

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

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

Date of report (Date of earliest event reported): July 22, 2016

Solitron Devices, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

001-04978

(Commission File Number)

22-1684144

(IRS Employer Identification No.)

3301 Electronics Way, West Palm Beach, Florida

(Address of Principal Executive Offices)

33407

(Zip Code)

(561) 848-4311

(Registrant's Telephone Number, Including Area Code)

(Former Name or Former Address, if Changed Since Last Report)

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

Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

## Section 5 – Corporate Governance and Management

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

#### *Retirement of Shevach Saraf*

On July 22, 2016, Shevach Saraf retired as Chairman, Chief Executive Officer, President, Chief Financial Officer, Treasurer and a member of the Board of Directors of Solitron Devices, Inc. (the "Company"). In connection with his retirement, Mr. Saraf entered into a Separation and General Release Agreement (the "Separation Agreement"), dated July 22, 2016, with the Company. Mr. Saraf also resigned from all positions with the Company including his position as Trustee of the Company's 401(k) plan.

Pursuant to the Separation Agreement, the Company and Mr. Saraf agreed that his last day of active full-time employment with the Company would be July 22, 2016 (the "Separation Date"). Pursuant to the Separation Agreement, Mr. Saraf has agreed to comply with certain confidentiality and cooperation provisions. The Separation Agreement also provides for a customary general release of claims by Mr. Saraf and a limited release of claims by the Company and the members of the Board of Directors (the "Board"), as well as certain other standard terms and a mutual non-disparagement covenant for a period of one year. Pursuant to the Separation Agreement and applicable law, Mr. Saraf has up to seven (7) days to revoke the Separation Agreement. The Separation Payment and Additional Consideration (as defined below) pursuant to the Separation Agreement will not be provided to Mr. Saraf until the eighth (8<sup>th</sup>) day following the signing of the Separation Agreement (the "Effective Date"). If Mr. Saraf does not revoke the Separation Agreement and complies with his obligations thereunder, he will be entitled to the following payments and benefits:

- a payment of one million two hundred ninety-four thousand three hundred fifteen dollars and fifty-seven cents (\$1,294,315.57) representing the aggregate purchase price for the Company's purchase of Mr. Saraf's ownership of 331,027 shares of the Company's common stock (the "Purchase Price");
- a payment of nine hundred ninety five thousand one hundred fourteen dollars and thirty-eight cents (\$995,114.38) representing the aggregate payment by the Company to Mr. Saraf for the exercisable stock options held by Mr. Saraf for 290,073 shares of the Company's common stock pursuant to his stock option agreements (the "Option Payment");
- a payment of four hundred ten thousand five hundred seventy dollars and five cents (\$410,570.05) representing the payment by the Company for severance (the "Severance Payment" and together with the Purchase Price and Option Payment, collectively, the "Separation Payment");
- a payment of forty-five thousand dollars and no cents (\$45,000.00) representing Mr. Saraf's premium payments for the continuation of health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act ("COBRA") for Mr. Saraf and his qualified dependents under the Company's group health insurance plan, as well as incidental medical expenses (the "Benefits Payment");
- the execution of all necessary documents and payment of the applicable fees and costs to convey to Mr. Saraf the title of ownership in the vehicle that he has used as a

- Company vehicle, with a fair market value of \$18,500.00 ("Vehicle Value"), within ten days of the Effective Date (the "Vehicle Transfer");
- the execution of all necessary documents to transfer the Company's cellular telephone assigned to and being used by Mr. Saraf as of the date of the Separation Agreement within ten days of the Effective Date (the "Cell Phone Transfer" and together with the Benefits Payment and Vehicle Transfer, collectively, the "Additional Consideration");
  - a payment of ninety-six thousand four hundred fifty-one dollars and sixty-eight cents (\$96,451.68), which represents payment for unused paid vacation through the Separation Date; and
  - a payment for the reimbursement of Mr. Saraf's reasonable and necessary business expenses incurred in the performance of his duties on or before the Separation Date following the Company's receipt from Mr. Saraf of written itemized expense accounts and such additional substantiation and justification as the Company may reasonably request.

Upon the execution of the Separation Agreement, the Separation Payment and Benefits Payment were delivered to an escrow agent and will be released from escrow and paid by the escrow agent to Mr. Saraf in one lump sum payment, less applicable payroll withholdings and deductions, on the Effective Date.

Mr. Saraf's participation in the Company's health insurance plans ends in accordance with the terms of the Company's health insurance plan unless Mr. Saraf elects a continuation through COBRA. In addition, certain restrictive covenants of Mr. Saraf's employment agreement shall survive the termination pursuant to the Separation Agreement. The foregoing summary of the Separation Agreement is qualified in its entirety by the text of the Separation Agreement. A copy of the Separation Agreement is attached hereto as Exhibit 10.1 and incorporated herein by reference.

On July 22, 2016, Mr. Saraf and the Company also entered into the Option Cancellation Agreement (the "Option Cancellation Agreement") for the purpose of documenting the termination and cancellation of the exercisable stock options held by Mr. Saraf for 290,073 shares of the Company's common stock pursuant to his stock option agreements in exchange for the Option Payment as of the Effective Date. The foregoing summary of the Option Cancellation Agreement is qualified in its entirety by the text of the Option Cancellation Agreement. A copy of the Option Cancellation Agreement is attached hereto as Exhibit 10.2 and incorporated herein by reference.

*Appointment of Tim Eriksen as Chief Executive Officer and Interim Chief Financial Officer*

On July 22, 2016, the Board of Directors of the Company appointed Tim Eriksen as Chief Executive Officer and Interim Chief Financial Officer effective as of July 22, 2016.

Mr. Eriksen, age 47, was elected a director of the Company on August 4, 2015. Mr. Eriksen also served as a member of the Audit Committee from October 14, 2015 to July 22, 2016. Mr. Eriksen founded Eriksen Capital Management LLC ("ECM"), a Lynden, Washington based investment advisory firm, in 2005. Mr. Eriksen is the Managing Member of ECM and Cedar Creek Partners LLC ("CCP"), a hedge fund founded in 2006 that focuses primarily on micro-cap and small cap stocks. Prior to founding ECM, Mr. Eriksen worked for Walker's Manual, Inc., a publisher of books and

newsletters on micro-cap stocks, unlisted stocks and community banks. Earlier in his career, Mr. Eriksen worked for Kiewit Pacific Co, a subsidiary of Peter Kiewit Sons, as an administrative engineer on the Benicia Martinez Bridge project. Mr. Eriksen received a B.A. from The Master's College and an M.B.A. from Texas A&M University.

In connection with his appointment as Chief Executive Officer and Interim Chief Financial Officer of the Company, Mr. Eriksen's annual salary will be \$72,000. Mr. Eriksen will not receive Board fees or any other compensation. There is no other plan, contract or arrangement to which Mr. Eriksen is a party or in which he participates that was entered into in connection with Mr. Eriksen's appointment as Chief Executive Officer and Interim Chief Financial Officer.

On July 22, 2016, upon the recommendation of the Audit Committee, the Board of Directors agreed to reimburse Tim Eriksen, Eriksen Capital Management LLC and Cedar Creek Partners LLC, for expenses related to the 2015 proxy contest and legal fees related to his service as a director in the amount of approximately \$110,000. Mr. Eriksen serves as Managing Member of ECM and CCP. This expense reimbursement is being disclosed pursuant to Item 404(a) of Regulation S-K. There is no family relationship between Mr. Eriksen and any director or executive officer of the Company.

*Appointment of David W. Pointer as Chairman of the Board of Directors*

On July 22, 2016, the Board appointed David W. Pointer as Chairman of the Board of Directors effective as of July 22, 2016 to fill the vacancy of the Chairman role caused by Shevach Saraf's retirement and to hold office until his successor is duly elected and qualified. Mr. Pointer will continue to serve on the Nominating Committee and Compensation Committee of the Board of Directors.

Mr. Pointer, age 46, was elected a director of the Company on August 4, 2015. Mr. Pointer also serves as a member of the Compensation Committee and Nominating Committee. Mr. Pointer is the founder and managing partner of VI Capital Management, LLC ("VICM"). VICM was founded on January 1, 2008, and is the general partner for VI Capital Fund, LP, a value oriented investment limited partnership. Prior to founding VICM, Mr. Pointer served as Senior Vice President and Senior Portfolio Manager for ICM Investment Management ("ICM"). Prior to ICM, Mr. Pointer served as a Portfolio Manager for Invesco, Inc., where he worked with a senior partner in managing two mutual funds with assets in excess of \$15 billion. Mr. Pointer has been a member of the board of directors of CompuMed, Inc., a healthcare services company, since January 2014 (and has served as chairman of the board since November 2014). From September 2014 to June 2015, he was a member of the board of directors of ALCO Stores, Inc., a publicly traded retailer in liquidation under the provisions of Chapter 11 of Title 11 of the United States Code. Mr. Pointer has an M.B.A. from the University of Pennsylvania and holds the Chartered Financial Analyst designation.

The Company believes that Mr. Pointer's experience as a director at other companies and his ability to relate to the broader investment community highly qualifies him to serve as Chairman and a member of the Board of Directors.

*Appointment of Mark Matson as President and Chief Operating Officer*

On July 22, 2016, the Board of Directors of the Company appointed Mark Matson as President and Chief Operating Officer effective as of July 22, 2016.

Mr. Matson, age 56, has served as a consultant to the Company since May 2016. Prior to working as a consultant to the Company, Mr. Matson provided consulting services from March 2012 to May 2016 through Avlet, Denali Advanced Integration and Tuxedo Technologies with respect to manufacturing supply chain issues and systems and software issues related to security and processes at global manufacturing plants. Mr. Matson served as the Chief Operating Officer and Vice President of Operations at YSI, a maker of environmental monitoring instruments, sensors, software, systems and data collection platforms, from December 2010 to March 2012. Mr. Matson served as the Vice President of Global Operations and Engineering for Rockford Corporation, a company that designed, sourced and distributed high performance mobile audio products, from January 2006 to December 2010. Prior to joining Rockford Corporation, Mr. Matson was the General Manager and Chief Operations Officer for Benchmark Electronics' Division in Redmond, Washington from 2003 through 2005. Mr. Matson was a Vice President at Advanced Digital Information Corporation from 1998 to 2003 and prior to that at Interpoint Corporation. Mr. Matson has more than 20 years of operations experience. Mr. Matson holds a B.A. from California State University at Bakersfield.

In connection with his appointment as President and Chief Operating Officer of the Company, Mr. Matson will be paid an annual salary of \$240,000. There is no other plan, contract or arrangement to which Mr. Matson is a party or in which he participates that was entered into in connection with Mr. Matson's appointment as President and Chief Operating Officer.

As a consultant to the Company from May 2016 to July 2016, the Company paid Mr. Matson \$43,000. There is no family relationship between Mr. Matson and any director or executive officer of the Company.

*Appointment of Charles M. Gillman as a Class III Director*

On July 22, 2016, the Board of Directors of the Company appointed Charles M. Gillman as a Class III director effective as of July 22, 2016 to fill the vacancy caused by Shevach Saraf's retirement from the Board. Mr. Gillman will hold office until the 2016 Annual Meeting of Stockholders or until his successor is duly elected and qualified. The appointment of Mr. Gillman was a result of both mutual business interest and discussions between the Board and Novation Companies, Inc. regarding the avoidance of a proxy contest. In return for Novation Companies, Inc. agreeing to not pursue a proxy contest at the Company's 2016 Annual Meeting of Stockholders, the Board agreed to appoint Mr. Gillman as a Class III director, nominate him for re-election at the 2016 Annual Meeting of Stockholders and reimburse the reasonable expenses incurred to date by Novation Companies, Inc. regarding a potential proxy contest at the 2016 Annual Meeting of Stockholders.

Mr. Gillman, age 46, is the Owner and Executive Managing Director of the IDWR Multi-Family Office (the "IDWR"), a position he has held since 2013. The IDWR employs a team of analysts with expertise in finding publicly traded companies that

require operational enhancement and an improvement in corporate capital allocation. From 2001 to 2013, Mr. Gillman was a portfolio manager of certain family office investment portfolios at Nadel and Gussman, LLC. Prior to his employment at Nadel and Gussman, Mr. Gillman worked in the investment industry and as a strategic management consultant at McKinsey & Company, where he gained experience designing operational turnarounds of U.S. and international companies. Mr. Gillman currently serves on the board of directors of Digirad Corporation, Novation Companies, Inc. and Datawatch Corporation. Additionally, Mr. Gillman previously served on the board of directors of the following companies during the last five years: MRV Communications Inc., InfuSystem Holdings Inc., On Track Innovations Ltd., Aetrium Inc., PMFG Inc., and Hooper Holmes, Inc. Mr. Gillman is a Summa Cum Laude graduate of the Wharton School and a Director of the Penn Club of New York which serves as the Manhattan home of the Wharton and Penn alumni community.

The Board believes that Mr. Gillman's qualifications to serve on the Board include his significant experience designing operational turnarounds of companies, as a successful portfolio manager and his mergers and acquisition experience.

