

EAGLE BANCORP INC  
Form S-3  
January 05, 2009  
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**As filed with the Securities and Exchange Commission on January 5, 2009**

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**FORM S-3**

**REGISTRATION STATEMENT**

**Under**

**The Securities Act of 1933**

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**Eagle Bancorp, Inc.**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**52-1943477**  
(I.R.S. Employer  
Identification Number)

**7815 Woodmont Avenue**

**Bethesda, Maryland 20814**

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301.986.1800

(Address, including ZIP Code and Telephone Number, including Area Code, of Registrant's Principal Executive Offices)

**Ronald D. Paul, President  
Eagle Bancorp, Inc.  
7815 Woodmont Avenue  
Bethesda, Maryland 20814  
301.986.1800**

(Name, Address, including ZIP Code and Telephone Number, including Area Code, of Agent for Service)

With a copy to:  
**Noel M. Gruber, Esquire  
Kennedy & Baris, LLP**

4701 Sangamore Road, Suite P-15  
Bethesda, Maryland 20816  
301.229.3400

**Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.**

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definitions of "large accelerated filer", "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered	Proposed Maximum Offering Price Per Unit	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Warrant to Purchase Common Stock, \$0.01 par value per share, and underlying shares of Common Stock (1)	770,867	\$ 7.44 (2)	\$ 5,735,250.48 (2)	\$ 225.40 (2)

(1) This registration statement covers (a) a warrant to purchase 770,867 shares of common stock with an initial exercise price of \$7.44 per and (b) the 770,867 shares of common stock underlying the warrant. This registration statement also covers, in accordance with Rule 416, such indeterminate number of additional shares of common stock which may from time to time become issuable by reason of stock splits, stock dividends and anti-dilution provisions set forth in the warrant.

(2) Calculated in accordance with Rule 457(g), based on the exercise price of the warrant. In accordance with Rule 457(g), no separate fee is payable with respect to the warrant.

**THE REGISTRANT HEREBY AMENDS THIS REGISTRATION STATEMENT ON SUCH DATE OR DATES AS MAY BE NECESSARY TO DELAY ITS EFFECTIVE DATE UNTIL THE REGISTRANT SHALL FILE A FURTHER AMENDMENT WHICH SPECIFICALLY STATES THAT THIS REGISTRATION STATEMENT SHALL THEREAFTER BECOME EFFECTIVE IN ACCORDANCE WITH SECTION 8(a) OF THE SECURITIES ACT OF 1933 OR UNTIL THE REGISTRATION STATEMENT SHALL BECOME EFFECTIVE ON SUCH DATE AS THE COMMISSION, ACTING PURSUANT TO SAID SECTION 8(a), MAY DETERMINE**

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The information in this preliminary prospectus is not complete and may be changed. This preliminary prospectus is not an offer to sell securities and is not soliciting an offer to buy these securities in any state or jurisdiction where the offer or sale is not permitted.

**Prospectus**

**SUBJECT TO COMPLETION, DATED JANUARY 5, 2009**

770,867 Shares of Common Stock, \$0.01 par value

This prospectus relates to the potential resale from time to time by selling securityholders of some or all of the warrant to purchase 770,867 shares of our common stock, referred to as the warrant, and some or all of the shares of our common stock issuable from time to time upon exercise of the warrant. In this prospectus, we refer to the warrant and the shares of common stock issuable upon exercise of the warrant, collectively, as the securities. The warrant along with a new series of preferred stock, our Fixed Rate Cumulative Perpetual Preferred Stock, Series A, or Series A Preferred Stock, was originally issued by us pursuant to a Letter Agreement dated December 5, 2008, and the related Securities Purchase Agreement – Standard Terms, between us and the United States Department of the Treasury, which we refer to as the Treasury or the initial selling securityholder, in a transaction exempt from the registration requirements of the Securities Act of 1933, as amended, or the Securities Act.

The initial selling securityholder and its successors, including transferees, which we collectively refer to as the selling securityholders, may offer the securities from time to time directly or through underwriters, broker-dealers or agents and in one or more public or private transactions and at fixed prices, prevailing market prices, at prices related to prevailing market prices or at negotiated prices. If these securities are sold through underwriters, broker-dealers or agents, the selling securityholders will be responsible for underwriting discounts or commissions or agents commissions.

