGITAL POWER CORPORATION

$500,000 12% SENIOR SECURED NOTE

NOTE

October 05, 2016

Summary

Digital Power Corporation (NYSE MKT:DPW)(DPW) provides this capital financing offer of $500,000 to Avalanche International Corp. (OTC:AVLP)(AVLP). DPW designs, manufactures and markets flexible power supply solutions for the most demanding applications in the telecom, medical, industrial and military markets. DPW is a California corporation with its U.S. headquarters in Fremont, California. Avalanche International Corp. is a holding company and Nevada corporation. AVLP has two wholly-owned operating subsidiaries, Restaurant Capital Group, LLC and Smith and Ramsay Brands, LLC. With its headquarters in Las Vegas, NV, the development strategy of AVLP is growth through acquisition and investment. This growth strategy permeates throughout AVLP and extends to its operational businesses. These businesses target horizontal opportunities as well as internal growth and typically feature consumer audiences and niche sectors.

Highlights of the transaction include:

1. A $525,000 Convertible Promissory Note (Note) providing net working capital of $500,000 with a $25,000 OID and simple annual interest rate of 12% for two years.
2. The Note is currently convertible into 9.9% of the common stock of AVLP, $0.74536 per share for 670,821 common shares.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED OR REGISTERED OR QUALIFIED UNDER ANY STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS SUCH SALE, TRANSFER, PLEDGE OR HYPOTHECATION IS IN ACCORDANCE WITH SUCH ACT AND APPLICABLE STATE SECURITIES LAWS.

AVALANCHE INTERNATIONAL CORPORATION

12% CONVERTIBLE PROMISSORY NOTE

US $525,000.00 Las Vegas, Nevada

10/05/2016

For good and valuable consideration, **Avalanche International Corp**, a Nevada corporation, ("Maker"), hereby makes and delivers this 12% secured Convertible Promissory Note (this "Note") in favor of Digital Power Corporation**,** or its assigns ("Holder"), and hereby agrees as follows:

1. **Principal Obligation and Interest.** For value received**,** Maker promises to pay to Holder at **5940 S. Rainbow Blvd., Las Vegas, NV 89118**, or at such other place as Holder may designate in writing, in currently available funds of the United States, the principal amount of Five Hundred Twenty-Five (**USD)**. Maker's obligation under this Note shall accrue simple interest at the rate of **Twelve Percent (12.0%) per year** from the date hereof until paid in full. Interest shall be computed on the basis of a 365-day year or 366-day year, as applicable, and actual days lapsed.

2. Payment Terms.

a. All principal and accrued interest then outstanding shall be due and payable by the Maker on or before two (2) Years from the date actual cash is received by the Holder (the "Maturity Date") or until earlier redemption of this Note under the terms hereof.

b. Accrued interest hereunder shall be due and payable from Maker to Holder at Maturity Date or until earlier redemption of this Note under the terms hereof at any time after the date hereof, and before the Maturity Date of this Note or may be paid or redeemed in whole, or in part on one or more occasions, at the sole option of the Maker.

c. At any time after the date hereof and before the Maturity Date of this Note or may be paid or redeemed in whole, or in part on one or more occasions, at the sole option of the Maker.

d. All payments of principal and interest hereunder may, at the sole option of the Maker, be paid pro-rata or redeemed for common stock at a conversion price of $.74536 in validly issued shares of common stock in the Maker, par value $0.001, issued to Holder. For example, Holder could redeem 670,821 shares at a conversion price of $.74536 per share for the principal balance only at a time deemed permissible by Rule 144. Any and all accrued interest would be payable by cash or at an equivalent conversion rate into the shares of the Company’s common stock.

e. All payments shall be applied first to interest, then principal and shall be credited to the Maker's account on the date that such payment is physically received by the Holder.

3. Optional Conversion; Adjustments to Conversion Price.

a. At any time after six months from the date hereof, the Holder shall have the right, at its option, to convert all or any portion of the principal and accrued interest due and owing hereunder into shares of fully paid and nonassessable Common Stock of the Maker at the price of $0.74536 per share, (the "Conversion Price"), subject to adjustment as explained herein.

b. If the Maker shall (i) declare a dividend or other distribution payable in securities, (ii) split its outstanding shares of Common Stock into a larger number, (iii) combine its outstanding shares of Common Stock into a smaller number, or (iv) increase or decrease the number of shares of its capital stock in a reclassification of the Common Stock including any such reclassification in connection with a merger, consolidation or other business combination in which the Maker is the continuing entity (any such corporate event, an “Event”), then in each instance the Conversion Price shall be adjusted such that the number of shares issued upon conversion of the sum due and owing hereunder will equal the number of shares of Common Stock that would otherwise be issued but for such event.

c. Notices.

i. Immediately upon any adjustment of the Conversion Price, the Maker shall give written notice thereof to Holder, setting forth in reasonable detail and certifying the calculation of such adjustment and the facts upon which such adjustment is based.

ii. The Maker shall give written notice to the Holder at least five (5) days prior to the date on which the Maker closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, or (b) with respect to any dissolution or liquidation or any merger, consolidation, reorganization, recapitalization or similar event.

4. Security. This Note shall be secured through a lien on any new assets purchased by AVLP from this day forward along with the full faith and credit of AVLP.

5. Registration Rights.

a. The Maker agrees that if, at any time, and from time to time, the Board of Directors of the Maker shall authorize the filing of a registration statement under the Securities Act of 1933 on Form S-1, S-3, or S-4 in connection with the proposed offer of any of its securities by it or any of its stockholders, the Maker shall: (A) promptly notify each Holder that such registration statement will be filed and that the Common Stock issuable to Holder upon conversion of this Note at the Conversion Price then in effect (the "Registrable Securities") will be included in such registration statement at such Holder's request; (B) cause such registration statement to cover all of such Registrable Securities for which such Holder requests inclusion; (C) use best efforts to cause such registration statement to become effective as soon as practicable; (D) use best efforts to cause such registration statement to remain effective until the earliest to occur of (i) such date as the sellers of Registrable Securities have completed the distribution described in the registration statement and (ii) such time that all of such Registrable Securities are no longer, by reason of Rule 144 under the Securities Act, required to be registered for the sale thereof by such Holders; and (E) take all other reasonable action necessary under any federal or state law or regulation of any governmental authority to permit all such Registrable Securities to be sold or otherwise disposed of, and will maintain such compliance with each such federal and state law and regulation of any governmental authority for the period necessary for such Holder to promptly effect the proposed sale or other disposition.

b. The right of any Holder to request inclusion in any registration pursuant to this Agreement shall terminate if all Registrable Securities may immediately be sold under Rule 144.

c. Notwithstanding any other provision of this Section 5, the Maker may at any time, abandon or delay any registration commenced by the Maker. In the event of such an abandonment by the Maker, the Maker shall not be required to continue registration of shares requested by the Holder for inclusion.

d. In connection with any offering involving an underwriting of shares of the Maker's capital stock, the Maker shall not be required to include any of the Registrable Securities in such underwriting unless they accept the terms of the underwriting as agreed upon between the Maker and the underwriters selected by it, and then only in such quantity as the underwriters determine in their sole discretion will not jeopardize the success of the offering by the Maker. If the total amount of securities, including Registrable Securities, requested by stockholders to be included in such offering exceeds the amount of securities sold other than by the Maker that the underwriters determine in their sole discretion is compatible with the success of the offering, then the Maker shall be required to include in the offering only that number of such securities, including Registrable Securities, which the underwriters determine in their sole discretion will not jeopardize the success of the offering (the securities so included to be apportioned pro rata among the selling stockholders according to the total amount of securities entitled to be included therein owned by each selling stockholder or in such other proportions as shall mutually be agreed to by such selling stockholders).

6. Representations and Warranties of Maker. Maker hereby represents and warrants the following to Holder:

a. Maker and those executing this Note on its behalf have the full right, power, and authority to execute, deliver and perform the Obligations under this Note, which are not prohibited or restricted under the articles of incorporation or bylaws of Maker. This Note has been duly executed and delivered by an authorized officer of Maker and constitutes a valid and legally binding obligation of Maker enforceable in accordance with its terms.

b. The execution of this Note and Maker's compliance with the terms, conditions and provisions hereof does not conflict with or violate any provision of any agreement, contract, lease, deed of trust, indenture, or instrument to which Maker is a party or by which Maker is bound, or constitute a default thereunder.

7. Representations and Covenants of the Holder. The Maker has issued this Note in reliance upon the following representations and covenants of the Holder:

a. Investment Purpose**.** This Note and any common stock which may be issued as payment hereunder or upon conversion hereof are acquired for investment and not with a view to the sale or distribution of any part thereof, and the Holder has no present intention of selling or engaging in any public distribution of the same except pursuant to a registration or exemption.

b. Private Issue**.** The Holder understands (i) that this Note and any common stock which may be issued as payment hereunder are not registered under the Securities Act of 1933 (the "1933 Act") or qualified under applicable state securities laws, and (ii) that the Maker is relying on an exemption from registration predicated on the representations set forth in this Section 7.

c. Financial Risk. The Holder has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment, and has the ability to bear the economic risks of its investment.

d. Risk of No Registration**.** The Holder understands that if the Maker does not register with the Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934 (the "1934 Act"), or file reports pursuant to Section 15(d) of the 1934 Act, or if a registration statement covering the securities under the 1933 Act is not in effect when it desires to sell any of the common stock issued as payment hereunder, it may be required to hold such securities for an indefinite period. The Holder also understands that any sale of this Note or any sale of common stock in the Maker which might be made by Holder in reliance upon Rule 144 under the 1933 Act may be made only

in accordance with the terms and conditions of that Rule.

8. **Defaults.** The following events shall be defaults under this Note:

a. Maker's failure to remit any payment under this Note on before the date due, if such failure is not cured in full within ten (10) days of written notice of default;

b. Maker's failure to perform or breach of any non-monetary obligation or covenant set forth in this Note or in the Agreement if such failure is not cured in full within fifteen (15) days following delivery of written notice thereof from Holder to Maker;

c. If Maker is dissolved, whether pursuant to any applicable articles of incorporation or bylaws, and/or any applicable laws, or otherwise;

d. The entry of a decree or order by a court having jurisdiction in the premises adjudging the Maker bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Maker under the federal Bankruptcy code or any other applicable federal or state law, or appointing a receiver, liquidator, assignee or trustee of the Maker, or any substantial part if its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order un-stayed and in effect for a period of twenty (20) days; or

e. Maker's institution of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or its filing of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Code or any other applicable federal or state law, or its consent to the filing of any such petition or to the appointment of a receiver, liquidator, assignee or trustee of the company, or of any substantial part of its property, or its making of an assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by the Maker in furtherance of any such action.

9. Rights and Remedies of Holder. Upon the occurrence of an event of default by Maker under this Note, then, in addition to all other rights and remedies at law or in equity, Holder may exercise any one or more of the following rights and remedies:

a. Accelerate the time for payment of all amounts payable under this Note by written notice thereof to Maker, whereupon all such amounts shall be immediately due and payable.

b. Pursue any other rights or remedies available to Holder at law or in equity.

10. **Choice of Laws; Actions.** This Note shall be constructed and construed in accordance with the internal substantive laws of the State of California, without regard to the choice of law principles of said State. Maker acknowledges that this Note has been negotiated in Alameda County, California. Accordingly, the exclusive venue of any action, suit, and counterclaim or cross claim arising under, out of, or in connection with this Note shall be the state or federal courts in Alameda County, California. Maker hereby consents to the personal jurisdiction of any court of competent subject matter jurisdiction sitting in Alameda, California.

11. **Usury Savings Clause.** Maker expressly agrees and acknowledges that Maker and Holder intend and agree that this Note shall not be subject to the usury laws of any state other than the State of Nevada. Notwithstanding anything contained in this Note to the contrary, if collection from Maker of interest at the rate set forth herein would be contrary to applicable laws, then the applicable interest rate upon default shall be the highest interest rate that may be collected from Maker under applicable laws at such time.

12. **Costs of Collection.** Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or this Note be placed in the hands of any attorney for collection after default, Maker agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement.

13. **Miscellaneous.**

a. This Note shall be binding upon Maker and shall inure to the benefit of Holder and its successors, assigns, heirs, and legal representatives.

b. Any failure or delay by Holder to insist upon the strict performance of any term, condition, covenant or agreement of this Note, or to exercise any right, power or remedy hereunder shall not constitute a waiver of any such term, condition, covenant, agreement, right, power or remedy.

c. Any provision of this Note that is unenforceable shall be severed from this Note to the extent reasonably possible without invalidating or affecting the intent, validity or enforceability of any other provision of this Note.

d. This Note may not be modified or amended in any respect except in a writing executed by the party to be charged.

e. Time is of the essence.

14. **Notices.** All notices required to be given under this Note shall be given to each of the parties at such address as a party may designate by written notice to the other party. Notices may be transmitted by facsimile, certified mail, private delivery, electronic mail, or any other commercially reasonable means, and shall be deemed given upon receipt by the Party to whom they are addressed.

15. **Waiver of Certain Formalities.** All parties to this Note hereby waive presentment, dishonor, notice of dishonor and protest. All parties hereto consent to, and Holder is hereby expressly authorized to make, without notice, any and all renewals, extensions, modifications or waivers of the time for or the terms of payment of any sum or sums due hereunder, or under any documents or instruments relating to or securing this Note, or of the performance of any covenants, conditions or agreements hereof or thereof or the taking or release of collateral securing this Note. Any such action taken by Holder shall not discharge the liability of any party to this Note.

IN WITNESS WHEREOF, this Note has been executed effective the date and place first written above.

Avalanche International Corp "Maker" **Digital Power Corporation "Holder":**

By: /s/ Philip E. Mansour	**By: /s/ Amos Kohn**
Philip E. Mansour, President & CEO	**Amos Kohn, President & CEO**

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-104941 and No. 333-192819) and Registration Statements on Form S-3 (No. 333-215237; No. 333-215834; and No. 333-215852) of our report dated March 30, 2016, with respect to the consolidated financial statements of Digital Power Corporation and its subsidiary, included in this Annual Report (Form 10-K) for the year ended December 31, 2015 and for the year then ended, appearing in this Annual Report on Form 10-K of Digital Power Corporation for the year ended December 31, 2016.

/s/ KOST FORER GABBAY &

KASIERER

Tel-Aviv, Israel KOST FORER GABBAY & KASIERER
April 10, 2017 A Member of Ernst & Young Global

Exhibit 23.2

Independent Registered Public Accounting Firm's Consent

We consent to the incorporation by reference in the Registration Statement of Digital Power Corporation on Forms S-8 (File No. 333-104941 and File No. 333-192819) and Forms S-3 (File No. 333-215237, File No. 333-215834 and File No. 333-215852) of our report dated April 10, 2017, with respect to our audit of the consolidated financial statements of Digital Power Corporation and Subsidiary as of December 31, 2016 and for the year ended December 31, 2016, which report is included in this Annual Report on Form 10-K of Digital Power Corporation for the year ended December 31, 2016.

/s/ Marcum LLP

Marcum LLP

New York, NY

April 10, 2017

A-89

Exhibit 31.1

CERTIFICATION

I, Amos Kohn, certify that:

1. I have reviewed this annual report on Form 10-K of Digital Power Corporation

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process,process summarize and report financial information and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 10, 2017 By: /s/ Amos Kohn
Amos Kohn, President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Uri Friedlander, certify that:

1. I have reviewed this annual report on Form 10-K of Digital Power Corporation

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: April 10, 2017 By: /s/ Uri Friedlander
Uri Friedlander
V.P. of Finance, Principal Accounting Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO

18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

The undersigned hereby certify, pursuant to, and as required by, 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Annual Report of Digital Power Corporation (the "Company") on Form 10-K for the year ended December 31, 2016 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Annual Report on Form 10-K fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: April 10, 2017 By: /s/ Amos Kohn Amos Kohn
President and Chief Executive Officer

/s/ Uri Friedlander
Uri Friedlander
V.P. of Finance and Principal Accounting Officer

Appendix B

AGREEMENT AND PLAN OF MERGER OF

DPW HOLDINGS INC.,

A DELAWARE CORPORATION,

AND

DIGITAL POWER CORPORATION,

A CALIFORNIA CORPORATION

This AGREEMENT AND PLAN OF MERGER, dated as of [ ], 2017 (the "**Merger Agreement**"), is made by and between DPW Holdings, Inc., a Delaware corporation ("**DIGITAL Delaware**"), and Digital Power Corporation, a California corporation ("**DIGITAL California**"). DIGITAL Delaware and DIGITAL California are sometimes referred to herein as the "**Constituent Corporations**." DIGITAL Delaware is a wholly-owned subsidiary of DIGITAL California.