On July 22, 2016, upon the recommendation of the Audit Committee, the Board of Directors agreed to reimburse Novation Companies, Inc. for expenses incurred related to a potential proxy contest at the 2016 Annual Meeting of Stockholders in an amount not to exceed \$60,000. Mr. Gillman serves as a member of the board of directors of Novation Companies. This expense reimbursement is being disclosed pursuant to Item 404(a) of Regulation S-K. There is no family relationship between Mr. Gillman and any director or executive officer of the Company.

### **Important Additional Information About the 2016 Annual Meeting of Stockholders**

This Current Report on Form 8-K may be deemed to be solicitation material in respect of the 2016 Annual Meeting of Stockholders, including the upcoming election of directors. The meeting proposals, including the election of directors, will be submitted to the stockholders of Solitron for their consideration. In connection with the 2016 Annual Meeting of Stockholders, Solitron will file with the Securities and Exchange Commission (the "SEC") a proxy statement. Stockholders of Solitron are urged to read the proxy statement when it becomes available and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information. Stockholders of Solitron will be able to obtain a free copy of the proxy statement, as well as other filings containing information about Solitron at the SEC's Internet site (<http://www.sec.gov>). Copies of the proxy statement and any SEC filings that will be incorporated by reference in the proxy statement can be obtained, free of charge, by directing a request to: Tim Eriksen, Chief Executive Officer, E-mail: [corporate@solitrondevices.com](mailto:corporate@solitrondevices.com).

Solitron and its directors, executive officers and other persons may be deemed to be participants in the solicitation of proxies in respect of the 2016 Annual Meeting of Stockholders. Information regarding Solitron's directors and executive officers is available in its Annual Report on Form 10-K/A for the year ended February 29, 2016, which was filed with the SEC on June 28, 2016. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement and

other relevant materials to be filed with the SEC when they become available. You may obtain free copies of these documents as described in the preceding paragraph.

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

On July 22, 2016, the Board of Directors of the Company approved the adoption of Amended and Restated By-Laws of the Company (the “Amended By-Laws”). The principal changes in the Amended By-Laws provide the Board with flexibility, in its sole discretion, to separate the roles of Chairman of the Board and Chief Executive Officer of the Company. Previously, the Bylaws required the Chairman of the Board to be the Chief Executive Officer of the Company. Additionally, the Amended By-Laws incorporate the changes that were previously made by Amendment No. 1 to the By-Laws adopted on December 12, 2007 and Amendment No. 2 to the By-Laws adopted on April 22, 2013. The Amended By-Laws are effective as of July 22, 2016.

The above summary of the Amended By-Laws is qualified in its entirety by reference to the Amended By-Laws, a copy of which is filed with this report as Exhibit 3.1, and incorporated by reference herein.

**Section 8 – Other Events**

**Item 8.01. Other Events.**

On July 22, 2016, the Company issued a press release announcing the retirement of Mr. Saraf and the management and Board changes discussed above. A copy of the Company's press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

**Section 9 – Financial Statements and Exhibits**

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<b>Exhibit No.</b>	<b>Description</b>
3.1	Amended and Restated By-Laws of Solitron Devices, Inc.
10.1	Separation and General Release Agreement, dated July 22, 2016, between Shevach Saraf and Solitron Devices, Inc.
10.2	Option Cancellation Agreement, dated July 22, 2016, between Shevach Saraf and Solitron Devices, Inc.
99.1	Press Release, dated July 22, 2016

## SIGNATURE

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

July 27, 2016

**SOLITRON DEVICES, INC.**

/s/ Tim Eriksen

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Tim Eriksen  
Chief Executive Officer



## EXHIBIT INDEX

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99.1	Press Release, dated July 22, 2016

## **Exhibit 3.1.**

### **AMENDED AND RESTATED BY-LAWS OF SOLITRON DEVICES, INC. (a Delaware Corporation)**

#### **ARTICLE I**

##### **OFFICES**

SECTION 1. *Registered Office.* The address of the registered office of the Corporation in the State of Delaware and the name of the registered agent at such address shall be as specified in the Certificate of Incorporation or, if subsequently changed, as specified in the most recent certificate of change filed pursuant to law.

SECTION 2. *Other Offices.* The Corporation may also have an office or offices other than said registered office at such place or places, either within or without the State of Delaware, as the Board of Directors shall from time to time determine or the business of the Corporation may require.

SECTION 3. *Change of Location.* In the manner permitted by law, the Board of Directors or the registered agent may change the address of the Corporation's registered office in the State of Delaware and the Board of Directors may make, revoke or change the designation of the registered agent.

#### **ARTICLE II**

##### **MEETINGS OF STOCKHOLDERS**

SECTION 1. *Place of Meetings.* All meetings of the stockholders for the election of directors or for any other purpose shall be held at any such place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of meeting or in a duly executed waiver thereof.

SECTION 2. *Annual Meeting.* The annual meeting of stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of meeting or in a duly executed waiver thereof. At such annual meeting the stockholders shall elect directors and transact such other business as may properly come before the meeting. At any annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation who is entitled to vote with respect thereto and who complies with the notice procedures set forth in this Section. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered or mailed to and received at the principal executive offices of the Corporation not less than 30 days prior to the date of the annual meeting; provided, however, that in the event that less

than 40 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, to be timely, a stockholder's notice must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the annual meeting was mailed or such public disclosure was made. A stockholder's notice to the Secretary shall set forth as to each matter such stockholder proposes to bring before the annual meeting (i) 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, (ii) the name and address, as they appear on the Corporation's books, of the stockholder proposing such business, (iii) the class and number of shares of the Corporation's capital stock that are beneficially owned by such stockholder, and (iv) any material interest of such stockholder in such business. Notwithstanding anything in these By-Laws to the contrary, no business shall be brought before or conducted at an annual meeting except in accordance with the provisions of this Section. The officer of the Corporation or other person presiding at the annual meeting shall, if the facts so warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with such provisions and, if he should so determine, he shall so declare to the meeting and any such business so determined to be not properly brought before the meeting shall not be transacted.

SECTION 3. *Special Meetings.* Subject to the holders of any class or series of stock having a preference over the common stock of the Corporation as to dividends or upon liquidation ("Preferred Stock"), special meetings of stockholders of the Corporation may be called only by a majority of the total number of directors the Corporation would have if there were no vacancies (the "Whole Board") or by the Chief Executive Officer or the President. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice of meeting.

SECTION 4. *Notice of Meetings.* Except as otherwise expressly required by statute, written notice of each annual and special meeting of stockholders stating the date, place and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given to each stockholder of record entitled to vote thereat, not less than ten nor more than sixty days before the date of the meeting. Notice shall be given personally or by mail, and if by mail, shall be sent in a postage prepaid envelope, addressed to the stockholder at his address as it appears on the records of the Corporation. Notice by mail shall be deemed given at the time when the same shall be deposited in the United States mail, postage prepaid. Notice of any meeting shall not be required to be given to any person who attends such meeting, except when such person attends the meeting in person or by proxy 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, or who, either before or after the meeting, shall submit a signed written waiver of notice, in person or by proxy. Neither the business to be transacted at, nor the purpose of, an annual or special meeting of stockholders need be specified in any written waiver of notice.

SECTION 5. *List of Stockholders.* The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before each meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city, town or village where the meeting is to be held, which place shall be specified in the notice of meeting, or, if not specified, at the place where the meeting is to be held. 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. The stock ledger shall be the only evidence as to the identity of the stockholders entitled to examine the stock ledger, the list required by this section or the books of the Corporation, or to vote at any meeting of stockholders.

SECTION 6. *Quorum, Adjournments.* The holders of a majority of the voting power of the issued and outstanding stock of the Corporation entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of stockholders, except as otherwise provided by statute or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented by proxy at any meeting of stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented by proxy. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the meeting as originally called. If the adjournment is for more than thirty days, or, if after adjournment a new record date is set, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

SECTION 7. *Organization.* At each meeting of stockholders, the Chairman of the Board, if one shall have been elected, shall act as chairman of the meeting, or, in his absence or if one shall not have been elected, the Board of Directors may designate any officer or director of the Corporation to preside at meetings of stockholders. The Secretary or, in his absence or inability to act, the Assistant Secretary or such other person whom the chairman of the meeting shall appoint secretary of the meeting, shall act as secretary of the meeting and keep the minutes thereof.

SECTION 8. *Order of Business.* The order of business at all meetings of the stockholders shall be as determined by the chairman of the meeting.

SECTION 9. *Voting.* Except as otherwise provided by statute or the Certificate of Incorporation, each stockholder of the Corporation shall be entitled at each meeting of the stockholders to one vote for each share of capital stock of the Corporation standing in his name on the record of stockholders of the Corporation:

(a) on the date fixed pursuant to the provisions of Section 7 of Article V of these By-Laws as the record date for the determination of the stockholders who shall be entitled to notice of and to vote at such meeting; or

(b) If no such record date shall have been so fixed, then at the close of business on the day next preceding the day on which notice thereof shall be given, or, if notice is waived, at the close of business on the date next preceding the day on which such meeting is held.

Each stockholder entitled to vote at any meeting of stockholders may authorize another person or persons to act for him by a proxy signed by such stockholder or his attorney-in-fact, but no proxy shall be voted after three years from its date, unless the proxy provides for a longer period. Any such proxy shall be delivered to the secretary of the meeting at or prior to the time designated in the order of business for so delivering such proxies. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the issued and outstanding

stock of the Corporation entitled to vote thereon, present in person or represented by proxy, shall decide any question brought before such meeting, unless the question is one upon which by express provision of statute or of the Certificate of Incorporation or of these By-Laws, a different vote is required, in which case such express provision shall govern and control the decision of such question. Unless required by statute, or determined by the chairman of the meeting to be advisable, the vote on any question need not be by ballot.

Except as otherwise provided by these By-Laws, each director shall be elected by the vote of the majority of the votes cast with respect to such director's election at any meeting for the election of directors at which a quorum is present, provided that if, as of the tenth (10th) day preceding the date the Corporation first mails the notice of such meeting to the stockholders, the number of nominees for the directorships (or, if applicable, the directorships of a particular class of directors) exceeds the number of such directors to be elected (a "Contested Election"), such directors shall be elected by the vote of a plurality of the votes cast. For purposes of this Section 9 of this Article II, a majority of votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election (with "abstentions" and "broker non-votes" not counted as a vote cast either "for" or "against" that director's election). In order for any incumbent director to become a nominee of the Board of Directors for further service on the Board of Directors, such person must submit an irrevocable resignation, contingent on (i) that person not receiving a majority of the votes cast in an election that is not a Contested Election, and (ii) acceptance of that resignation by the Board of Directors in accordance with these By-Laws and any policies and procedures adopted by the Board of Directors for such purpose. In the event an incumbent director fails to receive a majority of the votes cast in an election that is not a Contested Election, the independent directors of the Board of Directors (or, if the Board of Directors so directs, a nominating committee established by the Board of Directors or such other committee designated by the Board of Directors pursuant to these By-Laws) shall make a recommendation to the Board of Directors as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The Board of Directors shall act on the resignation, taking into account the recommendation of the independent directors or any such committee, and shall disclose (by a press release and by filing an appropriate disclosure with the Securities and Exchange Commission) its decision regarding the resignation (and, if such resignation is rejected, the rationale behind the decision) within ninety (90) days following certification of the election results. The independent directors or committee, as applicable, in making such recommendation, and the Board of Directors, in making such decision, may consider any factors and other information that they consider appropriate and relevant. If the Board of Directors accepts a director's resignation pursuant to this Section 9 of this Article II, or if any nominee for director is not elected and such nominee is not an incumbent director (and, as a result, any vacancy remains after the final adjournment of the meeting for the election of directors), then the Board of Directors may fill the resulting vacancy pursuant to the Certificate of Incorporation and these By-Laws.

On a vote by ballot, each ballot shall be signed by the stockholder voting, or by his proxy, if there be such proxy, and shall state the number of shares voted.

**SECTION 10. *Inspectors.*** The Board of Directors may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting shall, or

if inspectors shall not have been appointed, the chairman of the meeting may, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. The inspectors shall determine the number of shares of capital stock of the Corporation outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, the validity and effect of proxies, and shall receive votes, ballots or consents, hear and determine all challenges and questions arising in connection with the right to vote, count and tabulate all votes, ballots or consents, determine the results, and do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. Inspectors need not be stockholders.

SECTION 11. *Action by Consent.* Subject to the rights of holders of any class or series of Preferred Stock, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by the stockholders.

