

GENCOR INDUSTRIES INC  
Form DEF 14A  
January 28, 2009  
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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**SCHEDULE 14A**

**(Rule 14-A-101)**

**Proxy Statement Pursuant to Section 14(a)**  
**of the Securities Exchange Act of 1934**

Filed by the Registrant ☒

Filed by a Party other than the Registrant ☐

Check the appropriate box:

☐ Preliminary Proxy Statement

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

☒ Definitive Proxy Statement

☐ Definitive Additional Materials

☐ Soliciting Material Pursuant to §240.14a-12

**Gencor Industries, Inc.**

(Name of Registrant as Specified In Its Charter)

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☒ No fee required.

☐ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

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(2) Aggregate number of securities to which transaction applies:

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(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):

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☐ Fee paid previously with preliminary materials.

☐ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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(1) Amount Previously Paid:

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

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(3) Filing Party:

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(4) Date Filed:

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GENCOR INDUSTRIES, INC.

5201 NORTH ORANGE BLOSSOM TRAIL, ORLANDO, FLORIDA 32810

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD MARCH 6, 2009

TO THE STOCKHOLDERS OF GENCOR INDUSTRIES, INC.:

Notice is hereby given that the Annual Meeting of Stockholders of Gencor Industries, Inc., a Delaware corporation (the "Company"), will be held at the Company's corporate offices; 5201 North Orange Blossom Trail, Orlando, Florida 32810, on March 6, 2009 at 10:00 A.M., local time, for the following purposes, all of which are more completely set forth in the accompanying Proxy Statement:

1. To elect the Director to be voted upon by the holders of Common Stock and to elect the Directors to be voted upon by the holders of Class B Stock.
2. To ratify the selection of Moore Stephens Lovelace, P.A., independent certified public accountants, as auditors for the Company for the year ending September 30, 2009.
3. To approve the 2009 Incentive Compensation Plan.
4. To transact such other business as may properly come before the meeting.

Only Stockholders of record at the close of business on February 5, 2009 are entitled to notice of and to vote at the Annual Meeting or any adjournments thereof. Stockholders should review the information provided herein in conjunction with the Company's 2008 Annual Report to Stockholders, which accompanies this Proxy Statement.

A copy of our Annual Report on Form 10-K for the year ended September 30, 2008, as filed with the Securities and Exchange Commission, except for exhibits, will be furnished without charge to any stockholder upon written or oral request to:

Gencor Industries, Inc.

Attn: Secretary

5201 N. Orange Blossom Trail

Orlando, Florida 32810

Phone 407-290-6000

The Company's Proxy Statement and Proxy accompany this notice.

By order of the Board of Directors,

Jeanne M. Lyons, Secretary

Orlando, Florida

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Date: February 6, 2009

Enclosures

\*\*\*\*YOUR VOTE IS IMPORTANT\*\*\*\*

YOU ARE URGED TO DATE, SIGN, AND PROMPTLY RETURN YOUR PROXY SO THAT YOUR SHARES MAY BE VOTED IN ACCORDANCE WITH YOUR WISHES AND IN ORDER THAT THE PRESENCE OF A QUORUM MAY BE ASSURED. THE PROMPT RETURN OF YOUR SIGNED PROXY, REGARDLESS OF THE NUMBER OF SHARES YOU HOLD, WILL AID THE COMPANY IN REDUCING THE EXPENSE OF ADDITIONAL PROXY SOLICITATION. THE GIVING OF SUCH PROXY DOES NOT AFFECT YOUR RIGHT TO VOTE IN PERSON IN THE EVENT YOU ATTEND THE MEETING.

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NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS

Important Notice Regarding the Availability of Proxy Materials for the

Annual Stockholder Meeting to be Held on March 6, 2009

Pursuant to new rules promulgated by the Securities and Exchange Commission, we have elected to provide access to these proxy statement materials (which includes this proxy statement, a proxy card and our 2008 Annual Report) both by sending you this full set of proxy statement materials, including a proxy card, and by notifying you of the availability of such materials on the Internet.

This proxy statement, the Company's 2008 Annual Report and a proxy card are available at <http://proxy.gencor.com>.

Please have your proxy card in hand when you access the website and follow the instructions. You will need your username and password, which is located on your proxy card.

The Annual Meeting of Stockholders will be held March 6, 2009 at 10:00 a.m. local time at our Corporate Offices located at 5201 North Orange Blossom Trail, Orlando, Florida 32810. In order to obtain directions to attend the Annual Meeting of Stockholders, please call Jeanne M. Lyons, Secretary, at (407) 290-6000. The Proposals to be voted upon at the Annual Meeting of Stockholders, all of which are more completely set forth in this proxy statement, are as follows:

1. To elect the Director to be voted upon by the holders of Common Stock and to elect the Directors to be voted upon by the holders of Class B Stock.
2. To ratify the selection of Moore Stephens Lovelace, P.A., independent certified public accountants, as auditors for the Company for the year ending September 30, 2009.
3. To approve the 2009 Incentive Compensation Plan.

Our Board of Directors recommends that you vote FOR the approval of all of the Proposals.

For information on how to vote in person at the Annual Meeting of Stockholders, please see the sections entitled "Solicitation and Revocation of Proxy" and "Voting Securities" below.

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PROXY STATEMENT

FOR

ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD MARCH 6, 2009

This Proxy Statement is furnished in connection with the Annual Meeting of Stockholders of Gencor Industries, Inc. (the "Company") to be held March 6, 2009 at 10:00 a.m. local time, or any adjournments or postponements thereof at the Company's Corporate Offices, 5201 North Orange Blossom Trail, Orlando, Florida 32810. This Proxy Statement and accompanying proxy are first being mailed to stockholders on or about February 6, 2009. A copy of the Company's 2008 Annual Report to Stockholders is being mailed with this Proxy Statement but is not to be regarded as proxy solicitation material.

SOLICITATION AND REVOCATION OF PROXY

This Proxy Statement is furnished in connection with the solicitation of proxies by the Board of Directors of the Company to be used at the Annual Meeting of the holders of the Company's Common Stock, par value \$.10 per share, and Class B Stock, par value \$.10 per share (herein referred to as "Common Stock" and "Class B Stock," respectively) to be held March 6, 2009. The enclosed proxy may be revoked at any time before it is exercised by attending and voting in person at the meeting, by giving written notice of revocation to the Secretary of the Company prior to the taking of the vote for which such proxy has been given, or by delivery to the Secretary of the Company of a duly executed proxy bearing a later date. Notice and delivery shall occur upon actual receipt by the Secretary of the Company at its principal place of business. The cost of soliciting proxies will be borne by the Company. In addition to the use of the mails, proxies may be solicited personally, by telephone, or by telegraph by the Directors, Officers, and employees of the Company, or by the Company's transfer agent. Directors, Officers and other employees of the Company will receive no additional compensation for any such further solicitations. Also, the Company will make arrangements with banks, brokerage houses, and other nominees, fiduciaries, and custodians holding shares in their names or in those of their nominees to forward proxy materials to the beneficial owners of shares, and the Company will, upon request, reimburse such entities for their reasonable expenses in sending the proxy materials. All properly executed unrevoked proxies received in time for the meeting will be voted as specified. If no other indication is made, the proxies will be voted for the election of Directors shown as nominees and as recommended by the Board of Directors with regard to all other matters.

VOTING SECURITIES

At the close of business on February 5, 2009, there were 8,079,872 shares of Common Stock and 1,532,998 shares of Class B Stock outstanding and entitled to vote at the Annual Meeting.

The holders of such shares are entitled to one vote for each share of stock held by them on any matter to be presented at the Annual Meeting, including the election of Directors. The holders of Common Stock and Class B Stock will vote separately as a class on the election of Directors. Only Stockholders of record at the close of business on February 5, 2009 are entitled to vote at the Annual Meeting and any adjournment thereof. Although the Company has not polled its Directors and Executive Officers, management expects that the Directors and Executive Officers will vote for the nominees and proposals as shown herein.

The presence at the Annual Meeting, in person or by proxy, of a majority of the outstanding shares of each class of Common Stock and Class B Stock will constitute a quorum.

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PROPOSAL 1

ELECTION OF DIRECTORS

The Company's Certificate of Incorporation provides that 75% (calculated to the nearest whole number, rounding a fractional number of five-tenths (.5) to the next highest whole number) of the members of the Board of Directors shall be elected by Class B Stockholders voting separately as a class.

Pursuant to the Company's Bylaws, the Board of Directors has fixed the number of Directors at six. Each Director elected at the Annual Meeting shall hold office until his respective successor has been elected and qualified, or until such individual's earlier resignation or removal. Vacancies may be filled by a majority vote of the remaining directors then in office.

The Board of Directors has selected the following person as nominee for election by the holders of Common Stock as a Director at the 2009 Annual Meeting of Stockholders:

To be elected by the holders of Common Stock:

Cort J. Dondero

The affirmative vote of Stockholders holding a plurality of the Company's issued and outstanding Common Stock in attendance at the meeting, either in person or by proxy, is required to approve this proposal. Abstentions and broker non-votes will have no effect.

The Board of Directors has selected the following persons as nominees for election by the holders of Class B Stock as Directors at the 2009 Annual Meeting of Stockholders:

David A. Air

E.J. Elliott

Marc G. Elliott

Randolph H. Fields

Edward A. Moses

The affirmative vote of Stockholders holding a plurality of the Company's issued and outstanding Class B Stock in attendance at the meeting, either in person or by proxy, is required to approve this proposal. Abstentions and broker non-votes will have no effect.

The Board of Directors recommends an affirmative vote for the above nominees.

It is the intention of the persons named in the accompanying form of proxy to nominate and, unless otherwise directed, vote such proxies for the election of the nominees named above as Directors. The Board of Directors knows of no reason why any nominee for Director would be unable to serve as a Director. If any nominee should for any reason become unable to serve, the shares represented by all valid proxies will be voted for the election of such other person as the Board of Directors may designate, or the Board of Directors may reduce the number of Directors to eliminate the vacancy.

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**DIRECTORS AND EXECUTIVE OFFICERS**

The names of Directors and the Executive Officers of the Company are listed in the following table:

| <b>Name and Principal Occupation or Employment (1)</b>                                                                  | <b>First Became<br/>a Director</b> | <b>First Became an<br/>Executive Officer</b> |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------------------|
| Directors for Class B Stockholders:                                                                                     |                                    |                                              |
| E. J. Elliott                                                                                                           |                                    |                                              |
| Chairman of the Board and Chief Executive Officer (2) (3) (6)                                                           | 1968                               | 1968                                         |
| Marc G. Elliott                                                                                                         |                                    |                                              |
| President (2) (3) (6)                                                                                                   | 2007                               | 1993                                         |
| Randolph H. Fields (2) (6) (9)                                                                                          |                                    |                                              |
| Attorney, Greenberg Traurig, P.A. since 1995                                                                            | 2002                               |                                              |
| David A. Air (5)                                                                                                        |                                    |                                              |
| Consultant, Synthane International Inc., 2009.                                                                          |                                    |                                              |
| Engineering / Sales Consulting Rubbercraft Inc., 1994 to 1999.                                                          | 2004                               |                                              |
| Edward A. Moses, Ph. D. (5) (8)                                                                                         |                                    |                                              |
| Bank of America Professor of Finance at the Roy E. Crummer Graduate School of Business,<br>Rollins College, since 1989. | 2007                               |                                              |
| Director for Common Stock Stockholders:                                                                                 |                                    |                                              |
| Cort J. Dondero (7) (8)                                                                                                 |                                    |                                              |
| Founder of Dondero and Associates                                                                                       |                                    |                                              |
| President of Georgia Aggregates for Florida Rock Industries 2006 to 2007                                                |                                    |                                              |
| Vice President & General Manager, Vulcan Materials Company 2007 to 2008                                                 | 2008                               |                                              |
| Executive Officers (4)                                                                                                  |                                    |                                              |
| Dennis B. Hunt                                                                                                          |                                    |                                              |
| Senior Vice President                                                                                                   |                                    | 2008                                         |
| Vice President, Vulcan Materials Company, Western Division 1999 to 2004                                                 |                                    |                                              |
| Scott W. Runkel (10)                                                                                                    |                                    |                                              |
| Chief Financial Officer and Treasurer                                                                                   |                                    | 2000                                         |
| Jeanne M. Lyons                                                                                                         |                                    |                                              |
| Secretary                                                                                                               |                                    | 1996                                         |

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- (1) Except as otherwise indicated, there has been no change in principal occupation or employment during the past five years.
- (2) Member of the Executive Committee.
- (3) E.J. Elliott is the father of Marc G. Elliott.
- (4) Each executive officer holds office until his successor has been elected and qualified, or until his earlier resignation or removal.
- (5) Member of the Audit Committee and Compensation Committee.
- (6) Member of the Nominating Committee.
- (7) Mr. Dondero was appointed as a director on July 2, 2008 to fill a vacancy created by resignation of a Board member for personal reasons. Mr. Dondero was recommended to the Board of Directors for consideration by the nominating committee.
- (8) Member of the Audit Committee and Financial Expert.
- (9) Member of Compensation Committee.
- (10) Mr. Runkel resigned effective December 31, 2008, but has continued to perform his prior duties on an interim basis.

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### **Compensation Committee**

During the fiscal year ended September 30, 2008, the Board of Directors held four meetings. All Directors attended the meetings.

The Compensation Committee endeavors to ensure that the compensation program for executive officers is effective in attracting and retaining key executives responsible for our success and in promoting our long-term interests and those of our stockholders. The committee, without applying any specific quantitative formulas, considers such factors as net income, earnings per share, duties and scope of responsibility, industry standards and comparable salaries, corporate growth, profits, goals and market share increases. The functions of the Compensation Committee include reviewing and establishing compensation plans for our executive officers and reviewing certain of our employee benefit and compensation programs. The key elements of determining compensation levels for our named executive officers (other than E.J. Elliott, our Chairman of the Board and Chief Executive Officer) are as follows:

**Develop performance measures:** consider appropriate performance measures and recommend performance levels that are used to determine annual and long-term awards.

**Develop compensation guidelines:** using publicly disclosed compensation information as the foundation, management develops compensation parameters for each executive position. These parameters are provided to the CEO as the basis for his recommendations regarding individual compensation actions.

The key member of management involved in the compensation process was E. J. Elliott. Mr. Elliott was not present during the Compensation Committee's deliberations regarding his compensation. The three members of the Compensation Committee are Randolph H. Fields, David A. Air, and Edward A. Moses. Currently, the Compensation Committee is comprised only of independent directors, as defined by NASDAQ rules. The Compensation Committee formally met three times in fiscal 2008 and communicated several other times by phone and email. The Compensation Committee operates under a Charter adopted by the Board of Directors, a copy of which is included in this Proxy Statement.

### **Audit Committee**

The Audit Committee's responsibilities include selecting our auditors and reviewing our audit plan, financial statements and internal accounting and audit procedures. The Audit Committee operates under a charter adopted by the Board of Directors, and which is included as Appendix B to our proxy statement for the fiscal year-ended September 30, 2006. During the fiscal year ended September 30, 2008, the Audit Committee had six meetings, which were attended by all members of the Audit Committee. The three members of the Audit Committee are David A. Air, Cort J. Dondero, and Edward A. Moses. Currently, the Audit Committee is comprised of all independent Directors as defined by NASDAQ rules. Mr. Dondero and Mr. Moses serve as the audit committee financial experts.

### **Nominating Committee**

The three members of the Nominating Committee are E. J. Elliott, Marc G. Elliott and Randolph H. Fields. Although, Mr. Fields is considered independent by NASDAQ rules, Messrs. Elliott and Elliott are not. The Nominating Committee does not have a charter, but has developed guidelines. The Nominating Committee guidelines provide that it consider for director, candidates by stockholders or others, and believes that for smaller companies it is desirable and beneficial to recommend board candidates who possess a proven track record in heavy manufacturing operations, understand our overall business, and are able to make maximum contribution to guiding our affairs. Accordingly, the Nominating Committee reviews recommendations of its individual members and gives considerable weight to candidates with industry-related experience and expertise that will benefit the Company. Additionally, the Nominating Committee believes that persons selected must have a serious work ethic and an ability to work as a constructive member of a team for the benefit of the stockholders. The Nominating Committee met once during fiscal 2008.

In addition to any other applicable requirements, if a stockholder desires to nominate a director for election at an annual meeting, such stockholder must (A) be a stockholder of record on both (1) the date such stockholder provides notice of such nomination to us and (2) the record date for the determination of stockholders entitled to vote as such annual meeting, and (B) have given timely notice in proper written form to our Secretary. If a stockholder is entitled to vote only for a specific class or category of directors at the annual meeting, such stockholder's right to nominate one or more persons for election as a director at the meeting shall be limited to such class or category of directors.