We will not receive any proceeds from the sale of securities by the selling securityholders.

Our common stock is listed on the Nasdaq Stock Market under the symbol EGBN . On January 2, 2009, the closing price for the common stock was \$6.10 per share. You are urged to obtain current quotations for the common stock.

The warrant is not listed on any exchange, and unless required and requested under the Letter Agreement and Securities Purchase Agreement Standard Terms, we do not have any intention of listing the warrant on any exchange.

**An investment in the common stock or the warrant involves investment risks. See Risk Factors at page 4.**

**Shares of our common stock are not deposits, savings accounts, or other obligations of a depository institution and are not insured by the Federal Deposit Insurance Corporation or any other governmental agency. Investing in our common stock involves investment risks.**

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the common stock or determined if this prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

The date of this prospectus is \_\_\_\_\_, 2009.

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Eagle Bancorp has not authorized anyone to give any information or make any representation about the offering that differs from, or adds to, the information in this prospectus or in its documents that are publicly filed with the Securities and Exchange Commission. Therefore, if anyone does give you different or additional information, you should not rely on it. The delivery of this prospectus and/or the sale of shares of Preferred Stock do not mean that there have not been any changes in Eagle Bancorp's condition since the date of this prospectus. If you are in a jurisdiction where it is unlawful to offer to sell, or to ask for offers to buy, the securities offered by this prospectus, or if you are a person to whom it is unlawful to direct such activities, then the offer presented by this prospectus does not extend to you. This prospectus speaks only as of its date except where it indicates that another date applies.

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**SUMMARY**



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*This section highlights selected material information from this prospectus. This summary is not a complete description of the offering or the securities offered, and does not contain all of the information that may be important to you. For a more complete understanding of us and the terms of the securities offered by the selling securityholders, you should read carefully this entire prospectus, including the Risk Factors section, and the other documents we refer to and incorporate by reference. In particular, we incorporate important business and financial information into this prospectus by reference.*



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Unless the context requires otherwise, in this prospectus, we use the terms we, us, our, Eagle and the Company to refer to Eagle Bancorp, Inc. and its subsidiaries. The term EagleBank or Bank refers to our principal operating subsidiary, EagleBank (unless the context indicates another meaning).

### **Eagle Bancorp, Inc.**

**7815 Woodmont Avenue**

**Bethesda, Maryland 20814**

**(301) 986-1800**

We are the registered bank holding company for EagleBank, Bethesda, Maryland, a Maryland chartered commercial bank which is a member of the Federal Reserve System. We are a growth oriented institution, providing general commercial and consumer banking services through EagleBank, and subordinated financing for real estate projects through a direct subsidiary, where the primary financing would be provided by EagleBank. EagleBank was organized as an independent, community oriented, and full-service alternative to the super regional financial institutions, which dominate its primary market area. EagleBank's philosophy is to provide superior, personalized service to our customers. EagleBank focuses on relationship banking, providing each customer with a number of services, becoming familiar with and addressing customer needs in a proactive, personalized fashion. We were organized in October 1997 to be the holding company for EagleBank.

On December 5, 2008, we entered into a Letter Agreement, including a related Securities Purchase Agreement Standard Terms, with the Treasury, pursuant to which we agreed to issue and sell, and the Treasury agreed to purchase, (i) 38,235 shares of our Fixed Rate Cumulative Perpetual Preferred Stock, Series A, having a liquidation preference of \$1,000 per share, referred to as our Series A Preferred Stock and (ii) a ten-year warrant to purchase up to 770,867 shares of our common stock, \$0.01, at an initial exercise price of \$7.44 per share. The warrant was immediately exercisable upon its issuance and will expire on December 5, 2018.

### **The Securities That May Be Offered**

The selling securityholders may use this prospectus to offer for resale the warrant or the shares of common stock issuable upon the exercise of the warrant in one or more offerings. At the time a particular offer of securities is made, if required, a prospectus supplement will set forth the number and type of securities being offered and the terms of the offering, including the name of any underwriter, dealer or agent, the purchase price paid by any underwriter, any discount, commission and other item constituting compensation, any discount, commission or concession allowed or reallocated or paid to any dealer, and the proposed selling price to the public. In that case, the prospectus supplement may describe risks associated with an investment in the securities in addition to those described in the Risk Factors section of this prospectus. Terms used in this prospectus will have the meanings described in this prospectus unless otherwise specified.