SECTION 12. *Nomination of Directors.* Only persons who are nominated in accordance with the procedures set forth in this Section shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the Corporation may be made at a meeting of stockholders at which directors are to be elected only (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the Corporation entitled to vote for the election of directors at the meeting who complies with the notice procedures set forth in this Section. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made by timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice must be delivered or mailed to and received at the principal executive offices of the Corporation not less than 30 days prior to the date of the meeting, provided, however, that in the event that less than 40 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, to be timely, a stockholder's notice must be so received not later than the close of business on the tenth day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made. Such stockholder's notice shall set forth (i) as to each person whom such stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (including each such person's written consent to serving as a director if elected); and (ii) as to the stockholder giving the notice (x) the name and address of such stockholder as they appear on the Corporation's books, and (y) the class and number of shares of the Corporation's capital stock that are beneficially owned by such stockholder. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director shall furnish to the Secretary of the Corporation that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the provisions of this Section. The officer of the Corporation or other person presiding at the meeting shall, if the facts so warrant, determine and declare to the meeting that a nomination was not made in

accordance with such provisions and, if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

### **ARTICLE III**

#### **BOARD OF DIRECTORS**

SECTION 1. *General Powers.* The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. The Board of Directors may exercise all such authority and powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these By-Laws directed or required to be exercised or done by the stockholders.

SECTION 2. *Number, Qualifications, Election and Term of Office.* The Board of Directors of the Corporation shall consist of not less than three directors nor more than nine directors, the exact number of directors to be determined from time to time by resolution of the Whole Board. The directors shall be divided into three classes, designated Class-I, Class-II and Class-III. Each class shall consist, as nearly as may be possible, of one-third of the total number of directors constituting the entire Board of Directors. At the first meeting of stockholders, Class-I directors shall be elected for a term expiring at the annual meeting of stockholders to be held in 1987, Class-II directors shall be elected for a term expiring at the annual meeting of stockholders to be held in 1988 and Class-III directors shall be elected for a term expiring at the annual meeting of stockholders to be held in 1989. At each annual meeting of stockholders, beginning in 1987, successors to the class of directors whose term expires at the annual meeting shall be elected for a term expiring at the third annual meeting following the annual meeting at which such director was elected. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, and any additional director of any class elected to fill a vacancy resulting from an increase in such class shall hold office for a term that shall coincide with the remaining term of that class, but in no case will a decrease in the number of directors shorten the term of any incumbent director. A director shall hold office until the annual meeting for the year in which his term expires and until his successor shall be elected and shall qualify, subject, however, to prior death, resignation, retirement, disqualification or removal from office. Directors need not be stockholders.

Notwithstanding the foregoing, whenever the holders of any one or more classes or series of Preferred Stock issued by the Corporation shall have the right, voting separately by class or series, to elect directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of the Certificate of Incorporation applicable thereto, and such directors so elected shall not be divided into classes pursuant to this Section unless expressly provided by such terms.

SECTION 3. *Place of Meetings.* Meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as shall be specified in the notice of any such meeting.

SECTION 4. *Annual Meeting.* The Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business, as soon as practicable

after each annual meeting of stockholders, on the same day and at such place as where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board of Directors may be held at such other time and place (within or without the State of Delaware) as shall be specified in a notice thereof given as hereinafter provided in Section 7 of this Article III.

SECTION 5. *Regular Meetings.* Regular meetings of the Board of Directors shall be held at such time and place as the Board of Directors may fix. If any day fixed for a regular meeting shall be a legal holiday at the place where the meeting is to be held, then the meeting which would otherwise be held on that day shall be held at the same hour on the next succeeding business day. Notice of regular meetings of the Board of Directors need not be given except as otherwise required by statute or these By-Laws.

SECTION 6. *Special Meetings.* Special meetings of the Board of Directors may be called by the Chairman of the Board, if one shall have been elected, by the Chief Executive Officer or by a majority of the Whole Board.

SECTION 7. *Notice of meetings.* Notice of each special meeting of the Board of Directors (and of each regular meeting for which notice shall be required) shall be given by the Secretary as hereinafter provided in this Section 7, in which notice shall be stated the time and place of the meeting. Except as otherwise required by these By-Laws, such notice need not state the purposes of such meeting. Notice of each such meeting shall be mailed, postage prepaid, to each director, addressed to him at such place as is duly recorded within the records of the Corporation, by telegraph, cable, telex, telecopier or other similar means, or be delivered to him personally or be given to him by telephone or other similar means, at least twenty-four hours before the time at which such meeting is to be held. Notice of any such meeting need not be given to any director who shall, either before or after the meeting, submit a signed waiver of notice or who shall attend such meeting, except when he shall attend 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.

SECTION 8. *Quorum and Manner of Acting.* A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and, except as otherwise expressly required by statute or the Certificate of Incorporation or these By-Laws, the act of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present thereat may adjourn such meeting to another time and place. Notice of the time and place of any such adjourned meeting shall be given to all of the directors unless such time and place were announced at the meeting at which the adjournment was taken, in which case such notice shall only be given to the directors who were not present thereat. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called. The directors shall act only as a Board and the individual directors shall have no authority to act except through the Board.

SECTION 9. *Organization.* At each meeting of the Board of Directors, the Chairman of the Board, if one shall have been elected, or, in the absence of the Chairman of the Board or if one shall not have been elected, another director designated by the Board of Directors shall act as



chairman of the meeting and preside thereat. The Secretary or, in his absence, the Assistant Secretary or such other person who shall be appointed by the chairman of the meeting shall act as secretary of the meeting and keep the minutes thereof.

SECTION 10. *Resignations.* Any director of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein or, if the time when it shall become effective shall not be specified therein, immediately upon its receipt. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 11. *Vacancies.* Any vacancy on the Board of Directors that results from an increase in the number of directors may be filled by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring in the Board of Directors may be filled only by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his predecessor.

SECTION 12. *Removal of Directors.* Subject to the Certificate of Incorporation and the rights of the holders of any series of Preferred Stock then outstanding, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of not less than 80% of the votes to be cast by the holders of all outstanding shares entitled to vote thereon, voting together as a single class.

SECTION 13. *Chairman of the Board.* The Board of Directors may from time to time elect or appoint from among its members a Chairman of the Board. The Chairman of the Board shall preside at all meetings of the stockholders of the Corporation and at all meetings of the Board of Directors; provided, that in the absence of the Chairman of the Board or if one shall not have been elected, another director shall be designated by the Board to preside at meetings of the Board of Directors, and the Board of Directors may designate any officer or director of the Corporation to preside at meetings of stockholders. The Chairman of the Board shall also perform such other duties as may be assigned or delegated by the Board of Directors from time to time. The Chairman of the Board shall not be an officer of the Corporation under Section 142 of the General Corporation Law of the State of Delaware, unless the Board of Directors shall have otherwise designated the Chairman of the Board as such.

SECTION 14. *Compensation.* The Board of Directors shall have authority to fix the compensation, including fees and reimbursement of expenses, of directors for services to the Corporation in any capacity.

SECTION 15. *Committees.* The Board of Directors may, by resolution or resolutions passed by a majority of the Whole Board, designate one or more committees, each committee to consist of two 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 any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint

another member of the Board of Directors 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 of Directors, or in these By-Laws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the stockholders the sale, lease or exchange of all or substantially all of the Corporation's property and assets, recommending to the stockholders a dissolution of the Corporation or a revocation of a dissolution, or amending these By-Laws; and, unless the resolution, these By-Laws or the Certificate of Incorporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

**SECTION 16. *Action by Consent.*** Unless restricted by the Certificate of Incorporation, any action required or permitted to be taken by the Board of Directors or any committee thereof may be taken without a meeting if all members of the Board of Directors or such committee, as the case may be, consent thereto in writing and the writing or writings are filed with the minutes of the proceedings of the Board of Directors or such committee, as the case may be.

**SECTION 17. *Telephonic Meeting.*** Unless restricted by the Certificate of Incorporation, any one or more members of the Board of Directors or any committee thereof may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other participant. Participation by such means shall constitute presence in person at a meeting.

## **ARTICLE IV**

### **OFFICERS**

**SECTION 1. *Number and Qualifications.*** The officers of the Corporation shall be elected by the Board of Directors and shall include the Chief Executive Officer, the President, one or more Vice-Presidents, the Secretary and the Treasurer. If the Board of Directors wishes, it may also elect other officers (including one or more Assistant Secretaries and Assistant Treasurers) as may be necessary or desirable for the business of the Corporation. Any two or more offices may be held by the same person, except that the same person shall not simultaneously hold the offices of President and Secretary. No officer need be a director. Each officer shall hold office until his successor shall have been duly elected and shall have qualified, or until his death, or until he shall have resigned or have been removed, as hereinafter provided in these By-Laws.

**SECTION 2. *Resignations.*** Any officer of the Corporation may resign at any time by giving written notice of his resignation to the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time when it shall become effective shall not be specified therein, immediately upon receipt. Unless otherwise specified therein, the acceptance of any such resignation shall not be necessary to make it effective.

SECTION 3. *Removal.* Each officer of the Corporation shall hold office until his successor is duly elected and qualified, or until his death or until his resignation or removal from office. Any officer elected or appointed by the Board of Directors may be removed at any time by the vote of the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

SECTION 4. *Chief Executive Officer.* The Chief Executive Officer of the Corporation shall have general and active management responsibilities of the business and affairs of the Corporation, and shall see that all orders and resolutions of the Board of Directors are carried into effect, and shall perform such other duties and have such other powers as these By-Laws, or the Board of Directors may prescribe. He may execute any deed, mortgage, bond, contract, or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Directors or by these By-Laws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board of Directors from time to time.

SECTION 5. *The President.* The President, in the absence or disability of the Chief Executive Officer, shall perform the duties and exercise the powers of the Chief Executive Officer. He shall be the principal administrative officer of the Corporation, his activities as such are subject to the direction and approval of the Chief Executive Officer, and he shall be responsible for the implementation of the details of managing the administrative affairs of the Corporation, and shall perform such other duties and have such other powers as these By-Laws, or the Board of Directors may prescribe.

SECTION 6. *Vice-President.* Each Vice-President shall perform all such duties as from time to time may be assigned to him by the Board of Directors, the Chief Executive Officer or the President. At the request of the President or in his absence or in the event of his inability or refusal to act, the Vice-President, or if there shall be more than one, the Vice-Presidents in the order determined by the Board of Directors (or if there be no such determination, then the Vice-Presidents in the order of their election), shall perform the duties of the President, and, when so acting, shall have the powers of and be subject to the restrictions placed upon the President in respect of the performance of such duties.

SECTION 7. *Treasurer.* The Treasurer shall:

- (a) have charge and custody of and be responsible for, all the funds and securities of the Corporation;
- (b) keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation;
- (c) deposit all moneys and other valuables to the credit of the Corporation in such depositories as may be designated by the Board of Directors or pursuant to its direction;
- (d) receive, and give receipts for, moneys due and payable to the Corporation from any source whatsoever;

(e) disburse the funds of the Corporation and supervise the investment of its funds, taking proper vouchers therefore;

(f) render to the Board of Directors, whenever the Board of Directors may require, an account of the financial condition of the Corporation; and

(g) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 8. *Secretary*. The Secretary shall:

(a) keep or cause to be kept in one or more books provided for the purpose, the minutes of all meetings of the Board of Directors, the committees of the Board of Directors and the stockholders;

(b) see that all notices are duly given in accordance with the provision of these By-Laws and as required by law;

(c) be custodian of the records and the seal of the Corporation and affix and attest the seal to all certificates for shares of the Corporation (unless the seal of the Corporation on such certificates shall be a facsimile, as hereinafter provided) and affix and attest the seal of all other documents to be executed on behalf of the Corporation under its seal;

(d) see that the books, reports, statements, certificates and other documents and records required by law to be kept and filed are properly kept and filed; and

(e) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 9. *The Assistant Treasurer*. The Assistant Treasurer, or if there shall be one or more than one, the Assistant Treasurers in the order determined by the Board of Directors (or if there be no such determination, then in the order of their election), shall, in the absence of the Treasurer or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Treasurer and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 10. *The Assistant Secretary*. The Assistant Secretary, or if there shall be one or more than one, the Assistant Secretaries in the order determined by the Board of Directors (or if there shall be no such determination, then in the order of their election), shall in the absence of the Secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties as from time to time may be assigned by the Board of Directors.

SECTION 11. *Officers' Bonds or Other Security*. If required by the Board of Directors, any officer of the Corporation shall give a bond or other security for the faithful performance of his duties, in such amount and with such surety as the Board of Directors may require.

SECTION 12. *Compensation.* The compensation of the officers of the Corporation for their services as such officers shall be fixed from time to time by the Board of Directors. An officer of the Corporation shall not be prevented from receiving compensation by reason of the fact that he is also a director of the Corporation.

## ARTICLE V

### STOCK CERTIFICATES AND THEIR TRANSFER

SECTION 1. *Stock Certificates.* Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided under the General Corporation Law of the State of Delaware. Upon request, every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation by, the Chairman of the Board, the Chief Executive Officer, or the President or a Vice-President and by the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by him in the Corporation. If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preference and relative, participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restriction of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock, provided that, except as otherwise provided in Section 202 of the General Corporation Law of the State of Delaware, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which 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 designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restriction of such preferences and/ or rights.