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To be timely in connection with the annual meeting, a stockholder's notice shall be delivered to the Secretary at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting. As a result, with respect to the 2010 Annual Meeting, any notice given by a stockholder pursuant to the provisions of our Bylaws must be received no earlier than November 6, 2009 and no later than December 6, 2009, unless our Annual Meeting is advanced by more than 30 days or delayed by more than 60 days from March 6, 2009. If our 2010 Annual Meeting date is advanced by more than 30 days or delayed by more than 60 days from this year's meeting date, then notices must be received no earlier than the 120<sup>th</sup> day prior to the 2010 Annual Meeting and no later than the close of business on the later of the 90<sup>th</sup> day prior to the 2010 Annual Meeting or the 10<sup>th</sup> day following the date on which the meeting date is publicly announced.

In the event we call a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote for the election of such director(s) at such meeting (and satisfying the requirements set forth above) may nominate a person or persons (as the case may be) for election to such position(s) as are specified in our notice of such meeting, but only if the stockholder notice is delivered to the Secretary at our principal executive office no later than the close of business on the 10<sup>th</sup> day following the first day on which the date of the special meeting and either the names of all nominees proposed by the Board of Directors to be elected at such meeting or the number of directors to be elected shall have been publicly announced.

To be in proper written form, a stockholder's notice to the Secretary must set forth (A) as to each person whom the stockholder proposes to nominate for election as a director (1) the name, business address and residence address of the person, (2) the principal occupation or employment of the person, (3) the class or series and number of shares of our capital stock if any, which are owned beneficially or of record by the person and (4) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (the Exchange Act), and the rules and regulations promulgated thereunder; and (B) as to the stockholder giving notice (1) the name and record address of such stockholder, (2) the class or series and number of shares of our capital stock which are owned beneficially or of record by such stockholder, (3) a description of all arrangements or understandings between such stockholder and each proposed nominee and any other person or persons (including their names) pursuant to which the nominations(s) are to be made by such stockholder, (4) a representation that such stockholder intends to appear in person or by proxy at the annual meeting to nominate the person(s) named in its notice and (5) any other information relating to such stockholder that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Securities Exchange Act of 1934, as amended (The Exchange Act) and the rules and regulations promulgated thereunder. Such notice must also be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected.

## **Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires our directors, officers and certain stockholders to file with the Commission an initial statement of beneficial ownership and certain statements of changes in beneficial ownership of our equity. Based solely on our review of such forms received by us, we are unaware of any instances of noncompliance, or late compliance, with such filings during the fiscal year ended September 30, 2008, by our officers or directors except: that Messrs Moses, Hunt and Dondero filed late Forms 3.

## **Independent Directors**

Our common stock is listed on the NASDAQ Global Market. NASDAQ requires that a majority of our directors be independent, as defined by NASDAQ's rules. Generally, a director does not qualify as an independent director if the director or a member of a director's immediate family has had in the past three years certain relationships or affiliations with us, our external or internal auditors, or other companies that do business with us. Our Board has affirmatively determined that a majority of its directors are independent directors under NASDAQ rules. Based on these standards, the Board determined that our independent directors include the following current directors and nominees for director: Randolph H. Fields, David A. Air, Edward A. Moses and Cort J. Dondero.

## **Independent Director Meetings in Executive Sessions**

Our independent directors meet separately from the other directors in regularly scheduled executive sessions. Any independent director may call an executive session of independent directors at any time. The independent directors did meet three times in an executive session during the fiscal year ended September 30, 2008.

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### **Stockholder Communications with Directors**

Stockholders wishing to communicate with Directors should send their correspondence to the individual Director or Directors in care of the Chairman of the Board at our address. Our policy is to forward such communications to the addressees, if the issues/subjects are material and relevant.

### **Director Attendance at Annual Meetings of Stockholders**

We encourage all incumbent directors, as well as all nominees for election as director, to attend the Annual Meeting of Stockholders. All of our incumbent directors at the time of the Annual Meeting attended our Annual Meeting in 2008.

### **Code of Ethics**

We have adopted a code of ethics that applies to our principal executive officer, principal accounting officer and persons performing similar functions. We will provide to any person without charge, upon written request, addressed to our corporate headquarters, attention Corporate Secretary, a copy of such code of ethics.

## **EXECUTIVE COMPENSATION**

### **Compensation Committee Process and Procedures**

The members of the Compensation Committee for fiscal 2008 (hereafter in the Executive Compensation section referenced as 2008 ) were David A. Air (Chairman), Randolph H. Fields, and Edward A. Moses. The Compensation Committee meets regularly as circumstances dictate, and agendas for the meetings are typically established with input from the Committee's Chairman and Chief Executive Officer ( CEO ). At times, our CEO attends portions of the meetings of the Compensation Committee. However, the Compensation Committee also conducts meetings regularly to consider, discuss and evaluate issues without the presence of any of our executive officers. Our CEO is never present during voting or deliberations with respect to his own compensation.

To assist the Compensation Committee in the design of effective compensation programs, policies and practices, including developing a mix of cash and equity compensation and annual and long-term compensation that promotes our compensation objectives, and that is competitive in the marketplace, the Compensation Committee may retain a compensation consultant from time to time subject to Board approval.

### **Compensation Discussion and Analysis**

#### ***Overview and Objectives***

Our Board of Directors has delegated to its Compensation Committee overall responsibility for monitoring the compensation programs for all executive officers, including our named executive officers. The primary objective of our compensation program is the same as we have for our overall operations: to create long-term value for our stockholders. The Compensation Committee is responsible for reviewing and evaluating our compensation plans, policies and programs. The Compensation Committee works directly with the CEO to ensure the compensation objectives are aligned with our mission and overall objectives and to provide a decision-making framework for use in formulating recommendations for each executive's compensation.

The Compensation Committee's overall objective is to recommend compensation policies that will (1) align the interests of executives with those of our long-term stockholders; (2) attract, retain and reward highly-qualified executives who drive our performance and help us achieve our business objectives; and (3) motivate executives to consistently deliver outstanding performance. In addition, our compensation policies are intended to reward individual performance in a way that emphasizes the strategic thinking necessary to create long-term value while balancing rewards for short-term increases in operating results. We compensate executive officers with a combination of salary and incentives designed to focus their efforts on maximizing both our near-term and long-term financial performance.

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The Compensation Committee takes measure of the competitive market for senior executives by reviewing market compensation levels provided by comparable companies, although it does not benchmark compensation paid to our executives to specified levels of compensation paid to executives at the comparable companies. This and other market information is a useful informational tool, which provides the Compensation Committee with a range of compensation paid in the market and various market alternatives to compensation package design. Compensation levels are determined from an assortment of factors with competitive information being one of the factors considered.

Our executive compensation packages are comprised primarily of base salary, cash incentive performance bonus and long-term equity awards. The Compensation Committee believes that each element of the total compensation program serves an important function in achieving the overall objectives of our compensation program. The Compensation Committee strives to recommend a base salary that is competitive within our industry in order to attract and retain top-level talent in a highly competitive market. The year-end cash bonuses that are paid are designed to provide executives with strong incentive to achieve their individual, and our corporate financial and operational goals, which are intended to drive year-over-year growth. Finally, the long-term equity awards granted to executive officers are designed to closely align the executives interests with those of our stockholders. Compensation packages for executive officers generally are designed to provide an appropriately weighted mix of these elements, which cumulatively provide a competitive level of compensation that motivates and rewards executives to achieve objectives which are beneficial to our stockholders, to us, and to our management. In general, the Compensation Committee has emphasized incentive cash bonuses to drive near-term and annual performance. On average, it is intended that our senior executive officers earn a portion of their annual compensation from sources that are based on the results of operations.

### ***Compensation Elements***

**Base Salary.** Base salary levels for each of our executive officers, including the CEO, are generally recommended within a range of base salaries that the Compensation Committee believes are competitive and appropriate for us given the performance objectives the Compensation Committee expects us to continue to achieve and the qualifications and experience of the individual required for the job. In addition, the Compensation Committee will generally review our past financial performance and future expectations, as well as the performance of the executives and changes in the executives responsibilities. Base salary is established upon hiring and periodically reviewed and decisions regarding changes in base salary take into account the executive s current base salary, the competitive market place, retention and other factors as described above. The compensation Committee with the assistance of our CEO is responsible for assessing the contributions and performance of key executives. The compensation of the key executives is determined by the Board of Directors after meetings between the Compensation Committee and the CEO. The Compensation Committee reviews and assesses the performance of our CEO and recommends to the Board the amount of his compensation.

**Incentive Cash Bonus.** Our executive officers are hired to lead and grow our organization and as such we believe that a portion of our executive officers compensation should be tied to our overall performance. We emphasize pay-for-performance by providing our executives with the opportunity to receive bonuses only if it is determined by the CEO and the Compensation Committee that appropriate performance levels have been obtained.

In certain limited circumstances, the Compensation Committee may also recommend a discretionary bonus to an executive officer for extraordinary individual achievement, service and dedication. Discretionary bonuses are evaluated and awarded by the Compensation Committee on a case-by-case basis and are heavily influenced by the circumstances giving rise to the award.

**Equity Incentive Awards.** We use equity incentive awards, when available, to provide a stock-based incentive to improve our financial performance and to assist in the recruitment, retention and motivation of professional, managerial and other personnel. Equity incentive awards are also designed to align the interests of our executive officers with those of our stockholders by encouraging executive officers to enhance our value, the price of our Common Stock, and hence, the stockholders return over the long term. Historically, we have used stock options to recognize these goals.

The Compensation Committee may elect to grant stock options, when available, because this type of award serves to align an executive s interests with our stockholders. With stock options, executives can realize value from increases in our stock price, thus aligning their interests with stockholder interests. Furthermore, when stock price does increase, vesting helps to retain executives. On the other hand, if our stock price does not rise, then the options provide no value to executives. Thus, the Compensation Committee believes that this type of award links our executives pay to stockholder value because stock options are a particularly effective way to put significant value at risk in relation to increases in stockholder value.

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Generally, stock options are granted to executive officers from time to time based primarily upon the individual's actual and potential contributions to the Company and our financial performance over the long term. The Compensation Committee approves stock option grants. The performance of our executive officers is reviewed periodically and based on those reviews and performance during the year; they may be awarded stock options. The number of stock options awarded to an executive is determined by the Compensation Committee based on a number of factors, including the executive's prior experience, his or her role and responsibilities, competitive retention and market data compiled and reviewed by the Compensation Committee, and performance and demonstrated leadership.

The exercise price of options grants is set at the closing price of our Common Stock on the date of grant. To date, stock option grants to executives generally vest in equal installments over a specified time period and have a ten-year term.

**Other Benefits.** We maintain certain broad-based benefit plans in which our employees, including our executive officers, are entitled to participate. These plans include health and life insurance and a qualified 401(k) savings plan. We make a matching contribution equal to 2.5% of compensation for the qualified 401(k) savings plan, subject to Internal Revenue Code limitations.

**Perquisites.** We provide a limited number of perquisites consistent with comparable companies the aggregate of which in 2008 did not exceed \$10,000 for each named executive officer. The level of perquisites does not factor into decisions on total compensation.

### ***2008 Executive Compensation***

The specific compensation decisions made for each of our executive officers in 2008 reflect our overall compensation objectives described above, as well as our 2008 performance.

**Base Salary.** Our CEO, Mr. E.J. Elliott, received a base salary of \$449,000 (increased from an annual base salary of \$400,000 to \$600,000 effective July 2008). The Compensation Committee increased Mr. E. J. Elliott's base salary as a result of its review of our performance plus external factors such as compensation paid by comparable companies. The Compensation Committee considers Mr. E.J. Elliott to be a highly qualified CEO with a proven track record of delivering solid performance. Mr. E.J. Elliott's continued retention with us is considered to be a critical component to our future success. Mr. Marc G. Elliott, President, received a base salary of \$302,000 during the year (increased from annual base of \$275,000 to \$384,000 effective July 2008). Mr. Dennis Hunt, our Senior Vice President of Sales and Marketing, received \$203,000 in base salary for the fiscal year (increased from annual base of \$185,000 to \$250,000 effective July 2008). These increases were also made by the Compensation Committee based on performance, external market, retention and other factors. Mr. Runkel, Chief Financial Officer, received \$225,000 in base salary for the year.

**Incentive Cash Bonus.** There were no incentive cash bonuses in fiscal 2008.

**Stock Options.** No stock options were granted in 2008.

### ***Employment Agreements***

We do not have employment agreements with any of the executive officers named in the Summary Compensation Table. Employment may terminate at any time without severance. All are entitled to the standard benefits available to all employees and have executed our nondisclosure and noncompete agreements and have agreed to keep confidential our trade secrets and other confidential information.

### ***Tax Deductibility of Compensation***

Limitations on the deductibility of compensation may occur under Section 162(m) of the Internal Revenue Code of 1986, (the "Code") which generally limits a publicly held corporation's tax deduction for compensation paid to each of its chief executive officer and next four most highly compensated executive officers to \$1 million in any year. In addition, Section 162(m) specifically exempts certain performance-based compensation from the deduction limit. The annual salary, cash incentive bonus and equity compensation we generally pay to our executive officers does not exceed this limit. The Compensation Committee's intent is to design compensation packages that are deductible without limitation, where doing so will further the purposes of our executive compensation program. However, the Compensation Committee will take into consideration various other factors, together with Section 162(m) consideration, in making executive compensation decisions and could, in certain circumstances, approve and authorize compensation that is not fully tax deductible.



**Table of Contents****Compensation Committee Report on Executive Compensation**

We, as a Compensation Committee, have reviewed and discussed with management the Compensation Discussion and Analysis required by Item 402(b) of Regulation S-K included in this Proxy Statement. Based on that review and discussion, we have recommended to the Board of Directors of the Company that the Compensation Discussion and Analysis be included in this Proxy Statement.

**Compensation Committee:**

David A. Air, Chairman

Randolph H. Fields

Edward A. Moses

*This report shall not be deemed to be incorporated by reference, or by any general statement incorporating by reference this Proxy Statement into any filing under the Securities Act of 1933, or the Exchange Act, and shall not otherwise be deemed filed under these acts.*

Information about Executive Compensation:

The following table presents the annual summary compensation for our principal executive officer, and our principal financial officer, and the three highest-paid executive officers who were serving as our executive officers as of September 30, 2008, other than the principal executive officer and principal financial officer, (collectively the "Named Executive Officers").

**Summary Compensation Table for Fiscal Years 2008 and 2007**

| Name and Principal Position                       | Year | Salary<br>(\$) | Bonus<br>(\$) | All Other<br>Compensation (1)<br>(\$) | Total<br>(\$) |
|---------------------------------------------------|------|----------------|---------------|---------------------------------------|---------------|
| E. J. Elliott                                     | 2008 | \$ 449,000     | \$            | \$ 7,063                              | \$ 456,063    |
| Chief Executive Officer and Chairman of the Board | 2007 | \$ 400,000     | \$ 205,653    | \$ 7,394                              | \$ 613,047    |
| Marc G. Elliott                                   | 2008 | \$ 302,000     | \$            | \$                                    | \$ 302,000    |
| President                                         | 2007 | \$ 275,000     | \$ 110,000    | \$                                    | \$ 385,000    |
| David F. Brashears                                | 2007 | \$ 185,000     | \$ 50,000     | \$ 3,380                              | \$ 238,380    |
| Senior Vice President, Technology                 |      |                |               |                                       |               |
| Scott W. Runkel                                   | 2008 | \$ 225,000     | \$            | \$ 4,117                              | \$ 229,117    |
| Chief Financial Officer and Treasurer             | 2007 | \$ 225,000     | \$ 10,000     | \$ 4,110                              | \$ 239,110    |
| Dennis Hunt                                       | 2008 | \$ 203,000     | \$            | \$                                    | \$ 203,000    |
| Senior Vice President Sales and Marketing         | 2007 | \$ 185,000     | \$            | \$                                    | \$ 185,000    |

The compensation reported under All Other Compensation represents contributions to the Company's 401(k) Plan on behalf of the Named Executive Officers to match 2007-2008 pretax executive contributions (included under salary) made by each executive officer to such plan.

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## Grants of Plan-Based Awards in Fiscal Year 2008

There were no options granted during the fiscal year 2008 to the Named Executive Officers.

**Outstanding Equity Awards in Fiscal Year 2008**

The following table provides information concerning unexercised options as of September 30, 2008 for each Named Executive Officer

| Name               | *Number of Securities<br>Underlying Unexercised<br>Options at<br>September 30, 2008<br>Exercisable | Option Awards<br>*Number of Securities<br>Underlying Unexercised<br>Options at<br>September 30, 2008<br>Unexercisable | Option<br>Exercise<br>Price<br>(\$) | Option<br>Expiration<br>Date |
|--------------------|----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------|
| E. J. Elliott      | 5,000                                                                                              |                                                                                                                       | \$ 9.32                             | 9/30/16                      |
| Marc G. Elliott    | 5,000                                                                                              |                                                                                                                       | \$ 9.32                             | 9/30/16                      |
| David F. Brashears |                                                                                                    |                                                                                                                       |                                     |                              |
| Scott W. Runkel    |                                                                                                    |                                                                                                                       |                                     |                              |
| Dennis B. Hunt     |                                                                                                    |                                                                                                                       |                                     |                              |

The options outstanding at September 30, 2008 vest over two years.