RECITALS

WHEREAS, DIGITAL California is a corporation duly incorporated and existing under the laws of the State of California and has a total authorized capital stock of 32,000,000 shares, of which 30,000,000 are common stock, no par value (the "**DIGITAL California Common Stock**."), and 2,000,000 are preferred stock, no par value (the "**DIGITAL California Preferred Stock**"). Of the 2,000,000 preferred stock, (i) 500,000 shares are designated as Series A Preferred Stock, no par value, (ii) 500,000 shares are designated as Series B Convertible Preferred Stock, no par value (the "**Series B Stock**"), (iii) 460,000 shares are designated as Series C Preferred Stock, no par value (the "**Series C Stock**"), (iv) 378,776 shares are designated as Series D Preferred Stock, no par value (the "**Series D Stock**"), (v) 10,000 shares are designated as Series E Preferred Stock, no par value (the "**Series E Stock**"), (vi) and 151,224 shares of DIGITAL California Preferred Stock are undesignated as to series, rights, preferences, privileges or restrictions, all of which shares of DIGITAL California Preferred Stock are issued and outstanding except for the Series A Preferred Stock and the undesignated Preferred Stock, none of which is issued or outstanding. As of the date hereof, and before giving effect to the transactions contemplated hereby, 100 shares of DIGITAL Delaware Common Stock are issued and outstanding, all of which (i) consist of Class A Common Stock (as hereinafter defined), and (ii) are held by DIGITAL California. DIGITAL Delaware was formed solely for the purposes contemplated by the Merger Agreement, and prior to becoming the Surviving Corporation (as defined below) has had no operations, assets or liabilities.

WHEREAS, DIGITAL Delaware is a corporation duly incorporated and existing under the laws of the State of Delaware and has a total authorized capital stock of 250,000,000 shares, consisting of (i) 225,000,000 shares of common stock having a par value $0.001 per share ("**DIGITAL Delaware Common Stock**"), of which (A) 200,000,000 shares consist of Class A Common Stock and are designated as Voting Common Stock ("**Class A Common Stock**"), and (B) 25,000,000 shares consist of Class B Common Stock and are designated as Super-Voting Common Stock ("**Class B Common Stock**"), and (ii) 25,000,000 shares of "blank check" preferred stock, par value $0.001 per share (the "**DIGITAL Delaware Preferred Stock**"). The rights, preferences, powers, privileges, and the restrictions, qualifications and limitations of the Class A Voting Common Stock are identical with those of the Class B Common Stock other than in respect of voting and conversion rights as set forth in DIGITAL Delaware's Certificate of Incorporation, and for all purposes under its Certificate of Incorporation, the Class A Common Stock and Class B Common Stock shall together constitute a single class of shares of the capital stock of the Corporation.

WHEREAS, The Board of Directors of DIGITAL California has determined that, for the purpose of effecting the reincorporation of DIGITAL California in the State of Delaware, it is advisable and in the best interests of DIGITAL California and its shareholders that DIGITAL California merge with and into DIGITAL Delaware upon the terms and conditions herein provided.

WHEREAS, the respective Boards of Directors of the Constituent Corporations, the shareholders of DIGITAL California and the stockholder of DIGITAL Delaware have approved this Merger Agreement and have directed that this Merger Agreement be executed by the undersigned officers.

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein, DIGITAL Delaware and DIGITAL California hereby agree, intending to be legally bound hereby, subject to the terms and conditions hereinafter set forth, as follows:

ARTICLE I

THE MERGER

1. Merger. In accordance with the provisions of this Merger Agreement, the General Corporation Law of the State of Delaware (the "**DGCL**") and the California Corporations Code, DIGITAL California shall be merged with and into DIGITAL Delaware (the "**Merger**"), the separate existence of DIGITAL California shall cease and DIGITAL Delaware shall be, and is herein sometimes referred to as, the "**Surviving Corporation**."

2. Filing and Effectiveness. The Merger shall become effective in accordance with Section 1108 of the California Corporations Code and Section 252 of the DGCL. The date and time when the Merger shall become effective, as aforesaid, is herein called the "**Effective Date**."

3. Effect of the Merger. Upon the Effective Date, the separate existence of DIGITAL California shall cease, and DIGITAL Delaware, as the Surviving Corporation, shall: (i) continue to possess all of its assets, rights, powers and property as constituted immediately prior to the Effective Date, (ii) be subject to all actions previously taken by its and DIGITAL California's Boards of Directors, (iii) succeed, without other transfer, to all of the assets, rights, powers and property of DIGITAL California in the manner as more fully set forth in Section 259 of the DGCL, (iv) continue to be subject to all of its debts, liabilities and obligations as constituted immediately prior to the Effective Date, and (v) succeed, without other transfer, to all of the debts, liabilities and obligations of DIGITAL California in the same manner as if DIGITAL Delaware had itself incurred them, all as more fully provided under the applicable provisions of the DGCL and the California Corporations Code.

ARTICLE II

CHARTER DOCUMENTS, DIRECTORS AND OFFICERS

1. Certificate of Incorporation. The Certificate of Incorporation of DIGITAL Delaware as in effect immediately prior to the Effective Date (the "**Certificate of Incorporation**") shall continue in full force and effect as the Certificate of Incorporation of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

2. Bylaws. The Bylaws of DIGITAL Delaware as in effect immediately prior to the Effective Date shall continue in full force and effect as the Bylaws of the Surviving Corporation until duly amended in accordance with the provisions thereof and applicable law.

3. Directors and Officers. The directors and officers of DIGITAL California immediately prior to the Effective Date shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected and qualified or until as otherwise provided by law, the Certificate of Incorporation of the Surviving Corporation or the Bylaws of the Surviving Corporation.

ARTICLE III

MANNER OF CONVERSION OF SECURITIES

1. DIGITAL California Common Stock. Upon the Effective Date, each share of DIGITAL California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) legally issued, fully paid and nonassessable share of Class A Common Stock.

2. DIGITAL Delaware Common Stock. Upon the Effective Date, each share of DIGITAL Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by DIGITAL Delaware, or the holder of such shares or any other person, be cancelled and returned to the status of authorized and unissued shares of DIGITAL Delaware Common Stock, without any consideration being delivered in respect thereof.

3. Series B Preferred Stock. Each outstanding share of Series B Preferred Stock, no par value per share, of DIGITAL California shall be converted into, in accordance with the terms and conditions hereof, one (1) share of Series B Preferred Stock of the Surviving Corporation (the "**New Series B Preferred Stock**"), which New Series B Preferred Stock shall be identical in all respects to the Series B Preferred Stock, with the exception of the par value of such shares.

4. Series C Preferred Stock. Each outstanding share of Series C Preferred Stock, no par value per share, of DIGITAL California shall be converted into, in accordance with the terms and conditions hereof, one (1) share of Series C Preferred Stock of the Surviving Corporation (the "**New Series C Preferred Stock**"), which New Series C Preferred Stock shall be identical in all respects to the Series C Preferred Stock, with the exception of the par value of such shares.

5. Series D Preferred Stock. Each outstanding share of Series D Preferred Stock, no par value per share, of DIGITAL California shall be converted into, in accordance with the terms and conditions hereof, one (1) share of Series D Preferred Stock of the Surviving Corporation (the "**New Series D Preferred Stock**"), which New Series D Preferred Stock shall be identical in all respects to the Series D Preferred Stock, with the exception of the par value of such shares and that there shall be 500,000 such shares designated as New Series C Preferred Stock.

6. Series E Preferred Stock. Each outstanding share of Series E Preferred Stock, no par value per share, of DIGITAL California shall be converted into, in accordance with the terms and conditions hereof, one (1) share of Series E Preferred Stock of the Surviving Corporation (the "**New Series E Preferred Stock**"), which New Series E Preferred Stock shall be identical in all respects to the Series E Preferred Stock, with the exception of the par value of such shares.

7. Exchange of Certificates. After the Effective Date, each holder of an outstanding certificate representing shares of DIGITAL California Common Stock may, at such shareholder's option, surrender the same for cancellation to an exchange agent designated by the Surviving Corporation (the "**Exchange Agent**"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of DIGITAL Delaware Common Stock into which the shares formerly represented by the surrendered certificate were converted as herein provided. Until so surrendered, each certificate representing shares of DIGITAL California Common Stock outstanding immediately prior to the Effective Date shall be deemed for all purposes, from and after the Effective Date, to represent the number of shares of DIGITAL Delaware Common Stock into which such shares of DIGITAL California Common Stock were converted in the Merger.

The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any shares of stock represented by such certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of DIGITAL

Delaware Common Stock represented by such certificate as provided above.

Each certificate representing shares of DIGITAL Delaware Common Stock so issued in the Merger shall bear the same legends, if any, with respect to the restrictions on transferability as the certificate of DIGITAL California Common Stock so converted and given in exchange therefor, unless otherwise determined by the Board of Directors of the Surviving Corporation in compliance with applicable laws.

8. DIGITAL California Equity Incentive Plans; Option; Warrants; Etc.

(a) Options, Warrants or other Derivative Securities. At the Effective Time, each outstanding option or warrant to purchase a share of DIGITAL California Common Stock (collectively, "**Purchase Rights**"), whether issued under an equity incentive plan adopted by DIGITAL California (a "**Plan**") or otherwise, whether vested or unvested, will continue in effect and shall be, until thereafter altered, amended or terminated as provided therein and in accordance with applicable law or the terms of the applicable Plan, if any, converted as a result of the Merger into an option or warrant to purchase Class A Common Stock of the Surviving Corporation. Each option and warrant issued or to be issued by the Surviving Corporation shall continue to have, and be subject to, the same terms and conditions set forth in the applicable plan, grant or issuance agreement, or terms immediately prior to the Effective Time. Additionally, each Plan including without limitation, the 2012 Stock Option Plan and the 2016 Stock Incentive Plan, shall as a result of the Merger become Plans of the Surviving Corporation and the Surviving Corporation hereby agrees that the terms, provisions and conditions of such Plans shall continue in full force and effect following the Effective Time, as if such Plans had been adopted by the directors and stockholders of the Surviving Corporation, subject to the right of the Surviving Corporation to amend, terminate or alter such Plans after the Effective Time in accordance with the terms of applicable law and such Plans.

(b) Reservation of Shares. A number of shares of Class A Common Stock shall be reserved for issuance under the Plans equal to the number of shares of DIGITAL California Common Stock so reserved immediately prior to the Effective Date.

ARTICLE IV

GENERAL

1. Conditions to DIGITAL California's Obligations. The obligations of DIGITAL California under this Merger Agreement shall be conditioned upon the occurrence of the following events:

(a) The principal terms of this Merger Agreement shall have been duly approved by the shareholders of DIGITAL California;

(b) Any consents, approvals or authorizations that DIGITAL California deems necessary or appropriate to be obtained in connection with the consummation of the Merger shall have been obtained, including, but not limited to, approvals with respect to federal and state securities laws; and

(c) The Class A Common Stock to be issued and reserved for issuance in connection with the Merger shall have been approved for listing on the NYSE American LLC.

2. Covenants of DIGITAL Delaware. DIGITAL Delaware covenants and agrees that it will, on or before the Effective Date:

(a) Qualify to do business as a foreign corporation in the State of California and, in connection therewith, appoint an agent for service of process as required under the provisions of Section 2105 of the California Corporations Code;

(b) File this Merger Agreement with the Secretary of State of the State of California; and

(c) Take such other actions as may be required by the California Corporations Code.

3. FIRPTA Notification. If any shareholder believes that it, or its direct or indirect beneficial owners, could potentially be subject to tax in connection with the Merger under Section 897 of the Code by reason of (i) being a nonresident alien individual or foreign corporation within the meaning of Section 897(a)(1) of the Code, and (ii) not qualifying for the exemption in Section 897(c)(3) of the Code, such shareholder may provide the Surviving Corporation with a statement on the date hereof in accordance with Notice 89-57, 1989-1 C.B. 698, and Section 1.1445-2(d)(2)(iii) of the Treasury Regulations, which statement the Surviving Corporation shall file with the Internal Revenue Service within 20 days in accordance with Section 1.1445-2(d)(2)(i)(B) of the Treasury Regulations.

4. Reorganization for Tax Purposes. The Merger is intended to be treated for U.S. federal income tax purposes as a "reorganization" described in Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended, and by executing this agreement the parties intend to adopt a "plan of reorganization" within the meaning of Sections 1.368-2(g) and 1.368-3(a) of the Treasury Regulations.

5. Further Assurances. From time to time, as and when required by DIGITAL Delaware or by its successors or assigns, there shall be executed and delivered on behalf of DIGITAL California such deeds and other instruments, and there shall be taken or caused to be taken by DIGITAL Delaware and DIGITAL California such further and other actions, as shall be appropriate or necessary in order to vest or perfect in or conform of record or otherwise by DIGITAL Delaware the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of DIGITAL California and otherwise to carry out the purposes of this Merger Agreement, and the officers and directors of DIGITAL Delaware are fully authorized in the name and on behalf of DIGITAL California or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

6. Abandonment. At any time before the Effective Date, this Merger Agreement may be terminated and the Merger may be abandoned for any reason whatsoever by the Board of Directors of either or both of the Constituent Corporations, notwithstanding the approval of this Merger Agreement by the shareholders of DIGITAL California or by the sole stockholder of DIGITAL Delaware, or by both. In the event of the termination of this Merger Agreement, this Merger Agreement shall become void and of no effect and there shall be no obligations on either Constituent Corporation or their respective Board of Directors, shareholders or stockholders with respect thereto.

7. Amendment. The Boards of Directors of the Constituent Corporations may amend this Merger Agreement at any time prior to the filing of this Merger Agreement with the Secretaries of State of the States of California and Delaware, provided that an amendment made subsequent to the adoption of this Merger Agreement by the stockholders or shareholders of either Constituent Corporation shall not, unless approved by such stockholders or shareholders as required by law:

(a) Alter or change the amount or kind of shares, securities, cash, property and/or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation;

(b) Alter or change any term of the Certificate of Incorporation of the Surviving Corporation to be effected by the Merger; or

(c) Alter or change any of the terms and conditions of this Merger Agreement if such alteration or change would adversely affect the holders of any class or series of capital stock of any Constituent Corporation.

8. Registered Office. The registered office of the Surviving Corporation in the State of Delaware is Corporation Trust Center, 1209 Orange Street, City of Wilmington, County of New Castle, State of Delaware, 19801, and The Corporation Trust Company is the registered agent of the Surviving Corporation at such address.

9. Governing Law. This Merger Agreement shall in all respects be construed, interpreted and enforced in accordance with and governed by the laws of the State of Delaware and, so far as applicable, the merger provisions of the California Corporations Code.

10. Counterparts. In order to facilitate the filing and recording of this Merger Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, this Merger Agreement, having first been approved by resolutions of the Boards of Directors of DIGITAL Delaware, a Delaware corporation, and DIGITAL California, a California corporation, is hereby executed on behalf of each of such two corporations and attested to by their respective officers thereunto duly authorized.

DPW HOLDINGS, INC.

a Delaware corporation

By:

Amos Kohn

President and Chief Executive Officer

By:

[Title]

DIGITAL POWER CORPORATION

a California corporation

By:

Amos Kohn

President and Chief Executive Officer

By:

[Title]

Appendix C

CERTIFICATE OF INCORPORATION

OF

DPW HOLDINGS, INC.

*** * * ***

ARTICLE I

The name of this corporation is DPW Holdings, Inc. (hereinafter, the "**Corporation**").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware is Corporation Trust Center, 1209 Orange Street in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

Section 1. Authorized Shares.

This Corporation is authorized to issue two hundred million (200,000,000) shares of Class A Common Stock, par value $0.001 per share (the "**Class A Common Stock**"), twenty-five million (25,000,000) shares of Class B Common Stock, par value $0.001 per share (the "**Class B Common Stock**", and together with the Class A Common Stock, the "**Common Stock**"), and twenty-five million (25,000,000) shares of Preferred Stock, par value $0.001 per share. The number of authorized shares of any class or classes of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding shares of Common Stock of the Corporation, voting together as a single class.

Section 2. Common Stock.

A statement of the designations of each class of Common Stock and the powers, preferences and rights and qualifications, limitations or restrictions thereof is as follows:

(a) Voting Rights.

(i) Except as otherwise provided herein or by applicable law, the holders of shares of Class A Common Stock and Class B Common Stock shall at all times vote together as one class on all matters (including the election of directors) submitted to a vote or for the consent of the stockholders of the Corporation.

(ii) Each holder of shares of Class A Common Stock shall be entitled to one (1) vote for each share of Class A Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

(iii) Each holder of shares of Class B Common Stock shall be entitled to ten (10) votes for each share of Class B Common Stock held as of the applicable date on any matter that is submitted to a vote or for the consent of the stockholders of the Corporation.

(b) Dividends. Subject to the preferences applicable to any series of Preferred Stock, if any, outstanding at any time, the holders of Class A Common Stock and the holders of Class B Common Stock shall be entitled to share equally, on a per share basis, in such dividends and other distributions of cash, property or shares of stock of the Corporation as may be declared by the Board of Directors from time to time with respect to the Common Stock out of assets or funds of the Corporation legally available therefor; provided, however, that in the event that such dividend is paid in the form of shares of Common Stock or rights to acquire Common Stock, the holders of Class A Common Stock shall receive Class A Common Stock or rights to acquire Class A Common Stock, as the case may be, and the holders of Class B Common Stock shall receive Class B Common Stock or rights to acquire Class B Common Stock, as the case may be.