The selling securityholders, as well as any agents acting on their behalf, reserve the sole right to accept or to reject in whole or in part any proposed purchase of our securities.

*Warrant.* The selling securityholders may sell all or a portion of the warrant to purchase 770,867 shares of our common stock. The warrant has an initial exercise price of \$7.44 per share. If required, a prospectus supplement will describe the price at which the selling securityholder is offering the warrant or interest in the warrant and the number of shares of common stock underlying the warrant offered.



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*Common Stock.* Upon the exercise of all or a portion of the warrant, the selling securityholders may sell the shares of our common stock issued upon such exercise. If required, a prospectus supplement will describe the aggregate number of shares offered and the offering price or prices of the shares.

**CAUTION ABOUT FORWARD LOOKING STATEMENTS**

We make forward-looking statements in this prospectus and in other documents incorporated by reference in this prospectus, within the meaning of and pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. A forward-looking statement encompasses any estimate, prediction, opinion or statement of belief in this joint proxy statement/prospectus and the underlying management assumptions. These forward-looking statements can be identified by words such as believes, expects, anticipates, intends and similar expressions. These statements are based upon our current reasonable expectations and assessments and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are beyond our control. In addition, these forward-looking statements are subject to assumptions with respect to future business strategies and decisions that are subject to change.

In addition to factors that we have previously disclosed in our reports filed with the SEC and those that we discuss elsewhere in this prospectus, the following factors, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statements:

- the businesses of the Company and Fidelity & Trust Financial Corporation ( Fidelity ), acquired by the Company in August 2008, may not be combined successfully, or such combination, including the conversion of Fidelity s systems, controls and procedures, may take longer, be more difficult, time-consuming or costly to accomplish than expected;
- the expected cost savings from the acquisition may not be fully realized or may take longer to realize than expected;
- customer relationship losses, increases in operating costs and business disruption following the merger may be greater than expected;
- adverse effects on relationships with employees may be greater than expected;
- adverse governmental or regulatory policies may be enacted;
- the interest rate environment may compress margins and adversely affect net interest income;
- adverse effects may be caused by continued diversification of assets and adverse changes to credit quality;
- competition from other financial services companies in our markets could adversely affect operations;
- our concentrations of loans in commercial, commercial real estate and construction loans, and loans to borrowers in the Washington, D.C. metropolitan area, may adversely affect our earnings and results of operations;

- the effect and costs of Fidelity's legacy mortgage brokerage operations may be greater than anticipated;
- an economic slowdown could adversely affect credit quality and loan originations; and
- social and political conditions such as war, political unrest and terrorism or natural disasters could have unpredictable negative effects on our businesses and the economy.

The forward-looking statements are made as of the date of the applicable document and, except as required by applicable law, we assume no obligation to update these forward-looking statements or to update the reasons why actual results could differ from those projected in the forward-looking statements. You should consider these risks and uncertainties in evaluating forward-looking statements and you should not place undue reliance on these statements.

### **RISK FACTORS**

An investment in our securities involves various risks. You should carefully consider the risks and uncertainties and the risk factors set forth in the documents and reports filed with the SEC pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange



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Act, that are incorporated by reference into this prospectus, as well as any risks described in any applicable prospectus supplement, before you make an investment decision. These risk factors may cause our future earnings to be lower or our financial condition to be less favorable than we expect. In addition, other risks of which we are not aware, or which we do not believe are material, may cause our earnings to be lower, or hurt our future financial condition.

**USE OF PROCEEDS**

We will not receive any proceeds from the sale by the selling securityholders of the warrant or the shares of common stock issuable upon exercise of the warrant.

**DESCRIPTION OF THE WARRANT TO PURCHASE COMMON STOCK**

The following is a brief description of the terms of the warrant that may be resold by the selling securityholders. This summary does not purport to be complete in all respects. This description is subject to and qualified in its entirety by reference to the warrant, a copy of which has been filed with the SEC and is also available upon request from us.