**1997 Stock Option Plan**

In July 1996, our Board of Directors, subject to the approval of our stockholders, adopted the Gencor Industries, Inc. 1997 Stock Option Plan or the 1997 Plan, which provided for the issuance of stock options to purchase an aggregate of up to 1,200,000 shares of our Common Stock, 1,200,000 shares of our Class B Stock and up to fifteen percent (15%) of the authorized common stock of any subsidiary. The 1997 Plan permitted the grant of options to our officers, directors and key employees. The 1997 Plan was approved by stockholders on April 11, 1997. As of September 30, 2008, there are no options available for future grants under the plan.

**Payments Upon a Change of Control**

Under the terms of our 1997 Plan, upon the occurrence of a change of control, each option holder shall be entitled to receive, pursuant to an option exercise, such number and kind of securities as the option holder would have been entitled to had the option holder exercised the option prior to a change of control.

Assuming a change of control had occurred on September 30, 2008 and the executive officers exercised the full amount of their awards, the cash value of the accelerated awards for each of the Named Executive Officers would have been as follows:

| Name            | Value of Accelerated<br>Equity<br>Awards <sup>(1)(2)</sup> |
|-----------------|------------------------------------------------------------|
| E.J. Elliott    | \$ 0                                                       |
| David Brashears | 0                                                          |
| Marc G. Elliott | 0                                                          |
| Scott W. Runkel | 0                                                          |

- (1) Assumes a stock price of \$8.08, which was the closing price of our common stock on September 30, 2008, the last trading day of our fiscal year.
- (2) The value of accelerated equity awards is calculated by multiplying the difference between the closing price of our common stock on September 30, 2008 and the exercise price of the option by the number of options accelerated.



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Under the terms of the 1997 Plan, a change of control (which is actually defined as a corporate transaction in the 1997 Plan) shall be deemed to have occurred upon any reorganization, reclassification, merger, consolidation or exchange, or similar event.

## **Equity Compensation Plan Information**

In the following table is information about our common stock that may be issued upon exercise of options, warrants and rights under all of our existing equity compensation plans and arrangements as of September 30, 2008, including the 1997 Stock Option Plan.

| <b>Plan Category</b>                                       | <b>Number of Securities to be issued upon exercise of outstanding options, warrants and rights</b> | <b>Weighted-average exercise price of outstanding options, warrants and rights</b> | <b>Number of Securities remaining available for future issuance under equity compensation plans (excluding securities reflected in second column)</b> |
|------------------------------------------------------------|----------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equity compensation plans approved by security holders     | 25,000                                                                                             | \$ 9.32                                                                            | 0                                                                                                                                                     |
| Equity compensation plans not approved by security holders | 0                                                                                                  | 0                                                                                  | 0                                                                                                                                                     |
| <b>Total</b>                                               | <b>25,000</b>                                                                                      | <b>\$ 9.32</b>                                                                     | <b>0</b>                                                                                                                                              |

## **Compensation of Directors**

The following table provides information regarding compensation paid to each of our non-employee directors for the fiscal year ended September 30, 2008.

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## Director Compensation Table

Fiscal year ended September 30, 2008

| Name                | Fees Earned or<br>Paid in Cash<br>(\$) | Option Awards<br>(\$) | Total<br>(\$) |
|---------------------|----------------------------------------|-----------------------|---------------|
| David A. Air        | \$ 25,500                              | 0                     | \$ 25,500     |
| Randolph H. Fields  | \$ 24,500                              | 0                     | \$ 24,500     |
| Edward A. Moses     | \$ 25,500                              | 0                     | \$ 25,500     |
| Cort J. Dondero     | \$ 6,000                               | 0                     | \$ 6,000      |
| Russell R. Lee, III | \$ 14,000                              | 0                     | \$ 14,000     |

Directors fees are paid to non-employee directors at the rate of \$1,500 per month, plus \$1,000 per board meeting attended and \$500 per committee meeting attended. Total fees paid in fiscal 2008 were \$95,500. Mr. Lee is not currently serving on our Board of Directors.

**Compensation Committee Interlocks and Insider Participation**

The following non-employee directors were the members of the Compensation Committee of the Board of Directors during fiscal year 2008: Russell R. Lee, III, David A. Air, Edward A. Moses and Randolph H. Fields. Mr. Fields is a stockholder of the law firm Greenberg Traurig, P.A., which serves as our primary legal counsel. None of the members of the Compensation Committee is an executive officer of a public company of which one of our executive officers is a director.

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CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

We lease vehicles from Marcar Leasing Corporation ( Marcar ), a corporation engaged in general leasing to the public of machinery as well as vehicles owned by members of E.J. Elliott's immediate family, including Marc G. Elliott. The terms of the leases are established based on the rates charged by independent leasing organizations and we believe them to be more favorable than those generally available from independent third parties. Leases between Marcar and us generally provide for equal monthly payments over either thirty-six months or forty-eight months. During fiscal 2008, we made lease payments to Marcar in the aggregate amount of \$149,946.

Although we did not deem the following transaction to be a related person transaction, and therefore do not require disclosure, we note that Randolph H. Fields, one of our directors, is a stockholder of the law firm of Greenberg Traurig P.A., which serves as our primary legal counsel.

We recognize that related person transactions may raise questions among our stockholders as to whether the transactions are consistent with our best interests and our stockholders' best interests. We generally do not enter into or ratify a related person transaction unless our Board of Directors, acting through the Audit Committee or otherwise, determines that the related person transaction is in, or is not inconsistent with, our best interests and our stockholders' best interests. Our procedures are currently not documented in writing.

**Table of Contents****Security Ownership Of Certain Beneficial Owners And Management**

The following table sets forth certain information as of October 14, 2008 with respect to (i) each person known to us to be the beneficial owner (as defined by the Securities and Exchange Commission) of more than 5% of our Common Stock or Class B Stock, (ii) each Director, (iii) each Executive Officer named in the Summary Compensation Table, (iv) each nominee for election to the Board of Directors, and (v) the Directors and Executive Officers of the Company as a group. Except as otherwise noted, each named beneficial owner has sole voting and investment power over the shares shown.

| Name And Address of Beneficial Owner                        | Amount and Nature of<br>Beneficial Ownership (1) |                  | Percent of Class (1) |                  |
|-------------------------------------------------------------|--------------------------------------------------|------------------|----------------------|------------------|
|                                                             | Common<br>Stock                                  | Class B<br>Stock | Common<br>Stock      | Class B<br>Stock |
| E. J. Elliott                                               |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 1,066,530(2)                                     | 1,348,318        | 13.2%                | 88.0%            |
| Marc G. Elliott                                             |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 296,402                                          | 101,520          | 3.7%                 | 6.6%             |
| David F. Brashears                                          |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 57,438                                           |                  | 0.7%                 |                  |
| Dennis B. Hunt                                              |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 500                                              |                  | 0.0%                 |                  |
| Scott W. Runkel                                             |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 33,957                                           |                  | 0.4%                 |                  |
| Randolph H. Fields                                          |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 5,000                                            |                  | 0.1%                 |                  |
| David A. Air                                                |                                                  |                  |                      |                  |
| 5201 N. Orange Blossom Trail                                |                                                  |                  |                      |                  |
| Orlando, Florida 32810                                      | 5,000                                            |                  | 0.1%                 |                  |
| All Directors and Executive Officers as a group (7 persons) | 1,444,827(2)                                     | 1,449,838        | 17.9%                | 94.6%            |

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John E. Elliott

5201 N. Orange Blossom Trail

Orlando, Florida 32810

591,011

7.3%

Harvey Houtkin

160 Summit Avenue

Montvale, NJ 07645

2,171,469(3)

26.9%

Lloyd I. Miller, III

4550 Gordon Drive

Naples, Florida 34102

754,960(4)

9.3%

- (1) In accordance with Rule 13d-3(f) the Securities Exchange Act of 1934, as amended, shares that are not outstanding, but that are subject, to option, warrants, rights or conversion privileges exercisable within 60 days have been deemed to be outstanding for the purpose of computing the percentage of outstanding shares owned by the individual having such right but have not been deemed outstanding for the purpose of computing the percentage for any other person.

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- (2) Includes 48,978 shares owned by the Elliott Foundation, Inc.
- (3) Based solely on a Schedule 13D dated August 8, 2005 filed by Harvey Houtkin with the Securities and Exchange Commission. Amount beneficially owned is: 2,171,469 shares (includes 834,780 shares owned by Mr. Houtkin's wife Sherry Houtkin; 45,974 shares owned by Mr. Houtkin's son Stuart; 67,980 shares owned by Mr. Houtkin's son Brad; 26,830 shares owned by Mr. Houtkin's son Michael; and 30,500 shares owned by Domestic Securities, Inc., of which Mr. Houtkin is Chief Executive Officer, Secretary, director and a 50% indirect beneficial owner), Mr. Houtkin died in 2008.
- (4) Based solely on a Schedule 13G dated July 2, 2008 filed by Lloyd I. Miller III with the Securities and Exchange Commission. Amount beneficially owned, 754,960 shares (includes 154,045 shares sole voting power and 600,915 shares shared voting power).

### **REPORT OF THE AUDIT COMMITTEE**

The following report of the Audit Committee, covering our fiscal year ended September 30, 2008, shall not be deemed to be soliciting material or to be filed with the Securities and Exchange Commission (the Commission or SEC) or subject to Regulations 14A or 14C of the Commission, or the liabilities of Section 18 of the Exchange Act. Such Report shall not be deemed incorporated by reference into any filing under the Exchange Act or the Securities Act of 1933, notwithstanding any general incorporation by reference of this Proxy Statement into any other document.

Management is responsible for the preparation, presentation and integrity of the Company's financial statements, accounting and financial reporting principles and internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditors, Moore Stephens Lovelace, P. A., are responsible for performing an independent audit of the consolidated financial statements in accordance with generally accepted auditing standards.

In performing its oversight role, the Audit Committee has considered and discussed the audited financial statements with management. The Audit Committee has also discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (AICPA, Professional Standards, Vol. 1, AU section 380), as adopted by the Public Company Oversight Board in Rule 3200T. The Audit Committee has received the written disclosures and the letter from the independent auditors required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent auditor's communications with the Audit Committee concerning independence, and has discussed with the independent auditors the independent auditor's independence.

Based on the review and discussions described in this report, and subject to the limitations on the role and responsibilities of the Audit Committee with regard to its oversight functions referred to below, the Audit Committee approved the audited financial statements for inclusion in the Company's Annual Report on Form 10-K for the fiscal year ended September 30, 2008, for filing with the SEC.

The Audit Committee members do not serve as professional accountants or auditors and their functions are not intended to duplicate or to certify the activities of management and the independent auditors.

Date: December 12, 2008

Respectfully submitted,

Edward A. Moses, Chairman  
David A. Air  
Cort J. Dondero

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PROPOSAL 2

RATIFICATION OF SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Moore Stephens Lovelace, P.A. has served as the Company's independent registered public accounting firm for fiscal years 2000-2008.

Moore Stephens Lovelace, P.A. was reappointed by the Board of Directors, on the recommendation of the Audit Committee, as its independent accountants for fiscal 2009. Representatives of Moore Stephens Lovelace, P.A. are expected to appear at the Annual Meeting to make a statement, if they wish to do so, and to be available to answer appropriate questions from Stockholders at that time.

The Board of Directors has approved the Company's engagement of Moore Stephens Lovelace, P.A. as the Company's independent auditors. Moore Stephens Lovelace, P.A. has served as the Company's independent auditors since fiscal 2000, and is familiar with the Company's business and management.

Audit Fees

The aggregate fees billed by Moore Stephens Lovelace, P.A. for the last two fiscal years' audit of the annual financial statements and review of financial statements included in the Company's Form 10-Qs was \$185,400 in 2008 and \$152,500 in 2007.

Audit-Related Fees

There were no audit related fees billed for 2008 or 2007.

Tax Fees

The aggregate fees billed by Moore Stephens Lovelace, P.A. for the last two fiscal years for preparation of income tax returns were \$27,000 in 2008 and \$27,000 in 2007.

All Other Fees

The aggregate fees billed by Moore Stephens Lovelace, P.A. for the last two fiscal years for other services was \$4,392 in 2008 and \$624 in 2007 for assistance with a tax examination.

The Audit Committee has reviewed the fee structure and believes that Moore Stephens Lovelace, P.A. has the independence necessary to act as the Company's independent registered public accounting firm.

In accordance with Company policy, all fees for Moore Stephens Lovelace, P.A. were approved in advance by the Audit Committee or full board of directors.

While ratification by Stockholders of this appointment is not required by law or the Company's Certificate of Incorporation or Bylaws, management believes that such ratification is desirable. In the event this appointment is not ratified by an affirmative vote of Stockholders holding a majority of the Company's issued and outstanding Common Stock and Class B Stock, together, in attendance at the meeting, either in person or by proxy, the Board of Directors of the Company will consider that fact when it appoints independent public accountants for the next fiscal year.

The Board of Directors recommends a vote for the ratification and approval of its selection of Moore Stephens Lovelace, P.A. at the 2009 Annual Meeting.

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PROPOSAL 3

PROPOSAL TO APPROVE THE 2009 INCENTIVE COMPENSATION PLAN

On January 9, 2009, the Company's Board of Directors approved, subject to stockholder approval, the Gencor Industries, Inc. 2009 Incentive Compensation Plan (the "2009 Plan"). Pursuant to Rule 4350(i) of the NASDAQ Marketplace Rules, the approval of the 2009 Plan must be approved by a majority of the votes cast.

The following is a summary of certain principal features of the 2009 Plan.

**Purpose.** The purpose of the 2009 Plan is to assist the Company and its subsidiaries and other designated affiliates, which we refer to as "Related Entities", in attracting, motivating, retaining and rewarding high-quality executives and other employees, officers, directors, consultants and other persons who provide services to the Company or its Related Entities, by enabling such persons to acquire or increase a proprietary interest in the Company in order to strengthen the mutuality of interests between such persons and the Company's stockholders, and providing such persons with performance incentives to expend their maximum efforts in the creation of stockholder value.

**Shares Available for Awards; Annual Per-Person Limitations.** The total number of shares of stock that may be subject to the granting of awards under the 2009 Plan ("Awards") at any time during the term of the 2009 Plan shall be equal to 800,000 shares of Common stock of the Company, par value \$.10 per share and 160,000 shares of Class B stock of the Company, par value \$.10 per share. The foregoing limit shall be increased by the number of shares with respect to which Awards previously granted under the 2009 Plan that are forfeited, expire or otherwise terminate without issuance of shares, or that are settled for cash or otherwise do not result in the issuance of shares, and the number of shares that are tendered (either actually or by attestation) or withheld upon exercise of an Award to pay the exercise price or any tax withholding requirements. Awards issued in substitution for awards previously granted by a company acquired by the Company or a Related Entity, or with which the Company or any Related Entity combines, do not reduce the limit on grants of Awards under the 2009 Plan.

The 2009 Plan imposes individual limitations on the amount of certain Awards in part to comply with Code Section 162(m). Under these limitations, during any 12-month period, the number of options, stock appreciation rights, shares of restricted stock, shares of deferred stock, performance shares and other stock based-awards granted to any one participant under the 2009 Plan may not exceed 100,000, subject to adjustment in certain circumstances. In addition, the maximum dollar value payable to any one participant with respect to performance units with respect to any 12-month performance period is \$3,000,000 (pro-rated for any performance period that is less than 12 months based upon the ratio of the number of days in the performance period as compared to 365), and with respect to any performance period that is more than 12 months, is \$3,000,000 multiplied by the number of full years in the performance period.

The Committee is authorized to adjust the foregoing limitations and is authorized to adjust outstanding Awards (including adjustments to exercise prices of options and other affected terms of Awards) in the event that a dividend or other distribution (whether in cash, shares of stock or other property), recapitalization, forward or reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange or other similar corporate transaction or event affects the stock so that an adjustment is appropriate. The Committee is also authorized to adjust performance conditions and other terms of Awards in response to these kinds of events or in response to changes in applicable laws, regulations or accounting principles.

**Eligibility.** The persons eligible to receive Awards under the 2009 Plan are the officers, directors, employees, consultants and other persons who provide services to the Company or any Related Entity. An employee on leave of absence may be considered as still in the employ of the Company or a Related Entity for purposes of eligibility for participation in the 2009 Plan.