SECTION 2. *Facsimile Signatures.* Any of or all the signatures, as well as the seal of the Corporation, appearing on a 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 shall have 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 were such officer, transfer agent or registrar at the date of issue.

SECTION 3. *Lost Certificates.* The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen, or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to give the Corporation a bond equivalent to such sum as may be made against the Corporation on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate. The replacement of a lost certificate may be in a certificated or uncertificated form pursuant to the provisions of Section 1 of Article V.

SECTION 4. *Transfers of Stock.* Transfers of stock shall be made on the books of the Corporation in the case of uncertificated shares of stock upon receipt of proper transfer instructions

from the registered holder of the shares or by such person's attorney-in-fact lawfully constituted in writing and in the case of certificated shares 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, assignment or authority to transfer, it shall be the duty of the Corporation to issue a record of ownership in a certificated or uncertificated form to the person entitled thereto, cancel the old certificate (if applicable) and record the transaction upon its records provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer. Whenever any transfer of stock shall be made for collateral security, and not absolutely, it shall also be so expressed in the entry of transfer if, when the certificates are presented to the Corporation for transfer, both the transferor and the transferee request the Corporation to do so.

SECTION 5. *Transfer Agents and Registrars.* The Board of Directors may appoint, or authorize any officer or officers to appoint, one or more transfer agents and one or more registrars.

SECTION 6. *Regulations.* The Board of Directors may make such additional rules and regulations, not inconsistent with these By-Laws, as it may deem expedient concerning the issue, transfer and registration of certificates for shares of stock of the Corporation.

SECTION 7. *Fixing the Record Date.* In order that the Corporation may determine the stockholders entitled to notice or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, 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 of Directors may fix, in advance, a record date, which shall not be more than sixty nor less than ten days before the day of such meeting, nor more than sixty days prior to any other action. 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 of Directors may fix a new record date for the adjourned meeting.

SECTION 8. *Registered Stockholders.* The Corporation shall be entitled to recognize the exclusive right of a person registered on its records as the owner of shares of stock to receive dividends and to vote as such owner shall be entitled to hold liable for calls and assessments a person registered on its records as the owner of shares of stock, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares of stock on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VI

### INDEMNIFICATION

SECTION 1. *Right to Indemnification.* The Corporation shall, to the fullest extent permitted by applicable law as then in effect, indemnify any person (the "Indemnitee") who is or was a director or officer of the Corporation and who is or was involved in any manner (including, without limitation, as a party of a witness) or is threatened to be made so involved in any threatened, pending or completed investigation, claim, action, suit or proceeding, whether civil, criminal, administrative or investigative (including, without limitation, any action, suit or

proceeding by or in the right of the Corporation to procure a judgment in its favor) (a "Proceeding") by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), against all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding. Such indemnification shall be a contract right and shall include the right to receive payment in advance of any expenses incurred by such Indemnitee in connection with such Proceeding, consistent with the provisions of applicable law as then in effect.

SECTION 2. *Insurance, Contracts, and Funding.* The Corporation may purchase and maintain insurance to protect itself and any person entitled to indemnity under this Article VI against any expenses, judgments, fines and amounts paid in settlement as specified in this Article VI or incurred by any such person in connection with any Proceeding referred to in this Article VI, to the fullest extent permitted by applicable law as then in effect. The Corporation may enter into contracts with any person entitled to indemnity under this Article VI in furtherance of the provisions of this Article VI and may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to ensure the payment of such amounts as may be necessary to effect indemnification as provided in this Article VI.

SECTION 3. *Indemnification; Not Exclusive Right.* The right of indemnification provided in this Article VI shall not be exclusive of any other rights to which those seeking indemnification may otherwise be entitled, and the provisions of this Article VI shall inure to the benefit of the heirs and legal representatives of any person entitled to indemnity under this Article VI and shall be applicable to Proceedings commenced or continuing after the adoption of this Article VI, whether arising from acts or omissions occurring before or after such adoption.

SECTION 4. *Advancement of Expenses; Procedures; Presumptions and Effect of Certain Proceedings: Remedies.* In furtherance, but not in limitation of the foregoing provisions, the following procedures, presumptions and remedies shall apply with respect to advancement of expenses and the right to indemnification under this Article VI:

(a) *Advancement of Expenses.* All reasonable expenses incurred by or on behalf of the Indemnitee in connection with any Proceeding shall be advanced to the Indemnitee by the Corporation within 20 days after the receipt by the Corporation of a statement or statements from the Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the expenses incurred by the Indemnitee and, if required by law at the time of such advance, shall include or be accompanied by an undertaking by or on behalf of the Indemnitee to repay the amounts advanced if it should ultimately be determined that the Indemnitee is not entitled to be indemnified against such expenses pursuant to this Article VI.

(b) *Procedure for Determination of Entitlement in Indemnification*

(i) To obtain indemnification under this Article VI, an Indemnitee shall submit to the Secretary of the Corporation a written request, including such documentation and information as is reasonably available to the Indemnitee and reasonably

necessary to determine whether and to what extent the Indemnitee is entitled to indemnification (the "Supporting Documentation"). The determination of the Indemnitee's entitlement to indemnification shall be made not later than 60 days after receipt by the Corporation of the written request for indemnification together with the Supporting Documentation. The Secretary of the Corporation shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that the Indemnitee has requested indemnification.

(ii) The Indemnitee's entitlement to indemnification under this Article VI shall be determined in one of the following ways: (A) by a majority vote of the Disinterested Directors (as hereinafter defined), if they constitute a quorum of the Board of Directors; (B) by a written opinion of Independent Counsel (as hereinafter defined) if (x) a Change of Control (as hereinafter defined) shall have occurred and the Indemnitee so requests or (y) a quorum of the Board of Directors consisting of Disinterested Directors is not obtainable or, even if obtainable, a majority of such Disinterested Directors so directs; (C) by the stockholders of the Corporation (but only if a majority of the Disinterested Directors, if they constitute a quorum of the Board of Directors, presents the issue of entitlement to indemnification to the stockholders for their determination), or (D) as provided in Section 4(c).

(iii) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 4(b)(ii), a majority of the Disinterested Directors shall select the Independent Counsel, but only an Independent Counsel to which the Indemnitee does not reasonably object; provided, however, that if a Change of Control shall have occurred, the Indemnitee shall select such Independent Counsel, but only an Independent Counsel to which the Board of Directors does not reasonably object. If no Independent Counsel is so selected to act as provided in Section 4(b)(ii), the Indemnitee shall be entitled to seek adjudication of his entitlement to indemnification in an appropriate court of the State of Delaware or any other court of competent jurisdiction.

(c) *Presumptions and Effect of Certain Proceedings.* Except as otherwise expressly provided in this Article VI, if a Change of Control shall have occurred the Indemnitee shall be presumed to be entitled to indemnification under this Article VI upon submission of a request for indemnification together with the Supporting Documentation in accordance with Section 4(b)(i), and thereafter the Corporation shall have the burden of proof to overcome that presumption in reaching a contrary determination. In any event, if the person or persons empowered under Section 4(b) to determine entitlement to indemnification shall not have been appointed or shall have not made a determination within 60 days after receipt by the Corporation of the request therefore together with the Supporting Documentation, the Indemnitee shall be deemed to be entitled to indemnification and the Indemnitee shall be entitled to such indemnification unless (A) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. The termination of any Proceeding described in Section I, or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, adversely affect the right of the Indemnitee to indemnification or create a presumption that the Indemnitee did not act in good faith and in a



manner which the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation or, with respect to any criminal Proceeding, that the Indemnitee had reasonable cause to believe that his conduct was unlawful.

(d) *Remedies of Indemnitee.*

(i) In the event that a determination is made pursuant to Section 4(b) that the Indemnitee is not entitled to indemnification under this Article VI, (A) the Indemnitee shall be entitled to seek an adjudication of his entitlement to such indemnification either, at the Indemnitee's sole option, in an appropriate court of the State of Delaware or any other court of competent jurisdiction; (B) any such judicial proceeding shall be *de novo* and the Indemnitee shall not be prejudiced by reason of such adverse determination; and (C) if a Change of Control shall have occurred, in any such judicial proceeding the Corporation shall have the burden of proving that the Indemnitee is not entitled to indemnification under this Article VI.

(ii) If a determination shall have been made or deemed to have been made, pursuant to Section 4(b) or (c), that the Indemnitee is entitled to indemnification, the Corporation shall be obligated to pay the amounts constituting such indemnification within five days after such determination has been made or deemed to have been made and shall be conclusively bound by such determination unless (A) the Indemnitee misrepresented or failed to disclose a material fact in making the request for indemnification or in the Supporting Documentation or (B) such indemnification is prohibited by law. In the event that (x) advancement of expenses is not timely made pursuant to Section 4(a) or (y) payment of indemnification is not made within five days after a determination of entitlement to indemnification has been made or deemed to have been made pursuant to Section 4(b) or (c), the Indemnitee shall be entitled to seek judicial enforcement of the Corporation's obligation to pay to the Indemnitee such advancement of expenses or indemnification. Notwithstanding the foregoing, the Corporation may bring an action, in an appropriate court in the State of Delaware or any other court of competent jurisdiction, contesting the right of the Indemnitee to receive indemnification hereunder due to the occurrence of an event described in subclause (A) or (B) of this clause (ii) (a "Disqualifying Event"); provided, however, that in any such action the Corporation shall have the burden of proving the occurrence of such Disqualifying Event.

(iii) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 4(d) that the procedures and presumptions of this Article VI are not valid, binding and enforceable and shall stipulate in any such court that the Corporation is bound by all the provisions of this Article VI.

(iv) In the event that the Indemnitee, pursuant to this Section 4(d), seeks a judicial adjudication to enforce his rights under, or to recover damages for breach of, this Article VI, the Indemnitee shall be entitled to recover from the Corporation, and shall be indemnified by the Corporation against, any expenses actually and reasonably incurred by the Indemnitee if the Indemnitee prevails in such judicial adjudication. If it shall be determined in such judicial adjudication that the Indemnitee is entitled to receive part but not all of the indemnification or advancement of expenses sought, the expenses

incurred by the Indemnitee in connection with such judicial adjudication shall be prorated accordingly.

(e) *Definitions.* For purposes of this Section 4:

(i) "Change in Control" means a change in control of the Corporation of a nature that would be required to be reported in response to Item 6(e) (or any successor provision) of Schedule 14A of Regulation 14A promulgated under the Securities Exchange Act of 1934 (the "Act"), whether or not the Corporation is then subject to such reporting requirement; provided that, without limitation, such a change in control shall be deemed to have occurred if (A) any "person" (as such term is defined in Article 12 of the Certificate of Incorporation) is or becomes an "Interested Stockholder" (as such term is defined in Article 12 of the Certificate of Incorporation); (B) the Corporation is a party to any merger or consolidation in which the Corporation is not the continuing or surviving corporation or pursuant to which shares of the Corporation's Common Stock would be converted into cash, securities or other property, other than a merger of the Corporation in which the holders of the Corporation's Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger; (C) there is a sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all, or substantially all, the assets of the Corporation, or a liquidation or dissolution of the Corporation; or (D) during any period of two consecutive years, individuals who at the beginning of such period constituted the Board of Directors (including for this purpose any new director whose election or nomination for election by the Corporation's stockholders was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of such period) cease for any reason to constitute at least a majority of the Board of Directors.

(ii) "Disinterested Director" means a director of the Corporation who is not or was not a party to the Proceeding in respect of which indemnification is sought by the Indemnitee.

(iii) "Independent Counsel" means a law firm or a member of a law firm that neither presently is, nor in the past five years has been, retained to represent: (i) the Corporation or the Indemnitee in any matter material to either such party or (ii) any other party to the Proceeding giving rise to a claim for indemnification under this Article VI. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing under the law of the State of Delaware, would have a conflict of interest in representing either the Corporation or the Indemnitee in an action to determine the Indemnitee's rights under this Article VI.

SECTION 5. *Severability.* If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Article VI (including, without limitation, all portions of any section of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article

VI (including, without limitation, all portions of any section of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

SECTION 6. *Indemnification of Employers and Agents.* Notwithstanding any other provision or provisions of this Article VI, the Corporation may indemnify (including, without limitation, by direct payment) any person (other than a director or officer of the Corporation) who is or was involved in any manner (including, without limitation, as a party or a witness) or is threatened to be made so involved in any Proceeding by reason of the fact that such person is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), against any or all expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred in connection with such Proceeding.

## ARTICLE VII

### GENERAL PROVISIONS

SECTION 1. *Dividends.* Subject to the provisions of statute and the Certificate of Incorporation, dividends upon the shares of capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting. Dividends may be paid in cash, in property or in shares of stock of the Corporation, unless otherwise provided by statute or the Certificate of Incorporation.

SECTION 2. *Reserves.* Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors may, from time to time, in its absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation or for such other purposes as the Board of Directors may think conducive to the interests of the Corporation. The Board of Directors may modify or abolish any such reserves in the manner in which it was created.