*Shares of Common Stock Subject to the Warrant.* The warrant is initially exercisable for 770,867 shares of our common stock. If we complete one or more qualified equity offerings, as described below, on or prior to December 31, 2009 that result in our receipt of aggregate gross proceeds of not less than \$38,235,000, which is equal to 100% of the aggregate fixed liquidation amount of \$1,000 per share of our Series A Preferred Stock, plus any accrued and unpaid dividends, the number of shares of common stock underlying the warrant then held by the selling securityholders will be reduced by 50%, to approximately 385,433 shares. The number of shares subject to the warrant are subject to the further adjustments described below under the heading - Adjustments to the Warrant. A qualified equity offering is a sale or issuance for cash by us, to persons other than Eagle or its subsidiaries after December 5, 2008, of shares of preferred stock, common stock or a combination thereof, that in each case qualify as tier 1 capital of at the time of issuance under the applicable risk-based capital guidelines of the Board of Governors of the Federal Reserve System. Qualified equity offerings do not include sales or issuances made pursuant to agreements or arrangements entered into, or pursuant to financing plans that were publicly announced, on or prior to October 13, 2008.

*Exercise of the Warrant.* The initial exercise price applicable to the warrant is \$7.44 for each share of common stock for which the warrant may be exercised. The warrant may be exercised at any time on or before December 5, 2018 by surrender of the warrant and a completed notice of exercise and the payment of the exercise price for the shares of common stock for which the warrant is being exercised. The exercise price may be paid either by the withholding of such number of shares of common stock issuable upon exercise of the warrant equal to the value of the aggregate exercise price of the warrant, determined by reference to the market price of our common stock on the trading day on which the warrant is exercised or, if agreed to by us and the warrant holder, by the payment of cash, certified or cashier's check, or wire transfer, in an amount equal to the aggregate exercise price. The exercise price applicable to

the warrant is subject to the further adjustments described below under the heading - Adjustments to the Warrant.

Upon exercise of the warrant, certificates for the shares of common stock issuable upon exercise will be issued to the warrant holder. We will not issue fractional shares upon any exercise of the warrant. Instead, the warrant holder will be entitled to a cash payment equal to the market price of our common stock on the last trading day preceding the exercise of the warrant, less the pro-rated exercise price of the warrant, for any fractional shares that would have otherwise been issuable upon exercise of the warrant. We will at all times reserve the aggregate number of shares of our common stock for which the warrant may be exercised. We have listed the shares of common stock issuable upon exercise of the warrant with the Nasdaq Capital Market.

*Rights as a Shareholder.* The warrant holder shall have no rights or privileges of the holders of our common stock, including any voting rights, until (and then only to the extent) the warrant has been exercised.

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*Transferability; Restrictions on Exercise of Warrant.* The initial selling securityholder may not transfer a portion of the warrant, and/or exercise the warrant, with respect to more than one half of the shares of common stock subject to the warrant until the earlier of the date on which we have received aggregate gross proceeds from a qualified equity offering of at least \$38,235,000 and December 31, 2009. The warrant, and all rights under the warrant, are otherwise transferable and exercisable.

*Adjustments to the Warrant - Adjustments in Connection with Stock Splits, Subdivisions, Reclassifications and Combinations.* The number of shares for which the warrant may be exercised and the exercise price applicable to the warrant will be proportionately adjusted in the event we pay dividends or make distributions of our common stock, subdivide, combine or reclassify outstanding shares of our common stock.

*Anti-dilution Adjustment.* Until the earlier of December 5, 2011 and the date the initial selling securityholder no longer holds the warrant (and other than in certain permitted transactions described below), if we issue any shares of common stock (or securities convertible or exercisable into common stock) for less than 90% of the market price of the common stock on the last trading day prior to pricing such shares, then the number of shares of common stock into which the warrant is exercisable and the exercise price will be adjusted. Permitted transactions include issuances:

- as consideration for or to fund the acquisition of businesses and/or related assets;
- in connection with employee benefit plans and compensation related arrangements in the ordinary course and consistent with past practice approved by our board of directors;
- in connection with public or broadly marketed offerings and sales of common stock or convertible securities for cash conducted by us or our affiliates pursuant to registration under the Securities Act, or Rule 144A thereunder on a basis consistent with capital-raising transactions by comparable financial institutions; and
- in connection with the exercise of preemptive rights on terms existing as of December 5, 2008.