(c) Liquidation. Subject to the preferences applicable to any series of Preferred Stock, if any outstanding at any time, in the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the Corporation, the holders of Class A Common Stock and the holders of Class B Common Stock shall be entitled to share equally, on a per share basis, all assets of the Corporation of whatever kind available for distribution to the holders of Common Stock.

(d) Subdivision or Combinations. If the Corporation in any manner subdivides or combines the outstanding shares of one class of Common Stock, the outstanding shares of the other class of Common Stock will be subdivided or combined in the same manner.

(e) Equal Status. Except as expressly provided in this **Article IV**, Class A Common Stock and Class B Common Stock shall have the same rights and privileges and rank equally, share ratably and be identical in all respects as to all matters. Without limiting the generality of the foregoing, (i) in the event of a merger, consolidation or other business combination requiring the approval of the holders of the Corporation's capital stock entitled to vote thereon (whether or not the Corporation is the surviving entity), the holders of the Class A Common Stock shall have the right to receive, or the right to elect to receive, the same form of consideration, if any, as the holders of the Class B Common Stock and the holders of the Class A Common Stock shall have the right to receive, or the right to elect to receive, at least the same amount of consideration, if any, on a per share basis as the holders of the Class B Common Stock, and (ii) in the event of (x) any tender or exchange offer to acquire any shares of Common Stock by any third party pursuant to an agreement to which the Corporation is a party or (y) any tender or exchange offer by the Corporation to acquire any shares of Common Stock, pursuant to the terms of the applicable tender or exchange offer, the holders of the Class A Common Stock shall have the right to receive, or the right to elect to receive, the same form of consideration as the holders of the Class B Common Stock and the holders of the Class A Common Stock shall have the right to receive, or the right to elect to receive, at least the same amount of consideration on a per share basis as the holders of the Class B Common Stock.

(f) Conversion.

(i) As used in this Section 2(f), the following terms shall have the following meanings:

(1) "**Founder**" shall mean either Milton C. Ault III, a natural living person, or Philou Ventures, LLC, and "**Founders**" shall mean both of them.

(2) "**Class B Stockholder**" shall mean (a) the Founders, (b) any person who will become a registered holder of any shares of Class B Common Stock as, a result of a Transfer by either of the Founders, and (c) any person to whom or to which shares of Class B Common Stock will be issued during the Corporation's existence.

(3) "**Permitted Entity**" shall mean, with respect to any individual Class B Stockholder, any trust, account, plan, corporation, partnership, or limited liability company specified in Section 2(f)(iii)(2) established by or for such individual Class B Stockholder, so long as such entity meets the requirements of the exception set forth in Section 2(f)(iii)(2) applicable to such entity.

(4) "**Transfer**" of a share of Class B Common Stock shall mean any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law. A "**Transfer**" shall also include, without limitation, a transfer of a share of Class B Common Stock to a broker or other nominee (regardless of whether or not there is a corresponding change in beneficial ownership), or the transfer of, or entering into a binding agreement with respect to, Voting Control over a share of Class B Common Stock by proxy or otherwise; provided, however, that the following shall not be considered a "**Transfer**" within the meaning of this Section 2(f)(i)(4):

(A) the granting of a proxy to officers or directors of the Corporation at the request of the Board of Directors of the Corporation in connection with actions to be taken at an annual or special meeting of stockholders;

(B) entering into a voting trust, agreement or arrangement (with or without granting a proxy) solely with stockholders who are Class B Stockholders, that (A) is disclosed either in a Schedule 13D filed with the Securities and Exchange Commission or in writing to the Secretary of the Corporation, (B) either has a term not exceeding one (1) year or is terminable by the Class B Stockholder at any time and (C) does not involve any payment of cash, securities, property or other consideration to the Class B Stockholder other than the mutual promise to vote shares in a designated manner; or

(C) the pledge of shares of Class B Common Stock by a Class B Stockholder that creates a mere security interest in such shares pursuant to a bona fide loan or indebtedness transaction so long as the Class B Stockholder continues to exercise Voting Control over such pledged shares; provided, however, that a foreclosure on such shares of Class B Common Stock or other similar action by the pledgee shall constitute a "**Transfer**."

(5) "**Voting Control**" with respect to a share of Class B Common Stock shall mean the power (whether exclusive or shared) to vote or direct the voting of such share of Class B Common Stock by proxy, voting agreement or otherwise.

(ii) Each share of Class B Common Stock shall be convertible into one (1) fully paid and nonassessable share of Class A Common Stock at the option of the holder thereof at any time upon written notice to the transfer agent of the Corporation.

(iii) Each share of Class B Common Stock shall automatically, without any further action, convert into one (1) fully paid and nonassessable share of Class A Common Stock upon a Transfer of such share, other than a Transfer:

(1) from a Founder, or such Founder's Permitted Entities, to the other Founder, or such Founder's Permitted Entities.

(2) by a Class B Stockholder who is a natural person to any of the following Permitted Entities, and from any of the following Permitted Entities back to such Class B Stockholder and/or any other Permitted Entity established by or for such Class B Stockholder:

(A) a trust for the benefit of such Class B Stockholder and for the benefit of no other person, provided such Transfer does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust) to the Class B Stockholder and, provided, further, that in the event such Class B Stockholder is no longer the exclusive beneficiary of such trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(B) a trust for the benefit of persons other than the Class B Stockholder so long as the Class B Stockholder has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such trust, provided such Transfer does not involve any payment of cash, securities, property or other consideration (other than an interest in such trust) to the Class B Stockholder, and, provided, further, that in the event the Class B Stockholder no longer has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(C) a trust under the terms of which such Class B Stockholder has retained a "qualified interest" within the meaning of §2702(b)(1) of the Code and/or a reversionary interest so long as the Class B Stockholder has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such trust; provided, however, that in the event the Class B Stockholder no longer has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(D) an Individual Retirement Account, as defined in Section 408(a) of the Internal Revenue Code, or a pension, profit sharing, stock bonus or other type of plan or trust of which such Class B Stockholder is a participant or beneficiary and which satisfies the requirements for qualification under Section 401 of the Internal Revenue Code; provided that in each case such Class B Stockholder has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held in such account, plan or trust, and provided, further, that in the event the Class B Stockholder no longer has sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such account, plan or trust, each share of Class B Common Stock then held by such trust shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(E) a corporation in which such Class B Stockholder directly, or indirectly through one or more Permitted Entities, owns shares with sufficient Voting Control in the corporation, or otherwise has legally enforceable rights, such that the Class B Stockholder retains sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such corporation; provided that in the event the Class B Stockholder no longer owns sufficient shares or has sufficient legally enforceable rights to enable the Class B Stockholder to retain sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such corporation, each share of Class B Common Stock then held by such corporation shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock;

(F) a partnership in which such Class B Stockholder directly, or indirectly through one or more Permitted Entities, owns partnership interests with sufficient Voting Control in the partnership, or otherwise has legally enforceable rights, such that the Class B Stockholder retains sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such partnership; provided that in the event the Class B Stockholder no longer owns sufficient partnership interests or has sufficient legally enforceable rights to enable the Class B Stockholder to retain sole dispositive power and exclusive Voting Control with respect to the shares of Class B

Common Stock held by such partnership, each share of Class B Common Stock then held by such partnership shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock; or

(G) a limited liability company in which such Class B Stockholder directly, or indirectly through one or more Permitted Entities, owns membership interests with sufficient Voting Control in the limited liability company, or otherwise has legally enforceable rights, such that the Class B Stockholder retains sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such limited liability company; provided that in the event the Class B Stockholder no longer owns sufficient membership interests or has sufficient legally enforceable rights to enable the Class B Stockholder to retain sole dispositive power and exclusive Voting Control with respect to the shares of Class B Common Stock held by such limited liability company, each share of Class B Common Stock then held by such limited liability company shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock. Notwithstanding the foregoing, if the shares of Class B Common Stock held by the Permitted Entity of a Class B Stockholder would constitute stock of a "controlled corporation" (as defined in Section 2036(b)(2) of the Code) upon the death of such Class B Stockholder, and the Transfer of shares Class B Common Stock by such Class B Stockholder to the Permitted Entity did not involve a bona fide sale for an adequate and full consideration in money or money's worth (as contemplated by Section 2036(a) of the Code), then such shares will not automatically convert to Class A Common Stock if the Class B Stockholder does not directly or indirectly retain Voting Control over such shares until such time as the shares of Class B Common Stock would no longer constitute stock of a "controlled corporation" pursuant to the Code upon the death of such Class B Stockholder (such time is referred to as the "**Voting Shift**"). If the Class B Stockholder does not, within five (5) business days following the mailing of the Corporation's proxy statement for the first annual or special meeting of stockholders following the Voting Shift, directly or indirectly through one or more Permitted Entities assume sole dispositive power and exclusive Voting Control with respect to such shares of Class B Common Stock, each such share of Class B Common Stock shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock.

(3) by a Class B Stockholder that is a limited liability company, or a nominee for a limited liability company, which limited liability company beneficially held more than five percent (5%) of the total outstanding shares of Class B Common Stock as of the Effective Time, to any person or entity that, at the Effective Time, was a member of such limited liability company pro rata in accordance with their ownership interests in the company and the terms of any applicable agreement binding the company and its members at the Effective Time, and any further Transfer(s) by any such member that is a partnership or limited liability company to any person or entity that was at such time a partner or member of such partnership or limited liability company pro rata in accordance with their ownership interests in the partnership or limited liability company and the terms of any applicable partnership or similar agreement binding the partnership or limited liability company. All shares of Class B Common Stock held by affiliated entities shall be aggregated together for the purposes of determining the satisfaction of such five percent (5%) threshold.

(iv) Each share of Class B Common Stock held of record by a Class B Stockholder who is a natural person, or by such Class B Stockholder's Permitted Entities, shall automatically, without any further action, convert into one (1) fully paid and nonassessable share of Class A Common Stock upon the death of such Class B Stockholder; provided, however, that if a Founder, or such Founder's Permitted Entity (in either case, the "**Transferring Founder**") Transfers exclusive Voting Control (but not ownership) of shares of Class B Common Stock to the other Founder (the "**Transferee Founder**") which Transfer of Voting Control is contingent or effective upon the death or dissolution, as applicable, of the Transferring Founder, then each share of Class B Common Stock that is the subject of such Transfer shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock upon that date which is the earlier of: (a) nine (9) months after the date upon which the Transferring Founder died or was dissolved, or (b) the date upon which the Transferee Founder ceases to hold exclusive Voting Control over such shares of Class B Common Stock; provided, further, that if the Transferee Founder shall die or be liquidated within nine (9) months following the death or dissolution of the Transferring Founder, then a trustee designated by the Transferee Founder and approved by the Board of Directors may exercise Voting Control over: (x) the Transferring Founders' shares of Class B Common Stock and, in such instance, each such share of Class B Common Stock shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock upon that date which is the earlier of: (A) nine (9) months after the date upon which the Transferring Founder died or was dissolved, or (B) the date upon which such trustee ceases to hold exclusive Voting Control over such shares of Class B Common Stock; and (y) the Transferee Founders' shares of Class B Common Stock (or shares held by an entity of the type referred to in paragraph (2) below established by or for the Transferee Founder) and, in such instance, each such share of Class B Common Stock shall automatically convert into one (1) fully paid and nonassessable share of Class A Common Stock upon that date which is the earlier of: (A) nine (9) months after the date upon which the Transferee Founder died or was dissolved, or (B) the date upon which such trustee ceases to hold exclusive Voting Control over such shares of Class B Common Stock.

(v) The Corporation may, from time to time, establish such policies and procedures relating to the conversion of the Class B Common Stock to Class A Common Stock and the general administration of this dual class common stock structure, including the issuance of stock certificates with respect thereto, as it may deem necessary or advisable, and may request that holders of shares of Class B Common Stock furnish affidavits or other proof to the Corporation as it deems necessary to verify the ownership of Class B Common Stock and to confirm that a conversion to Class A Common Stock has not occurred. A determination by the Secretary of the Corporation that a Transfer results in a conversion to Class A Common Stock shall be conclusive.

(vi) In the event of a conversion of shares of Class B Common Stock to shares of Class A Common Stock pursuant to this Section 2, such conversion shall be deemed to have been made at the time that the Transfer of such shares occurred. Upon any conversion of Class B Common Stock to Class A Common Stock, all rights of the holder of shares of Class B Common Stock shall cease and the person or persons in whose names or names the certificate or certificates representing the shares of Class A Common Stock are to be issued shall be treated for all purposes as having become the record holder or holders of such shares of Class A Common Stock. Shares of Class B Common Stock that are converted into shares of Class A Common Stock as provided in this Section 2 shall be retired and may not be reissued.

(g) Reservation of Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the conversion of the shares of Class B Common Stock, such number of its shares of Class A Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Class B Common Stock into shares of Class A Common Stock.

Section 3. Change in Control Transaction.

The Corporation shall not consummate a Change in Control Transaction without first obtaining the affirmative vote, at a duly called annual or special meeting of the stockholders of the Corporation, of the holders of the greater of: (A) a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote thereon, voting together as a single class, and (B) sixty percent (60%) of the voting power of the shares of capital stock present in person or represented by proxy at the stockholder meeting called to consider the Change in Control Transaction and entitled to vote thereon, voting together as a single class. For the purposes of this section, a "**Change in Control Transaction**" means the occurrence of any of the following events:

(a) the sale, encumbrance or disposition (other than non-exclusive licenses in the ordinary course of business and the grant of security interests in the ordinary course of business) by the Corporation of all or substantially all of the Corporation's assets;

(b) the merger or consolidation of the Corporation with or into any other corporation or entity, other than a merger or consolidation which would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) more than fifty percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity or its parent outstanding immediately after such merger or consolidation; or

(c) the issuance by the Corporation, in a transaction or series of related transactions, of voting securities representing more than two percent (2%) of the total voting power of the Corporation before such issuance, to any person or persons acting as a group as contemplated in Rule 13d-5(b) under the Securities Exchange Act of 1934 (or any successor provision) such that, following such transaction or related transactions, such person or group of persons would hold more than fifty percent (50%) of the total voting power of the Corporation, after giving effect to such issuance.

Section 4. Preferred Stock.

The Board of Directors is authorized, subject to any limitations prescribed by law, to provide for the issuance of shares of Preferred Stock in series, and to establish from time to time the number of shares to be included in each such

series, and to fix the designation, power, preferences, and rights of the shares of each such series and any qualifications, limitations or restrictions thereof. Except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

ARTICLE V

The Corporation is to have perpetual existence.

ARTICLE VI

Section 1. Board of Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 2. Bylaws.

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, alter, amend or repeal the Bylaws of the Corporation. The affirmative vote of at least a majority of the Board of Directors then in office shall be required in order for the Board of Directors to adopt, amend, alter or repeal the Corporation's Bylaws. The Corporation's Bylaws may also be adopted, amended, altered or repealed by the stockholders of the Corporation. Notwithstanding the above or any other provision of this Certificate of Incorporation, the Bylaws of the Corporation may not be amended, altered or repealed except in accordance with Article X of the Bylaws. No Bylaw hereafter legally adopted, amended, altered or repealed shall invalidate any prior act of the directors or officers of the Corporation that would have been valid if such Bylaw had not been adopted, amended, altered or repealed.

Section 3. Controlled Company.

(a) If, at any time during which shares of capital stock of the Corporation are listed for trading on either The Nasdaq Stock Market ("**Nasdaq**"), the New York Stock Exchange or the NYSE American (in either case, "**NYSE**"), holders of the requisite voting power under the then-applicable Nasdaq or NYSE listing standards notify the Corporation in writing of their election to cause the Corporation to rely upon the applicable "controlled company" exemptions (the "**Controlled Company Exemption**") to the corporate governance rules and requirements of the Nasdaq or the NYSE (the "**Exchange Governance Rules**"), the Corporation shall call a special meeting of the stockholders to consider whether to approve the election to be held within ninety (90) days of written notice of such election (or, if the next succeeding annual meeting of stockholders will be held within ninety (90) days of written notice of such election, the Corporation shall include a proposal to the same effect to be considered at such annual meeting). The Corporation shall not elect to rely upon the Controlled Company Exemption until such time as the Corporation shall have received the approval from holders of at least sixty-six and two thirds percent (66 2/3%) of the voting power of the issued and outstanding shares of capital stock of the Corporation at such annual or special meeting.