SECTION 3. *Corporate Seal.* The seal of the Corporation shall be in such form as shall be approved by the Board of Directors.

SECTION 4. *Fiscal Year.* The fiscal year of the Corporation shall be fixed, and once fixed may thereafter be changed, by resolution of the Board of Directors.

SECTION 5. *Checks, Notes, Drafts, Etc.* All checks, notes, drafts or other orders for the payment of money of the Corporation shall be signed, endorsed or accepted in the name of the Corporation by such officer, officers, person or persons as from time to time may be designated either by the Board of Directors or by an officer or officers authorized by the Board of Directors to make such designation.

SECTION 6. *Execution of Contracts, Deeds, Etc.* The Chief Executive Officer may, and the Board of Directors may authorize any other officer or officers, agent or agents, in the name

and on behalf of the Corporation to, enter into or execute and deliver any and all deeds, bonds, mortgages, contracts and other obligations or instruments, and such authority may be general or confined to specific instances.

SECTION 7. *Voting of Stock in Other Corporations.* Unless otherwise provided by resolution of the Board of Directors, the Chief Executive Officer, from time to time, may (or may appoint one or more attorneys or agents to) cast the votes which the Corporation may be entitled to cast as a stockholder or otherwise in any other corporation, any of whose shares or securities may be held by the Corporation, at meetings of the holders of the shares or other securities of such other corporation. In the event one or more attorneys or agents are appointed, the Chief Executive Officer may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent. The Chief Executive Officer may, or may instruct the attorneys or agents appointed to, execute or cause to be executed in the name and on behalf of the Corporation and under its seal or otherwise, such written proxies, consents, waivers or other instruments as may be necessary or proper in the circumstances.

## **ARTICLE VIII**

### **AMENDMENTS**

Subject to the laws of the State of Delaware, the Certificate of Incorporation and the rights of any holders of Preferred Stock, these By-Laws may be amended or repealed or new by-laws adopted (a) by action of the stockholders entitled to vote thereon at any annual or special meeting of stockholders or (b) if the Certificate of Incorporation so provides, by action of the Board of Directors at a regular or special meeting thereof. Subject to the laws of the State of Delaware, the Certificate of Incorporation and the rights of any holders of Preferred Stock, any by-law made by the Board of Directors may be amended or repealed by action of the stockholders at any annual or special meeting of stockholders. Notwithstanding the foregoing, any other provision of these By-Laws or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of voting stock required by law, the Certificate of Incorporation, the holders of any Preferred Stock or these By-Laws, the affirmative vote of not less than 80% of the votes to be cast by the holders of all the outstanding shares entitled to vote thereon, voting together as a single class, shall be required to amend or repeal, or to adopt any provision inconsistent with, Section 2, 3, 11 and 12 of Article II, Sections 2, 11 and 12 of Article III, Article VI or Article VIII of these By-Laws.

**SEPARATION AND GENERAL RELEASE AGREEMENT\*\***

THIS SEPARATION AND GENERAL RELEASE AGREEMENT (this "Separation Agreement") is entered into between Shevach Saraf (the "Employee") and Solitron Devices, Inc., a Delaware company (the "Employer"), (collectively, the "Parties").

**WHEREAS**, Employee and Employer are parties to the Amended and Restated Employment Agreement dated December 1, 2000, as amended by the Employment Agreement Amendment dated January 14, 2003 (collectively, the "Employment Agreement");

**WHEREAS**, Employee is retiring from employment with Employer; and

**WHEREAS**, Employer and Employee mutually agree to sever the employment relationship on the terms and subject to the conditions set forth in this Separation Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Employee and Employer agree as follows:

1. Separation of Employment.

(a) Resignation by Employee on Separation Date. Employee hereby resigns from his position as President, Chief Executive Officer, Chief Financial Officer and Treasurer of Employer, from his position on the Board of Directors of Employer, and from all other capacities in which Employee is employed by Employer effective as of the Separation Date (as defined herein). In addition, in accordance with the Trustee Resignation Agreement by and between Employee and Employer, dated as of July 22, 2016, Employee hereby resigns as Trustee of the Solitron Devices, Inc. 401(k) & Profit Sharing Plan (the "Plan"), effective as of July 22, 2016, and Employer hereby accepts such resignation and waives the thirty (30) day notice period in accordance with Section 12.11 of the Plan.

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\*\* A portion of the Separation and General Release Agreement has been omitted based upon a request for confidential treatment filed with the Securities and Exchange Commission. The non-public information has been filed with the Securities and Exchange Commission.

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(b) Definition of Separation Date. For purposes of this Separation Agreement, the “Separation Date” means the date hereof.

(c) Termination of Employment Agreement; Survival of Restrictive Covenants. Employee and Employer agree that the Employment Agreement shall terminate as of the Separation Date, except that the restrictive covenants set forth in Article 5 of the Employment Agreement shall survive termination of Employee’s employment with Employer in accordance with the terms set forth in the Employment Agreement.

(d) Termination of Stock Option Agreements. Employee and Employer agree that the Stand-Alone Option Grant Agreements entered into between Employee and Employer, dated December 1, 2000 and May 17, 2004, and executed by Employee and Employer on May 13, 2013 (collectively, the “Stock Option Agreements”) shall be terminated as of the Separation Date. Accordingly, Employee shall concurrently herewith:

(i) execute a cancellation agreement (the “Option Cancellation Agreement”) attached as an exhibit to that certain Escrow Agreement dated as of the date hereof by and between Akerman LLP (the “Escrow Agent”), Employee, and Employer and attached hereto (the “Escrow Agreement”); and

(ii) deliver the Option Cancellation Agreement to the Escrow Agent to hold in escrow until the Separation Payment (as defined herein), Vacation Payment (as defined herein) and Additional Consideration (as defined herein) is paid or delivered to Employee, whereupon such cancellation agreement shall automatically be deemed effective and delivered to Employer without any further action by any Parties hereto.

(e) Payment for Unused Vacation. Employer shall pay Employee the gross amount of NINETY-SIX THOUSAND FOUR HUNDRED FIFTY-ONE DOLLARS and SIXTY-EIGHT CENTS (\$96,451.68), less applicable statutory payroll withholdings and deductions, representing six hundred twenty-four (624) hours of unused paid vacation for which Employee is eligible through the Separation Date (the “Vacation Payment”).

(f) Payment for Reimbursable Business Expenses. Employer shall reimburse Employee for all reasonable and necessary business expenses actually incurred by Employee in the performance of his duties for Employer on or before the Separation Date in accordance with the Employer's current policies regarding reimbursable business expenses (the "Reimbursable Business Expenses"). Employer shall provide payment to Employee for the Reimbursable Business Expenses on Employer's next regularly scheduled payroll date following Employer's receipt from Employee of written itemized expense accounts and such additional substantiation and justification as Employer may reasonably request regarding the Reimbursable Business Expenses. Employer's payment to Employee for the Reimbursable Business Expenses is not contingent on the execution of this Separation Agreement by Employee.

(g) Acknowledgment of Receipt of Compensation; Termination of Benefits. Employee acknowledges and understands that Employee's last day of employment with Employer shall be the Separation Date and Employee shall cease to be an employee of Employer as of the Separation Date. Employee further acknowledges that Employee has received all compensation and benefits to which Employee is entitled as a result of Employee's employment. Employee understands that, except as otherwise provided in this Separation Agreement, Employee is not entitled to anything further from the Released Parties (as defined below), including reinstatement by Employer. Employee's active participation in the Employer's health insurance plans shall end in accordance with the terms of the Employer's health insurance plan, unless Employee elects COBRA continuation in such health insurance plans.

## 2. Consideration.

(a) Separation Payment; Additional Consideration. Subject to Section 2(c), as long as (x) this Separation Agreement is executed by Employee and not revoked as set forth in Section 25 hereof, and (y) Employee concurrently herewith executes all necessary documents to effectuate the Share Repurchase (as defined herein), including the letter from Employee to Employer in which Employee agrees to indemnify Employer against all losses, damages, costs, charges and expenses that Employer may in any way sustain, incur or become liable for by reason related to that certain indemnity letter dated July 22, 2016 provided by Employer to Continental Stock Transfer & Trust Company ("Continental") and Continental's waiver of the requirement for Employee to obtain a medallion signature guarantee (the "Indemnification Letter"), and delivers same to the Escrow Agent, then Employer shall:

(i) pay Employee the gross amount of TWO MILLION SEVEN HUNDRED THOUSAND DOLLARS AND NO CENTS (\$2,700,000.00), of which ONE MILLION TWO HUNDRED NINETY-FOUR THOUSAND THREE HUNDRED FIFTEEN DOLLARS AND FIFTY-SEVEN CENTS (\$1,294,315.57) represents the aggregate purchase price for Employer's purchase of Employee's ownership of 331,027 shares of common stock of Employer (the "Purchase Price"), NINE HUNDRED NINETY-FIVE THOUSAND ONE HUNDRED FOURTEEN DOLLARS AND THIRTY-EIGHT CENTS (\$995,114.38) represents the aggregate payment by Employer to Employee for the exercisable stock options (the "Stock Options") held by Employee for 290,073 shares of common stock of Employer pursuant to the Stock Option Agreements (the "Option Payment") (collectively, the purchase of the Common Stock and Stock Options by Employer is referred to herein as the "Share Repurchase"), and FOUR HUNDRED TEN THOUSAND FIVE HUNDRED SEVENTY DOLLARS AND FIVE CENTS (\$410,570.05) represents payment by Employer to Employee for severance (the "Severance Payment") (the Purchase Price, Option Payment and Severance Payment are collectively referred to herein as the "Separation Payment");

(ii) pay Employee the gross amount of FORTY-FIVE THOUSAND DOLLARS and NO CENTS (\$45,000.00), representing Employee's premium payments for the continuation of health insurance coverage under the Consolidated Omnibus Budget Reconciliation Act for Employee and his qualified dependents under Employer's group health insurance plan, as well as incidental medical expenses (the "Benefits Payment");

(iii) execute all necessary documents and pay the applicable fees and costs to convey to Employee the title of ownership in the 2012 BMW 528i, VIN \*\* (the "Vehicle"), with a fair market value of \$18,500 (the "Vehicle Value"), within ten (10) days of the Effective Date (as defined herein) (the "Vehicle Transfer"); and

(iv) transfer Employer's cellular telephone assigned to and being used by Employee as of the date of Employee's execution of this Separation Agreement (the "Cell Phone"), and execute all necessary documents and pay all applicable fees and costs to transfer to Employee the cellular telephone number associated with the Cell Phone, within ten (10) days of the Effective Date (the "Cell Phone Transfer").

The Benefits Payment, Vehicle Transfer, and Cell Phone Transfer are collectively referred to herein as the "Additional Consideration." The Separation Payment, Vacation Payment and Benefits Payment will be delivered to the Escrow Agent on the date of execution of this Separation Agreement pursuant to the terms of the Escrow Agreement and shall automatically be released from escrow and paid by Escrow Agent to Employee in one (1) lump sum on the Effective Date provided Employee has not revoked this Separation Agreement in accordance with Section 25 hereof. Employee agrees that the Vehicle Value set forth in Section 2(a)(iii) is the fair market value of the Vehicle. Employee agrees that Employee shall be responsible for any fees related to registration of the Vehicle in Employee's name and securing new license plates for the Vehicle. Employee further agrees and acknowledges that, as of the date of the Vehicle Transfer, Employee will be the owner of the Vehicle, and as such Employee will assume responsibility for all payments, expenses, liabilities, insurance, and costs related to the Vehicle. Employee agrees and acknowledges that, as of the date of the Vehicle Transfer, Employee shall indemnify and release Employer from any direct or indirect liability, payments, expenses, insurance, and costs related to the Vehicle that may be claimed against Employer by any third party or Employee. Employee further agrees and acknowledges that, as of the date of the Cell Phone Transfer, Employee will be the owner of the Cell Phone, and as such Employee will assume responsibility for all payments, expenses, liabilities, insurance, and costs related to the Cell Phone. For the avoidance of doubt, Employee shall continue to be allowed to retain and use the Vehicle and the Cell Phone after the Separation Date and until the transfer documents are delivered to Employee.

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\*\* Confidential term omitted and provided separately to the Securities and Exchange Commission.