*Other Distributions.* If we declare any dividends or distributions greater than our most recent quarterly dividend, or dividends payable in common stock, the exercise price of the warrant will be adjusted to reflect such distribution.

*Certain Repurchases.* If we effect a pro rata repurchase of common stock, both the number of shares issuable upon exercise of the warrant and the exercise price will be adjusted.

*Business Combinations.* In the event of a merger, consolidation or similar transaction involving Eagle and requiring shareholder approval, the warrant holder's right to receive shares of our common stock upon exercise of the warrant shall be converted into the right to exercise the warrant for the consideration that would have been payable to the warrant holder with respect to the shares of common stock for which the warrant may be exercised, as if the warrant had been exercised prior to such merger, consolidation or similar transaction.

#### DESCRIPTION OF OUR CAPITAL STOCK

Our authorized capital stock consists of 50,000,000 shares of common stock, \$.01 par value, and 1,000,000 shares of undesignated preferred stock, \$.01 par value. As of December 31, 2008, there were 12,686,128 shares of common stock outstanding and 38,235 shares of our Series A Preferred Stock outstanding.

*Common Stock.* Holders of common stock are entitled to cast one vote for each share held of record, to receive such dividends as may be declared by the Board of Directors out of legally available funds, and, subject to the rights of any class of stock having preference to the common stock, to share ratably in any distribution of our assets after payment of all debts and other liabilities upon liquidation, dissolution or winding up. Shareholders do not have cumulative voting rights or preemptive rights or other rights to subscribe for additional shares, and the common stock is not subject to conversion or redemption.

Pursuant to the terms of the Letter Agreement and related Securities Purchase Agreement Standard Terms, and the Articles Supplementary designating the terms of the Series A Preferred Stock, our ability to declare

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or pay dividends or distributions on, or purchase, redeem or otherwise acquire for consideration, shares of Junior Stock (as defined below) and Parity Stock (as defined below) is subject to restrictions, including a restriction against paying any dividends on the common stock. These restrictions will terminate on the earlier of (a) the third anniversary of the date of issuance of the Series A Preferred Stock and (b) the date on which all of the Series A Preferred Stock has been redeemed or Treasury has transferred all of the Series A Preferred Stock to third parties.

In addition, our ability to declare or pay dividends or distributions on, or repurchase, redeem or otherwise acquire for consideration, shares of Junior Stock and Parity Stock is subject to restrictions in the event that we fail to declare and pay full dividends (or declare and set aside a sum sufficient for payment thereof) on the Series A Preferred Stock.

Junior Stock means our common stock and any other class or series of the Company's stock the terms of which expressly provide that it ranks junior to the Series A Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company. Parity Stock means any class or series of the Company's stock the terms of which do not expressly provide that such class or series will rank senior or junior to the Series A Preferred Stock as to dividend rights and/or rights on liquidation, dissolution or winding up of the Company.

Our common stock is listed on the Nasdaq Capital Market under the symbol EGBN. The shares of common stock issuable upon exercise of the warrant in accordance with its terms, will be fully paid, validly issued and nonassessable.

The Transfer Agent for the common stock is Computershare Shareholder Services, 250 Royall Street, Canton, Massachusetts 02021.

*Preferred Stock.* The Board of Directors may, from time to time, by action of a majority, issue shares of the authorized, undesignated preferred stock, in one or more classes or series. In connection with any such issuance, the Board may by resolution determine the designation, voting rights, preferences as to dividends, in liquidation or otherwise, participation, redemption, sinking fund, conversion, dividend or other special rights or powers, and the limitations, qualifications and restrictions of such shares of preferred stock.

As of the date hereof, the Board of Directors has created one series of preferred stock, the Series A Preferred Stock, which was issued to the Treasury. The Series A Preferred Stock consists of 38,235 shares having a liquidation amount per share equal to \$1,000. The Series A Preferred Stock pays cumulative dividends at a rate of 5% per year for the first five years and thereafter at a rate of 9% per year, prior to the payment of dividends on any shares of Junior Stock. The Company may not redeem the Series A Preferred Stock during the first three years except with the proceeds from a qualified equity offering (as defined above). After three years, the Company may, at its option, redeem the Series A Preferred Stock at the liquidation amount plus accrued and unpaid dividends.