(b) In the event such approval is obtained, for so long as shares of the capital stock of the Corporation are listed on either the Nasdaq or the NYSE and the Corporation remains eligible for the Controlled Company Exemption under the requirements of the applicable Exchange Governance Rules, then the Board of Directors shall be constituted such that (i) a majority of the directors on the Board of Directors shall be Outside Directors (as defined below), and (ii) the Corporation's compensation committee and the governance and nominating committee (or such committees serving similar functions as the Board of Directors of the Corporation shall constitute from time to time) shall consist of at least two (2) members of the Board of Directors and shall be composed entirely of Outside Directors. In the event the number of Outside Directors serving on the Board of Directors constitutes less than a majority of the directors on the Board of Directors as a result of the death, resignation or removal of an Outside Director, then the Board of Directors may continue to properly exercise its powers and no action of the Board of Directors shall be so invalidated, provided, that the Board of Directors shall promptly take such action as is necessary to appoint new Outside Director(s) to the Board of Directors.

(c) An "**Outside Director**" shall mean a director who, currently and for any of the past three years, is and was not an officer of the Corporation (other than service as the chairman of the Board of Directors) or a parent or subsidiary of the Corporation and is not and was not otherwise employed by the corporation or a parent or subsidiary of the Corporation.

Section 4. Audit Committee.

The Board of Directors of the Corporation shall establish an audit committee whose principal purpose will be to oversee the Corporation's and its subsidiaries' accounting and financial reporting processes, internal systems of control, independent auditor relationships and audits of consolidated financial statements of the Corporation and its subsidiaries. The audit committee will also determine the appointment of the independent auditors of the Corporation and any change in such appointment and ensure the independence of the Corporation's auditors. In addition, the audit committee will assume such other duties and responsibilities delegated to it by the Board of Directors and specified for it under applicable law and Exchange Governance Rules.

Section 5. Corporate Governance and Nominating Committee.

The Board of Directors of the Corporation shall establish a corporate governance and nominating committee whose principal duties will be to assist the Board of Directors by identifying individuals qualified to become members of the Board of Directors consistent with criteria approved by the Board of Directors, to recommend to the Board of Directors for its approval the slate of nominees to be proposed by the Board of Directors to the stockholders for election to the Board of Directors, to develop and recommend to the Board of Directors the governance principles applicable to the Corporation, as well as such other duties and responsibilities delegated to it by the Board of Directors and specified for it under applicable law and Exchange Governance Rules. In the event the corporate governance and nominating committee will not be recommending a then incumbent director for inclusion in the slate of nominees to be proposed by the Board of Directors to the stockholders for election to the Board of Directors, and provided such incumbent director has not notified the committee that he or she will be resigning or that he or she does not intend to stand for re-election to the Board of Directors, then, in the case of an election to be held at an annual meeting of stockholders, the corporate governance and nominating committee will recommend the slate of nominees to the Board of Directors at least thirty (30) days prior to the latest date required by the provisions of Sections 2.14 (advance notice of stockholder business) and 2.15 (advance notice of director nominations) of the Bylaws of the Corporation (as such provisions may be amended from time to time) for stockholders to submit nominations for directors at such annual meeting, or in the case of an election to be held at a special meeting of stockholders, at least ten (10) days prior to the latest date required by the provisions of Sections 2.14 and 2.15 of the Bylaws for stockholders to submit nominations for directors at such special meeting.

Section 6. Compensation Committee.

The Board of Directors of the Corporation shall establish a compensation committee whose principal duties will be to review employee compensation policies and programs as well as the compensation of the chief executive officer and other executive officers of the Corporation, to recommend to the Board of Directors a compensation program for outside members of the Board of Directors, as well as such other duties and responsibilities delegated to it by the Board of Directors and specified for it under applicable law and Exchange Governance Rules.

Section 7. Election of Directors.

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

Section 8. Cumulative Voting.

No stockholder will be permitted to cumulate votes at any election of directors.

Section 9. Number of Directors.

The number of directors that constitute the whole Board of Directors shall be fixed exclusively in the manner designated in the Bylaws of the Corporation.

ARTICLE VII

Section 1. Limitation of Personal Liability.

To the fullest extent permitted by the General Corporation Law of Delaware as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated to the fullest extent permitted by the General Corporation Law of Delaware, as so amended.

Section 2. Indemnification.

The Corporation may indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, she, his or her testator or intestate is or was a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation or serves or served at any other enterprise as a director, officer, employee or agent at the request of the Corporation or any predecessor to the Corporation.

Section 3. Inconsistent Provisions.

Neither any amendment or repeal of any Section of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE VIII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

ARTICLE IX

Section 1. Special Meetings.

Unless otherwise required by law, special meetings of the stockholders of the Corporation, for any purpose or purposes, may be called only by (i) the Board of Directors of the Corporation, (ii) the Chairman of the Board of Directors of the Corporation, (iii) the Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) of the Corporation, or (iv) a holder, or group of holders, of Common Stock holding more than twenty percent (20%) of the total voting power of the outstanding shares of capital stock of the Corporation then entitled to vote.

Section 2. Action Without a Meeting.

Any action required or permitted to be taken by the stockholders of the Corporation may, but need not, be effected at a duly called annual or special meeting of stockholders of the Corporation; any such action may also be effected by any consent in writing by such stockholders pursuant to Section 228 of the General Corporation Law of Delaware.

ARTICLE XII

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that notwithstanding any other provision of this Certificate of Incorporation, or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of the Corporation, and, as applicable, such other approvals of the Board of Directors of the Corporation, as are required by law or by this Certificate of Incorporation: (i) the unanimous consent of Board of Directors then in office, and the affirmative vote of the holders at least a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote, shall be required to amend or repeal Article IV, Section 2, this clause (i) of Article XII; (ii) the affirmative vote of the holders of the greater of: (A) a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote thereon, or (B) sixty percent (60%) of the voting power of the shares of capital stock present in person or represented by proxy at the stockholder meeting and entitled to vote thereon, shall be required to amend or repeal Article IV, Section 3 or this clause (ii) of Article XII; (iii) the consent of a majority of the members of the Board then in office, and the affirmative vote of the holders at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote shall be required to amend or repeal Article IV, Section 4 and Article XI or this clause (iii) of Article XII; (iv) the unanimous consent of the Board of Directors then in office and the consent of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of the issued and outstanding shares of capital stock of the Corporation shall be required to amend or repeal Article VI, Section 3, 5, 6 or 7 or this clause (iv) of Article XII; and (v) the consent of at least two-thirds of the members of the Board of Directors then in office and the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote shall be required to amend or repeal this clause (v) of Article XII.

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Appendix D - Bylaws

BYLAWS

OF

DPW HOLDINGS, INC.

a Delaware Corporation

Effective as of September __, 2017

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BYLAWS

OF

DPW HOLDINGS, INC.

ARTICLE I

CORPORATE OFFICES

1.1 Registered Office. The registered office of DPW Holdings, Inc. (the "**Corporation**") shall be fixed in the Corporation's certificate of in Corporation, as the same may be amended and/or restated from time to time (as so amended and/or restated, the "**Certificate**").

1.2 Other Offices. The Corporation's Board of Directors (the "**Board**") may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 Place of Meetings. Meetings of stockholders shall be held at any place within or outside the State of Delaware as designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 Annual Meeting. The annual meeting of stockholders shall be held each year on a date and at a time designated by the Board. At the annual meeting, directors shall be elected and any other proper business may be transacted.

2.3 Special Meeting. Unless otherwise required by law or the Certificate, special meetings of the stockholders may be called at any time, for any purpose or purposes, only by (i) the Board, (ii) the Chairman of the Board, (iii) the chief executive officer of the Corporation, or (iv) holders of more than twenty percent (20%) of the total voting power of the outstanding shares of capital stock of the Corporation then entitled to vote.

If any person(s) other than the Board calls a special meeting, the request shall:

(a) be in writing;

(b) specify the general nature of the business proposed to be transacted; and

(c) be delivered personally or sent by registered mail or by facsimile transmission to the secretary of the Corporation.

Upon receipt of such a request, the Board shall determine the date, time and place of such special meeting, which must be scheduled to be held on a date that is within ninety (90) days of receipt by the secretary of the request therefor, and the secretary of the Corporation shall prepare a proper notice thereof. No business may be transacted at such special meeting other than the business specified in the notice to stockholders of such meeting.

2.4 Notice of Stockholders' Meetings. All notices of meetings of stockholders shall be sent or otherwise given in accordance with either Section 2.5 or Section 8.1 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise required by applicable law. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Any previously scheduled meeting of stockholders may be postponed, and, unless the Certificate provides otherwise, any special meeting of the stockholders may be cancelled by resolution duly adopted by a majority of the Board members then in office upon public notice given prior to the date previously scheduled for such meeting of stockholders.

Whenever notice is required to be given, under the DGCL, the Certificate or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

Whenever notice is required to be given, under any provision of the DGCL, the Certificate or these bylaws, to any stockholder to whom (a) notice of two (2) consecutive annual meetings, or (b) all, and at least two (2) payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12) month period, have been mailed addressed to such person at such person's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the Corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL.

The exception in subsection (a) of the above paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

2.5 Manner of Giving Notice; Affidavit of Notice. Notice of any meeting of stockholders shall be given:

(a) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the Corporation's records;

(b) if electronically transmitted, as provided in Section 8.1 of these bylaws; or

(c) otherwise, when delivered.

An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

Notice may be waived in accordance with Section 7.13 of these bylaws.

2.6 Quorum. Unless otherwise provided in the Certificate or required by law, stockholders representing a majority of the voting power of the issued and outstanding capital stock of the Corporation, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If such quorum is not present or represented at any meeting of the stockholders, then the chairman of the meeting, or the stockholders representing a majority of the voting power of the capital stock at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed. The stockholders present at a duly called meeting at which quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum.

2.7 Adjourned Meeting; Notice. When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place if any thereof, and the means of remote communications if any by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the continuation of the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in accordance with the provisions of Section 2.4 and 2.5 of these bylaws.

2.8 Administration of the Meeting. Meetings of stockholders shall be presided over by the chairman of the Board or, in the absence thereof, by such person as the chairman of the Board shall appoint, or, in the absence thereof or in the event that the chairman shall fail to make such appointment, any officer of the Corporation elected by the Board. In the absence of the secretary of the Corporation, the secretary of the meeting shall be such person as the chairman of the meeting appoints.

The Board shall, in advance of any meeting of stockholders, appoint one (1) or more inspector(s), who may include individual(s) who serve the Corporation in other capacities, including without limitation as officers, employees or agents, to act at the meeting of stockholders and make a written report thereof. The Board may designate one (1) or more persons as alternate inspector(s) to replace any inspector, who fails to act. If no inspector or alternate has been appointed or is able to act at a meeting of stockholders, the chairman of the meeting shall appoint one (1) or more inspector(s) to act at the meeting. Each inspector, before discharging his or her duties, shall take and sign an oath to faithfully execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspector(s) or alternate(s) shall have the duties prescribed pursuant to Section 231 of the DGCL or other applicable law.

The Board shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including without limitation establishing an agenda of business of the meeting, rules or regulations to maintain order, restrictions on entry to the meeting after the time fixed for commencement thereof and the fixing of the date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at a meeting (and shall announce such at the meeting).

2.9 Voting. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as otherwise provided in the provisions of Section 213 of the DGCL (relating to the fixing of a date for determination of stockholders of record) or these bylaws, each stockholder shall be entitled to that number of votes for each share of capital stock held by such stockholder as set forth in the Certificate.

In all matters, other than the election of directors and except as otherwise required by law, the Certificate or these bylaws, the affirmative vote of a majority of the voting power of the shares present or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

The stockholders of the Corporation shall not have the right to cumulate their votes for the election of directors of the Corporation.

2.10 Stockholder Action by Written Consent without a Meeting. Any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 2.10 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above in this Section 2.10.

Any action required or permitted to be taken by the stockholders of the Corporation (if the Corporation has more than one stockholder at such time) must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

2.11 Record Date for Stockholder Notice; Voting; Giving Consents. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other such action.

If the Board does not fix a record date in accordance with these bylaws and applicable law:

(a) The record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held.

(b) The record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is necessary, shall be the first day on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation.

(c) The record date for determining stockholders for any other purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

2.12 Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law and filed with the secretary of the Corporation, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A stockholder may also authorize another person or persons to act for him, her or it as proxy in the manner(s) provided under Section 212(c) of the DGCL or as otherwise

provided under Delaware law. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

2.13 List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Corporation's principal place of business.

In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.14 Advance Notice of Stockholder Business. Only such business shall be conducted as shall have been properly brought before a meeting of the stockholders of the Corporation. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board, (b) otherwise properly brought before the meeting by or at the direction of the Board, or (c) a proper matter for stockholder action under the DGCL that has been properly brought before the meeting by a stockholder (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.14 and on the record date for the determination of stockholders entitled to vote at such annual meeting and (ii) who complies with the notice procedures set forth in this Section 2.14. For such business to be considered properly brought before the meeting by a stockholder such stockholder must, in addition to any other applicable requirements, have given timely notice in proper form of such stockholder's intent to bring such business before such meeting. To be timely, such stockholder's notice must be delivered to or mailed and received by the secretary of the Corporation 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 anniversary date of the immediately preceding annual meeting; provided, however, that in the event that no annual meeting was held in the previous year or the annual meeting is called for a date that is not within thirty (30) days before or after such anniversary date, notice by the stockholder to be timely must be so received not later than the close of business on the tenth (10th) day following the day on which such notice of the date of the meeting was mailed or public disclosure of the date of the meeting was made, whichever occurs first.

To be in proper form, a stockholder's notice to the secretary shall be in writing and shall set forth:

(a) the name and record address of the stockholder who intends to propose the business and the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by such stockholder;

(b) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to introduce the business specified in the notice;

(c) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the annual meeting;

(d) any material interest of the stockholder in such business; and

(e) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by, and otherwise comply with the requirements of, the Exchange Act and the regulations promulgated thereunder.

No business shall be conducted at the annual meeting of stockholders except business brought before the annual meeting in accordance with the procedures set forth in this Section 2.14. The chairman of the meeting may refuse to acknowledge the proposal of any business not made in compliance with the foregoing procedure.

2.15 Advance Notice Of Director Nominations. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate with respect to the right of holders of Preferred Stock of the Corporation to nominate and elect a specified number of directors. To be properly brought before an annual meeting of stockholders, or any special meeting of stockholders called for the purpose of electing directors, nominations for the election of director must be (a) specified in the notice of meeting (or any supplement thereto), (b) made by or at the direction of the Board (or any duly authorized committee thereof) or (c) made by any stockholder of the Corporation (i) who is a stockholder of record on the date of the giving of the notice provided for in this Section 2.15 and on the record date for the determination of stockholders entitled to vote at such meeting and (ii) who complies with the notice procedures set forth in this Section 2.15.

In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the secretary of the Corporation. To be timely, a stockholder's notice to the secretary must be delivered to or mailed and received at the principal executive offices of the Corporation, in the case of an annual meeting, in accordance with the provisions set forth in Section 2.14, and, in the case of a special meeting of stockholders called for the purpose of electing directors, not later than the close of business on the tenth (10^{th}) day following the day on which notice of the date of the special meeting was mailed or public disclosure of the date of the special meeting was made, whichever first occurs.

To be in proper written form, a stockholder's notice to the secretary must set forth:

(a) as to each person whom the stockholder proposes to nominate for election as a director (i) the name, age, business address and residence address of the person, (ii) the principal occupation or employment of the person, (iii) the class or series and number of shares of capital stock of the Corporation which are owned beneficially or of record by the person, (iv) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder, and (v) any other information relating to such person that is required to be disclosed in solicitations of proxies for elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and

(b) as to such stockholder giving notice, the information required to be provided pursuant to Section 2.14.

Subject to the rights of any holders of Preferred Stock of the Corporation, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.15. If the chairman of the meeting properly determines that a nomination was not made in accordance with the foregoing procedures, the chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded.

ARTICLE III

DIRECTORS

3.1 Powers. Subject to the provisions of the DGCL and any limitations in the Certificate, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

3.2 Number of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of at least five members. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 Election, Qualification and Term of Office of Directors. Except as provided in Section 3.4 and Section 3.13 of these bylaws, directors shall be elected at each annual meeting of stockholders to hold office until the next annual meeting. Directors need not be stockholders unless so required by the Certificate or these bylaws. The Certificate or these bylaws may prescribe other qualifications for directors. Each director, including a director elected to fill a vacancy, shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

All elections of directors shall be by written ballot, unless otherwise provided in the Certificate. If authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, provided that any such electronic transmission must be either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized.

3.4 Resignation and Vacancies. Any director may resign at any time upon written notice or by electronic transmission to the chairman of the Board, with a copy to the secretary of the Corporation.

Subject to the rights of the holders of any series of Preferred Stock of the Corporation then outstanding and unless the Board otherwise determines, newly created directorships resulting from any increase in the authorized number of directors, or any vacancies on the Board resulting from the death, resignation, retirement, disqualification, removal from office or other cause shall, unless otherwise required by law, be filled by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director. When one or more directors resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

3.5 Place of Meetings; Meetings by Telephone. The Board may hold meetings, both regular and special, either within or outside the State of Delaware. Unless otherwise restricted by the Certificate or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.6 Regular Meetings. Regular meetings of the Board may be held with at least two (2) business days prior notice at such time and at such place as shall from time to time be determined by the Board.