**Administration.** The 2009 Plan is to be administered by a committee designated by the Board of Directors consisting of not less than two directors (the "Committee"), provided, however, that except as otherwise expressly provided in the 2009 Plan, the Board of Directors may exercise any power or authority granted to the Committee under the 2009 Plan. Subject to the terms of the 2009 Plan, the Committee is authorized to select eligible persons to receive Awards, determine the type, number and other terms and conditions of, and all other matters relating to, Awards, prescribe Award agreements (which need not be identical for each Participant), and the rules and regulations for the administration of the Plan, construe and interpret the Plan and Award agreements, correct defects, supply omissions or reconcile inconsistencies therein, and make all other decisions and determinations as the Committee may deem necessary or advisable for the administration of the 2009 Plan.

**Stock Options and Stock Appreciation Rights.** The Committee is authorized to grant stock options, including both incentive stock options ("ISOs"), which can result in potentially favorable tax treatment to the participant, and non-qualified stock



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options, and stock appreciation rights ( SARs ) entitling the participant to receive the amount by which the fair market value of a share of Common Stock on the date of exercise exceeds the grant price of the stock appreciation right. The exercise price per share subject to an option and the grant price of a stock appreciation right are determined by the Committee, but must not be less than the fair market value of a share of Common Stock on the date of grant. For purposes of the 2009 Plan, the term fair market value means the fair market value of Common Stock, Awards or other property as determined by the Committee or under procedures established by the Committee. Unless otherwise determined by the Committee, the fair market value of Common Stock as of any given date shall be the closing sales price per share of Common Stock as reported on the principal stock exchange or market on which Common Stock is traded on the date as of which such value is being determined or, if there is no sale on that date, then on the last previous day on which a sale was reported. The maximum term of each option or stock appreciation right, the times at which each option or stock appreciation right will be exercisable, and provisions requiring forfeiture of unexercised options or stock appreciation rights at or following termination of employment or other service generally are fixed by the Committee, except that no option or stock appreciation right may have a term exceeding ten years. Methods of exercise and settlement and other terms of the stock appreciation right are determined by the Committee. The Committee, thus, may permit the exercise price of options awarded under the Plan to be paid in cash, shares (including the withholding of shares otherwise deliverable pursuant to the Award), other Awards or other property (including loans to participants).

***Restricted and Deferred Stock.*** The Committee is authorized to grant restricted stock and deferred stock. Restricted stock is a grant of shares of Common Stock which may not be sold or disposed of, and which shall be subject to such risks of forfeiture and other restrictions as the Committee may impose. A participant granted restricted stock generally has all of the rights of a stockholder of the Company, unless otherwise determined by the Committee. An Award of deferred stock confers upon a participant the right to receive shares of Common Stock, cash equal to the fair market value of a specified number of shares of Common Stock, or a combination thereof, as determined by the Committee, at the end of a specified deferral period, subject to such risks of forfeiture and other restrictions as the Committee may impose. Prior to settlement, an Award of deferred stock carries no voting or dividend rights or other rights associated with share ownership, although dividend equivalents may be granted, as discussed below.

***Dividend Equivalents.*** The Committee is authorized to grant dividend equivalents conferring on participants the right to receive, currently or on a deferred basis, cash, shares of Common Stock, other Awards or other property equal in value to dividends paid on a specific number of shares of Common Stock or other periodic payments. Dividend equivalents may be granted alone or in connection with another Award, may be paid currently or on a deferred basis and, if deferred, may be deemed to have been reinvested in additional shares of Common Stock, Awards or otherwise as specified by the Committee.

***Bonus Stock and Awards in Lieu of Cash Obligations.*** The Committee is authorized to grant shares of Common Stock as a bonus free of restrictions, or to grant shares of Common Stock or other Awards in lieu of Company obligations to pay cash under the 2009 Plan or other plans or compensatory arrangements, subject to such terms as the Committee may specify.

***Other Stock-Based Awards.*** The Committee is authorized to grant Awards that are denominated or payable in, valued by reference to, or otherwise based on or related to shares of Common Stock. The Committee determines the terms and conditions of such Awards.

***Performance Awards.*** The Committee is authorized to grant performance awards ( Performance Awards ) to participants on terms and conditions established by the Committee. The performance criteria to be achieved during any performance period and the length of the performance period are determined by the Committee upon the grant of the performance Award. Performance Awards may be valued by reference to a designated number of Shares (in which case they are referred to as performance shares) or by reference to a designated amount of property including cash (in which case they are referred to as performance units). Performance Awards may be settled by delivery of cash, shares or other property, or any combination thereof, as determined by the Committee. Performance Awards granted to persons whom the Committee expects will, for the year in which a deduction arises, be covered employees (as defined below), if and to the extent intended by the Committee, be subject to provisions that should qualify such Awards as performance-based compensation not subject to the limitation on tax deductibility by the Company under Code Section 162(m). For purposes of Section 162(m), the term covered employee means the Company's chief executive officer and each other person whose compensation is required to be disclosed in the Company's filings with the Securities and Exchange Commission by reason of that person being among the three highest compensated officers of the Company as of the end of a taxable year. If and to the extent required under Section 162(m) of the Code, any power or authority relating to a performance award intended to qualify under Section 162(m) of the Code is to be exercised by the Committee and not the Board.

If and to the extent that the Committee determines that these provisions of the 2009 Plan are to be applicable to any Award, one or more of the following business criteria for the Company, on a consolidated basis, and/or for Related Entities, or for business or geographical units of the Company and/or a Related Entity (except with respect to the total stockholder return and earnings per share criteria), shall be used by the Committee in establishing performance goals for awards under the 2009 Plan:

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(1) earnings per share; (2) revenues or margins; (3) cash flow; (4) operating margin; (5) return on assets, net assets, investment, capital, operating revenue or equity; (6) economic value added; (7) direct contribution; (8) income; net income; pretax earnings; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings after interest expense and before extraordinary or special items; operating income; net operating income; income before interest income or expense, unusual items and income taxes, local, state or federal and excluding budgeted and actual bonuses which might be paid under any ongoing bonus plans of the Company; (9) working capital or working capital management, including inventory turnover and days sales outstanding; (10) management of fixed costs or variable costs; (11) identification or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans, including strategic mergers, acquisitions or divestitures; (12) total stockholder return; (13) debt reduction; (14) market share; (15) entry into new markets, either geographically or by business unit; (16) customer retention and satisfaction; (17) strategic plan development and implementation, including turnaround plans; and (18) stock price. Any of the above goals may be determined on an absolute or relative basis (e.g. growth in earnings per share) or as compared to the performance of a published or special index deemed applicable by the Committee including, but not limited to, the Standard & Poor's 500 Stock Index or a group of companies that are comparable to the Company. The Committee may exclude the impact of an event or occurrence which the Committee determines should appropriately be excluded, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (iii) a change in accounting standards required by generally accepted accounting principles.

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The Committee may, in its discretion, determine that the amount payable as a Performance Award will be reduced from the amount of any potential Award.

***Other Terms of Awards.*** Awards may be settled in the form of cash, shares of Common Stock, other Awards or other property, in the discretion of the Committee. The Committee may require or permit participants to defer the settlement of all or part of an Award in accordance with such terms and conditions as the Committee may establish, including payment or crediting of interest or dividend equivalents on deferred amounts, and the crediting of earnings, gains and losses based on deemed investment of deferred amounts in specified investment vehicles. The Committee is authorized to place cash, shares of Common Stock or other property in trusts or make other arrangements to provide for payment of the Company's obligations under the 2009 Plan. The Committee may condition any payment relating to an Award on the withholding of taxes and may provide that a portion of any shares of Common Stock or other property to be distributed will be withheld (or previously acquired shares of Common Stock or other property be surrendered by the participant) to satisfy withholding and other tax obligations. Awards granted under the 2009 Plan generally may not be pledged or otherwise encumbered and are not transferable except by will or by the laws of descent and distribution, or to a designated beneficiary upon the participant's death, except that the Committee may, in its discretion, permit transfers for estate planning or other purposes subject to any applicable restrictions under Rule 16b-3.

Awards under the 2009 Plan are generally granted without a requirement that the participant pay consideration in the form of cash or property for the grant (as distinguished from the exercise), except to the extent required by law. The Committee may, however, grant Awards in exchange for other Awards under the 2009 Plan, awards under other Company plans, or other rights to payment from the Company, and may grant Awards in addition to and in tandem with such other Awards, rights or other awards.

***Acceleration of Vesting; Change in Control.*** The Committee may, in its discretion, accelerate the exercisability, the lapsing of restrictions or the expiration of deferral or vesting periods of any Award, and such accelerated exercisability, lapse, expiration and, if so provided in the Award agreement or otherwise determined by the Committee, vesting shall occur automatically in the case of a change in control of the Company, as defined in the 2009 Plan (including the cash settlement of stock appreciation rights which may be exercisable in the event of a change in control). In addition, the Committee may provide in an Award agreement that the performance goals relating to any Performance Award will be deemed to have been met upon the occurrence of any change in control. For purposes of the 2009 Plan, unless otherwise specified in an Award agreement, a change in control means the occurrence of any of the following:

(i) The acquisition by any person (as that term is used in the Exchange Act) of Beneficial Ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (A) the then outstanding shares of common stock of the Company (the Outstanding Company Common Stock) or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the Outstanding Company Voting Securities) (the foregoing Beneficial Ownership hereinafter being referred to as a Controlling Interest); provided, however, that the following acquisitions shall not constitute or result in a Change of Control: (v) any acquisition directly from the Company; (w) any acquisition by the Company; (x) any acquisition by any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest; (y) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary; or (z) any acquisition by any corporation pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) below; or

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(ii) During any period of two (2) consecutive years (not including any period prior to the Effective Date) individuals who constitute the Board of Directors on the Effective Date (the Incumbent Board) cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this Purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board of Directors; or

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its Subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or stock of another entity by the Company or any of its Subsidiaries (each a Business Combination), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the Beneficial Owners, respectively, of the Outstanding Company Common Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Common Stock and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination or any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest) beneficially owns, directly or indirectly, fifty percent (50%) or more of the then outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such corporation except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the Board of Directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

***Amendment and Termination.*** The Board of Directors may amend, alter, suspend, discontinue or terminate the 2009 Plan or the Committee's authority to grant Awards without further stockholder approval, except that stockholder approval must be obtained for any amendment or alteration if such approval is required by law or regulation or under the rules of any stock exchange or quotation system on which shares of Common Stock are then listed or quoted. Thus, stockholder approval may not necessarily be required for every amendment to the 2009 Plan which might increase the cost of the 2009 Plan or alter the eligibility of persons to receive Awards. Stockholder approval will not be deemed to be required under laws or regulations, such as those relating to ISOs, that condition favorable treatment of participants on such approval, although the Board of Directors may, in its discretion, seek stockholder approval in any circumstance in which it deems such approval advisable. Unless earlier terminated by the Board, the 2009 Plan will terminate at the earliest of (a) such time as no shares of Common Stock remain available for issuance under the 2009 Plan, (b) termination of the 2009 Plan by the Board of Directors, or (c) the tenth anniversary of the effective date of the 2009 Plan. Awards outstanding upon expiration of the 2009 Plan shall remain in effect until they have been exercised or terminated, or have expired.

***New Plan Benefits.*** Because future awards will be within the discretion of the Committee, it is not possible to predict to whom future awards will be granted under the 2009 Plan or the number of shares underlying any award.

### ***Federal Income Tax Consequences of Awards***

The 2009 Plan is not qualified under the provisions of section 401(a) of the Code and is not subject to any of the provisions of the Employee Retirement Income Security Act of 1974.

### ***Nonqualified Stock Options***

On exercise of a nonqualified stock option granted under the 2009 Plan an optionee will recognize ordinary income equal to the excess, if any, of the fair market value on the date of exercise of the shares of stock acquired on exercise of the option over the exercise price. If the optionee is an employee of our company or a Related Entity, that income will be subject to the withholding of Federal income tax. The optionee's tax basis in those shares will be equal to their fair market value on the date of exercise of the option, and his holding period for those shares will begin on that date.



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If an optionee pays for shares of stock on exercise of an option by delivering shares of our company's stock, the optionee will not recognize gain or loss on the shares delivered, even if their fair market value at the time of exercise differs from the optionee's tax basis in them. The optionee, however, otherwise will be taxed on the exercise of the option in the manner described above as if he had paid the exercise price in cash. If a separate identifiable stock certificate is issued for that number of shares equal to the number of shares delivered on exercise of the option, the optionee's tax basis in the shares represented by that certificate will be equal to his tax basis in the shares delivered, and his holding period for those shares will include his holding period for the shares delivered. The optionee's tax basis and holding period for the additional shares received on exercise of the option will be the same as if the optionee had exercised the option solely in exchange for cash.

Our company will be entitled to a deduction for Federal income tax purposes equal to the amount of ordinary income taxable to the optionee, provided that amount constitutes an ordinary and necessary business expense for our company and is reasonable in amount, and either the employee includes that amount in income or our company timely satisfies its reporting requirements with respect to that amount.

### **Incentive Stock Options**

The 2009 Plan provides for the grant of stock options that qualify as incentive stock options as defined in section 422 of the Code, which we refer to as ISOs. Under the Code, an optionee generally is not subject to tax upon the grant or exercise of an ISO. In addition, if the optionee holds a share received on exercise of an ISO for at least two years from the date the option was granted and at least one year from the date the option was exercised, which we refer to as the Required Holding Period, the difference, if any, between the amount realized on a sale or other taxable disposition of that share and the holder's tax basis in that share will be long-term capital gain or loss.

If, however, an optionee disposes of a share acquired on exercise of an ISO before the end of the Required Holding Period, which we refer to as a Disqualifying Disposition, the optionee generally will recognize ordinary income in the year of the Disqualifying Disposition equal to the excess, if any, of the fair market value of the share on the date the ISO was exercised over the exercise price. If, however, the Disqualifying Disposition is a sale or exchange on which a loss, if realized, would be recognized for Federal income tax purposes, and if the sales proceeds are less than the fair market value of the share on the date of exercise of the option, the amount of ordinary income recognized by the optionee will not exceed the gain, if any, realized on the sale. If the amount realized on a Disqualifying Disposition exceeds the fair market value of the share on the date of exercise of the option, that excess will be short-term or long-term capital gain, depending on whether the holding period for the share exceeds one year.

**Stock Price.** The closing price of our Common Stock on January 14, 2009 was \$7.40 per share, as reported by the NASDAQ Global Market.

The Board of Directors recommends a vote for the ratification and approval of the 2009 Incentive Compensation Plan, as set forth herein. The full text of the 2009 Plan is attached as Appendix B to this Proxy Statement.

### **OTHER MATTERS**

As of the date of this Proxy Statement, the Board of Directors does not intend to present any matter for action at the Annual Meeting, other than as set forth in the Notice of Annual Meeting. If any other matters properly come before the Annual Meeting, it is intended that the holders of the proxies will act in accordance with their judgment on such matters.

### **STOCKHOLDER PROPOSALS**

Pursuant to Securities and Exchange Commission Rule 14a-8, in order to be eligible for inclusion in the proxy materials for the Company's 2010 Annual Meeting of Stockholders, any stockholder proposal to take action at such meeting must be received by the President of the Company no later than October 8, 2009. Stockholder proposals must be made in compliance with applicable legal requirements promulgated by the Securities and Exchange Commission and must be furnished to the President by certified mail, return receipt requested.

In accordance with the Company's Bylaws, in order to be properly brought before the 2010 Annual Meeting, a stockholder's notice of the matter the stockholder wishes to present must be delivered to the Secretary of the Company at its

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principal executive offices not less than 90 nor more than 120 days prior to the first anniversary of the preceding year's annual meeting. As a result, any notice given by a stockholder pursuant to these provisions of the Company's Bylaws (and not pursuant to the Securities and Exchange Commission's Rule 14a-8) must be received no earlier than November 6, 2009 and no later than December 6, 2009, unless the Company's Annual Meeting is more than 30 days before or after March 6, 2010. If the Company's 2009 Annual Meeting date is advanced or delayed by more than 30 days from this year's meeting date, then proposals must be received no earlier than the 12<sup>th</sup> day prior to the 2010 Annual Meeting and no later than the close of business on the later of the 90th day prior to the 2010 Annual Meeting or the 10<sup>th</sup> day following the date on which the meeting date is publicly announced.

ANNUAL REPORT

The Company, upon request, will furnish to record and beneficial holders of its Common Stock, free of charge, an additional copy of its Annual Report on Form 10-K (including financial statements and schedules but without exhibits) for fiscal 2008. Copies of exhibits to the Form 10-K also will be furnished upon request at the payment of a reasonable charge. All requests should be directed to the Investor Relations Department of the Company at the offices of the Company set forth in the Notice of Annual Meeting appended to this Proxy Statement.

YOU ARE URGED TO SIGN AND RETURN YOUR PROXY PROMPTLY TO MAKE CERTAIN YOUR SHARES WILL BE VOTED AT THE 2009 ANNUAL MEETING. FOR YOUR CONVENIENCE, A RETURN ENVELOPE IS ENCLOSED.