The Series A Preferred Stock is non-voting, except in limited circumstances. Prior to the third anniversary of issuance, unless the Company has redeemed all of the Series A Preferred Stock or the Treasury has transferred all of the Series A Preferred Stock to a third party, the consent of the Treasury will be required for the Company to increase its common stock dividend or repurchase its common stock or other equity or capital securities, other than in connection with benefit plans consistent with past practice and certain other circumstances specified in the Purchase Agreement. In the event that we do not pay dividends on the Series A Preferred Stock for six dividend periods, whether or not consecutive, the size of our board of directors will automatically be increased by two and the holders of the Series A Preferred Stock shall have the right to elect

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two directors to fill such newly created directorships at the next annual meeting and at each subsequent annual meeting until all accrued and unpaid dividends for all past dividend periods, including the latest completed dividend period, on all outstanding shares of Series A Preferred Stock have been declared and paid in full. The foregoing description of the Series A Preferred Stock is qualified in its entirety by reference to the Articles Supplementary to the Articles of Incorporation designating such series.

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**Selected Provisions of Our Articles of Incorporation and Maryland Law**

*Consideration of Business Combinations.* Our Articles of Incorporation provide that where the board of directors evaluates any actual or proposed business combination, it shall consider the following factors: the effect of the business combination on the corporation and its subsidiaries, and their respective shareholders, employees, customers and the communities which they serve; the timing of the proposed business combination; the risk that the proposed business combination will not be consummated; the reputation, management capability and performance history of the person proposing the business combination; the current market price of the corporation's capital stock; the relation of the price offered to the current value of the corporation in a freely negotiated transaction and in relation to the directors' estimate of the future value of the corporation and its subsidiaries as an independent entity or entities; tax consequences of the business combination to the corporation and its shareholders; and such other factors deemed by the directors to be relevant. In such considerations, the board of directors may consider all or some of such factors as a whole and may or may not assign relative weights to any of them. The foregoing is not intended as a definitive list of factors to be considered by the board of directors in the discharge of their fiduciary responsibility to the corporation and its shareholders, but rather to guide such consideration and to provide specific authority for the consideration by the board of directors of factors which are not purely economic in nature in light of the circumstances of the corporation and its subsidiaries at the time of such proposed business combination.

*Amendment of the Articles of Incorporation.* In general, the Articles of Incorporation may be amended upon the vote of two-thirds of the outstanding shares of capital stock entitled to vote, the standard vote required under Maryland law. Unless the proposed amendment adversely affects the rights of the Series A Preferred Stock, the holders of Series A Preferred Stock will not have the right to vote on any amendment to the Articles of Incorporation.

*Restrictions on Business Combinations with Interested Shareholders.* Section 3-602 of the Maryland General Corporation Law (MGCL), as in effect on the date hereof, imposes conditions and restrictions on certain business combinations (including, among other transactions, a merger, consolidation, share exchange, or, in certain circumstances, an asset transfer or issuance of equity securities) between a Maryland corporation and any person who beneficially owns at least 10% of the corporation's stock (an interested shareholder). Unless approved in advance by the board of directors, or otherwise exempted by the statute, such a business combination is prohibited for a period of five years after the most recent date on which the interested shareholder became an interested shareholder. After such five-year period, a business combination with an interested shareholder must be: (a) recommended by the corporation's board of directors, and (b) approved by the affirmative vote of at least (i) 80% of the corporation's outstanding shares entitled to vote and (ii) two-thirds of the outstanding shares entitled to vote which are not held by the interested shareholder with whom the business combination is to be effected, unless, among other things, the corporation's common shareholders receive a fair price (as defined by the statute) for their shares and the consideration is received in cash or in the same form as previously paid by the interested shareholder for his or her shares. The Articles of Incorporation and our bylaws do not include any provisions imposing any special approval requirements for a transaction with a major shareholder, and they do not opt out from the operation of Section 3-602.