3.7 Special Meetings; Notice. Special meetings of the Board for any purpose or purposes may be called at any time by (i) the Board of Directors of the Corporation, (ii) the Chairman of the Board of Directors of the Corporation, (iii) the Chief Executive Officer (or, in the absence of a Chief Executive Officer, the President) of the Corporation, or (iv) a holder, or group of holders, of Common Stock holding more than twenty percent (20%) of the total voting power of the outstanding shares of capital stock of the Corporation then entitled to vote. The person(s) authorized to call special meetings of the Board may fix the place and time of the meeting.

Notice of the time and place of special meetings shall be:

(a) delivered personally by hand, by courier or by telephone;

(b) sent by United States first-class mail, postage prepaid;

(c) sent by facsimile; or

(d) sent by electronic mail,

directed to each director at that director’s address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation’s records.

If the notice is (i) delivered personally by hand, by courier or by telephone, (ii) sent by facsimile or (iii) sent by electronic mail, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated either to the director or to a person at the office of the director who the person giving notice has reason to believe will promptly communicate such notice to the director. The notice need not specify the place of the meeting if the meeting is to be held at the Corporation's principal executive office nor the purpose of the meeting.

3.8 Quorum. Except as otherwise required by law or the Certificate, at all meetings of the Board, a majority of the authorized number of directors (as determined pursuant to Section 3.2 of these bylaws) shall constitute a quorum for the transaction of business, except to adjourn as provided in Section 3.11 of these bylaws. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the Certificate or these bylaws.

3.9 Waiver of Notice. Whenever notice is required to be given under any provisions of the DGCL, the Certificate or these bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting solely for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the directors, or members of a committee of directors, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate or these bylaws.

3.10 Board Action by Written Consent without a Meeting. Unless otherwise restricted by the Certificate or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.11 Adjourned Meeting; Notice. If a quorum is not present at any meeting of the Board, then a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate or these bylaws, the Board shall have the authority to fix the compensation of directors.

3.13 Removal of Directors. Subject to the rights of the holders of any series of Preferred Stock then outstanding, any director or the entire Board may be removed from office at any time, with or without cause, by the affirmative vote of the holders of at least a majority of the voting power of the issued and outstanding shares of capital stock of the Corporation then entitled to vote in the election of directors.

3.14 Corporate Governance Compliance. Without otherwise limiting the powers of the Board set forth in Section 3.1 and provided that shares of capital stock of the Corporation are listed for trading on either the NASDAQ Stock Market ("**NASDAQ**") or the New York Stock Exchange or the NYSE American (in either case, "**NYSE**"), the Corporation shall comply with the corporate governance rules and requirements of the NASDAQ or the NYSE, as applicable.

ARTICLE IV

COMMITTEES

4.1 Committees of Directors. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise such lawfully delegable powers and duties as the Board may confer. Each committee will comply with all applicable

provisions of: the Sarbanes-Oxley Act of 2002, the rules and regulations of the Securities and Exchange Commission, and the rules and requirements of NASDAQ or NYSE, as applicable, and will have the right to retain independent legal counsel and other advisers at the Corporation's expense.

4.2 Committee Minutes. Each committee shall keep regular minutes of its meetings and report to the Board when required.

4.3 Meetings and Action of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

(a) Section 3.5 (place of meetings and meetings by telephone);

(b) Section 3.6 (regular meetings);

(c) Section 3.7 (special meetings and notice);

(d) Section 3.8 (quorum);

(e) Section 3.9 (waiver of notice);

(f) Section 3.10 (action without a meeting); and

(g) Section 3.11 (adjournment and notice of adjournment), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members.

Notwithstanding the foregoing:

(a) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;

(b) special meetings of committees may also be called by resolution of the Board; and

(c) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

4.4 Audit Committee. The Board shall establish an Audit Committee whose principal purpose will be to oversee the Corporation's and its subsidiaries' accounting and financial reporting processes, internal systems of control, independent auditor relationships and audits of consolidated financial statements of the Corporation and its subsidiaries. The Audit Committee will also determine the appointment of the independent auditors of the Corporation and any change in such appointment and ensure the independence of the Corporation's auditors. In addition, the Audit Committee will assume such other duties and responsibilities as the Board may confer upon the committee from time to time.

4.5 Corporate Governance and Nominating Committee. The Board shall establish a Corporate Governance and Nominating Committee whose principal duties will be to assist the Board by identifying individuals qualified to become Board members consistent with criteria approved by the Board, to recommend to the Board for its approval the slate of nominees to be proposed by the Board to the stockholders for election to the Board, to develop and recommend to the Board the governance principles applicable to the Corporation, as well as such other duties and responsibilities as the Board may confer upon the committee from time to time. In the event the Corporate Governance and Nominating Committee will not be recommending a then incumbent director for inclusion in the slate of nominees to be proposed by the Board to the stockholders for election to the Board, and provided such incumbent director has not notified the Committee that he or she will be resigning or that he or she does not intend to stand for re-election to the Board, then, in the case of an election to be held at an annual meeting of stockholders, the Committee will recommend the slate of nominees to the Board at least thirty (30) days prior to the latest date required by the provisions of Sections 2.14 and 2.15 of these bylaws for stockholders to submit nominations for directors at such annual meeting, or in the case of an election to be held at a special meeting of stockholders, at least ten (10) days prior to the latest date required by the provisions of Sections 2.14 and 2.15 of these bylaws for stockholders to submit nominations for directors at such special meeting.

4.6 Compensation Committee. The Board shall establish a Compensation Committee whose principal duties will be to review employee compensation policies and programs as well as the compensation of the chief executive officer and other executive officers of the Corporation, to recommend to the Board a compensation program for outside Board members, as well as such other duties and responsibilities as the Board may confer upon the committee from time to time.

ARTICLE V

OFFICERS

5.1 Officers. The officers of the Corporation shall be a chief executive officer and a secretary. The Corporation may also have, at the discretion of the Board, a chairman of the Board, an executive chairman of the Board, one or more presidents, a chief financial officer, a treasurer, one or more vice presidents, one or more assistant vice presidents, one or more assistant treasurers, one or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws.

Any number of offices may be held by the same person, provided, however, that, except as provided in Section 5.6 below, the chairman of the Board shall not hold any other office of the Corporation.

5.2 Appointment of Officers. The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Sections 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. A failure to elect officers shall not dissolve or otherwise affect the Corporation.

5.3 Subordinate Officers. The Board may appoint, or empower the chief executive officer of the Corporation, to appoint, such other officers and agents as the business of the Corporation may require. Each of such officers and agents shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine.

5.4 Removal and Resignation of Officers. Any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board at any regular or special meeting of the Board or, except in the case of an officer appointed by the Board, by any officer upon whom such power of removal has been conferred by the Board.

Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

5.5 Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.2.

5.6 Chairman of the Board. The chairman of the Board shall be a member of the Board and, if present, preside at meetings of the Board and exercise and perform such other powers and duties as may from time to time be assigned to him or her by the Board or as may be prescribed by these bylaws.

The chairman shall be an Outside Director (as defined in the Certificate) and shall not hold any other office of the Corporation unless the appointment of the chairman is approved by two-thirds of the members of the Board then in office, provided, however, that if there is no chief executive officer or president of the Corporation as a result of the death, resignation or removal of such officer, then the chairman of the Board may also serve in an interim capacity as the chief executive officer of the Corporation until the Board shall appoint a new chief executive officer and, while serving in such interim capacity, shall have the powers and duties prescribed in Section 5.7 of these bylaws.

5.7 Chief Executive Officer. Subject to the control of the Board and any supervisory powers the Board may give to the chairman of the Board, the chief executive officer shall have general supervision, direction, and control of the business and affairs of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. The chief executive officer shall, together with any president or presidents of the Corporation, also perform all duties incidental to this office that may be required by law and all such other duties as are properly required of this office by the Board of Directors. The chief executive officer shall serve as chairman of and preside at all meetings of the stockholders. In the absence of the chairman of the Board, the chief executive officer shall preside at all meetings of the Board.

5.8 Presidents. Subject to the control of the Board and any supervisory powers the Board may give to the chairman of the Board, any president or presidents of the Corporation shall, together with the chief executive officer, have general supervision, direction, and control of the business and affairs of the Corporation and shall see that all orders and resolutions of the Board are carried into effect. A president shall have such other powers and perform such other duties as from time to time may be prescribed for him or her by the Board, these bylaws, the chief executive officer, or the chairman of the Board.

5.9 Vice Presidents. In the absence or disability of any president, the vice presidents, if any, in order of their rank as fixed by the Board or, if not ranked, a vice president designated by the Board, shall perform all the duties of a president. When acting as a president, the appropriate vice president shall have all the powers of, and be subject to all the restrictions upon, that president. The vice presidents shall have such other powers and perform such other duties as from time to time may be prescribed for them respectively by the Board, these bylaws, the chairman of the Board, the chief executive officer or, in the absence of a chief executive officer, any president.

5.10 Secretary. The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show:

(a) the time and place of each meeting;

(b) whether regular or special (and, if special, how authorized and the notice given);

(c) the names of those present at directors' meetings or committee meetings;

(d) the number of shares present or represented at stockholders' meetings; and

(e) the proceedings thereof.

The secretary shall keep, or cause to be kept, at the principal executive office of the Corporation or at the office of the Corporation's transfer agent or registrar, as determined by resolution of the Board, a share register, or a duplicate share register showing:

(a) the names of all stockholders and their addresses;

(b) the number and classes of shares held by each;

(c) the number and date of certificates evidencing such shares; and

(d) the number and date of cancellation of every certificate surrendered for cancellation.

The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these bylaws. The secretary shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these bylaws.

5.11 Chief Financial Officer. The chief financial officer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained

earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The chief financial officer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate. The chief financial officer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the chief executive officer or, in the absence of a chief executive officer, any president and directors, whenever they request it, an account of all his or her transactions as chief financial officer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board or these bylaws.

The chief financial officer may be the treasurer of the Corporation.

5.12 Treasurer. The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and shares. The books of account shall at all reasonable times be open to inspection by any director.

The treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation with such depositories as the Board may designate. The treasurer shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the chief executive officer or, in the absence of a chief executive officer, any president and the directors, whenever they request it, an account of all his or her transactions as treasurer and of the financial condition of the Corporation, and shall have other powers and perform such other duties as may be prescribed by the Board or these bylaws.

5.13 Assistant Secretary. The assistant secretary, or, if there is more than one, the assistant secretaries in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of the secretary’s inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as may be prescribed by the Board or these bylaws.

5.14 Assistant Treasurer. The assistant treasurer, or, if there is more than one, the assistant treasurers, in the order determined by the Board (or if there be no such determination, then in the order of their election), shall, in the absence of the chief financial officer or treasurer or in the event of the chief financial officer's or treasurer's inability or refusal to act, perform the duties and exercise the powers of the chief financial officer or treasurer, as applicable, and shall perform such other duties and have such other powers as may be prescribed by the Board or these bylaws.

5.15 Representation of Shares of Other Corporations. The chairman of the Board, the chief executive officer, any president, any vice president, the treasurer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board, the chief executive officer, a president or a vice president, is authorized to vote, represent, and exercise on behalf of this Corporation all rights incident to any and all shares or other equity interests of any other Corporation or entity standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.16 Authority and Duties of Officers. In addition to the foregoing authority and duties, all officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board.

ARTICLE VI

RECORDS AND REPORTS

6.1 Maintenance and Inspection of Records. The Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws, as may be amended to date, minute books, accounting books and other records.

Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to the provisions of the DGCL. When records are kept in such manner, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper form accurately portrays the record.

Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right during the usual hours for business to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal executive office.

6.2 Inspection by Directors. Any director shall have the right to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director.

ARTICLE VII

GENERAL MATTERS

7.1 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

7.2 Execution of Corporate Contracts and Instruments. Except as otherwise provided in these bylaws, the Board, or any officers of the Corporation authorized thereby, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances.

7.3 Stock Certificates; Partly Paid Shares. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairman or vice-chairman of the Board, or any president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of such Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, and upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.4 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences, and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.5 Lost Certificates. Except as provided in this Section 7.6, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner’s legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.6 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a Corporation and a natural person.

7.7 Dividends. The Board, subject to any restrictions contained in either (i) the DGCL, or (ii) the Certificate, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property, or in shares of the Corporation's capital stock. The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

7.8 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.9 Seal. The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.10 Transfer of Stock. Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation or by transfer agents designated to transfer shares of the stock of the Corporation. Except where a certificate is issued in accordance with Section 7.5 of these bylaws, an outstanding certificate for the number of shares involved shall be surrendered for cancellation before a new certificate is issued therefore. Upon surrender to the Corporation or the transfer agent of the Corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the Corporation to issue a new certificate to the person entitled thereto, cancel the old certificate, and record the transaction in its books.

7.11 Stock Transfer Agreements. The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes or series of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes or series owned by such stockholders in any manner not prohibited by the DGCL.

7.12 Registered Stockholders. The Corporation:

(a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner;

(b) shall be entitled to hold liable for calls and assessments on partly paid shares the person registered on its books as the owner of shares; and

(c) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.13 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL, the Certificate or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting solely for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate or these bylaws.

7.14 Charitable Foundation. The establishment by the Corporation of a charitable foundation will require Board approval, as will contributions by the Corporation to the foundation and disbursements by the foundation. The Board may delegate authority over the foundation to one or more persons who are not directors of the Corporation with the approval of two-thirds of the members of the Board.

ARTICLE VIII

NOTICE BY ELECTRONIC TRANSMISSION

8.1 Notice by Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate or these bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if:

(a) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent; and

b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Any notice given pursuant to the preceding paragraph shall be deemed given:

(a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;

(c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(d) if by any other form of electronic transmission, when directed to the stockholder.

An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

8.2 Definition Of Electronic Transmission. An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

8.3 Inapplicability. Notice by a form of electronic transmission shall not apply to Section 164 (failure to pay for stock; remedies), Section 296 (adjudication of claims; appeal), Section 311 (revocation of voluntary dissolution), Section 312 (renewal, revival, extension and restoration of certificate of in Corporation) or Section 324 (attachment of shares of stock) of the DGCL.

ARTICLE IX

INDEMNIFICATION OF DIRECTORS AND OFFICERS

9.1 Power to Indemnify in Actions, Suits or Proceedings Other Than Those by or in the Right of the Corporation. Subject to Section 9.3 of this Article IX, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person (or the legal representative of such person) is or was a director or officer of the Corporation or any predecessor of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director or officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, against expenses

(including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

9.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 9.3 of this Article IX, the Corporation shall indemnify, to the fullest extent permitted by the DGCL, as now or hereafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person (or the legal representative of such person) is or was a director or officer of the Corporation or any predecessor of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

9.3 Authorization of Indemnification. Any indemnification under this Article IX (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 9.1 or Section 9.2 of this Article IX, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders (but only if a majority of the directors who are not parties to such action, suit or proceeding, if they constitute a quorum of the board of directors, presents the issue of entitlement to indemnification to the stockholders for their determination). Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

9.4 Good Faith Defined. For purposes of any determination under Section 9.3 of this Article IX, to the fullest extent permitted by applicable law, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term "another enterprise" as used in this Section 9.4 shall mean any other Corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 9.4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 9.1 or 9.2 of this Article IX, as the case may be.

9.5 Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 9.3 of this Article IX, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery in the State of Delaware for indemnification to the extent otherwise permissible under Sections 9.1 and 9.2 of this Article IX. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standards of conduct set forth in Section 9.1 or 9.2 of this Article IX, as the case may be. Neither a contrary determination in the specific case under Section 9.3 of this Article IX nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 9.5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

9.6 Expenses Payable in Advance. To the fullest extent not prohibited by the DGCL, or by any other applicable law, expenses incurred by a person who is or was a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding; provided, however, that if the DGCL requires, an advance of expenses incurred by any person in his or her capacity as a director or officer (and not in any other capacity) shall be made only upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article IX.

9.7 Non-Exclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article IX shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate, any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Sections 9.1 and 9.2 of this Article IX shall be made to the fullest extent permitted by law. The provisions of this Article IX shall not be deemed to preclude the indemnification of any person who is not specified in Section 9.1 or 9.2 of this Article IX but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise. The Corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

9.8 Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was a director, officer, employee or agent of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article IX.

9.9 Certain Definitions. For purposes of this Article IX, references to the " Corporation" shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent Corporation, or is or was a director or officer of such constituent Corporation serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article IX with respect to the resulting or surviving Corporation as such person would have with respect to such constituent Corporation if its separate existence had continued. For purposes of this Article IX, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article IX.