(b) Adequate Consideration. Employee acknowledges that the consideration set forth in Section 2(a) is good and adequate consideration for Employee's execution, delivery and non-revocation of this Separation Agreement and Employee's full compliance with the terms hereof and thereof. Employee acknowledges that Employee is not otherwise entitled to receive the Severance Payment and Additional Consideration described in Section 2(a) of this Separation Agreement and that the Employer is not obligated to enter into the Share Repurchase. Nothing in this Separation Agreement shall be deemed to be an admission of liability or wrongdoing on the part of any of the Released Parties (as defined herein) or on the part of Employee. Employee agrees that Employee will not seek anything further from any of the Released Parties, other than that which is specifically provided in this Separation Agreement. Similarly, Employer will not seek anything further from Employee, other than that which is specifically provided in this Separation Agreement or to enforce Employee's obligations hereunder or under the Employment Agreement. Should a court or arbitrator of competent jurisdiction in a final non-appealable decision determine that the general release set forth in Section 3 is invalid, void and/or unenforceable Employee and Employer agree that Employee and Employer's obligations under this Separation Agreement are null and void, the Employer and Employee rights, remedies, offices, positions and obligations to each other shall be reinstated as if this Separation Agreement and any related documents thereto had never been executed or delivered including, without limitation, that Employee shall return to Employer or the Escrow Agent shall release to Employer, as the case may be, the Separation Payment, Vacation Payment and Additional Consideration made to Employee under this Separation Agreement, and Employer or the Escrow Agent shall return to Employee, as the case may be, 331,027 shares of common stock of Employer and stock options for 290,073 shares of common stock of Employer, which such stock options shall be exercisable for one (1) year following the date Employer returns such stock options to Employee, notwithstanding any other terms of the Stock Option Agreements. Nothing in this Section 2(b) is intended to, nor shall be construed to apply to any contrary rights of Employee under the ADEA (as defined in Section 3).

(c) Withholdings; Deductions; Taxes. Employee understands that the Option Payment, Vacation Payment, Severance Payment, Benefits Payment, and Vehicle Value are subject to all applicable statutory payroll withholdings and deductions. No deductions will be made from the Separation Payment and Benefits Payment for medical, dental, or life insurance premiums, flexible spending or 401(k) deductions. Employee understands that the Purchase Price will be subject to capital gains tax. The Parties acknowledge that nothing herein shall constitute tax advice to either party.

(d) Acknowledgment by Employee. Employee agrees that the Separation Payment and Additional Consideration exceed anything due from the Employer and/or the Released Parties to Employee, and that the Employee has no further entitlement to or claim for any other wages, bonuses, commissions, benefits, vacation, damages, stock options or other securities of Employer, attorneys' fees or costs or any other sum of money for any reason whatsoever. Employee acknowledges that payment of any amounts to, or on behalf of, the Employee under this Separation Agreement does not, in any way, extend the period of employment or continuous service beyond the Separation Date, or confer any other rights or benefits other than what may be set forth expressly herein.

3. Employee's General Release of Released Parties. In consideration of the Separation Payment and Additional Consideration being paid to Employee as set forth in Section 2(a) above, Employee releases and gives up any and all waivable claims, causes of action and rights that Employee may have against Employer and/or its past and present parent companies, subsidiaries, divisions, officers, directors, employees, consultants, shareholders, trustees, members, managers, partners, plan administrators, insurers, attorneys, agents, affiliates, and each of their respective past and present officers, directors, employees, consultants, shareholders, trustees, members, managers, partners, plan administrators, insurers, attorneys, and agents (individually and in their official capacities), as well as any predecessors, future successors or assigns or estates of any of the foregoing (collectively, the "Released Parties"), including, but not limited to, all claims relating to: (i) Employee's employment by Employer, the terms and conditions of such employment, the Employment Agreement, the Stock Option Agreements, employee benefits related to Employee's employment, the separation of Employee's employment, and/or any of the events relating directly or indirectly to or surrounding such separation from employment; (ii) any and all claims of discrimination, harassment, whistle blowing or retaliation in employment (whether based on federal, state or local law, statutory or decisional), including without limitation, all claims under the Age Discrimination in Employment Act of 1967, as amended ("ADEA") (this release is meant to comply with the Older Workers Benefit Protection Act ("OWBPA"), 29 U.S.C. § 621 et seq., which statute was enacted to, among other things, ensure that individuals over the age of forty who waive their rights under the ADEA do so knowingly and voluntarily), the Worker's Adjustment and Retraining Notification Act ("WARN"), Title VII of the Civil Rights Act of 1964, as amended ("Title VII"), the Americans with Disabilities Act, as amended ("ADA"), the Civil Rights Act of 1991, the Reconstruction Era Civil Rights Act of 1866, 42 USC §§ 1981-86, as amended, the Equal Pay Act ("EPA"), the Family and Medical Leave Act, as amended ("FMLA"), the Employee Retirement Income Security Act ("ERISA") (other than claims with regard to vested benefits), Sections 503 and 504 of the Rehabilitation Act of 1973, the Occupational Safety and Health Act ("OSHA"), the National Labor Relations Act ("NLRA"), the Florida Civil Rights Act of 1992 ("FCRA") f/k/a Human Rights Act of 1977, any and all claims/actions for retaliation which have been or could have been raised under Florida's Workers' Compensation statute (Florida Statute § 440.205), the Florida Private Sector Whistle-Blower Act (Fla. Stat. § 448.101-105), the Florida Equal Pay Act, any claims under Fla. Stat. § 448.08 for unpaid wages, and waivable rights under the Florida Constitution; (iii) any and all claims for wrongful discharge; (iv) any and all claims for damages of any kind whatsoever, including without limitation compensatory, punitive, treble, liquidated and/or consequential damages; (v) any and all claims under any contract, whether express or implied, including, without limitation, the Employment Agreement and Stock Option Agreements; (vi) any and all claims for unintentional or intentional torts, for emotional distress and for pain and suffering; (vii) any and all claims for violation of any statutory or administrative rules, regulations or codes; and (viii) any and all claims for attorneys' fees, costs, disbursements, wages, bonuses, benefits, vacation and/or the like (collectively, "Claims"). Notwithstanding the foregoing, Employee does not waive any right to be indemnified and/or advanced expenses under any corporate document of Employer (including without limitation any Bylaws or Certificate of Incorporation of Employer) or any agreement or pursuant to applicable law, including as part of Section 8(c) of this Separation Agreement, or to be covered under any applicable directors' and officers' liability insurance policies (as extended by Section 8(c) of this Separation Agreement), and nothing contained herein shall operate to release any obligations of Employer arising under this Separation Agreement. This Section 3 releases all waivable claims, including those of which Employee is not aware and those not specifically mentioned in this Separation Agreement. This Separation Agreement applies to all waivable claims resulting from anything that has happened up through the execution of this Separation Agreement. Employee understands that this Separation Agreement does not waive rights or claims that may arise after the date that this Separation Agreement is executed. Employee represents that Employee knows of no claim that Employee has that has not released by this Section 3. Employee understands and agrees that this Separation Agreement is binding on Employee and on anyone who succeeds to Employee's rights and responsibilities.

4. Employer and Directors' Limited Release of Employee. In consideration of Employee signing and not revoking this Separation Agreement, Employer and each of the members of its current Board of Directors, individually (collectively, the "Directors," and each individually, the "Director"), hereby release and waive any claims, causes of action and rights that Employer or the Directors may have against Employee, his heirs and legal representatives (regardless of the capacity in which Employee was acting) solely relating to (1) the issuance of stock options for shares of Common Stock of Employer including, without limitation, the Stock Option Agreements and (2) the deployment of the Employer's capital including, without limitation, the investment of its cash in certificates of deposits and treasury bills (the "Limited Release"). Employer, the Directors, and Employee understand that the Limited Release does not release or waive claims Employer or the Directors may have against Employee first arising after the execution of this Separation Agreement by Employer or the Directors, or that are not arising out of, based upon, in connection with, or in any way related to the limited claims released and waived by Employer and the Directors in the Limited Release.

. Employer and Directors' Representation of No Known Claims. Employer and each of the Directors, individually, hereby represent and warrant that Employer and the Directors do not have knowledge, without investigation, of any claims by Employer or the Directors against Employee. Notwithstanding the foregoing, Employee's knowledge of any claims by Employer or the Directors against Employee is excluded from imputation to Employer or the Directors.

. Share Repurchase. In consideration of the Purchase Price and Option Payment set forth in Section 2(a) above, Employee agrees to deliver to the Escrow Agent on the date of execution of this Separation Agreement blank stock powers to convey the Employee's 331,027 shares of common stock of Employer to Employer (the "Common Stock") and the Option Cancellation Agreement that cancels the Stock Options. Employee agrees to execute all necessary documents on or before the Separation Date, including the Indemnification Letter, to effectuate the Share Repurchase and deliver same to the Escrow Agent. Employee agrees to deliver to the Escrow Agent on the date of execution of this Separation Agreement all stock certificates evidencing the Common Stock with stock powers executed by Employee in connection with the Share Repurchase.

(a) Employee Representations. Employee represents and warrants the following to Employer:

(i) Employee has full right, capacity and authority to enter into this Separation Agreement and to assume and perform Employee's obligations hereunder. Additionally, Employee is not a party to any other agreement restricting Employee's ability to sell the Common Stock of Employer subject to the Share Repurchase (the "Employee Shares"), and Employee has not taken any action which would cause either Employee's execution or delivery of this Separation Agreement or the consummation of the transactions contemplated by this Separation Agreement, or compliance by Employee with any of the provisions hereof, to violate or conflict with or result in a breach of any provision of, or constitute a default under, any agreement, instrument, judgment, law, rule or regulation to which Employee is subject or with respect to which Employee's properties may be bound or affected.

(ii) Employee has good and marketable title to the Employee Shares, is the sole owner of the Employee Shares, and the Employee Shares are not subject to any pledge agreements, restriction agreements or other document or instrument which affects title to the Employee Shares, in any way or manner whatsoever. Upon execution of this Separation Agreement, the Employee Shares will be conveyed to Employer, free and clear of any liens, claims or encumbrances of any third party whatsoever.

(iii) No approval, consent or authorization, including, without limitation, any action, approval, consent or authorization of any kind whatsoever from any governmental entity or instrumentality is necessary or required in order to constitute this Separation Agreement as a valid and binding obligation of Employee enforceable in accordance with its terms.

(iv) The Employee Shares and the Stock Options subject to termination pursuant to Section 1(d) hereof represent the entire ownership interest of Employer owned by the Employee (whether individually, beneficially, as trustee or otherwise), and that as of the Separation Date and the receipt of the consideration set forth in Section 2(a), Employee will not own, directly or indirectly, any equity interests of Employer.

(b) Employer Representations. Employer represents and warrants to Employee the following:

(i) Employer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority, corporate or otherwise, to acquire, own, lease and operate its assets and businesses as and in the places where such properties are now owned, leased or operated or such business is now being conducted. Employer has all requisite power and authority, corporate or otherwise, to enter into this Separation Agreement and to assume and perform its obligations hereunder. The execution and delivery of this Separation Agreement and the performance by Employer of its obligations hereunder have been duly authorized by all necessary action of Employer.

(ii) No approval, consent, or authorization which has not been obtained, including, without limitation, any action, approval, consent or authorization of any kind whatsoever from any governmental entity or instrumentality, is necessary or required as to Employer to constitute this Separation Agreement as a valid and binding obligation of Employer enforceable in accordance with its terms.

(iii) The execution and performance of this Separation Agreement on the part of Employer does not and will not breach its charter or governing documents or any agreement, contract, lease or other document to which Employer is a party or pursuant to which Employer or any of its assets are bound.

7. Cooperation. Employee agrees, upon the request of Employer or any Released Parties, to reasonably cooperate in any investigation, litigation, arbitration, or regulatory proceeding regarding events that occurred during Employee's tenure with Employer. Employee will make himself reasonably available to consult with counsel for Employer and any Released Parties, to provide information, and to appear to give testimony. Employee further agrees to reasonably cooperate with Employer's request for Employee to sign documents necessary to update corporate information and authorize new signatories and agents of Employer, including, without limitation, authorizing new signatories to act on behalf of Employer in connection with bank accounts and brokerage accounts, authorizing new SEC filing agents, authorizing new transfer agents, updating corporate documentation for Employer with the State of Delaware, the State of Florida, and any other vendors, and transferring authorized user information for any websites to which Employer has access. To the extent permitted by law, Employer will reimburse Employee for reasonable out-of-pocket expenses Employee incurs in extending such cooperation, so long as Employee provides advance written notice of Employee's request for reimbursement and provides satisfactory documentation of the expenses.

8. Return of Employer Property and Confidential Information; Employer Indemnification; Director and Officer Insurance Coverage.

(a) Return of Employer Property. Employee covenants that Employee shall return to Employer on or before the Separation Date all property in Employee's possession, custody or control belonging to the Released Parties, including, but not limited to, all equipment, computers, pass codes, keys, swipe cards, credit cards, smart phones or other electronic devices (other than the Cell Phone and Vehicle), documents or other materials, in whatever form or format, that Employee received, prepared, or helped prepare during his employment with Employer.

(b) Return of Confidential and/or Proprietary Information. Employee covenants that Employee shall return to Employer on or before the Separation Date all confidential and/or proprietary information and documents of the Released Parties in Employee's possession or under Employee's control to Employer and shall not retain any copies or other reproductions, or extracts thereof, electronic or otherwise.