BY ORDER OF THE BOARD OF DIRECTORS

Jeanne M. Lyons, Secretary  
Orlando, Florida  
February 6, 2009

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Appendix A

**COMMON STOCKHOLDER PROXY**

**GENCOR INDUSTRIES, INC.**

**THIS COMMON STOCKHOLDER PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS**

**PROXY FOR ANNUAL MEETING OF STOCKHOLDERS MARCH 6, 2009**

The undersigned hereby appoints E.J. Elliott, Marc G. Elliott, or any of them, as proxies, each with the power to appoint his or her substitutes, to represent, and vote all shares of Common Stock that the undersigned is entitled to vote on behalf of the undersigned as designated below at the Annual Meeting of Stockholders of Gencor Industries, Inc., to be held March 6, 2009, and any adjournments thereof, with all powers the undersigned would possess if personally present and voting at such meeting. In their discretion, the proxies are authorized to vote upon such other business as may properly come before the meeting.

This Proxy, when properly executed, will be voted in the manner directed herein by the undersigned stockholder. If no direction is indicated, the Proxy will vote FOR Proposals 1, 2 and 3.

**YOUR BOARD OF DIRECTORS RECOMMENDS A VOTE FOR PROPOSALS 1, 2 AND 3.**

**X PLEASE MARK VOTES AS IN THIS SAMPLE.**

1. ELECTION OF DIRECTOR:  
CORT J. DONDERO

☐ FOR the nominee listed above

☐ WITHHOLD AUTHORITY to vote for the nominee above

2. Proposal to ratify the selection of Moore Stephens Lovelace, P.A. as auditors.

☐ FOR

☐ AGAINST

☐ ABSTAIN

3. Proposal to approve the 2009 Incentive Compensation plan.

☐ FOR

☐ AGAINST

☐ ABSTAIN

q FOLD AND DETACH HERE q

IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE ANNUAL STOCKHOLDERS MEETING

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The proxy statement, the Company's 2008 Annual Report and proxy card are available at <http://proxy.gencor.com>

PROXY

THIS PROXY WILL BE VOTED AS DIRECTED, OR IF NO DIRECTION IS INDICATED, WILL BE VOTED FOR THE PROPOSALS.

THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS. PLEASE MARK VOTES AS IN THIS SAMPLE

1. ELECTION OF DIRECTOR

CORT J. DONDERO

FOR THE NOMINEE

WITHHOLD AUTHORITY TO VOTE FOR NOMINEE

2. Proposal to ratify the selection of  
Moore Stephens Lovelace, P.A., as auditors

FOR

AGAINST

ABSTAIN

3. Proposal to approve the 2009 Incentive  
Compensation Plan.

FOR

AGAINST

ABSTAIN

Signature

Signature

Date

Note: Please sign exactly as name(s) appears hereon. When signing as attorney, executor, administrator, trustee, or guardian, please give full title. If shares are jointly held, each holder must sign. If a corporation, please sign in full corporate name by President or other authorized officer. If a partnership, please sign in partnership name by an authorized person.

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Appendix B

**GENCOR INDUSTRIES, INC.  
2009 INCENTIVE COMPENSATION PLAN**

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GENCOR INDUSTRIES, INC.

2009 INCENTIVE COMPENSATION PLAN

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### **GENCOR INDUSTRIES, INC.**

#### **2009 INCENTIVE COMPENSATION PLAN**

1. **Purpose.** The purpose of this 2009 INCENTIVE COMPENSATION PLAN (the "Plan") is to assist Gencor Industries, Inc., a Delaware corporation (the "Company") and its Related Entities (as hereinafter defined) in attracting, motivating, retaining and rewarding high-quality executives and other employees, officers, directors, consultants and other persons who provide services to the Company or its Related Entities by enabling such persons to acquire or increase a proprietary interest in the Company in order to strengthen the mutuality of interests between such persons and the Company's shareholders, and providing such persons with performance incentives to expend their maximum efforts in the creation of shareholder value.

2. **Definitions.** For purposes of the Plan, the following terms shall be defined as set forth below, in addition to such terms defined in Section 1 hereof and elsewhere herein.

(a) **Award** means any Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award, Share granted as a bonus or in lieu of another Award, Dividend Equivalent, Other Stock-Based Award or Performance Award, together with any other right or interest, granted to a Participant under the Plan.

(b) **Award Agreement** means any written agreement, contract or other instrument or document evidencing any Award granted by the Committee hereunder.

(c) **Beneficiary and Beneficial Ownership** means the person, persons, trust or trusts that have been designated by a Participant in his or her most recent written beneficiary designation filed with the Committee to receive the benefits specified under the Plan upon such Participant's death or to which Awards or other rights are transferred if and to the extent permitted under Section 10(b) hereof. If, upon a Participant's death, there is no designated Beneficiary or surviving designated Beneficiary, then the term Beneficiary means the person, persons, trust or trusts entitled by will or the laws of descent and distribution to receive such benefits.

(d) **Beneficial Owner** shall have the meaning ascribed to such term in Rule 13d-3 under the Exchange Act and any successor to such Rule.

(e) **Board** means the Company's Board of Directors.

(f) **Cause** shall, with respect to any Participant, have the meaning specified in the Award Agreement. In the absence of any definition in the Award Agreement, Cause shall have the equivalent meaning or the same meaning as cause or for cause set forth in any employment, consulting, or other agreement for the performance of services between the Participant and the Company or a Related Entity or, in the absence of any such agreement or any such definition in such agreement, such term shall mean (i) the failure by the Participant to perform, in a reasonable manner, his or her duties as assigned by the Company or a Related Entity, (ii) any violation or breach by the Participant of his or her employment, consulting or other similar agreement with the Company or a Related Entity, if any, (iii) any violation or breach by the Participant of any non-competition, non-solicitation, non-disclosure and/or other similar agreement with the Company or a Related Entity, (iv) any act by the Participant of dishonesty or bad faith with respect to the Company or a Related Entity, (v) use of alcohol, drugs or other similar substances in a manner that adversely affects the Participant's work performance, or (vi) the commission by the Participant of any act, misdemeanor, or crime reflecting unfavorably upon the Participant or the Company or any Related Entity. The good faith determination by the Committee of whether the Participant's Continuous Service was terminated by the Company for Cause shall be final and binding for all purposes hereunder.

(g) **Change in Control** means a Change in Control as defined in Section 9(b) of the Plan.

(h) **Code** means the Internal Revenue Code of 1986, as amended from time to time, including regulations thereunder and successor provisions and regulations thereto.

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- (i) **Committee** means a committee designated by the Board to administer the Plan; provided, however, that if the Board fails to designate a committee or if there are no longer any members on the committee so designated by the Board, then the Board shall serve as the Committee. The Committee shall consist of at least two directors, and each member of the Committee shall be (i) a non-employee director within the meaning of Rule 16b-3 (or any successor rule) under the Exchange Act, unless administration of the Plan by non-employee directors is not then required in order for exemptions under Rule 16b-3 to apply to transactions under the Plan, (ii) an outside director within the meaning of Section 162(m) of the Code, and (iii) Independent .
- (j) **Consultant** means any person (other than an Employee or a Director, solely with respect to rendering services in such person's capacity as a director) who is engaged by the Company or any Related Entity to render consulting or advisory services to the Company or such Related Entity.
- (k) **Continuous Service** means the uninterrupted provision of services to the Company or any Related Entity in any capacity of Employee, Director, Consultant or other service provider. Continuous Service shall not be considered to be interrupted in the case of (i) any approved leave of absence, (ii) transfers among the Company, any Related Entities, or any successor entities, in any capacity of Employee, Director, Consultant or other service provider, or (iii) any change in status as long as the individual remains in the service of the Company or a Related Entity in any capacity of Employee, Director, Consultant or other service provider (except as otherwise provided in the Award Agreement). An approved leave of absence shall include sick leave, military leave, or any other authorized personal leave.
- (l) **Covered Employee** means the Person who, as of the end of the taxable year, either is the principal executive officer of the Company or is serving as the acting principal executive officer of the Company, and each other Person whose compensation is required to be disclosed in the Company's filings with the Securities and Exchange Commission by reason of that person being among the three highest compensated officers of the Company as of the end of a taxable year, or such other person as shall be considered a covered employee for purposes of Section 162(m) of the Code.
- (m) **Deferred Stock** means a right to receive Shares, including Restricted Stock, cash measured based upon the value of Shares or a combination thereof, at the end of a specified deferral period.
- (n) **Deferred Stock Award** means an Award of Deferred Stock granted to a Participant under Section 6(e) hereof.
- (o) **Director** means a member of the Board or the board of directors of any Related Entity.
- (p) **Disability** means a permanent and total disability (within the meaning of Section 22(e) of the Code), as determined by a medical doctor satisfactory to the Committee.
- (q) **Dividend Equivalent** means a right, granted to a Participant under Section 6(g) hereof, to receive cash, Shares, other Awards or other property equal in value to dividends paid with respect to a specified number of Shares, or other periodic payments.
- (r) **Effective Date** means the effective date of the Plan, which shall be January 9, 2009.
- (s) **Eligible Person** means each officer, Director, Employee, Consultant and other person who provides services to the Company or any Related Entity. The foregoing notwithstanding, only employees of the Company, or any parent corporation or subsidiary corporation of the Company (as those terms are defined in Sections 424(e) and (f) of the Code, respectively), shall be Eligible Persons for purposes of receiving any Incentive Stock Options. An Employee on leave of absence may be considered as still in the employ of the Company or a Related Entity for purposes of eligibility for participation in the Plan.
- (t) **Employee** means any person, including an officer or Director, who is an employee of the Company or any Related Entity. The payment of a director's fee by the Company or a Related Entity shall not be sufficient to constitute employment by the Company.
- (u) **Exchange Act** means the Securities Exchange Act of 1934, as amended from time to time, including rules thereunder and successor provisions and rules thereto.
- (v) **Fair Market Value** means the fair market value of Shares, Awards or other property as determined by the Committee, or under procedures established by the Committee. Unless otherwise determined by the Committee, the Fair Market Value of a Share as of any given date shall be the closing sale price per Share reported on a ***consolidated basis for stock*** listed on the principal stock exchange or market on which Shares are traded on the date as of which such value is being determined or, if there is no sale on that date, then on the last previous day on which a sale was reported.



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(w) **Good Reason** shall, with respect to any Participant, have the meaning specified in the Award Agreement. In the absence of any definition in the Award Agreement, **Good Reason** shall have the equivalent meaning or the same meaning as **good reason** or **for good reason** set forth in any employment, consulting or other agreement for the performance of services between the Participant and the Company or a Related Entity or, in the absence of any such agreement or any such definition in such agreement, such term shall mean (i) the assignment to the Participant of any duties inconsistent in any material respect with the Participant's duties or responsibilities as assigned by the Company or a Related Entity, or any other action by the Company or a Related Entity which results in a material diminution in such duties or responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and which is remedied by the Company or a Related Entity promptly after receipt of notice thereof given by the Participant; (ii) any material failure by the Company or a Related Entity to comply with its obligations to the Participant as agreed upon, other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and which is remedied by the Company or a Related Entity promptly after receipt of notice thereof given by the Participant; or (iii) the Company's or Related Entity's requiring the Participant to be based at any office or location outside of fifty miles from the location of employment or service as of the date of Award, except for travel reasonably required in the performance of the Participant's responsibilities.

(x) **Incentive Stock Option** means any Option intended to be designated as an incentive stock option within the meaning of Section 422 of the Code or any successor provision thereto.

(y) **Independent**, when referring to either the Board or members of the Committee, shall have the same meaning as used in the rules of the Nasdaq Stock Market or any national securities exchange on which any securities of the Company are listed for trading, and if not listed for trading, by the rules of the Nasdaq Stock Market.

(z) **Incumbent Board** means the Incumbent Board as defined in Section 9(b)(ii) of the Plan.

(aa) **Option** means a right granted to a Participant under Section 6(b) hereof, to purchase Shares or other Awards at a specified price during specified time periods.

(bb) **Optionee** means a person to whom an Option is granted under this Plan or any person who succeeds to the rights of such person under this Plan.

(cc) **Other Stock-Based Awards** means Awards granted to a Participant under Section 6(i) hereof.

(dd) **Participant** means a person who has been granted an Award under the Plan which remains outstanding, including a person who is no longer an Eligible Person.

(ee) **Performance Award** shall mean any Award of Performance Shares or Performance Units granted pursuant to Section 6(h).

(ff) **Performance Period** means that period established by the Committee at the time any Performance Award is granted or at any time thereafter during which any performance goals specified by the Committee with respect to such Award are to be measured.

(gg) **Performance Share** means any grant pursuant to Section 6(h) of a unit valued by reference to a designated number of Shares, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including cash, Shares, other property, or any combination thereof, upon achievement of such performance goals during the Performance Period as the Committee shall establish at the time of such grant or thereafter.

(hh) **Performance Unit** means any grant pursuant to Section 6(h) of a unit valued by reference to a designated amount of property (including cash) other than Shares, which value may be paid to the Participant by delivery of such property as the Committee shall determine, including cash, Shares, other property, or any combination thereof, upon achievement of such performance goals during the Performance Period as the Committee shall establish at the time of such grant or thereafter.

(ii) **Person** shall have the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, and shall include a group as defined in Section 13(d) thereof.

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(jj) **Related Entity** means any Subsidiary, and any business, corporation, partnership, limited liability company or other entity designated by the Board, in which the Company or a Subsidiary holds a substantial ownership interest, directly or indirectly.

(kk) **Restricted Stock** means any Share issued with the restriction that the holder may not sell, transfer, pledge or assign such Share and with such risks of forfeiture and other restrictions as the Committee, in its sole discretion, may impose (including any restriction on the right to vote such Share and the right to receive any dividends), which restrictions may lapse separately or in combination at such time or times, in installments or otherwise, as the Committee may deem appropriate.

(ll) **Restricted Stock Award** means an Award granted to a Participant under Section 6(d) hereof.

(mm) **Rule 16b-3** means Rule 16b-3, as from time to time in effect and applicable to the Plan and Participants, promulgated by the Securities and Exchange Commission under Section 16 of the Exchange Act.

(nn) **Shares** means the shares of common stock of the Company, par value \$.10 per share and the shares of Class B common stock of the Company, par value \$.10 per share, and such other securities as may be substituted (or resubstituted) for Shares pursuant to Section 10(c) hereof.

(oo) **Stock Appreciation Right** means a right granted to a Participant under Section 6(c) hereof.

(pp) **Subsidiary** means any corporation or other entity in which the Company has a direct or indirect ownership interest of 50% or more of the total combined voting power of the then outstanding securities or interests of such corporation or other entity entitled to vote generally in the election of directors or in which the Company has the right to receive 50% or more of the distribution of profits or 50% or more of the assets on liquidation or dissolution.

(qq) **Substitute Awards** means Awards granted or Shares issued by the Company in assumption of, or in substitution or exchange for, Awards previously granted, or the right or obligation to make future Awards, by a company acquired by the Company or any Related Entity or with which the Company or any Related Entity combines.

### **3. Administration.**

(a) **Authority of the Committee.** The Plan shall be administered by the Committee, except to the extent the Board elects to administer the Plan, in which case the Plan shall be administered by only those directors who are Independent Directors, in which case references herein to the Committee shall be deemed to include references to the Independent members of the Board. The Committee shall have full and final authority, subject to and consistent with the provisions of the Plan, to select Eligible Persons to become Participants, grant Awards, determine the type, number and other terms and conditions of, and all other matters relating to, Awards, prescribe Award Agreements (which need not be identical for each Participant) and rules and regulations for the administration of the Plan, construe and interpret the Plan and Award Agreements and correct defects, supply omissions or reconcile inconsistencies therein, and to make all other decisions and determinations as the Committee may deem necessary or advisable for the administration of the Plan. In exercising any discretion granted to the Committee under the Plan or pursuant to any Award, the Committee shall not be required to follow past practices, act in a manner consistent with past practices, or treat any Eligible Person or Participant in a manner consistent with the treatment of other Eligible Persons or Participants.

(b) **Manner of Exercise of Committee Authority.** The Committee, and not the Board, shall exercise sole and exclusive discretion on any matter relating to a Participant then subject to Section 16 of the Exchange Act with respect to the Company to the extent necessary in order that transactions by such Participant shall be exempt under Rule 16b-3 under the Exchange Act. Any action of the Committee shall be final, conclusive and binding on all persons, including the Company, its Related Entities, Eligible Persons, Participants, Beneficiaries, transferees under Section 10(b) hereof or other persons claiming rights from or through a Participant, and shareholders. The express grant of any specific power to the Committee, and the taking of any action by the Committee, shall not be construed as limiting any power or authority of the Committee. The Committee may delegate to officers or managers of the Company or any Related Entity, or committees thereof, the authority, subject to such terms as the Committee shall determine, to perform such functions, including administrative functions as the Committee may determine to the extent that such delegation will not result in the loss of an exemption under Rule 16b-3(d)(1) for Awards granted to Participants subject to Section 16 of the Exchange Act in respect of the Company and will not cause Awards intended to qualify as performance-based compensation under Code Section 162(m) to fail to so qualify. The Committee may appoint agents to assist it in administering the Plan.