9.10 Survival of Indemnification and Advancement of Expenses. The rights to indemnification and advancement of expenses conferred by this Article IX shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors, administrators and other personal and legal representatives of such a person.

9.11 Limitation On Indemnification. Notwithstanding anything contained in this Article IX to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 9.5 hereof), the Corporation shall not be obligated to indemnify any director or officer in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the board of directors of the Corporation.

9.12 Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the board of directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article IX to directors and officers of the Corporation.

9.13 Effect of Amendment or Repeal. Neither any amendment or repeal of any Section of this Article IX, nor the adoption of any provision of the Certificate or the bylaws inconsistent with this Article IX, shall adversely affect any right or protection of any director, officer, employee or other agent established pursuant to this Article IX existing at the time of such amendment, repeal or adoption of an inconsistent provision, including without limitation by eliminating or reducing the effect of this Article IX, for or in respect of any act, omission or other matter occurring, or any action or proceeding accruing or arising (or that, but for this Article IX, would accrue or arise), prior to such amendment, repeal or adoption of an inconsistent provision.

ARTICLE X

AMENDMENTS

The bylaws of the Corporation may be adopted, amended or repealed by a majority of the voting power of the stockholders entitled to vote; provided, however, that the Corporation may, in its Certificate, also confer the power to adopt, amend or repeal bylaws upon the Board. The fact that such power has been so conferred upon the Board shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

* * * * *

DPW HOLDINGS, INC.

a Delaware Corporation

CERTIFICATE OF ADOPTION OF BYLAWS

The undersigned hereby certifies that he or she is the duly elected, qualified, and acting Chief Executive Officer of DPW Holdings, Inc., a Delaware Corporation, and that the foregoing bylaws, comprising twenty (20) pages, were adopted as the Corporation's bylaws as of September __, 2017 by the Corporation's board of directors on September __, 2017.

IN WITNESS WHEREOF, the undersigned has hereunto set his or her hand this __ day of September, 2017.

/s/_____

Amos Kohn

Chief Executive Officer

D-21

Appendix E

DPW

2017 STOCK INCENTIVE PLAN

(effective _____, 2017, subject to stockholder approval)

1 General

1.1 **Purpose**. The purposes of the DPW 2017 Stock Incentive Plan (the "**Plan**") is to promote the interests of DPW (the "**Company**") and the stockholders of the Company by providing (i) executive officers and other employees of the Company and its Subsidiaries (as defined below), (ii) certain advisors who perform services for the Company and its Subsidiaries and (iii) non-employee members of the Board of Directors of the Company (the "**Board**") with appropriate incentives and rewards to encourage them to enter into and continue in the employ and service of the Company and to acquire a proprietary interest in the long-term success of the Company, as well as to reward the performance of these individuals in fulfilling their personal responsibilities for long-range and annual achievements.

1.2 **Effective Date and Term**. The Plan will become effective upon the date it is approved by the stockholders of the Company (the "**Effective Date**"). Unless terminated earlier by the Committee, the Plan will expire on the tenth (10th) anniversary of the Effective Date.

1.3 **Definitions**. Capitalized terms in the Plan, unless defined elsewhere in the Plan, shall be defined as set forth below:

162(m) Term. The term "162(m) Term" means the period starting on the date when the Company's stockholders first approve this Plan and ending on the date of the first meeting of the Company's stockholders that occurs in the fifth year following the year in which the Company's stockholders first approve this Plan.

1934 Act. The term "1934 Act" shall mean the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder and any successor thereto.

Affiliated Company. The term "Affiliated Company" means any company, partnership, association, organization or other entity controlled by, controlling or under common control with the Company.

Award. The term "Award" means any award or benefit granted under the Plan, including, without limitation, Options, SARs, Restricted Stock, Restricted Stock Units and Other Stock-Based Awards.

Award Agreement. The term "Award Agreement" means a written or electronic Award grant agreement under the Plan.

Change of Control. The term "Change of Control" shall be deemed to occur if and when:

(i) any person, including a "person" as such term is used in Section 14(d)(2) of the 1934 Act (a "**Person**"), is or becomes a beneficial owner (as such term is defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities;

(ii) individuals who, as of the Effective Date, constitute the Board (the "**Incumbent Board**") cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding for this purpose any such individual whose initial assumption of office occurs as a result of either an actual or threatened election contest (as such terms are used in Rule 14a-11 of Regulation 14A promulgated under the 1934 Act) or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(iii) all or substantially all of the assets of the Company are sold, transferred or distributed, or the Company is dissolved or liquidated; or

(iv) a reorganization, merger, consolidation or other corporate transaction involving the Company (a "**Transaction**") is consummated, in each case, with respect to which the stockholders of the Company immediately prior to such Transaction do not, immediately after the Transaction, own more than 50% of the combined voting power of the Company or other corporation resulting from such Transaction in substantially the same respective proportions as such stockholders' ownership of the voting power of the Company immediately before such Transaction.

Notwithstanding the foregoing or any other provision of this Plan, the term Change of Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company. For the avoidance of doubt, solely with respect to any Award that constitutes "deferred compensation" subject to Section 409A of the Code and that is payable on account of a Change of Control (including any installments or stream of payments that are accelerated on account of a Change of Control), a Change of Control shall occur only if such event also constitutes a "change in the ownership", "change in effective control", and/or a "change in the ownership of a substantial portion of assets" of the Company as those terms are defined under Treasury Regulation §1.409A-3(i)(5), but only to the extent necessary to establish a time or form of payment that complies with Section 409A of the Code, without altering the definition of Change of Control for purposes of determining whether a Grantee's rights to such Award become vested or otherwise unconditional upon the Change in Control.

Code. The term "Code" means the Internal Revenue Code of 1986, as amended. A reference to any provision of the Code shall include reference to any successor provision of the Code.

Committee. The term "Committee" means the committee of the Board described in Section 2 hereof and any sub-committee established by such Committee pursuant to Section 2.4.

Covered Employee. The term "Covered Employee" means an Employee who is, or who is anticipated to become, between the time of grant and payment of the Award, a "covered employee," as such term is defined in Section 162(m)(3) of the Code (or any successor section thereof).

Disability. The term "Disability" means "Disability" as defined in any Award Agreement to which the Grantee is a party.

Eligible Grantee. The term "Eligible Grantee" shall mean any Employee, Non-Employee Director or Key Advisor, as determined by the Committee in its sole discretion.

Employee. The term "Employee" means an active employee of the Company or a Subsidiary, but excluding any person who is classified by the Company or a Subsidiary as a "contractor" or "consultant," no matter how characterized by the Internal Revenue Service, other governmental agency or a court, or any employee who is not actively employed, as determined by the Committee. Any change of characterization of an individual by the Internal Revenue Service or any court or government agency shall have no effect upon the classification of an individual as an Employee for purposes of this Plan, unless the Committee determines otherwise.

Fair Market Value. For purposes of determining the "Fair Market Value" of a share of Stock as of any date, the "Fair Market Value" as of that date shall be, unless otherwise determined by the Committee, the closing sale price during regular trading hours of the Stock on the date on the principal securities market in which shares of Stock is then traded; or, if there were no trades on that date, the closing sale price during regular trading hours of the Stock on the first trading day prior to that date. If the Stock is not publicly traded at the time a determination of Fair Market Value is required to be made hereunder, the determination of such amount shall be made by the Committee in such manner as it deems appropriate.

Grantee. The term "Grantee" means an Employee, Non-Employee Director or Key Advisor of the Company or a Subsidiary who has been granted an Award under the Plan.

ISO. The term "ISO" means any Option intended to be and designated as an incentive stock option within the meaning of Section 422 of the Code.

Key Advisor. The term "Key Advisor" means a consultant or other key advisor who performs services for the Company or a Subsidiary.

Non-Employee Director. The term "Non-Employee Director" means a member of the Board who is not an Employee.

NQSO. The term "NQSO" means any Option that is not designated as an ISO, or which is designated by the Committee as an ISO but which subsequently fails or ceases to qualify as an ISO.

Option. The term "Option" means a right, granted to an Eligible Grantee under Section 4.2(i), to purchase shares of Stock. An Option may be either an ISO or an NQSO.

Other Stock-Based Award. The term "Other Stock-Based Award" means a right or other interest granted to an Eligible Grantee under Section 4.2(v) of the Plan that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Stock, including but not limited to (i) unrestricted Stock awarded as a bonus or upon the attainment of Performance Goals or otherwise as permitted under the Plan, and (ii) a right granted to an Eligible Grantee to acquire Stock from the Company containing terms and conditions prescribed by the Committee.

Performance Goals. The term "Performance Goals" means performance goals based on the attainment on an absolute or relative basis by the Company or any Subsidiary of the Company or any Affiliated Company (or any division or business unit of any such entity), or any two or more of the foregoing, of performance goals pre-established by the Committee in its sole discretion, based on one or more of the following criteria (if applicable, any performance criteria that are financial metrics, may be determined in accordance with United States Generally Accepted Accounting Principles ("**GAAP**") or may be adjusted when established to include or exclude any items otherwise includable or excludable under GAAP): (i) the attainment of certain target levels of, or a specified percentage increase in, revenues, earnings, income before taxes and extraordinary items, net income, operating income, earnings before or after deduction for all or any portion of income tax, earnings before interest, taxes, depreciation and amortization or a combination of any or all of the foregoing; (ii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax profits including, without limitation, that attributable to continuing and/or other operations; (iii) the attainment of certain target levels of, or a specified increase in, operational cash flow; (iv) the achievement of a certain level of, reduction of, or other specified objectives with regard to limiting the level of increase in, all or a portion of, the Company's bank debt or other long-term or short-term public or private debt or other similar financial obligations of the Company, which may be calculated net of such cash balances and/or other offsets and adjustments as may be established by the Committee; (v) earnings per share or the attainment of a specified percentage increase in earnings per share or earnings per share from continuing operations; (vi) the attainment of certain target levels of, or a specified increase in return on capital employed or return on invested capital; (vii) the attainment of certain target levels of, or a percentage increase in, after-tax or pre-tax return on stockholders' equity; (viii) the attainment of certain target levels of, or a specified increase in, economic value added targets based on a cash flow return on investment formula; (ix) the attainment of certain target levels in, or specified increases in, the fair market value of the shares of the Company's common stock; (x) the growth in the value of an investment in the Company's common stock; (xi) the attainment of a certain level of, reduction of, or other specified objectives with regard to limiting the level in or increase in, all or a portion of controllable expenses or costs or other expenses or costs; (xii) gross or net sales, revenue and growth of sales revenue (either before or after cost of goods, selling and general administrative expenses, research and development expenses and any other expenses or interest); (xiii) total stockholder return; (xiv) return on assets or net assets; (xv) return on sales; (xvi) operating profit or net operating profit; (xvii) operating margin; (xviii) gross or net profit margin; (xix) cost reductions or savings; (xx) productivity; (xxi) operating efficiency; (xxii) working capital; (xxiii) market share; (xxiv) customer satisfaction; and (xxv) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board. Any of the above Performance Goals may be compared to the performance of a selected group of comparison companies, or a published or special index that the Committee, in its sole discretion, deems appropriate, or as compared to various stock market indices. Subject to the limitations in Section 4.2, the Committee in its sole discretion may designate additional business criteria on which the Performance Goals may be based or adjust, or modify or amend the aforementioned business criteria. The relative weights of the criteria that comprise the Performance Goals shall be determined by the Committee in its sole discretion. In establishing the Performance Goals for a performance period, the Committee may establish different Performance Goals for individual Grantees or groups of Grantees. Subject to the limitations in Section 4.2(ix)(d), the Committee in its sole discretion shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary of the Company or any Affiliated Company or the financial statements of the Company or any Subsidiary of the Company or any Affiliated Company, in response to changes in applicable laws or regulations, including changes in generally accepted accounting principles or practices, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business, as applicable. Performance Goals may include a threshold level of performance below which no Award will be earned, a level of performance at which the target amount of an Award will be earned and a level of performance at which the maximum amount of the Award will be earned.

Restricted Stock. The term "Restricted Stock" means an Award of shares of Stock to an Eligible Grantee under Section 4.2(iii) that may be subject to certain restrictions and to a risk of forfeiture. Stock issued upon the exercise of Options or SARs is not "Restricted Stock" for purposes of the plan, even if subject to post-issuance transfer restrictions or forfeiture conditions. When Restricted Stock vests, it ceases to be "Restricted Stock" for purposes of the Plan.

Restricted Stock Unit. The term "Restricted Stock Unit" means a right granted to an Eligible Grantee under Section 4.2(iv) to receive Stock or cash at the end of a specified deferral period, which right may be conditioned on the satisfaction of specified performance or other criteria.

Retirement. The term "Retirement" means any termination of employment or service as an Employee, Non-Employee Director or Key Advisor as a result of retirement in good standing under the rules of the Company or a Subsidiary, as applicable, then in effect.

Rule 16b-3. The term "Rule 16b-3" means Rule 16b-3, as from time to time in effect promulgated by the Securities and Exchange Commission under Section 16 of the 1934 Act, including any successor to such Rule.

Stock. The term "Stock" means shares of the common stock, par value $0.001 per share, of the Company.

Stock Appreciation Right or SAR. The term "Stock Appreciation Right" or "SAR" means the right, granted to an Eligible Grantee under Section 4.2(ii), to be paid an amount measured by the appreciation in the Fair Market Value of Stock from the date of grant to the date of exercise of the right.

Subsidiary. The term "Subsidiary" means any present or future subsidiary corporation of the Company within the meaning of Section 424(f) of the Code, and any present or future business venture designated by the Committee in which the Company has a significant interest, including, without limitation, any subsidiary corporation in which the Company has at least a 50% ownership interest, as determined in the discretion of the Committee.

Substitute Award. The term "Substitute Award" means an Award granted or Stock issued by the Company in assumption of, or in substitution or exchange for, an award previously granted, or the right or obligation to make a future award, in all cases by a company acquired by the Company or any Subsidiary of the Company or with which the Company or a Subsidiary combines.

2 Administration

2.1 **Committee**. The authority to manage the operation of and administer the Plan shall be vested in a committee (the "**Committee**") in accordance with this Section 2. The Committee shall be selected by the Board, and shall consist solely of two or more members of the Board who are non-employee directors within the meaning of Rule 16b-3 and are outside directors within the meaning of Code Section 162(m). Unless otherwise determined by the Board, the Company's Compensation Committee shall be designated as the "Committee" hereunder.

2.2 **Powers of the Committee**. The Committee's administration of the Plan shall be subject to the following:

(i) Subject to the provisions of the Plan, the Committee will have the authority and discretion to select from among the Eligible Grantees those persons who shall receive Awards, to determine the time or times of receipt, to determine the types of Awards and the number of shares covered by the Awards, and to establish the terms, conditions, performance criteria, restrictions, and other provisions of such Awards;

(ii) The Committee will have the authority and discretion to interpret the Plan, to establish, amend, and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any Award Agreement made pursuant to the Plan, and to make all other determinations that may be necessary or advisable for the administration of the Plan;

(iii) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons; and

(iv) In managing the operation of and administering the Plan, the Committee shall take action in a manner that conforms to the articles of incorporation and by-laws of the Company, and applicable state corporate law.

2.3 **Prohibition Against Repricing**. Other than pursuant to Section 3.3, the Committee shall not, without the approval of the Company's stockholders, (a) lower the option price per share of an Option or SAR after it is granted, (b) cancel an Option or SAR when the exercise price per Share exceeds the Fair Market Value of one share in exchange for cash or another Award (other than in connection with a Change in Control), or (c) take any other action with respect to an Option or SAR that would be treated as a repricing under the rules and regulations of the principal U.S. national securities exchange on which the Company's shares are then listed.

2.4 **Delegation of Authority**. To the extent not inconsistent with applicable law, the rules of any national securities exchange that may in the future apply to the Company, or other provisions of the Plan, the Committee may, at any time, allocate all or any portion of its responsibilities and powers to any one or more of its members or, with respect to Awards made to Employees other than executive officers, the Chief Executive Officer, including without limitation,

the power to designate Grantees hereunder and determine the amount, timing and terms of Awards hereunder. Any such allocation or delegation may be revoked by the Committee at any time.

2.5 **Indemnification**. Each person who is or shall have been a member of the Committee, or 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 a party or in which he or she may be involved by reason of any action taken in good faith or failure to act in good faith 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 be in addition to any other rights of indemnification or elimination of liability to which such persons may be entitled under the Company's articles of incorporation or by-laws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

2.6 **Minimum Vesting Requirement for Full-Value Awards.** Notwithstanding anything to the contrary, Grantees of full-value Awards (i.e., Awards other than Options and SARs), will be required to continue to provide services to the Company (or an Affiliated Company) for not less than one-year following the date of grant in order for any such full-value Awards to fully or partially vest (other than in case of death, Disability or a Change of Control). Notwithstanding the foregoing, up to five percent (5%) of the available shares of Stock authorized for issuance under the Plan pursuant to Section 3.1 may provide for vesting of full-value Awards, partially or in full, in less than one-year.