(c) Employer Indemnification; Director and Officer Insurance Coverage. Subject to limitations imposed by law, Employer shall indemnify and hold harmless Employee to the fullest extent permitted by law from and against any and all claims, damages, expenses (including reasonable attorneys' fees), judgments, penalties, fines, settlements, and all other liabilities (collectively, "Losses") incurred or paid by Employee in connection with the investigation, defense, prosecution, settlement or appeal of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (collectively, an "Action") and to which Employee was or is a party or is threatened to be made a party by reason of the fact that Employee is or was a director, officer or an employee of Employer, or by reason of anything done or not done by Employee in any such capacity or capacities, provided that Employee acted in good faith, in a manner that was not grossly negligent or constituted willful misconduct and in a manner Employee reasonably believed to be in or not opposed to the best interests of Employer, and, with respect to any criminal action or proceeding, had no reasonable cause to believe Employee's conduct was unlawful (and in all cases, in any manner as required by or in compliance with applicable law in order to receive such statutory indemnification). Expenses (including attorneys' fees) incurred by Employee, as a present or former director or officer of Employer, in defending an Action by reason of the fact that Employee is or was a director, officer or an employee of Employer shall be paid by Employer in advance of the final disposition of such Action upon receipt of an undertaking by or on behalf of Employee to repay such amount if it shall ultimately be determined that Employee is not entitled to be indemnified by Employer as authorized by the relevant provisions of applicable law; provided, however, Employer shall not be required to advance such expenses to Employee (i) if Employee commences any Action as a plaintiff unless such advance is specifically approved by a majority of the Board of Directors of Employer, or (ii) if Employee is a party to an action, suit, or proceeding approved by a majority of the Board of Directors of Employer and brought by Employer that alleges willful misappropriation of corporate assets by Employee, willful disclosure of confidential information in violation of Employee's fiduciary or contractual obligations to Employer, or any other willful and deliberate breach in bad faith of Employee's duty to Employer or its stockholders. Notwithstanding anything to the contrary set forth herein, Employer shall maintain, at its sole expense, the same level of directors' and officers' (D&O) insurance coverage on Employer's directors and officers for Employee as currently exists as of the date of execution of this Separation Agreement for a period of three (3) years following the Separation Date to the extent that such coverage is available on commercially reasonable terms (as determined by the Board of Directors of Employer).

9. Representations; Covenant Not to Sue; No Assistance in Third Party Claims. Employee hereby represents and warrants that (a) Employee has not filed, caused or permitted to be filed any pending proceeding (nor has Employee lodged a complaint with any governmental or quasi-governmental authority) against the Released Parties, nor has Employee agreed to do any of the foregoing, (b) Employee has not assigned, transferred, sold, encumbered, pledged, hypothecated, mortgaged, distributed, or otherwise disposed of or conveyed to any third party any right or claim against any of the Released Parties that has been released in this Separation Agreement, and (c) Employee has not directly or indirectly assisted any third party in filing, causing or assisting to be filed, any claim against any of the Released Parties. Except as set forth in Section 15 below, Employee covenants and agrees that Employee shall not encourage or solicit or voluntarily assist or participate in any way in the filing, reporting or prosecution by himself or any third party of a proceeding or claim against any of the Released Parties. Employee acknowledges that, except as set forth in Section 15 below, any encouragement, solicitation, voluntary assistance, or participation by Employee in any way in third party claims against any of the Released Parties would constitute a material breach of this Separation Agreement.

. Press Release; Mutual Non-Disparagement. The Parties have mutually agreed as to the form of press release regarding Employee's retirement and this Separation Agreement and Employer shall issue such press release. Employee agrees and warrants that for a period of one (1) year from the Separation Date Employee will not make any statements (orally or in writing, including, without limitation, whether in fiction or nonfiction) or take any actions which in any way publicly disparage or defame Employer or any Released Parties, in any way, directly or indirectly, or cause or encourage the making of such statements, or the taking of such actions, by anyone else, unless such statements by Employee are made: (i) during litigation between the Parties; (ii) in response to a request for information submitted to Employee by a federal or state governmental agency; (iii) in response to a subpoena or court order; or (iv) as necessary to exercise Employee's rights specified in Section 15 below. Employer and each Director, individually, agree for a period of one (1) year from the Separation Date not to make any statements (orally or in writing, including, without limitation, whether in fiction or nonfiction) or take any actions which in any way publicly disparage or defame Employee in any way, directly or indirectly, or cause or encourage the making of such statements, or the taking of such actions, by anyone else, unless such statements by Employer or the Director are made: (i) during litigation between the Parties or litigation between the Director and either of the Parties; (ii) in response to a request for information submitted to Employer or the Director by a federal or state governmental agency; or (iii) in response to a subpoena or court order. Employee, Employer, and the Directors acknowledge that any incitement of others to publicly disparage or defame the other party in violation of this Section 10 would constitute a material breach of this Separation Agreement. In the event such a communication is made to anyone in violation of this Section 10, including but not limited to, the media, public interest groups and publishing companies, it will be considered a material breach of the terms of this Separation Agreement.



. Breach. Employee acknowledges that if Employee materially breaches or threatens to materially breach this Separation Agreement, breaches the provisions of Sections 9 or 10 of this Separation Agreement, breaches the restrictive covenants set forth in Article 5 of the Employment Agreement, and Employee fails to cure such breach or threatened breach within ten (10) days following receipt of written notice from Employer specifying such breach or threatened breach, and/or Employee commences a suit, action, proceeding or complaint in contravention of this Separation Agreement and release of claims (except as outlined in Section 11), then Employer shall be entitled to all other remedies allowed in law or equity. Further, nothing in this Separation Agreement shall prevent the Employer from pursuing an injunction to enforce the provisions of Sections 9 and 10 above or Article 5 of the Employment Agreement. Nothing in this Section is intended to, nor shall be construed to apply to any contrary rights of Employee under the ADEA.

. Severability. In the event that one or more of the provisions contained in this Separation Agreement shall for any reason be held unenforceable in any respect under the law of any state of the United States or the United States, such unenforceability shall not affect any other provision of this Separation Agreement, but this Separation Agreement shall then be construed as if such unenforceable provision or provisions had never been contained herein. If it is ever held that any restriction hereunder is too broad to permit enforcement of such restriction to its fullest extent, such restriction shall be enforced to the maximum extent permitted by applicable law.

. Governing Law. This Separation Agreement and any and all matters arising directly or indirectly here from shall be governed under the laws of the State of Florida without reference to choice of law rules.

. Arbitration. The Parties Agree that any dispute, controversy or claim based on, arising out of or relating to the interpretation and performance of this Separation Agreement, the Employment Agreement, the Stock Option Agreements, Employee's employment with Employer or the separation of Employee's employment with Employer, including, but not limited to, any claims for discrimination under the ADEA, the ADA, Title VII, the EPA, the FCRA, or any other federal, state or local law or regulation (collectively, "Dispute"), shall be solely submitted to and finally settled by arbitration before a single arbitrator to be held in West Palm Beach, Florida, in accordance with the then-current employment dispute resolution rules of the American Arbitration Association ("AAA"). Prior to initiating arbitration under this Section 14, a party who intends to initiate arbitration (the "Filing Party") must notify the other party (the "Opposing Party") of the Filing Party's intent to initiate arbitration, setting forth the Dispute the Filing Party intends to arbitrate, and providing the Opposing Party with ten (10) days to resolve the matter giving rise to the Dispute. Notwithstanding the foregoing, Employer and Employee may file a court action seeking provisional equitable remedies available under the law, including but not limited to temporary or preliminary injunctive relief, either before the commencement of or during the arbitration process, to preserve the status quo or otherwise prevent damage or loss pending final resolution of the arbitration of any Dispute pursuant to the terms of this Section 14. Nothing herein shall interfere with the Employee's rights under Section 15. The Parties agree that the single arbitrator shall be appointed from the AAA's list of arbitrators by mutual consent of the parties, or in the absence of such mutual consent, the AAA shall make the appointment of the arbitrator. Employer shall pay the fees of the arbitrator and the administrative fees charged by the AAA during the arbitration, except that the party initially filing the claim shall be responsible for the initial filing fee. Each of the Parties shall be responsible for their own legal fees, expert costs, and expenses of their witnesses incurred in arbitration. The Parties agree that this Section 14 shall be grounds for dismissal of any court action commenced by either party with respect to any Dispute, other than (i) post-arbitration actions seeking to enforce an arbitration award, and (ii) actions seeking temporary or preliminary injunctive relief, as provided in this Section 14. The Parties agree that the arbitrator shall issue a signed written decision that provides the reasons for the decision. Subject to the Parties' right to appeal or seek vacatur under applicable law, the arbitrator is authorized to award any party the full remedies that would be available to such party as if the claim had been filed in a court of competent jurisdiction, including attorneys' fees and costs. The decision of the arbitrator and arbitration award shall be final and binding on the Parties, and it may be enforced by a court of competent jurisdiction, subject to available legal grounds for vacating an arbitration award. **EMPLOYEE AND EMPLOYER KNOWINGLY AND VOLUNTARILY AGREE TO THIS ARBITRATION PROVISION AND ACKNOWLEDGE THAT ARBITRATION SHALL BE INSTEAD OF ANY CIVIL LITIGATION, MEANING THAT EMPLOYEE AND EMPLOYER ARE EACH WAIVING ANY RIGHTS TO A JURY TRIAL FOR ANY DISPUTE, AS DEFINED HEREIN.**

. Non-Interference. Nothing in this Separation Agreement shall interfere with the Employee's right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, or other federal or state regulatory or law enforcement agency. However, the consideration provided to Employee in this Separation Agreement shall be the sole relief provided to Employee for the claims that are released by Employee herein and Employee will not be entitled to recover and agrees to waive any monetary benefits or recovery against the Released Parties in connection with any such claim, charge or proceeding without regard to who has brought such complaint, charge or proceeding.

. Acknowledgments. Employee acknowledges that Employee has been advised in writing to consult with an attorney before signing this Separation Agreement and has done so; and that Employee has been afforded the opportunity to consider the terms of this Separation Agreement and incorporated waiver of claims for a period of twenty-one (21) days prior to its execution. Employee acknowledges that no representation, promise, or inducement has been made other than as set forth in this Separation Agreement, and that Employee enters into this Separation Agreement knowingly without reliance upon any other representation, promise, or inducement that is not set forth herein. Employee acknowledges and represents that Employee assumes the risk for any mistake of fact now known or unknown, and that Employee understands and acknowledges the significance and consequences of this Separation Agreement. Employee further acknowledges that Employee has read this Separation Agreement in its entirety; that Employee fully understands all of its terms and their significance; and that Employee has signed it voluntarily and of the Employee's own free will. Employee further affirms that, as of the date of this Separation Agreement, Employee has been paid and/or has received all leave (paid or unpaid), compensation, bonuses and/or benefits to which Employee may be entitled from Employer and that no other leave (paid or unpaid), compensation, bonuses and/or benefits are due to Employee, except as provided in this Separation Agreement. Employee further affirms that Employee has been provided and/or has not been denied any leave requested under the Family and Medical Leave Act and has not suffered any workplace injuries.

. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties' representatives, agents, successors, assigns, heirs, attorneys, affiliates, and predecessors.

. Execution of Necessary Documents. Each party to this Separation Agreement shall, upon the request of the other, execute and re-execute, acknowledge and deliver this Separation Agreement and any and all papers or documents or other instruments, as may be reasonably necessary to implement the terms hereof with any formalities as may be required and, otherwise, shall cooperate to fulfill the terms hereof and enable the other party to effectuate any of the provisions of this Separation Agreement.

. No Transfer of Claims. Employee represents and warrants that Employee has not assigned, transferred, or purported to assign or transfer, to any person, firm, corporation, association or entity whatsoever, any released claim. Employee agrees to indemnify and hold the Released Parties harmless against, without any limitation, any and all rights, claims, warranties, demands, debts, obligations, liabilities, costs, court costs, expenses (including attorneys' fees, paralegals' fees and costs, at all levels), causes of action or judgments based on or arising out of any such assignment or transfer. Employee further warrants that there is nothing that would prohibit Employee from entering into this Separation Agreement.

. Complete Agreement. This Separation Agreement and the Escrow Agreement shall not be modified unless in writing and signed by both Employer and Employee. This Separation Agreement and the Escrow Agreement contains the entire agreement and understanding between the Employee and the Employer and supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, express or implied, oral or written, except that Article 5 of the Employment Agreement shall remain in full force and effect following the Employee's execution of this Separation Agreement and the Escrow Agreement, and shall survive the termination of Employee's employment with Employer.

. No Waiver/All Rights Are Cumulative. No waiver of any breach or other rights under this Separation Agreement shall be deemed a waiver unless the acknowledgment of the waiver is in writing executed by the party committing the waiver. No waiver shall be deemed to be a waiver of any subsequent breach or rights. All rights are cumulative under this Separation Agreement.

. Construction. The Parties expressly acknowledge that they have had equal opportunity to negotiate the terms of this Separation Agreement and that this Separation Agreement shall not be construed against the drafter. The Parties represent that they have consulted with counsel of their choice. The Employer has been represented by Akerman LLP and the Employee has been represented by Brenner, Salzman & Wallman LLP.

. Headings. The headings contained in the Separation Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Separation Agreement.