(c) **Limitation of Liability.** The Committee and the Board, and each member thereof, shall be entitled to, in good faith, rely or act upon any report or other information furnished to him or her by any officer or Employee, the Company



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independent auditors, Consultants or any other agents assisting in the administration of the Plan. Members of the Committee and the Board, and any officer or Employee acting at the direction or on behalf of the Committee or the Board, shall not be personally liable for any action or determination taken or made in good faith with respect to the Plan, and shall, to the extent permitted by law, be fully indemnified and protected by the Company with respect to any such action or determination.

### **4. *Shares Subject to Plan.***

(a) ***Limitation on Overall Number of Shares Available for Delivery Under Plan.*** Subject to adjustment as provided in Section 10(c) hereof, the total number of Shares reserved and available for delivery under the Plan shall be 800,000 shares of common stock of the Company, par value \$.10 per share and 160,000 shares of Class B common stock of the Company, par value \$.10 per share. Any Shares that are subject to Awards of Options or Stock Appreciation Rights shall be counted against this limit as one (1) Share for every one (1) Share granted. Any Shares that are subject to Awards other than Options or Stock Appreciation Rights shall be counted against this limit as one and one-half (1.5) Shares for every one (1) Share granted. Any Shares delivered under the Plan may consist, in whole or in part, of authorized and unissued shares or treasury shares.

(b) ***Application of Limitation to Grants of Award.*** No Award may be granted if the number of Shares to be delivered in connection with such an Award or, in the case of an Award relating to Shares but settled only in cash (such as cash-only Stock Appreciation Rights), the number of Shares to which such Award relates, exceeds the number of Shares remaining available for delivery under the Plan, minus the number of Shares deliverable in settlement of or relating to then outstanding Awards. The Committee may adopt reasonable counting procedures to ensure appropriate counting, avoid double counting (as, for example, in the case of tandem or substitute awards) and make adjustments if the number of Shares actually delivered differs from the number of Shares previously counted in connection with an Award.

### **(c) *Availability of Shares Not Delivered under Awards and Adjustments to Limits.***

(i) If any Shares subject to an Award are forfeited, expire or otherwise terminate without issuance of such Shares, or any Award is settled for cash or otherwise does not result in the issuance of all or a portion of the Shares subject to such Award, the Shares shall, to the extent of such forfeiture, expiration, termination, cash settlement or non-issuance, again be available for Awards under the Plan, subject to Section 4(c)(v) below.

(ii) In the event that any Option or other Award granted hereunder is exercised through the tendering of Shares (either actually or by attestation) or by the withholding of Shares by the Company, or withholding tax liabilities arising from such option or other award are satisfied by the tendering of Shares (either actually or by attestation) or by the withholding of Shares by the Company, then only the number of Shares issued net of the Shares tendered or withheld shall be counted for purposes of determining the maximum number of Shares available for grant under the Plan.

(iii) Substitute Awards shall not reduce the Shares authorized for grant under the Plan or authorized for grant to a Participant in any period. Additionally, in the event that a company acquired by the Company or any Related Entity or with which the Company or any Related Entity combines has shares available under a pre-existing plan approved by shareholders and not adopted in contemplation of such acquisition or combination, the shares available for delivery pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for delivery under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not Employees or Directors prior to such acquisition or combination.

(iv) Any Share that again become available for delivery pursuant to this Section 4(c) shall be added back as one (1) Share if such Shares were subject to Options or Stock Appreciation Rights granted under the Plan, and as one and one-half (1.5) Shares if such Shares were subject to Awards other than Options or Stock Appreciation Rights granted under the Plan.

(v) Notwithstanding anything in this Section 4(c) to the contrary but subject to adjustment as provided in Section 10(c) hereof, the maximum aggregate number of Shares that may be issued under the Plan as a result of the exercise of the Incentive Stock Options shall be 500,000 shares of Company common stock, par value \$.10 per share and 100,000 shares of Class B common stock, par value \$.10 per share.

**5. *Eligibility; Per-Person Award Limitations.*** Awards may be granted under the Plan only to Eligible Persons. Subject to adjustment as provided in Section 10(c), in any fiscal year of the Company during any part of which the Plan is in effect, no Participant may be granted

(i) Options or Stock Appreciation Rights with respect to more than 100,000 Shares or (ii)



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Restricted Stock, Deferred Stock, Performance Shares and/or Other Stock-Based Awards with respect to more than 100,000 Shares. In addition, the maximum dollar value payable to any one Participant with respect to Performance Units is (x) \$3,000,000 with respect to any 12 month Performance Period (pro-rated for any Performance Period that is less than 12 months based upon the ratio of the number of days in the Performance Period as compared to 365), and (y) with respect to any Performance Period that is more than 12 months, \$3,000,000 multiplied by the number of full 12 months periods that are in the Performance Period.

### ***6. Specific Terms of Awards.***

(a) **General.** Awards may be granted on the terms and conditions set forth in this Section 6. In addition, the Committee may impose on any Award or the exercise thereof, at the date of grant or thereafter (subject to Section 10(e)), such additional terms and conditions, not inconsistent with the provisions of the Plan, as the Committee shall determine, including terms requiring forfeiture of Awards in the event of termination of the Participant's Continuous Service and terms permitting a Participant to make elections relating to his or her Award. Except in cases in which the Committee is authorized to require other forms of consideration under the Plan, or to the extent other forms of consideration must be paid to satisfy the requirements of Florida law, no consideration other than services may be required for the grant (as opposed to the exercise) of any Award.

(b) **Options.** The Committee is authorized to grant Options to any Eligible Person on the following terms and conditions:

(i) **Exercise Price.** Other than in connection with Substitute Awards, the exercise price per Share purchasable under an Option shall be determined by the Committee, provided that such exercise price shall not, be less than 100% of the Fair Market Value of a Share on the date of grant of the Option and shall not, in any event, be less than the par value of a Share on the date of grant of the Option. If an Employee owns or is deemed to own (by reason of the attribution rules applicable under Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the Code, respectively) and an Incentive Stock Option is granted to such employee, the exercise price of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no less than 110% of the Fair Market Value of a Share on the date such Incentive Stock Option is granted. Other than pursuant to Section 10(c), the Committee shall not be permitted to (A) lower the exercise price per Share of an Option after it is granted, (B) cancel an Option when the exercise price per Share exceeds the Fair Market Value of the underlying Shares in exchange for another Award (other than in connection with Substitute Awards), or (C) take any other action with respect to an Option that may be treated as a repricing, without approval of the Company's shareholders.

(ii) **Time and Method of Exercise.** The Committee shall determine the time or times at which or the circumstances under which an Option may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which Options shall cease to be or become exercisable following termination of Continuous Service or upon other conditions, the methods by which the exercise price may be paid or deemed to be paid (including in the discretion of the Committee a cashless exercise procedure), the form of such payment, including, without limitation, cash, Shares (including without limitation the withholding of Shares otherwise deliverable pursuant to the Award), other Awards or awards granted under other plans of the Company or a Related Entity, or other property (including notes or other contractual obligations of Participants to make payment on a deferred basis provided that such deferred payments are not in violation of the Sarbanes-Oxley Act of 2002, or any rule or regulation adopted thereunder or any other applicable law), and the methods by or forms in which Shares will be delivered or deemed to be delivered to Participants.

(iii) **Incentive Stock Options.** The terms of any Incentive Stock Option granted under the Plan shall comply in all respects with the provisions of Section 422 of the Code. Anything in the Plan to the contrary notwithstanding, no term of the Plan relating to Incentive Stock Options (including any Stock Appreciation Right issued in tandem therewith) shall be interpreted, amended or altered, nor shall any discretion or authority granted under the Plan be exercised, so as to disqualify either the Plan or any Incentive Stock Option under Section 422 of the Code, unless the Participant has first requested, or consents to, the change that will result in such disqualification. Thus, if and to the extent required to comply with Section 422 of the Code, Options granted as Incentive Stock Options shall be subject to the following special terms and conditions:

(A) the Option shall not be exercisable for more than ten years after the date such Incentive Stock Option is granted; provided, however, that if a Participant owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than 10% of the combined voting power of all classes of stock of the Company (or any parent corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the Code, respectively) and the Incentive Stock Option is granted to such Participant, the term of the Incentive Stock Option shall be (to the extent required by the Code at the time of the grant) for no more than five years from the date of grant; and

(B) The aggregate Fair Market Value (determined as of the date the Incentive Stock Option is granted) of the Shares with respect to which Incentive Stock Options granted under the Plan and all other option plans of the Company (and any parent



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corporation or subsidiary corporation of the Company, as those terms are defined in Sections 424(e) and (f) of the Code, respectively) that become exercisable for the first time by the Participant during any calendar year shall not (to the extent required by the Code at the time of the grant) exceed \$100,000.

(c) ***Stock Appreciation Rights***. The Committee may grant Stock Appreciation Rights to any Eligible Person in conjunction with all or part of any Option granted under the Plan or at any subsequent time during the term of such Option (a Tandem Stock Appreciation Right ), or without regard to any Option (a Freestanding Stock Appreciation Right ), in each case upon such terms and conditions as the Committee may establish in its sole discretion, not inconsistent with the provisions of the Plan, including the following:

(i) ***Right to Payment***. A Stock Appreciation Right shall confer on the Participant to whom it is granted a right to receive, upon exercise thereof, the excess of (A) the Fair Market Value of one Share on the date of exercise over (B) the grant price of the Stock Appreciation Right as determined by the Committee. The grant price of a Stock Appreciation Right shall not be less than 100% of the Fair Market Value of a Share on the date of grant, in the case of a Freestanding Stock Appreciation Right, or less than the associated Option exercise price, in the case of a Tandem Stock Appreciation Right. Other than pursuant to Section 10(c), the Committee shall not be permitted to (A) lower the grant price per Share of a Stock Appreciation Right after it is granted, (B) cancel a Stock Appreciation Right when the grant price per Share exceeds the Fair Market Value of the underlying Shares in exchange for another Award (other than in connection with Substitute Awards), or (C) take any other action with respect to a Stock Appreciation Right that may be treated as a repricing, without shareholder approval.

(ii) ***Other Terms***. The Committee shall determine at the date of grant or thereafter, the time or times at which and the circumstances under which a Stock Appreciation Right may be exercised in whole or in part (including based on achievement of performance goals and/or future service requirements), the time or times at which Stock Appreciation Rights shall cease to be or become exercisable following termination of Continuous Service or upon other conditions, the method of exercise, method of settlement, form of consideration payable in settlement, method by or forms in which Shares will be delivered or deemed to be delivered to Participants, whether or not a Stock Appreciation Right shall be in tandem or in combination with any other Award, and any other terms and conditions of any Stock Appreciation Right.

(iii) ***Tandem Stock Appreciation Rights***. Any Tandem Stock Appreciation Right may be granted at the same time as the related Option is granted or, for Options that are not Incentive Stock Options, at any time thereafter before exercise or expiration of such Option. Any Tandem Stock Appreciation Right related to an Option may be exercised only when the related Option would be exercisable and the Fair Market Value of the Shares subject to the related Option exceeds the exercise price at which Shares can be acquired pursuant to the Option. In addition, if a Tandem Stock Appreciation Right exists with respect to less than the full number of Shares covered by a related Option, then an exercise or termination of such Option shall not reduce the number of Shares to which the Tandem Stock Appreciation Right applies until the number of Shares then exercisable under such Option equals the number of Shares to which the Tandem Stock Appreciation Right applies. Any Option related to a Tandem Stock Appreciation Right shall no longer be exercisable to the extent the Tandem Stock Appreciation Right has been exercised, and any Tandem Stock Appreciation Right shall no longer be exercisable to the extent the related Option has been exercised.

(d) ***Restricted Stock Awards***. The Committee is authorized to grant Restricted Stock Awards to any Eligible Person on the following terms and conditions:

(i) ***Grant and Restrictions***. Restricted Stock Awards shall be subject to such restrictions on transferability, risk of forfeiture and other restrictions, if any, as the Committee may impose, or as otherwise provided in this Plan, covering a period of time specified by the Committee (the Restriction Period ). The terms of any Restricted Stock Award granted under the Plan shall be set forth in a written Award Agreement which shall contain provisions determined by the Committee and not inconsistent with the Plan. The restrictions may lapse separately or in combination at such times, under such circumstances (including based on achievement of performance goals and/or future service requirements), in such installments or otherwise, as the Committee may determine at the date of grant or thereafter. Except to the extent restricted under the terms of the Plan and any Award Agreement relating to a Restricted Stock Award, a Participant granted Restricted Stock shall have all of the rights of a shareholder, including the right to vote the Restricted Stock and the right to receive dividends thereon (subject to any mandatory reinvestment or other requirement imposed by the Committee). During the Restriction Period, subject to Section 10(b) below, the Restricted Stock may not be sold, transferred, pledged, hypothecated, margined or otherwise encumbered by the Participant.

(ii) ***Forfeiture***. Except as otherwise determined by the Committee, upon termination of a Participant's Continuous Service during the applicable Restriction Period, the Participant's Restricted Stock that is at that time subject to a risk of forfeiture that has not lapsed or otherwise been satisfied shall be forfeited and reacquired by the Company; provided that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that forfeiture conditions relating to Restricted Stock Awards shall be waived in whole or in part in the event of terminations resulting from specified causes.



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(iii) ***Certificates for Stock.*** Restricted Stock granted under the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing Restricted Stock are registered in the name of the Participant, the Committee may require that such certificates bear an appropriate legend referring to the terms, conditions and restrictions applicable to such Restricted Stock, that the Company retain physical possession of the certificates, and that the Participant deliver a stock power to the Company, endorsed in blank, relating to the Restricted Stock.

(iv) ***Dividends and Splits.*** As a condition to the grant of a Restricted Stock Award, the Committee may require or permit a Participant to elect that any cash dividends paid on a Share of Restricted Stock be automatically reinvested in additional Shares of Restricted Stock or applied to the purchase of additional Awards under the Plan. Unless otherwise determined by the Committee, Shares distributed in connection with a stock split or stock dividend, and other property distributed as a dividend, shall be subject to restrictions and a risk of forfeiture to the same extent as the Restricted Stock with respect to which such Shares or other property have been distributed.

(e) ***Deferred Stock Award.*** The Committee is authorized to grant Deferred Stock Awards to any Eligible Person on the following terms and conditions:

(i) ***Award and Restrictions.*** Satisfaction of a Deferred Stock Award shall occur upon expiration of the deferral period specified for such Deferred Stock Award by the Committee (or, if permitted by the Committee, as elected by the Participant). In addition, a Deferred Stock Award shall be subject to such restrictions (which may include a risk of forfeiture) as the Committee may impose, if any, which restrictions may lapse at the expiration of the deferral period or at earlier specified times (including based on achievement of performance goals and/or future service requirements), separately or in combination, in installments or otherwise, as the Committee may determine. A Deferred Stock Award may be satisfied by delivery of Shares, cash equal to the Fair Market Value of the specified number of Shares covered by the Deferred Stock, or a combination thereof, as determined by the Committee at the date of grant or thereafter. Prior to satisfaction of a Deferred Stock Award, a Deferred Stock Award carries no voting or dividend or other rights associated with Share ownership.

(ii) ***Forfeiture.*** Except as otherwise determined by the Committee, upon termination of a Participant's Continuous Service during the applicable deferral period or portion thereof to which forfeiture conditions apply (as provided in the Award Agreement evidencing the Deferred Stock Award), the Participant's Deferred Stock Award that is at that time subject to a risk of forfeiture that has not lapsed or otherwise been satisfied shall be forfeited; provided that the Committee may provide, by rule or regulation or in any Award Agreement, or may determine in any individual case, that forfeiture conditions relating to a Deferred Stock Award shall be waived in whole or in part in the event of terminations resulting from specified causes, and the Committee may in other cases waive in whole or in part the forfeiture of any Deferred Stock Award.

(iii) ***Dividend Equivalents.*** Unless otherwise determined by the Committee at date of grant, any Dividend Equivalents that are granted with respect to any Deferred Stock Award shall be either (A) paid with respect to such Deferred Stock Award at the dividend payment date in cash or in Shares of unrestricted stock having a Fair Market Value equal to the amount of such dividends, or (B) deferred with respect to such Deferred Stock Award and the amount or value thereof automatically deemed reinvested in additional Deferred Stock, other Awards or other investment vehicles, as the Committee shall determine or permit the Participant to elect.