3 Available Shares of Stock under the Plan

3.1 **Shares Available for Awards**. Subject to the adjustments described in Section 3 herein, the maximum number of shares of Stock reserved for the grant of Awards under the Plan shall be 2,000,000. Any shares of Stock that are subject to Options or SARs shall be counted against this limit as one (1) share for every one (1) share granted, and any shares of Stock that are subject to Awards other than Options or SARs shall be counted against this limit as 1.25 shares for every one (1) share granted.

3.2 **Forfeited, Cancelled and Expired Awards**. Awards granted under the Plan that are forfeited, expire or are canceled or settled without issuance of Stock shall not count against the maximum number of shares that may be issued under the Plan as set forth in Section 3.1 and shall be available for future Awards under the Plan. Any Stock that again becomes available for Awards under the Plan pursuant to this Section 3.2 shall be added as (i) one (1) share for every one (1) share subject to Options or SARs granted under the Plan or options, and (ii) as 1.25 shares for every one (1) share subject to Awards other than Options or Stock Appreciation Rights granted under the Plan.

3.3 **Prohibition on Share Recycling.** Notwithstanding anything to the contrary, any and all Stock that is (i) withheld or tendered in payment of an Option exercise price; (ii) withheld by the Company or tendered by the Grantee to satisfy any tax withholding obligation with respect to any Award; (iii) covered by a SAR (to the extent that it is settled in Stock, without regard to the number of shares of Stock that are actually issued to the Grantee upon exercise); (iv) reacquired by the Company on the open market or otherwise using cash proceeds from the exercise of Options, shall not be added to the maximum number of shares of Stock that may be issued under the Plan as set forth in Section 3.1.

3.4 Adjustments. In the event of any change in the Company's capital structure, including but not limited to a change in the number of shares of Stock outstanding, on account of (i) any stock dividend, stock split, reverse stock split or any similar equity restructuring, or (ii) any combination or exchange of equity securities, merger, consolidation, recapitalization, reorganization, or divesture or any other similar event affecting the Company's capital structure, to reflect such change in the Company's capital structure, the Committee shall make appropriate equitable adjustments to (a) the maximum number of shares of Stock that may be issued under the Plan as set forth in Section 3.1, (b) the number of shares of Stock issuable upon outstanding Awards, and (c) any individual Award limitations or restrictions, as applicable. In the event of any extraordinary dividend, divestiture or other distribution (other than ordinary cash dividends) of assets to stockholders, or any transaction or event described above, to the extent necessary to prevent the enlargement or diminution of the rights of Grantees, the Committee shall make appropriate equitable adjustments to the number or kind of shares subject to an outstanding Award, the exercise price applicable to an outstanding Award, and/or a Performance Goals. Any adjustments under this Section 3.3 shall be consistent with Section 409A or Section 424 of the Code, to the extent applicable, and made in a manner that does not adversely affect the exemption provided pursuant to Rule 16b-3 or qualification under Section 162(m) of the Code, to the extent each may be applicable. The Company shall give each Grantee notice of an adjustment to an Award hereunder and, upon notice, such adjustment shall be final, binding and conclusive for all purposes. Notwithstanding the foregoing, the Committee shall decline to adjust any Award made to a Grantee if such adjustment would violate applicable law.

3.5 **Fractional Shares**. The Company shall not be obligated to issue any fractional shares of Stock in settlement of Awards granted under the Plan. Except as otherwise provided in an Award Agreement or determined by the Committee, (i) the total number of shares issuable pursuant to the exercise, vesting or earning of an Award shall be rounded down to the nearest whole share, and (ii) no fractional shares shall be issued. The Committee may, in its discretion, determine that a fractional share shall be settled in cash.

3.6 **Substitute Awards; Plans of Acquired Companies**. Substitute Awards shall not count against the maximum number of shares that may be issued under the Plan as set forth in Section 3.1. In addition, shares of Stock issued in connection with awards that are assumed, converted or substituted as a result of the acquisition of another company by the Company or any Subsidiary of the Company (including by way of merger, combination or similar transaction) will not count against the number of shares of Stock that may be issued under the Plan. Available shares under a stockholder-approved plan of an acquired company (as appropriately adjusted to reflect the transaction) may be used for Awards under the Plan and do not reduce the maximum number of shares available for grant under the Plan, subject to applicable stock exchange requirements.

4Awards

4.1 **General**. The term of each Award shall be for such period as may be determined by the Committee, subject to the limitations set forth below. Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or any Subsidiary of the Company upon the grant, maturation, or exercise of an Award may be made in such forms as the Committee shall determine at the date of grant or thereafter, including, without limitation, cash, Stock, or other property. In addition to the foregoing, the Committee may impose on any Award or the exercise thereof, at the date of grant, such additional terms and conditions not inconsistent with the provisions of the Plan, including, but not limited to forfeiture and clawback provisions, as the Committee shall determine; provided, however, that any such terms and conditions shall not be inconsistent with Section 409A of the Code.

4.2 **Types of Awards**. The Committee is authorized to grant the Awards described in this Section 4.2, under such terms and conditions as deemed by the Committee to be consistent with the purposes of the Plan. Such Awards may be granted with value and payment contingent upon Performance Goals. Each Award shall be evidenced by an Award Agreement containing such terms and conditions applicable to such Award as the Committee shall determine.

(i) *Options*. The Committee is authorized to grant Options to Grantees on the following terms and conditions:

a. Type of Award. The Award Agreement evidencing an Option shall designate the Option as either an ISO or an NQSO, as determined in the discretion of the Committee. At the time of the grant of Options, the Committee may place restrictions on the exercisability or vesting of Options that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

b. Exercise Price. The exercise price of each Option granted under this Section 4.2 shall be established by the Committee or shall be determined by a method established by the Committee at the time the Option is granted; provided, however, that the exercise price shall not be less than 100% of the Fair Market Value of a share of Stock on the date of grant of the Award. Notwithstanding the foregoing, the exercise price of any Substitute Awards may be issued at any such price as the Committee determines necessary in order to preserve for such newly Eligible Grantee the economic value of all or a portion of such acquired entity award. No dividends or dividend equivalents will be paid on shares of Stock subject to an Option.

c. Exercise. Upon satisfaction of the applicable conditions relating to vesting and exercisability, as determined by the Committee and set forth in the Award Agreement, and upon provision for the payment in full of the exercise price and applicable taxes due, the Grantee shall be entitled to exercise the Option and receive the number of shares of Stock issuable in connection with the Option exercise provided, however, that no Option may be exercised more than ten years after its grant date. Except as set forth in Section 4.3, no NQSO granted hereunder may be exercised after the earlier of (A) the expiration of the NQSO or (B) unless otherwise provided by the Committee in an Award Agreement, ninety days after the severance of an NQSO holder’s employment or service with the Company or any Subsidiary. The shares issued in connection with the Option exercise may be subject to such conditions and restrictions as the Committee may determine, from time to time. An Option may be exercised by any method as may be permitted by the Committee from time to time, including but not limited to any “net exercise” or other “cashless” exercise method.

d. Restrictions Relating to ISOs. In addition to being subject to the terms and conditions of this Section 4.2(i), ISOs shall comply with all other requirements under Section 422 of the Code. Accordingly, ISOs may be granted only to Eligible Grantees who are employees (as described in Treasury Regulation Section 1.421-7(h)) of the Company or of any “Parent Corporation” (as defined in Code Section 424(e)) or of any “Subsidiary Corporation” (as defined in Code Section 424(f)) on the date of grant. The aggregate Fair Market Value (determined as of the time the ISO is granted) of the Stock with respect to which ISOs (under all option plans of the Company and of any Parent Corporation and of any Subsidiary Corporation) are exercisable for the first time by an Eligible Grantee during any calendar year shall not exceed $100,000. ISOs shall not be transferable by the Eligible Grantee otherwise than by will or the laws of descent and distribution and shall be exercisable, during the Eligible Grantee's lifetime, only by such Eligible Grantee. The Committee shall not grant ISOs to any Employee who, at the time the ISO is granted, owns stock possessing (after the application of the attribution rules of Section 424(d) of the Code) more than ten percent (10%) of the total combined voting stock of the Company or of any Parent Corporation or of any Subsidiary Corporation, unless the exercise price of the ISO is fixed at not less than one hundred and ten percent (110%) of the Fair Market Value of a share of Common Stock on the date of grant and the exercise of such ISO is prohibited by its terms after the fifth (5th) anniversary of the ISO's date of grant. In addition, no ISO shall be issued to an Eligible Grantee in tandem with a NQSO issued to such Eligible Grantee in accordance with Treasury

Regulation Section 14a.422A-1, Q/A-39.

(ii) *SARs*. The Committee is authorized to grant SARs to Grantees on the following terms and conditions:

a. In General. SARs may be granted independently or in tandem with an Option at the time of grant of the related Option. An SAR granted in tandem with an Option shall be exercisable only to the extent the underlying Option is exercisable. Payment of an SAR may be made in cash, Stock, or a combination of the foregoing, as specified in the Award Agreement or determined in the sole discretion of the Committee. At the time of the grant of SARs, the Committee may place restrictions on the exercisability or vesting of SARs that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

b. Term and Exercisability of SARs. SARs shall be exercisable over the exercise period at such times and upon such conditions as the Committee may determine, as reflected in the Award Agreement; provided, however, that no SAR may be exercised more than ten years after its grant date. Except as set forth in Section 4.3, no SAR granted hereunder may be exercised after the earlier of (A) the expiration of the SAR or (B) unless otherwise provided by the Committee in an Award Agreement, ninety days after the severance of an SAR holder's employment or service with the Company or any Subsidiary.

c. Payment. An SAR shall confer on the Grantee a right to receive an amount with respect to each share of Stock subject thereto, upon exercise thereof, equal to the excess of (A) the Fair Market Value of one share of Stock on the date of exercise over (B) the grant price of the SAR (which in the case of an SAR granted in tandem with an Option shall be equal to the exercise price of the underlying Option, and which in the case of any other SAR shall be such price as the Committee may determine but in no event shall be less than the Fair Market Value of a share of Stock on the date of grant of such SAR). An SAR may be exercised by giving written notice of such exercise to the Committee or its designated agent. No dividends or dividend equivalents will be paid on shares of Stock subject to an SAR.

(iii) *Restricted Stock*. The Committee is authorized to grant Restricted Stock to Grantees on the following terms and conditions:

a. Issuance and Restrictions. Restricted Stock shall be subject to such restrictions on transferability and other restrictions, if any, as the Committee may impose at the date of grant, which restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, or otherwise, as the Committee may determine. The Committee may place restrictions on Restricted Stock that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year. Except to the extent restricted under the Award Agreement relating to the Restricted Stock, a Grantee granted Restricted Stock shall have all of the rights of a stockholder including, without limitation, the right to vote Restricted Stock and the right to receive dividends thereon.

b. Certificates for Stock. Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Grantee, such certificates shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may retain physical possession of the certificate.

c. Dividends. Except to the extent restricted under the applicable Award Agreement, cash dividends paid on Restricted Stock shall be paid at the dividend payment date subject to no restriction. Unless otherwise determined by the Committee, Stock distributed in connection with a stock split or stock dividend shall be subject to the transfer restrictions, forfeiture risks and vesting conditions to the same extent as the Restricted Stock with respect to which such Stock or other property has been distributed. Notwithstanding the foregoing, the Committee may not provide for the current payment of dividends for Restricted Stock subject to Performance Goals; for such Awards, dividends may accrue but shall not be payable unless and until the Award vests upon satisfaction of the applicable Performance Goals and all other applicable conditions to vesting.

(iv) *Restricted Stock Units*. The Committee is authorized to grant Restricted Stock Units to Grantees, subject to the following terms and conditions:

a. Conditions to Vesting. At the time of the grant of Restricted Stock Units, the Committee may place restrictions on Restricted Stock Units that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year.

b. Benefit upon Vesting. Unless otherwise provided in an Award Agreement, upon the vesting of a Restricted Stock Unit, there shall be delivered to the Grantee, within 30 days of the date on which such Award (or any portion thereof) vests, the number of shares of Stock equal to the number of Restricted Stock Units becoming so vested.

c. Dividend Equivalents. To the extent provided in an Award Agreement, subject to the requirements of Section 409A of the Code, an Award of Restricted Stock Units may provide the Grantee with the right to receive dividend equivalent payments with respect to Stock subject to the Award (both before and after the Stock subject to the Award is earned, vested, or acquired), which payments may be either made currently or credited to an account for

the Grantee, and may be settled in cash or Stock, as determined by the Committee. Any such settlements and any such crediting of dividend equivalents may, at the time of grant of the Restricted Stock Unit, be made subject to the transfer restrictions, forfeiture risks, vesting and conditions of the Restricted Stock Units and subject to such other conditions, restrictions and contingencies as the Committee shall establish at the time of grant of the Restricted Stock Unit, including the reinvestment of such credited amounts in Stock equivalents, provided that all such conditions, restrictions and contingencies shall comply with the requirements of Section 409A of the Code. Notwithstanding the foregoing in this Section 4.2(iv)(c), dividend equivalents may accrue on unearned Restricted Stock Units subject to Performance Goals but shall not be payable unless and until the applicable Performance Goals are met and certified.

(v) *Other Stock-Based Awards*. The Committee is authorized to grant Awards to Grantees in the form of Other Stock-Based Awards, as deemed by the Committee to be consistent with the purposes of the Plan. At the time of the grant of Other Stock-Based Awards, the Committee may place restrictions on the payout or vesting of Other Stock-Based Awards that shall lapse, in whole or in part, upon the attainment of Performance Goals; provided that such Performance Goals shall relate to periods of performance of at least one fiscal year. The Committee shall determine the terms and conditions of such Awards at the date of grant. Other Stock-Based Awards may not be granted with the right to receive dividend equivalent payments.

(vi) *Settlement of Options and SARs*. Shares of Stock delivered pursuant to the exercise of an Option or SAR shall be subject to such conditions, restrictions and contingencies as the Committee may establish in the applicable Award Agreement. Settlement of SARs may be made in shares of Stock (valued at their Fair Market Value at the time of exercise), in cash, or in a combination thereof, as determined in the discretion of the Committee and set forth in the Award Agreement. The Committee, in its discretion, may impose such conditions, restrictions and contingencies with respect to shares of Stock acquired pursuant to the exercise of an Option or an SAR as the Committee determines to be desirable.

(vii) *Vesting; Additional Terms*. Subject to Section 2.6 and except as provided in Section 4.3, other than Options, SARs, Restricted Stock, Restricted Stock Units or Other Stock-Based Awards conditioned upon the attainment of Performance Goals that relate to performance periods of at least one fiscal year, Options, SARs, Restricted Stock, Restricted Stock Units or Other Stock-Based Awards granted hereunder shall vest as determined by the Committee and set forth in the Award Agreement. The term of any Award granted under the Plan will not exceed ten years from the date of grant.

(viii) *Qualified Performance-Based Compensation*.

The Committee may determine that Restricted Stock, Restricted Stock Units or Other Stock-Based Awards granted to a Covered Employee shall be considered "qualified performance-based compensation" under section 162(m) of the Code, in which case the provisions of this Section 4.2(ix) shall apply. As required pursuant to Section 162(m) of

a. the Code and the regulations promulgated thereunder, the Committee'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 qualifying Options and qualifying SARs) 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 stockholders first approve this Plan.

When Awards are made under this Section 4.2(ix), the Committee shall establish in writing (i) the objective Performance Goals that must be met, (ii) the period during which performance will be measured, (iii) the maximum amounts that may be paid if the Performance Goals are met, and (iv) any other conditions that the Committee deems appropriate and consistent with the requirements of Section 162(m) of the Code for "qualified performance-based compensation." The Performance Goals shall satisfy the requirements for "qualified

b. performance-based compensation," including the requirement that the achievement of the goals be substantially uncertain at the time they are established and that the Performance Goals be established in such a way that a third party with knowledge of the relevant facts could determine whether and to what extent the Performance Goals have been met. The Committee shall not have discretion to increase the amount of compensation that is payable, but may reduce the amount of compensation that is payable, pursuant to Awards identified by the Committee as "qualified performance-based compensation."

c. Performance Goals must be pre-established by the Committee. A Performance Goal is considered pre-established if it is established in writing not later than 90 days after the commencement of the period of service to which the Performance Goal relates, provided that the outcome is substantially uncertain at the time the Committee actually established the goal. However, in no event will a Performance Goal be considered pre-established if it is established

after 25% of the period of service (as scheduled in good faith at the time the goal is established) has elapsed.

d. The Committee in its sole discretion shall have the authority to make equitable adjustments to the Performance Goals in recognition of unusual or non-recurring events affecting the Company or any Subsidiary of the Company or any Affiliated Company or the financial statements of the Company or any Subsidiary of the Company or any Affiliated Company, for the following items: (1) asset write-downs; (2) litigation or claim judgments or settlements; (3) the effect of changes in tax laws, accounting principles, regulations, or other laws or regulations affecting reported results; (4) any reorganization and restructuring programs, including discontinued operations; (5) acquisitions or divestitures; (6) unusual nonrecurring or extraordinary items identified in the Company's audited financial statements, including footnotes; (7) any reorganization or change in the corporate or capital structures of the Company; (8) foreign exchange gains and losses; (9) business interruption events; (10) annual incentive payments or other bonuses; or (11) capital charges, provided such adjustment occurs in writing not later than 90 days after the commencement of the period of service to which the Performance Goal relates (and in no event later than the date that 25% of the period of service has elapsed). In addition, the Committee may specify that certain equitable adjustments to the Performance Goals will be made during the applicable Performance Period, provided such specification occurs in writing not later than 90 days after the commencement of the period of service to which the Performance Goal relates (and in no event later than the date that 25% of the period of service has elapsed).

e. The Committee shall certify the performance results for the performance period specified in the Award Agreement after the performance period ends. The Committee shall determine the amount, if any, to be paid pursuant to each Award based on the achievement of the Performance Goals and the satisfaction of all other terms of the Award Agreement. Subject to adjustment as provided in Section 3.4, the following limits will apply to Awards of the specified type granted to any one Grantee in any single fiscal year:

i. Appreciation Awards – Options and SARs: 750,000 shares; and

ii. Full Value Awards – Awards (other than Options and SARs) that are denominated in Shares: 500,000 shares.