. Electronic Transmission and Counterparts. This Separation Agreement may be executed in several counterparts and by electronic transmissions and all so executed shall constitute one Agreement, binding on all the Parties hereto, notwithstanding that the Parties are not signatories to the original or same counterpart.

. Right of Revocation. Employee has the right to revoke this Separation Agreement within seven (7) days after Employee's execution of this Separation Agreement by giving notice in writing of such revocation to Dwight Aubrey, Director and Chairman of the Compensation Committee of Solitron Devices, Inc., c/o ES Components, 108 Pratts Junction Road, Sterling, MA 01564, Fax: 978-422-0011. As such, no payments or deliveries to Employee shall be made until the eighth (8th) day following Employee's signing of this Separation Agreement (the "Effective Date"). In the event that Employee revokes this Separation Agreement, this Separation Agreement, and the promises and obligations contained therein, shall automatically and retroactively be deemed null and void and the Employer and Employee's rights, remedies, offices, positions and obligations to each other shall be reinstated as if this Separation Agreement and any related documents thereto had never been executed or delivered including, without limitation, that Employer will not be obligated to pay Employee the Separation Payment, Vacation Payment and Additional Consideration under Section 2(a) of this Separation Agreement. Employee acknowledges and understands that Escrow Agent is not obligated to deliver any amount due under Section 2(a) of this Separation Agreement until the Effective Date.

*[SIGNATURES FOLLOW ON NEXT PAGE]*

**Employee represents and warrants that Employee has read this Separation Agreement in its entirety, has been offered a period of twenty-one (21) days to review this Separation Agreement and incorporated release, and has been advised in writing herein to consult with counsel and has done so, fully understands all of its terms, and voluntarily assents to all terms and conditions herein.**

EMPLOYEE

/s/ Shevach Saraf  
Shevach Saraf

Date: July 22, 2016

EMPLOYER  
DEVICES, INC.

By: /s/ Dwight P. Aubrey  
Print Name: Dwight P. Aubrey  
Title: Chairman, Compensation Committee

Date: July 22, 2016

MEMBERS OF THE CURRENT BOARD OF DIRECTORS OF SOLITRON DEVICES, INC. AS OF THE DATE OF EXECUTION OF THIS SEPARATION AGREEMENT (Solely agreeing in their individual capacities with respect to Sections 4, 5, and 10 hereof)

/s/ Tim Eriksen  
Tim Eriksen

Date: July 22, 2016

/s/ David W. Pointer  
David W. Pointer

Date: July 22, 2016

/s/ Dwight P. Aubrey  
Dwight P. Aubrey

Date: July 22, 2016

/s/ John F. Chiste  
John F. Chiste

Date: July 22, 2016

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## **OPTION CANCELLATION AGREEMENT**

THIS OPTION CANCELLATION AGREEMENT (this "Agreement") is made as of July 22, 2016, by and between Shevach Saraf (the "Option Holder") and Solitron Devices, Inc. (the "Company").

### **WITNESSETH:**

WHEREAS, the Company granted to the Option Holder options to acquire the Company's common stock, ("Options"), pursuant to one or more stock option award agreements (each, an "Option Agreement" and collectively, the "Option Agreements"); and

WHEREAS, the Option Holder is retiring from employment with the Company; and

WHEREAS, in connection with the Option Holder's retirement, the Company wishes to dispose of all rights that the Option Holder may have to obtain equity interests in the Company, including the Options; and

WHEREAS, in consideration for the disposal of the Options, the Company shall pay the Option Holder, in accordance with the terms of the Separation and General Release Agreement by and between the Company and the Option Holder dated July 22, 2016 ("Separation Agreement"), the Option Payment (as such term is defined in Section 2(a)(i) of the Separation Agreement), subject to all applicable statutory payroll withholdings and deductions.

NOW, THEREFORE, in consideration of the premises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Option Holder and the Company hereby agree as follows:

1. Options. The Option Holder acknowledges and agrees that the Option Holder owns the Options free and clear of all pledges, security interests, liens, claims, encumbrances, agreements, rights of first refusal and options of any kind whatsoever, other than such restrictions arising under the Securities Act of 1933, as amended or state securities laws.

2. Termination and Cancellation. The Option Holder hereby acknowledges and agrees to the termination of the Option Agreements and cancellation of all of the Options as of the Effective Date (as such term is defined in Section 25 of the Separation Agreement) and further acknowledges and agrees that such Options hereby will be null and void as of the Effective Date; provided, however, that, prior to the Effective Date, the Options will remain in effect (subject to the provisions hereof and the Separation Agreement) to the extent they would otherwise remain in effect pursuant to their existing terms.

3. Payment. On the Effective Date, Option Holder shall be paid the Option Payment (subject to all applicable statutory payroll withholdings and deductions), in accordance with the terms of the Separation Agreement and the Escrow Agreement related thereto.

4. Binding Effect; Benefits. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns. Nothing in

this Agreement, express or implied, is intended or shall be construed to give any person other than the Option Holder or the Company or their respective successors or assigns any legal or equitable right, remedy or claim under or in respect of any agreement or any provision contained herein.

5. Entire Agreement. This Agreement and the Separation Agreement and the documents referenced therein and herein contain the entire agreement of the parties hereto relating to the subject matter hereof and supersede all prior agreements and understandings between the parties with respect to the subject matter hereof, and there are no written or oral terms or representations made by either party other than those made herein.

6. Amendment. No amendment or modification of this Agreement shall be valid or binding unless made in writing and duly executed by the party against whom enforcement of any such amendment or modification is sought and making specific references to this Agreement.

7. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Florida, without regard to its conflicts of laws principles.

8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

9. Taxation. The Option Holder shall be solely responsible for any personal tax consequences arising from this Agreement and the holding and cancellation of the Options.

**IN WITNESS WHEREOF**, the Company and the Option Holder have each executed this Agreement as of the date and year first above written.

**SOLITRON DEVICES, INC.:**

By: /s/ Dwight P. Aubrey  
Dwight P. Aubrey  
Chairman, Compensation Committee

**SHEVACH SARAF:**

By: /s/ Shevach Saraf  
Shevach Saraf



SOLITRON DEVICES, INC. ANNOUNCES CHANGE OF LEADERSHIP AND ADDITIONAL BOARD MEMBER

WEST PALM BEACH, FL – Solitron Devices, Inc. (OTCQB: SODI) (the “Company”) today announced:

Shevach Saraf, Chairman and CEO of the Company has retired as of Friday July 22, 2016. The Board would like to thank Mr. Saraf for his many years of service. He joined the Company at a particularly difficult time for Solitron and guided the Company successfully while many competitors failed. The Company will be holding a retirement luncheon in Mr. Saraf’s honor at the Company’s offices in early August.

Pursuant to Mr. Saraf's retirement, the Company reached an agreement with Mr. Saraf, subject to a seven day revocation period by Mr. Saraf ending July 29<sup>th</sup>, whereby the Company will fulfill the terms of his employment agreement, repurchase all shares held by Mr. Saraf, and repurchase all outstanding options held by Mr. Saraf. The total sum of the payment to Mr. Saraf is approximately \$2.85 million including accrued unused vacation and COBRA benefits. Mr. Saraf has also resigned from the Board effective as of July 22, 2016, subject to the revocation period described above. As a result of this transaction the total number of fully diluted shares outstanding will decline from 2,523,050 to 1,901,950, a reduction of 621,100, or 24.6%.

The Board has also approved an amendment to Solitron’s bylaws in order to separate the CEO and Chairman roles, and appointed Tim Eriksen as CEO of the Company. Mr. Eriksen has served as a Director of the Company since the election of August 4<sup>th</sup>, 2015. Mr. Eriksen’s responsibilities will primarily consist of shareholder relations, capital allocation, governance issues, and assistance in financial reporting. The Board believes Mr. Eriksen is well qualified to fill this position.

David Pointer has been appointed Chairman of the Board of the Company. Mr. Pointer has served as a Director of the Company since the election of August 4<sup>th</sup>, 2015. The Board appreciates Mr. Pointer’s willingness to step in and fill this role.

Mark Matson has been named President and Chief Operating Officer of the Company (COO). In recent months Mr. Matson has served the Company in a consultant role and is very familiar with Solitron Devices, Inc.’s products and markets. Mr. Matson’s previous experience includes COO and VP of Operations at YSI, Vice President of Operations and Engineering at Rockford Corporation, General Manager of Seattle Division for Benchmark Electronics, and Vice President at ADIC (Advanced Digital Information Corporation) and at Interpoint. The Board is pleased to have someone of Mr. Matson’s experience in the semiconductor component marketplace to be able to step in and run the operations of the Company.

Several months ago a shareholder of Solitron informed Solitron of the shareholder’s intention to run a proxy contest in the 2016 election. The Board entered into discussions with this shareholder and was pleased to learn that their concerns about the Company closely mirrored those expressed by shareholders in the 2015 election. As a result of those discussions, the Board has appointed Charles Gillman as a Class III director effective July 22, 2016 to fill the vacancy caused by Mr. Saraf’s retirement. Mr. Gillman will hold office until the Company's 2016 Annual Meeting of Stockholders and will be the Company’s nominee in the upcoming election at the 2016 Annual Meeting of Stockholders. Mr. Gillman

has served on numerous corporate boards and has an excellent reputation for strong corporate governance in favor of all shareholders.

Solitron has agreed to reimburse expenses related to the 2015 proxy contest and the potential 2016 proxy contest. In total, the expenses to be reimbursed will not exceed \$200,000.

The Company has set the date of its 2016 annual meeting of shareholders for August 26, 2016. The meeting will be held in West Palm Beach, Florida.

### **Important Additional Information About the 2016 Annual Meeting of Stockholders**

This press release may be deemed to be solicitation material in respect of the 2016 Annual Meeting of Stockholders, including the upcoming election of directors. The meeting proposals, including the election of directors, will be submitted to the stockholders of Solitron for their consideration. In connection with the 2016 Annual Meeting of Stockholders, Solitron will file with the Securities and Exchange Commission (the "SEC") a proxy statement. Stockholders of Solitron are urged to read the proxy statement when it becomes available and any other relevant documents filed with the SEC, as well as any amendments or supplements to those documents, because they will contain important information. Stockholders of Solitron will be able to obtain a free copy of the proxy statement, as well as other filings containing information about Solitron at the SEC's Internet site (<http://www.sec.gov>). Copies of the proxy statement and any SEC filings that will be incorporated by reference in the proxy statement can be obtained, free of charge, by directing a request to: Tim Eriksen, Chief Executive Officer, E-mail: [corporate@solitrondevices.com](mailto:corporate@solitrondevices.com).

Solitron and its directors, executive officers and other persons may be deemed to be participants in the solicitation of proxies in respect of the 2016 Annual Meeting of Stockholders. Information regarding Solitron's directors and executive officers is available in its Annual Report on Form 10-K/A for the year ended February 29, 2016, which was filed with the SEC on June 28, 2016. Other information regarding the participants in the proxy solicitation and a description of their direct and indirect interests, by security holdings or otherwise, will be contained in the proxy statement and other relevant materials to be filed with the SEC when they become available. You may obtain free copies of these documents as described in the preceding paragraph.

### **About Solitron Devices, Inc.**

Solitron Devices, Inc., a Delaware corporation, designs, develops, manufactures and markets solid-state semiconductor components and related devices primarily for the military and aerospace markets. The Company manufactures a large variety of bipolar and metal oxide semiconductor ("MOS") power transistors, power and control hybrids, junction and power MOS field effect transistors ("Power MOSFETS"), field effect transistors and other related products. Most of the Company's products are custom made pursuant to contracts with customers whose end products are sold to the United States government. Other products, such as Joint Army/Navy transistors, diodes and Standard Military Drawings voltage regulators, are sold as standard or catalog items. The Company was incorporated under the laws of the State of New York in March 1959, and reincorporated under the laws of the State of Delaware in August 1987.

### **Forward-Looking Statements**

This press release contains forward-looking statements regarding future events and the future performance of Solitron Devices, Inc. that involve risks and uncertainties that could materially affect actual results, including statements regarding interim appointments to our Board of Directors and our executive officers. Factors that could cause actual results to vary from current expectations and forward-looking statements contained in this press release include, but are not limited to: (1) our ability to implement a smooth succession plan at the Board and executive officer level on both an interim and long-term basis, (2) our ability to develop and recruit effective Board members and executive officers, (3) changes in our stock price, corporate or other market conditions; (4) the loss of, or reduction of business from, substantial clients; (5) our dependence on government contracts, which are subject to termination, price renegotiations and regulatory compliance; (6) changes in government policy or economic conditions; (7) increased competition; (8) the uncertainty of current economic conditions, domestically and globally; and (9) other factors contained in the Company's Securities and Exchange Commission filings, including its Form 10-K, 10-Q and 8-K reports.

**CONTACT:**

Tim Eriksen  
Chief Executive Officer  
E-mail: [corporate@solitrondevices.com](mailto:corporate@solitrondevices.com)