(f) ***Bonus Stock and Awards in Lieu of Obligations.*** The Committee is authorized to grant Shares to any Eligible Persons as a bonus, or to grant Shares or other Awards in lieu of obligations to pay cash or deliver other property under the Plan or under other plans or compensatory arrangements, provided that, in the case of Eligible Persons subject to Section 16 of the Exchange Act, the amount of such grants remains within the discretion of the Committee to the extent necessary to ensure that acquisitions of Shares or other Awards are exempt from liability under Section 16(b) of the Exchange Act. Shares or Awards granted hereunder shall be subject to such other terms as shall be determined by the Committee.

(g) ***Dividend Equivalents.*** The Committee is authorized to grant Dividend Equivalents to any Eligible Person entitling the Eligible Person to receive cash, Shares, other Awards, or other property equal in value to the dividends paid with respect to a specified number of Shares, or other periodic payments. Dividend Equivalents may be awarded on a free-standing basis or in connection with another Award. The Committee may provide that Dividend Equivalents shall be paid or distributed when accrued or shall be deemed to have been reinvested in additional Shares, Awards, or other investment vehicles, and subject to such restrictions on transferability and risks of forfeiture, as the Committee may specify.

(h) ***Performance Awards.*** The Committee is authorized to grant Performance Awards to any Eligible Person payable in cash, Shares, or other Awards, on terms and conditions established by the Committee, subject to the provisions

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of Section 8 if and to the extent that the Committee shall, in its sole discretion, determine that an Award shall be subject to those provisions. The performance criteria to be achieved during any Performance Period and the length of the Performance Period shall be determined by the Committee upon the grant of each Performance Award. Except as provided in Section 9 or as may be provided in an Award Agreement, Performance Awards will be distributed only after the end of the relevant Performance Period. The performance goals to be achieved for each Performance Period shall be conclusively determined by the Committee and may be based upon the criteria set forth in Section 8(b), or in the case of an Award that the Committee determines shall not be subject to Section 8 hereof, any other criteria that the Committee, in its sole discretion, shall determine should be used for that purpose. The amount of the Award to be distributed shall be conclusively determined by the Committee. Performance Awards may be paid in a lump sum or in installments following the close of the Performance Period or, in accordance with procedures established by the Committee, on a deferred basis.

(i) **Other Stock-Based Awards.** The Committee is authorized, subject to limitations under applicable law, to grant to any Eligible Person such other Awards that may be denominated or payable in, valued in whole or in part by reference to, or otherwise based on, or related to, Shares, as deemed by the Committee to be consistent with the purposes of the Plan. Other Stock-Based Awards may be granted to Participants either alone or in addition to other Awards granted under the Plan, and such Other Stock-Based Awards shall also be available as a form of payment in the settlement of other Awards granted under the Plan. The Committee shall determine the terms and conditions of such Awards. Shares delivered pursuant to an Award in the nature of a purchase right granted under this Section 6(i) shall be purchased for such consideration, (including without limitation loans from the Company or a Related Entity provided that such loans are not in violation of the Sarbanes Oxley Act of 2002, or any rule or regulation adopted thereunder or any other applicable law) paid for at such times, by such methods, and in such forms, including, without limitation, cash, Shares, other Awards or other property, as the Committee shall determine.

### ***7. Certain Provisions Applicable to Awards.***

(a) **Stand-Alone, Additional, Tandem, and Substitute Awards.** Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, or in substitution or exchange for, any other Award or any award granted under another plan of the Company, any Related Entity, or any business entity to be acquired by the Company or a Related Entity, or any other right of a Participant to receive payment from the Company or any Related Entity. Such additional, tandem, and substitute or exchange Awards may be granted at any time. If an Award is granted in substitution or exchange for another Award or award, the Committee shall require the surrender of such other Award or award in consideration for the grant of the new Award. In addition, Awards may be granted in lieu of cash compensation, including in lieu of cash amounts payable under other plans of the Company or any Related Entity, in which the value of Stock subject to the Award is equivalent in value to the cash compensation (for example, Deferred Stock or Restricted Stock), or in which the exercise price, grant price or purchase price of the Award in the nature of a right that may be exercised is equal to the Fair Market Value of the underlying Stock minus the value of the cash compensation surrendered (for example, Options or Stock Appreciation Right granted with an exercise price or grant price discounted by the amount of the cash compensation surrendered).

(b) **Term of Awards.** The term of each Award shall be for such period as may be determined by the Committee; provided that in no event shall the term of any Option or Stock Appreciation Right exceed a period of ten years (or in the case of an Incentive Stock Option such shorter term as may be required under Section 422 of the Code).

(c) **Form and Timing of Payment Under Awards; Deferrals.** Subject to the terms of the Plan and any applicable Award Agreement, payments to be made by the Company or a Related Entity upon the exercise of an Option or other Award or settlement of an Award may be made in such forms as the Committee shall determine, including, without limitation, cash, Shares, other Awards or other property, and may be made in a single payment or transfer, in installments, or on a deferred basis. Any installment or deferral provided for in the preceding sentence shall, however, be subject to the Company's compliance with the provisions of the Sarbanes-Oxley Act of 2002, the rules and regulations adopted by the Securities and Exchange Commission thereunder, and all applicable rules of the Nasdaq Stock Market or any national securities exchange on which the Company's securities are listed for trading and, if not listed for trading on either the Nasdaq Stock Market or a national securities exchange, then the rules of the Nasdaq Stock Market. The settlement of any Award may be accelerated, and cash paid in lieu of Shares in connection with such settlement, in the discretion of the Committee or upon occurrence of one or more specified events (in addition to a Change in Control). Installment or deferred payments may be required by the Committee (subject to Section 10(e) of the Plan, including the consent provisions thereof in the case of any deferral of an outstanding Award not provided for in the original Award Agreement) or permitted at the election of the Participant on terms and conditions established by the Committee. The Committee may, without limitation, make provision for the payment or crediting of a reasonable interest rate on installment or deferred payments or the grant or crediting of Dividend Equivalents or other amounts in respect of installment or deferred payments denominated in Shares.

(d) **Exemptions from Section 16(b) Liability.** It is the intent of the Company that the grant of any Awards to or other transaction by a Participant who is subject to Section 16 of the Exchange Act shall be exempt from Section 16 pursuant



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to an applicable exemption (except for transactions acknowledged in writing to be non-exempt by such Participant). Accordingly, if any provision of this Plan or any Award Agreement does not comply with the requirements of Rule 16b-3 then applicable to any such transaction, such provision shall be construed or deemed amended to the extent necessary to conform to the applicable requirements of Rule 16b-3 so that such Participant shall avoid liability under Section 16(b).

### **(e) *Code Section 409A.***

(i) If any Award constitutes a nonqualified deferred compensation plan under Section 409A of the Code (a Section 409A Plan), then the Award shall be subject to the following additional requirements, if and to the extent required to comply with Section 409A of the Code:

(A) Payments under the Section 409A Plan may not be made earlier than (u) the Participant's separation from service, (v) the date the Participant becomes disabled, (w) the Participant's death, (x) a specified time (or pursuant to a fixed schedule) specified in the Award Agreement at the date of the deferral of such compensation, (y) a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or (z) the occurrence of an unforeseeable emergency;

(B) The time or schedule for any payment of the deferred compensation may not be accelerated, except to the extent provided in applicable Treasury Regulations or other applicable guidance issued by the Internal Revenue Service;

(C) Any elections with respect to the deferral of such compensation or the time and form of distribution of such deferred compensation shall comply with the requirements of Section 409A(a)(4) of the Code; and

(D) In the case of any Participant who is specified employee, a distribution on account of a separation from service may not be made before the date which is six months after the date of the Participant's separation from service (or, if earlier, the date of the Participant's death).

For purposes of the foregoing, the terms in quotation marks in the foregoing paragraph, all shall be defined in the same manner as those terms are defined for purposes of Section 409A of the Code, and the limitations set forth herein shall be applied in such manner (and only to the extent) as shall be necessary to comply with any requirements of Section 409A of the Code that are applicable to the Award.

(ii) The Award Agreement for any Award that the Committee reasonably determines to constitute a Section 409A Plan, and the provisions of the Plan applicable to that Award, shall be construed in a manner consistent with the applicable requirements of Section 409A, and the Committee, in its sole discretion and without the consent of any Participant, may amend any Award Agreement (and the provisions of the Plan applicable thereto) if and to the extent that the Committee determines that such amendment is necessary or appropriate to comply with the requirements of Section 409A of the Code. No Section 409A Plan shall be adjusted, modified or substituted for, pursuant to any provision of this Plan, without the consent of the Participant if any such adjustment, modification or substitution would cause the Section 409A Plan to violate the requirements of Section 409A of the Code.

### **8. *Code Section 162(m) Provisions.***

(a) ***Covered Employees.*** The Committee, in its discretion, may determine at the time an Award is granted to an Eligible Person who is, or is likely to be, as of the end of the tax year in which the Company would claim a tax deduction in connection with such Award, a Covered Employee, that the provisions of this Section 8 shall be applicable to such Award.

(b) ***Performance Criteria.*** If an Award is subject to this Section 8, then the lapsing of restrictions thereon and the distribution of cash, Shares or other property pursuant thereto, as applicable, shall be contingent upon achievement of one or more objective performance goals. Performance goals shall be objective and shall otherwise meet the requirements of Section 162(m) of the Code and regulations thereunder including the requirement that the level or levels of performance targeted by the Committee result in the achievement of performance goals being substantially uncertain. One or more of the following business criteria for the Company, on a consolidated basis, and/or for Related Entities, or for business or geographical units of the Company and/or a Related Entity (except with respect to the total shareholder return and earnings per share criteria), shall be used by the Committee in establishing performance goals for such Awards: (1) earnings per share; (2) revenues or margins; (3) cash flow; (4) operating margin; (5) return on net assets, investment, capital, or equity; (6) economic value added; (7) direct contribution; (8) net income; pretax earnings; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; earnings after interest expense and before extraordinary or special items; operating income; income before interest income or expense, unusual items and income taxes, local, state or federal and excluding budgeted and actual bonuses which might be paid under any ongoing bonus plans of the Company; (9) working capital; (10) management of fixed costs or variable costs; (11) identification or consummation of investment opportunities or completion of specified projects in accordance with corporate business plans, including strategic mergers, acquisitions or divestitures; (12) total shareholder return; (13) debt reduction; (14) market share; (15) entry into new markets, either geographically or by business unit; (16) customer

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retention and satisfaction; (17) strategic plan development and implementation, including turnaround plans; and/or (18) the Fair Market Value of a Share. Any of the above goals may be determined on an absolute or relative basis or as compared to the performance of a

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published or special index deemed applicable by the Committee including, but not limited to, the Standard & Poor's 500 Stock Index or a group of companies that are comparable to the Company. The Committee shall exclude the impact of an event or occurrence which the Committee determines should appropriately be excluded, including without limitation (i) restructurings, discontinued operations, extraordinary items, and other unusual or non-recurring charges, (ii) an event either not directly related to the operations of the Company or not within the reasonable control of the Company's management, or (iii) a change in accounting standards required by generally accepted accounting principles.

(c) **Performance Period; Timing For Establishing Performance Goals.** Achievement of performance goals in respect of Performance Awards shall be measured over a Performance Period, as specified by the Committee. Performance goals shall be established not later than 90 days after the beginning of any Performance Period applicable to such Performance Awards, or at such other date as may be required or permitted for performance-based compensation under Code Section 162(m).

(d) **Adjustments.** The Committee may, in its discretion, reduce the amount of a settlement otherwise to be made in connection with Awards subject to this Section 8, but may not exercise discretion to increase any such amount payable to a Covered Employee in respect of an Award subject to this Section 8. The Committee shall specify the circumstances in which such Awards shall be paid or forfeited in the event of termination of Continuous Service by the Participant prior to the end of a Performance Period or settlement of Awards.

(e) **Committee Certification.** No Participant shall receive any payment under the Plan that is subject to this Section 8 unless the Committee has certified, by resolution or other appropriate action in writing, that the performance criteria and any other material terms previously established by the Committee or set forth in the Plan, have been satisfied to the extent necessary to qualify as performance based compensation under Code Section 162(m).

## 9. Change in Control.

(a) **Effect of Change in Control.** Subject to Section 9(a)(iv), and if and only to the extent provided in the Award Agreement, or to the extent otherwise determined by the Committee, upon the occurrence of a Change in Control, as defined in Section 9(b):

(i) Any Option or Stock Appreciation Right that was not previously vested and exercisable as of the time of the Change in Control, shall become immediately vested and exercisable, subject to applicable restrictions set forth in Section 10(a) hereof.

(ii) Any restrictions, deferral of settlement, and forfeiture conditions applicable to a Restricted Stock Award, Deferred Stock Award or an Other Stock-Based Award subject only to future service requirements granted under the Plan shall lapse and such Awards shall be deemed fully vested as of the time of the Change in Control, except to the extent of any waiver by the Participant and subject to applicable restrictions set forth in Section 10(a) hereof.

(iii) With respect to any outstanding Award subject to achievement of performance goals and conditions under the Plan, the Committee may, in its discretion, deem such performance goals and conditions as having been met as of the date of the Change in Control.

(iv) Notwithstanding the foregoing or any provision in any Award Agreement to the contrary, if in the event of a Change in Control the successor company assumes or substitutes for an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award, then each such outstanding Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award shall not be accelerated as described in Sections 9(a)(i), (ii) and (iii). For the purposes of this Section 9(a)(iv), an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award shall be considered assumed or substituted for if following the Change in Control the Award confers the right to purchase or receive, for each Share subject to the Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award immediately prior to the Change in Control, the consideration (whether stock, cash or other securities or property) received in the transaction constituting a Change in Control by holders of Shares for each Share held on the effective date of such transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares); provided, however, that if such consideration received in the transaction constituting a Change in Control is not solely common stock of the successor company or its parent or subsidiary, the Committee may, with the consent of the successor company or its parent or subsidiary, provide that the consideration to be received upon the exercise or vesting of an Option, Stock Appreciation Right, Restricted Stock Award, Deferred Stock Award or Other Stock-Based Award, for each Share subject thereto, will be solely common stock of the successor company or its parent or subsidiary substantially equal in fair market value to the per share consideration received by holders of Shares in the transaction constituting a Change in Control. The determination of such

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substantial equality of value of consideration shall be made by the Committee in its sole discretion and its determination shall be conclusive and binding. Notwithstanding the foregoing, on such terms and conditions as may be set forth in an Award Agreement, in the event of a termination of a Participant's employment in such successor company (other than for Cause) within 24 months following such Change in Control, each Award held by such Participant at the time of the Change in Control shall be accelerated as described in Sections 9(a)(i), (ii) and (iii) above.

(b) **Definition of Change in Control**. Unless otherwise specified in an Award Agreement, a Change in Control shall mean the occurrence of any of the following:

(i) The acquisition by any Person of Beneficial Ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of more than fifty percent (50%) of either (A) the value of then outstanding equity securities of the Company (the Outstanding Company Stock) or (B) the combined voting power of the then outstanding voting securities of the Company entitled to vote generally in the election of directors (the Outstanding Company Voting Securities) (the foregoing Beneficial Ownership hereinafter being referred to as a Controlling Interest); provided, however, that for purposes of this Section 9(b), the following acquisitions shall not constitute or result in a Change in Control: (v) any acquisition directly from the Company; (w) any acquisition by the Company; (x) any acquisition by any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest; (y) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Related Entity; or (z) any acquisition by any entity pursuant to a transaction which complies with clauses (A), (B) and (C) of subsection (iii) below; or

(ii) During any period of two (2) consecutive years (not including any period prior to the Effective Date) individuals who constitute the Board on the Effective Date (the Incumbent Board) cease for any reason to constitute at least a majority of the Board; provided, however, that any individual becoming a director subsequent to the Effective Date whose election, or nomination for election by the Company's shareholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board; or

(iii) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar transaction involving the Company or any of its Related Entities, a sale or other disposition of all or substantially all of the assets of the Company, or the acquisition of assets or equity of another entity by the Company or any of its Related Entities (each a Business Combination), in each case, unless, following such Business Combination, (A) all or substantially all of the individuals and entities who were the Beneficial Owners, respectively, of the Outstanding Company Stock and Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than fifty percent (50%) of the value of the then outstanding equity securities and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of members of the board of directors (or comparable governing body of an entity that does not have such a board), as the case may be, of the entity resulting from such Business Combination (including, without limitation, an entity which as a result of such transaction owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership, immediately prior to such Business Combination of the Outstanding Company Stock and Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any employee benefit plan (or related trust) of the Company or such entity resulting from such Business Combination or any Person that as of the Effective Date owns Beneficial Ownership of a Controlling Interest) beneficially owns, directly or indirectly, fifty percent (50%) or more of the value of the then outstanding equity securities of the entity resulting from such Business Combination or the combined voting power of the then outstanding voting securities of such entity except to the extent that such ownership existed prior to the Business Combination and (C) at least a majority of the members of the Board of Directors or other governing body of the entity resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement, or of the action of the Board, providing for such Business Combination; or

(iv) Approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

## **10. General Provisions.**

(a) **Compliance With Legal and Other Requirements**. The Company may, to the extent deemed necessary or advisable by the Committee, postpone the issuance or delivery of Shares or payment of other benefits under any Award until completion of such registration or qualification of such Shares or other required action under any federal or state law, rule or regulation, listing or other required action with respect to any stock exchange or automated quotation system upon which the Shares or other Company securities are listed or quoted, or compliance with any other obligation of the Company, as the



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Committee, may consider appropriate, and may require any Participant to make such representations, furnish such information and comply with or be subject to such other conditions as it may consider appropriate in connection with the issuance or delivery of Shares or payment of other benefits in compliance with applicable laws, rules, and regulations, listing requirements, or other obligations.