In applying the foregoing limits, (a) all Awards of the specified type granted to the same Grantee in the same fiscal year will be aggregated and made subject to one limit; (b) the limits applicable to Options and SARs refer to the number of shares of Stock subject to those Awards; (c) the share limit under clause (y) refers to the maximum number of shares of Stock that may be delivered under an Award or Awards of the type specified in clause (y) assuming a maximum payout; (d) the dollar limit under clause (z) refers to the maximum dollar amount payable under an Award or Awards of the type specified in clause (z) assuming a maximum payout, (e) the respective limits for Awards of the type specified in clause (y) and clause (z) are only applicable to Awards that are intended to comply with the performance-based exception under Code Section 162(m), and (f) each of the specified limits in clauses (x), (y) and (z) is multiplied by two (2) for Awards granted to a Grantee in the year employment commences.

f. The Committee may provide in the Award Agreement that Awards under this Section 4.2(ix) shall be payable, in whole or in part, in the event of the Grantee's death or Disability, or under other circumstances consistent with the Treasury regulations and rulings under Section 162(m) of the Code.

(ix) *Automatic Extended Exercisability in Certain Cases*. Notwithstanding the foregoing provisions of this Section, if the date an Award would otherwise terminate is a date that the Grantee is prohibited from exercising the Award under the Company's insider trading policy or such other conditions under applicable securities laws as the Committee shall specify, the term of the Award shall be extended to the second business day after the Grantee is no longer so prohibited from exercising the Award, but in no event shall the Award be extended beyond the original stated term of the Award.

4.3 **Change of Control of the Company.**

(i) The Committee may, at the time an Award is made or at any time prior to, coincident with or after the time of a Change of Control:

a. provide for the cancellation of any Awards then outstanding if the surviving entity or acquiring entity (or the surviving or acquiring entity's parent company) in the Change of Control replaces the Awards with new rights of substantially equivalent value, as determined by the Committee. For an Award to be validly assumed by a successor for purpose of this Section 4.3(b), it must (x) provide such Grantee 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 schedules; (y) have substantially equivalent value to such Award (determined at the time of the Change in Control); and (z) be based on stock that is traded on an established U.S. securities market or an established securities market outside the United Stated upon which the Grantees could readily trade the stock without administrative burdens or complexities. In the event of any ambiguity or discrepancy, the determination of the Committee shall be final and binding;

b. provide that upon an involuntary termination of a Grantee's employment as a result of a Change of Control, any time periods shall accelerate, and any other conditions relating to the vesting, exercise, payment or distribution of

an Award shall be waived; or

c. provide that Awards shall be purchased for an amount of cash equal to the amount that could have been obtained for the shares covered by a Restricted Stock Award if it had been vested and or by an Option or SAR if it had been exercised at the time of the Change of Control, provided however that Awards outstanding as of the date of the Change in Control may be cancelled and terminated without payment if the consideration payable with respect to one share of Stock in connection with the Change in Control is less than the exercise price or grant price applicable to such Award, as applicable.

(ii) Notwithstanding any other provisions of the Plan or an Award Agreement to the contrary, the vesting, payment, purchase or distribution of an Award may not be accelerated by reason of a Change of Control for any Grantee unless the Grantee's employment is involuntarily terminated as a result of the Change of Control as provided in the Award Agreement or in any other written agreement, including an employment agreement, between us and the Grantee.

4.4 **Limitation on Award Grants to Non-Employee Directors**. The maximum number of shares of Stock subject to Awards granted during a single fiscal year to any non-employee director, taken together with any cash fees paid to such non-employee director during the fiscal year, shall not exceed $350,000 in total value (calculating the value of any such Awards based on the grant date fair value of such Awards for financial reporting purposes); *provided*, that the Board may make exceptions to this limit for individual non-employee directors in extraordinary circumstances as the Board may determine in its sole discretion, so long as (x) the aggregate limit does not exceed $500,000 in total value during a fiscal year and (y) the non-employee director receiving such additional compensation does not participate in the decision to award such compensation or in other contemporaneous compensation decisions involving non-employee directors.

5 Operation

5.1 **Duration**. Grants may be made under the Plan through _____, 2026. In the event of Plan termination while Awards remain outstanding, the Plan shall remain in effect as long as any Awards under it are outstanding, although no further grants may be made following Plan termination.

5.2 **Uncertificated Stock**. Nothing contained in the Plan shall prohibit the issuance of Stock on an uncertificated basis, to the extent allowed by the Company's Articles of Incorporation and Bylaws, by applicable law and by the applicable rules of any stock exchange.

5.3 **Tax Withholding**. All distributions under the Plan are subject to withholding of all applicable taxes, and the Committee may condition the delivery of any shares or other benefits under the Plan on satisfaction of the applicable withholding obligations. The Committee, in its discretion, and subject to such requirements as the Committee may impose prior to the occurrence of such withholding, may permit such withholding obligations to be satisfied through cash payment by the Grantee, through the surrender of shares of Stock which the Grantee already owns, through withholding from other compensation payable to the Grantee or through the surrender of unrestricted shares of Stock to which the Grantee is otherwise entitled under the Plan, but only to the extent of the minimum amount required to be withheld under applicable law (or, if permitted by the Company, such other withholding rate as will not cause adverse accounting consequences and is permitted under applicable IRS withholding rules).

5.4 **Use of Shares.** Subject to the limitations on the number of shares of Stock that may be delivered under the Plan, the Committee may use available shares of Stock as the form of payment for compensation, grants or rights earned or due under any other compensation plans or arrangements of the Company or a Subsidiary, including the plans and arrangements of the Company or a Subsidiary assumed in business combinations.

5.5 **Non-transferability**. Awards granted under the Plan, and during any period of restriction on transferability, shares of Common Stock issued in connection with the exercise of an Option or a SAR, or vesting of a Restricted Stock Award may not be sold, pledged, hypothecated, assigned, margined or otherwise transferred by a Grantee in any manner other than by will or the laws of descent and distribution, unless and until the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed or have been waived by the Committee. No Award or interest or right therein shall be subject to the debts, contracts or engagements of a Grantee or his or her successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law, by judgment, lien, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy and divorce), and any attempted disposition thereof shall be null and void, of no effect, and not binding on the Company in any way. Notwithstanding the foregoing, the Committee may permit Options and/or shares issued in connection with an Option or a SAR exercise that are subject to restrictions on transferability, to be transferred one time and without payment or consideration to a member of a Grantee's immediate family or to a trust or similar vehicle for the benefit of a Grantee's immediate family members. During the lifetime of a Grantee, all rights with respect to Awards shall be

exercisable only by such Grantee or, if applicable pursuant to the preceding sentence, a permitted transferee.

5.6 **Form and Time of Elections**. Unless otherwise specified herein, each election required or permitted to be made by any Grantee or other person entitled to benefits under the Plan, and any permitted modification, or revocation thereof, shall be in writing filed with the Committee at such times, in such form, and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee shall require.

5.7 **Agreement with Company**. An Award under the Plan shall be subject to such terms and conditions, not inconsistent with the Plan, as the Committee shall, in its sole discretion, prescribe. The terms and conditions of any Award to any Grantee shall be reflected in such form of written document as is determined by the Committee. A copy of such document shall be provided to the Grantee, and the Committee may, but need not, require that the Grantee shall sign a copy of such document. Such document is referred to in the Plan as an "Award Agreement" regardless of whether any Grantee signature is required.

5.8 **Gender and Number**. Where the context admits, words in any gender shall include any other gender, words in the singular shall include the plural and the plural shall include the singular.

5.9 **Limitation of Implied Rights.**

(i) The Plan shall at all times be unfunded and neither a Grantee nor any other person shall, by reason of participation in the Plan, acquire any right in or title to any assets, funds or property of the Company or any Subsidiary whatsoever, including, without limitation, any specific funds, assets, or other property which the Company or any Subsidiary, in its sole discretion, may set aside in anticipation of a liability under the Plan. Nothing contained in the Plan and no action taken pursuant hereto shall create or be construed to create a fiduciary relationship between the Company and any Grantee or any other person. A Grantee shall have only a contractual right to the Stock or amounts, if any, payable under the Plan, unsecured by any assets of the Company or any Subsidiary, and nothing contained in the Plan shall constitute a guarantee that the assets of the Company or any Subsidiary shall be sufficient to pay any benefits to any person.

(ii) The Plan does not constitute a contract of employment or service, and selection as a Grantee will not give any participating Employee, Non-Employee Director or Key Advisor the right to be retained in the employ or service of the Company or any Subsidiary, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan or the Award Agreement, no Award under the Plan shall confer upon the holder thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights.

5.10 **Section 409A**. It is intended that all Options and SARs granted under the Plan shall be exempt from the provisions of Section 409A of the Code and that all other Awards under the Plan, to the extent that they constitute "non-qualified deferred compensation" within the meaning of Section 409A of the Code, will comply with Section 409A of the Code (and any regulations and guidelines issued thereunder). The Plan and any Award Agreements issued hereunder may be amended in any respect deemed by the Board or the Committee to be necessary in order to preserve compliance with Section 409A of the Code. Notwithstanding anything in this Plan to the contrary, if required by Section 409A of the Code, if a Grantee is considered a "specified employee" for purposes of Section 409A of the Code and if payment of any Award under this Plan is required to be delayed for a period of six months after "separation from service" within the meaning of Section 409A of the Code, payment of such Award shall be delayed as required by Section 409A of the Code, and the accumulated amounts with respect to such Award shall be paid in a lump sum payment within ten days after the end of the six month period. If the Grantee dies during the postponement period prior to the payment of benefits, the amounts withheld on account of Section 409A of the Code shall be paid to the Grantee's beneficiary within sixty (60) days after the date of the Grantee's death. For purposes of Section 409A of the Code, each payment under the Plan shall be treated as a separate payment. In no event shall a Grantee, directly or indirectly, designate the calendar year of payment. To the extent that any provision of the Plan would cause a conflict with the requirements of section 409A of the Code, or would cause the administration of the Plan to fail to satisfy the requirements of Section 409A of the Code, such provision shall be deemed null and void to the extent permitted by applicable law. Notwithstanding anything in the Plan or any Award Agreement to the contrary, each Grantee shall be solely responsible for the tax consequences of Awards under the Plan, and in no event shall the Company have any responsibility or liability if an Award does not meet any applicable requirements of Section 409A of the Code. Although the Company intends to administer the Plan to prevent taxation under Section 409A of the Code, the Company does not represent or warrant that the Plan or any Award complies with any provision of federal, state, local or other tax law.

5.11 **Regulations and Other Approvals**.

(i) The obligation of the Company to sell or deliver Stock with respect to any Award granted under the Plan shall be subject to all applicable laws, rules and regulations, including all applicable federal and state securities laws, and the obtaining of all such approvals by governmental agencies as may be deemed necessary or appropriate by the Committee.

(ii) Each Award is subject to the requirement that, if at any time the Committee determines, in its absolute discretion, that the listing, registration or qualification of Stock issuable pursuant to the Plan is required by any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the grant of an Award or the issuance of Stock, no such Award shall be granted or payment made or Stock issued, in whole or in part, unless listing, registration, qualification, consent or approval has been effected or obtained free of any conditions not acceptable to the Committee.

(iii) In the event that the disposition of Stock acquired pursuant to the Plan is not covered by a then current registration statement under the Securities Act and is not otherwise exempt from such registration, such Stock shall be restricted against transfer to the extent required by the Securities Act of 1933, as amended, or regulations thereunder, and applicable state securities laws, and the Committee may require a Grantee receiving Stock

pursuant to the Plan, as a condition precedent to receipt of such Stock, to represent to the Company in writing that the Stock acquired by such Grantee is acquired for investment only and not with a view to distribution.

(iv) With respect to persons subject to section 16 of the 1934 Act, it is the intent of the Company that the Plan and all transactions under the Plan comply with all applicable provisions of Rule 16b-3.

(v) All Awards under the Plan will be subject to any compensation, clawback and recoupment policies that may be applicable to the employees of the Company, as in effect from time to time and as approved by the Board or Committee, whether or not approved before or after the Effective Date. Subject to the requirements of applicable law, any such compensation, clawback and recoupment policies shall apply to Awards made after the effective date of the policy.

5.12 **Non-Employee Director Award Deferrals**. The Committee may permit a Non-Employee Director to defer receipt of the payment of cash or the delivery of shares that would otherwise be due to such Non-Employee Director in connection with any Restricted Stock, Restricted Stock Units or Other Stock-Based Awards. If any such deferral election is permitted, the Committee shall establish rules and procedures for such deferrals and may provide for interest or other earnings to be paid on such deferrals, which rules and procedures shall be consistent with applicable requirements of Section 409A of the Code. Unless otherwise specified in a Non-Employee Director's valid election, any deferred amount will be deferred until the earliest to occur of the Non-Employee Director's death, separation from service, or Change of Control; provided that any such deferral election is made by the Non-Employee Director on or prior to December 31 of the calendar year preceding the calendar year in which any such amounts are earned, or, if such Non-Employee Director is newly eligible for purposes of Section 409A of the Code, then within 30 days following the date he or she is first eligible, and then only with respect to amounts earned after the date of the election.

6 Amendment and Termination

The Plan may be terminated or amended by the Board at any time, except that the following actions may not be taken without stockholder approval:

(i) any increase in the number of shares that may be issued under the Plan (except by certain adjustments provided for under the Plan);

(ii) any change in the class of persons eligible to receive ISOs under the Plan;

(iii) any change in the requirements of Sections 4.2(i)(b) and 4.2(ii)(c) hereof regarding the exercise price of Options and the grant price of SARs;

(iv) any repricing or cancellation and regrant of any Option or, if applicable, other Award at a lower exercise, base or purchase price, as set forth in Section 2.3; or

(v) any other amendment to the Plan that would require approval of the Company's stockholders under applicable law, regulation or rule or stock exchange listing requirement.

Notwithstanding any of the foregoing, adjustments pursuant to Section 3 shall not be subject to the foregoing limitations of this Section 6.

7 Governing Law

The Plan and all Award Agreements entered into under the Plan shall be construed in accordance with and governed by the laws of the State of New York, except that any principles or provisions of New York law that would apply the law of another jurisdiction (other than applicable provisions of U.S. Federal law) shall be disregarded. Notwithstanding the foregoing, matters with respect to indemnification, delegation of authority under the Plan, and the legality of shares of Stock issued under the Plan, shall be governed by the Nevada Revised Statutes.

8 Severability

If any of the provision of this Plan is finally held to be invalid, illegal or unenforceable (whether in whole or in part), such provision shall be deemed modified to the extent, but only to the extent, of such invalidity, illegality or

unenforceability and the remaining provisions shall not be affected thereby; provided that, if any such provision is finally held to be invalid, illegal or unenforceable because it exceeds the maximum scope determined to be acceptable to permit such provision to be enforceable, such provision shall be deemed modified to the minimum extent necessary in order to make such provision enforceable.

9 Clawback and Non-compete

Notwithstanding any other provisions of this Plan, any Award which is subject to recovery under any law, government regulation, stock exchange listing requirement, or Company policy, will be subject to such deductions and clawback as may be required to be made pursuant to such law, government regulation or stock exchange listing requirement, or any policy adopted by the Company whether pursuant to any such law, government regulation or stock exchange listing requirement or otherwise. In addition and notwithstanding any other provisions of this Plan, any Award shall be subject to such noncompete provisions under the terms of the Agreement or any other agreement or policy adopted by the Company, including, without limitation, any such terms providing for immediate termination and forfeiture of an Award if and when a Participant becomes an employee, agent or principal of a competitor without the express written consent of the Company.

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