(b) ***Limits on Transferability; Beneficiaries.*** No Award or other right or interest granted under the Plan shall be pledged, hypothecated or otherwise encumbered or subject to any lien, obligation or liability of such Participant to any party, or assigned or transferred by such Participant otherwise than by will or the laws of descent and distribution or to a Beneficiary upon the death of a Participant, and such Awards or rights that may be exercisable shall be exercised during the lifetime of the Participant only by the Participant or his or her guardian or legal representative, except that Awards and other rights (other than Incentive Stock Options and Stock Appreciation Rights in tandem therewith) may be transferred to one or more Beneficiaries or other transferees during the lifetime of the Participant, and may be exercised by such transferees in accordance with the terms of such Award, but only if and to the extent such transfers are permitted by the Committee pursuant to the express terms of an Award Agreement (subject to any terms and conditions which the Committee may impose thereon). A Beneficiary, transferee, or other person claiming any rights under the Plan from or through any Participant shall be subject to all terms and conditions of the Plan and any Award Agreement applicable to such Participant, except as otherwise determined by the Committee, and to any additional terms and conditions deemed necessary or appropriate by the Committee.

(c) ***Adjustments.***

(i) ***Adjustments to Awards.*** In the event that any extraordinary dividend or other distribution (whether in the form of cash, Shares, or other property), recapitalization, forward or reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, share exchange, liquidation, dissolution or other similar corporate transaction or event affects the Shares and/or such other securities of the Company or any other issuer such that a substitution, exchange, or adjustment is determined by the Committee to be appropriate, then the Committee shall, in such manner as it may deem equitable, substitute, exchange or adjust any or all of (A) the number and kind of Shares which may be delivered in connection with Awards granted thereafter, (B) the number and kind of Shares by which annual per-person Award limitations are measured under Section 5 hereof, (C) the number and kind of Shares subject to or deliverable in respect of outstanding Awards, (D) the exercise price, grant price or purchase price relating to any Award and/or make provision for payment of cash or other property in respect of any outstanding Award, and (E) any other aspect of any Award that the Committee determines to be appropriate.

(ii) ***Adjustments in Case of Certain Transactions.*** In the event of any merger, consolidation or other reorganization in which the Company does not survive, or in the event of any Change in Control, any outstanding Awards may be dealt with in accordance with any of the following approaches, as determined by the agreement effectuating the transaction or, if and to the extent not so determined, as determined by the Committee: (a) the continuation of the outstanding Awards by the Company, if the Company is a surviving entity, (b) the assumption or substitution for, as those terms are defined in Section 9(b)(iv) hereof, the outstanding Awards by the surviving entity or its parent or subsidiary, (c) full exercisability or vesting and accelerated expiration of the outstanding Awards, or (d) settlement of the value of the outstanding Awards in cash or cash equivalents or other property followed by cancellation of such Awards (which value, in the case of Options or Stock Appreciation Rights, shall be measured by the amount, if any, by which the Fair Market Value of a Share exceeds the exercise or grant price of the Option or Stock Appreciation Right as of the effective date of the transaction). The Committee shall give written notice of any proposed transaction referred to in this Section 10(c)(ii) a reasonable period of time prior to the closing date for such transaction (which notice may be given either before or after the approval of such transaction), in order that Participants may have a reasonable period of time prior to the closing date of such transaction within which to exercise any Awards that are then exercisable (including any Awards that may become exercisable upon the closing date of such transaction). A Participant may condition his exercise of any Awards upon the consummation of the transaction.

(iii) ***Other Adjustments.*** The Committee (and the Board if and only to the extent such authority is not required to be exercised by the Committee to comply with Section 162(m) of the Code) is authorized to make adjustments in the terms and conditions of, and the criteria included in, Awards (including Performance Awards, or performance goals relating thereto) in recognition of unusual or nonrecurring events (including, without limitation, acquisitions and dispositions of businesses and assets) affecting the Company, any Related Entity or any business unit, or the financial statements of the Company or any Related Entity, or in response to changes in applicable laws, regulations, accounting principles, tax rates and regulations or business conditions or in view of the Committee's assessment of the business strategy of the Company, any Related Entity or business unit thereof, performance of comparable organizations, economic and business conditions, personal performance of a Participant, and any other circumstances deemed relevant; provided that no such adjustment shall be authorized or made if and to the extent that such authority or the making of such adjustment would cause Options, Stock Appreciation Rights, Performance Awards granted pursuant to Section 8(b) hereof to Participants designated by the Committee as Covered Employees and intended to qualify as performance-based compensation under Code Section 162(m) and the regulations thereunder to otherwise fail to qualify as performance-based compensation under Code Section 162(m) and regulations thereunder.



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(d) **Taxes.** The Company and any Related Entity are authorized to withhold from any Award granted, any payment relating to an Award under the Plan, including from a distribution of Shares, or any payroll or other payment to a Participant, amounts of withholding and other taxes due or potentially payable in connection with any transaction involving an Award, and to take such other action as the Committee may deem advisable to enable the Company or any Related Entity and Participants to satisfy obligations for the payment of withholding taxes and other tax obligations relating to any Award. This authority shall include authority to withhold or receive Shares or other property and to make cash payments in respect thereof in satisfaction of a Participant's tax obligations, either on a mandatory or elective basis in the discretion of the Committee.

(e) **Changes to the Plan and Awards.** The Board may amend, alter, suspend, discontinue or terminate the Plan, or the Committee's authority to grant Awards under the Plan, without the consent of shareholders or Participants, except that any amendment or alteration to the Plan shall be subject to the approval of the Company's shareholders not later than the annual meeting next following such Board action if such shareholder approval is required by any federal or state law or regulation (including, without limitation, Rule 16b-3 or Code Section 162(m)) or the rules of any stock exchange or automated quotation system on which the Shares may then be listed or quoted, and the Board may otherwise, in its discretion, determine to submit other such changes to the Plan to shareholders for approval; provided that, without the consent of an affected Participant, no such Board action may materially and adversely affect the rights of such Participant under any previously granted and outstanding Award. The Committee may waive any conditions or rights under, or amend, alter, suspend, discontinue or terminate any Award theretofore granted and any Award Agreement relating thereto, except as otherwise provided in the Plan; provided that, without the consent of an affected Participant, no such Committee or the Board action may materially and adversely affect the rights of such Participant under such Award.

(f) **Limitation on Rights Conferred Under Plan.** Neither the Plan nor any action taken hereunder or under any Award shall be construed as (i) giving any Eligible Person or Participant the right to continue as an Eligible Person or Participant or in the employ or service of the Company or a Related Entity; (ii) interfering in any way with the right of the Company or a Related Entity to terminate any Eligible Person's or Participant's Continuous Service at any time, (iii) giving an Eligible Person or Participant any claim to be granted any Award under the Plan or to be treated uniformly with other Participants and Employees, or (iv) conferring on a Participant any of the rights of a shareholder of the Company including, without limitation, any right to receive dividends or distributions, any right to vote or act by written consent, any right to attend meetings of shareholders or any right to receive any information concerning the Company's business, financial condition, results of operation or prospects, unless and until such time as the Participant is duly issued Shares on the stock books of the Company in accordance with the terms of an Award. None of the Company, its officers or its directors shall have any fiduciary obligation to the Participant with respect to any Awards unless and until the Participant is duly issued Shares pursuant to the Award on the stock books of the Company in accordance with the terms of an Award. Neither the Company nor any of the Company's officers, directors, representatives or agents are granting any rights under the Plan to the Participant whatsoever, oral or written, express or implied, other than those rights expressly set forth in this Plan or the Award Agreement.

(g) **Unfunded Status of Awards; Creation of Trusts.** The Plan is intended to constitute an unfunded plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant or obligation to deliver Shares pursuant to an Award, nothing contained in the Plan or any Award shall give any such Participant any rights that are greater than those of a general creditor of the Company; provided that the Committee may authorize the creation of trusts and deposit therein cash, Shares, other Awards or other property, or make other arrangements to meet the Company's obligations under the Plan. Such trusts or other arrangements shall be consistent with the unfunded status of the Plan unless the Committee otherwise determines with the consent of each affected Participant. The trustee of such trusts may be authorized to dispose of trust assets and reinvest the proceeds in alternative investments, subject to such terms and conditions as the Committee may specify and in accordance with applicable law.

(h) **Nonexclusivity of the Plan.** Neither the adoption of the Plan by the Board nor its submission to the shareholders of the Company for approval shall be construed as creating any limitations on the power of the Board or a committee thereof to adopt such other incentive arrangements as it may deem desirable including incentive arrangements and awards which do not qualify under Section 162(m) of the Code.

(i) **Payments in the Event of Forfeitures; Fractional Shares.** Unless otherwise determined by the Committee, in the event of a forfeiture of an Award with respect to which a Participant paid cash or other consideration, the Participant shall be repaid the amount of such cash or other consideration. No fractional Shares shall be issued or delivered pursuant to the Plan or any Award. The Committee shall determine whether cash, other Awards or other property shall be issued or paid in lieu of such fractional shares or whether such fractional shares or any rights thereto shall be forfeited or otherwise eliminated.

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(j) **Governing Law.** The validity, construction and effect of the Plan, any rules and regulations under the Plan, and any Award Agreement shall be determined in accordance with the laws of the State of Delaware without giving effect to principles of conflict of laws, and applicable federal law.

(k) **Non-U.S. Laws.** The Committee shall have the authority to adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of foreign countries in which the Company or its Related Entities may operate to assure the viability of the benefits from Awards granted to Participants performing services in such countries and to meet the objectives of the Plan.

(l) **Plan Effective Date and Shareholder Approval; Termination of Plan.** The Plan shall become effective on the Effective Date, subject to subsequent approval, within 12 months of its adoption by the Board, by shareholders of the Company eligible to vote in the election of directors, by a vote sufficient to meet the requirements of Code Sections 162(m) (if applicable) and 422, Rule 16b-3 under the Exchange Act (if applicable), applicable requirements under the rules of any stock exchange or automated quotation system on which the Shares may be listed or quoted, and other laws, regulations, and obligations of the Company applicable to the Plan. Awards may be granted subject to shareholder approval, but may not be exercised or otherwise settled in the event the shareholder approval is not obtained. The Plan shall terminate at the earliest of (a) such time as no Shares remain available for issuance under the Plan, (b) termination of this Plan by the Board, or (c) the tenth anniversary of the Effective Date. Awards outstanding upon expiration of the Plan shall remain in effect until they have been exercised or terminated, or have expired.

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Appendix C

**Charter of the  
Compensation Committee  
of Gencor Industries, Inc.**

This Compensation Committee Charter (this Charter) was adopted by the Board of Directors (the Board) of Gencor Industries, Inc., a Florida corporation on August 7, 2008.

**Purpose**

The purpose of the Compensation Committee (the Committee) shall be to:

- (1) determine or recommend to the Board for determination, the compensation of the Chief Executive Officer (the CEO) of the Company and (in cooperation with the CEO) the President of the Company,
- (2) determine or recommend to the Board for determination, the compensation of all other executive officers of the Company after reviewing and taking into account the recommendations of the CEO, and
- (3) discharge the responsibilities of the Board relating to the Company's compensation programs and compensation of the Company's executive and directors.

The Board shall determine whether the Committee shall make determinations as a Committee or shall make recommendations to the Board.

**Composition**

The Committee shall consist of two or more members of the Board, each of whom is determined to be independent under the rules of Nasdaq.

**Appointment and Removal**

The members of the Committee shall be elected by a majority vote of the Board. A member shall serve until such member's successor is duly elected or until such member's earlier resignation or removal. The members of the Committee may be removed, with or without cause, by a majority vote of the Board.

**Chairman**

Unless a chairman is elected by the full Board, the members of the Committee shall designate a Chairman by majority vote of the Committee membership. The Chairman will chair all regulatory sessions of the Committee and set the agendas for the Committee meetings.

**Meetings**

The Committee shall meet as frequently as circumstances dictate. The Chairman of the Committee or a majority of the members of the Committee may call meetings of the Committee. Any one or more of the members of the Committee may participate in a meeting of the Committee by means of a conference call or similar communication device by means of which all persons participating in the meeting can hear each other.

The Committee may invite to its meetings any director, member of management of the Company, and such other persons as it deems appropriate to carry out its responsibilities. The Committee may also exclude from its meetings any persons it deems inappropriate.

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As part of this review and establishment of the performance criteria and compensation of designated key executives, the Committee should meet separately at least on an annual basis with the CEO and any other corporate officers as it deems appropriate. However, the committee should also meet from time to time without such officers present, and in all cases, such officers shall not be present at meetings at which their performance and compensation are being discussed and determined.

### **Duties and Responsibilities**

The Committee shall carry out the duties and responsibilities set forth below. These functions should serve as a guide with the understanding that the Committee may determine to carry out additional functions and adopt additional policies and procedures, subject to Board approval, as may be appropriate in light of changing business, legislative, regulatory, legal, or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board from time to time related to the purposes of the Committee outlined in this Charter.

In discharging its oversight role, the committee is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate and shall have the authority, after seeking Board approval, to retain outside counsel or other advisors for this purpose, including the authority to approve the fees payable to such counsel or advisors and any other terms of retention.

### **Setting Compensation for Executive Officers and Directors**

1. Establish and review the overall compensation philosophy of the Company and present it for Board approval.
2. Receive from the CEO the Company's corporate goals and objectives relevant to the compensation for the CEO and other executive officers including annual performance objectives. Review and approve these goals and objectives and then pass to Board for approval.
3. Evaluate the performance of the CEO and the President (in cooperation with the CEO) in light of those goals and objectives and, based on such evaluations and subject to the provisions of any employment agreement, approve, or recommend to the full Board the approval of, the annual salary, bonus, stock options, and other benefits, direct and indirect, of the CEO and President.
4. In approving or recommending the long-term incentive component of compensation for the CEO and the President, the Committee should consider the Company's performance and relative shareholder return, the value of similar incentive awards to CEOs and the President at comparable companies, and the awards given to the CEO and others in past years. The Committee is not precluded from approving awards (with the ratification of the Board) as may be required to comply with applicable tax laws, such as Rule 162(m).
5. In connection with executive compensation programs, the Committee should do the following:
  - (a) Review and recommend to the full Board, or approve, new executive compensation programs;
  - (b) Review on a periodic basis the operations of the Company's executive compensation programs to determine whether they are properly coordinated and achieving their intended purposes;
  - (c) Establish and periodically review actions for the administration of executive compensation programs; and
  - (d) Take steps to modify any executive compensation program that yields payments and benefits that are not reasonably related to executive and corporate performance.
6. Establish and periodically review policies in the area of senior management perquisites.
7. Consider policies and procedures pertaining to expense accounts of senior executives.
8. Review and recommend to the full Board compensation of directors as well as directors' and officers' indemnification and insurance matters.

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### Monitoring Incentive and Equity based Compensation Plans

9. Review and make recommendations to the full Board with respect to, or approve, the Company's incentive-compensation plans, equity based plans, Cash compensation, employee pension, profit sharing, and benefit plans.

10. Monitor compliance by executives with the rules and guidelines of the Company's equity-based plans.

11. Have the authority to select, retain, and /or replace, as needed, any compensation or other outside consultant to be used to assist in the evaluation of Director, CEO or senior executive compensation. In the event such a consultant is retained, the Committee shall have the authority to approve such consultant's fees and other terms, all the above being subject to Board approval.

### Reports

12. Prepare an annual Committee report for inclusion in the Company's proxy statement in accordance with applicable rules and regulations of Nasdaq, the SEC and other regulatory bodies. Review and discuss with the Company's management the said report. The Committee shall determine whether to recommend to the Board that the Compensation Discussion and Analysis be included in the Company's annual report or proxy statement for the annual meeting of shareholders.

13. Report regularly to the Board with respect to matters that are relevant to the Committee's discharge of its responsibilities and with respect to such recommendations as the Committee may deem appropriate. The report to the Board may take the form of an oral report by the Chairman or any other member of the Committee designated by the Committee to make such report.