*Control Share Acquisition Statute.* Under the MGCL's control share acquisition law, as in effect on the date hereof, voting rights of shares of stock of a Maryland corporation acquired by an acquiring person at ownership levels of 10%, 33-1/3% and 50% of the outstanding shares are denied unless conferred by a special shareholder vote of two-thirds of the outstanding shares held by persons other than the acquiring person and officers and directors of the corporation or, among other exceptions, such acquisition of shares is made pursuant to a merger agreement with the corporation or the corporation's charter or bylaws permit the acquisition of such shares prior to the acquiring person's acquisition thereof. Unless a corporation's charter or bylaws provide otherwise, the statute permits such corporation to redeem the acquired shares at fair value if the voting rights are not approved or if the acquiring person does not deliver a control share acquisition statement to the corporation on or before the tenth day after the control share acquisition. The acquiring person may call a shareholder's meeting to consider authorizing voting rights for control shares subject to meeting disclosure obligations and payment of costs set out in the statute. If voting rights are approved for more than fifty percent of the outstanding stock, objecting shareholders may have their shares appraised and repurchased by the corporation for cash. The Articles of Incorporation and Bylaws of Eagle do not include any provisions restricting the voting ability of major shareholders, and do not opt out from the operation of the control share acquisition law.



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**PLAN OF DISTRIBUTION**

The selling securityholders and their successors, including their transferees, may sell the securities directly to purchasers or through underwriters, broker-dealers or agents, who may receive compensation in the form of discounts, concessions or commissions from the selling securityholders or the purchasers of the securities. These discounts, concessions or commissions as to any particular underwriter, broker-dealer or agent may be in excess of those customary in the types of transactions involved.

The securities may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of sale, at varying prices determined at the time of sale or at negotiated prices. These sales may be affected in transactions, which may involve crosses or block transactions:

- on any national securities exchange or quotation service on which the preferred stock or the common stock may be listed or quoted at the time of sale, including, as of the date of this prospectus, the Nasdaq Capital Market in the case of the common stock;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or services or in the over-the-counter market; or
- through the writing of options, whether the options are listed on an options exchange or otherwise.

In addition, any securities that qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than pursuant to this prospectus.

In connection with the sale of the securities or otherwise, the selling securityholders may enter into hedging transactions with broker-dealers, which may in turn engage in short sales of the common stock issuable upon exercise of the warrant in the course of hedging the positions they assume. The selling securityholders may also sell short the common stock issuable upon exercise of the warrant and deliver common stock to close out short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities.

The aggregate proceeds to the selling securityholders from the sale of the securities will be the purchase price of the securities less discounts and commissions, if any.

In effecting sales, broker-dealers or agents engaged by the selling securityholders may arrange for other broker-dealers to participate. Broker-dealers or agents may receive commissions, discounts or concessions from the selling securityholders in amounts to be negotiated immediately prior to the sale.

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In offering the securities covered by this prospectus, the selling securityholders and any broker-dealers who execute sales for the selling securityholders may be deemed to be underwriters within the meaning of Section 2(a)(11) of the Securities Act in connection with such sales. Any profits realized by the selling securityholders and the compensation of any broker-dealer may be deemed to be underwriting discounts and commissions. Selling securityholders who are underwriters within the meaning of Section 2(a)(11) of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act and may be subject to certain statutory and regulatory liabilities, including liabilities imposed pursuant to Sections 11, 12 and 17 of the Securities Act and Rule 10b-5 under the Securities Exchange Act of 1934, or the Exchange Act.

In order to comply with the securities laws of certain states, if applicable, the securities must be sold in such jurisdictions only through registered or licensed brokers or dealers. In addition, in certain states the securities may not be sold unless they have been registered or qualified for sale in the applicable state or an exemption from the registration or qualification requirement is available and is complied with.

The anti-manipulation rules of Regulation M under the Exchange Act may apply to sales of securities pursuant to this prospectus and to the activities of the selling securityholders. In addition, we will make copies of this prospectus available to the selling securityholders for the purpose of satisfying the prospectus delivery requirements of the Securities Act, which may include delivery through the facilities of the Nasdaq Capital Market pursuant to Rule 153 under the Securities Act.

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At the time a particular offer of securities is made, if required, a prospectus supplement will set forth the number and type of securities being offered and the terms of the offering, including the name of any underwriter, dealer or agent, the purchase price paid by any underwriter, any discount, commission and other item constituting compensation, any discount, commission or concession allowed or reallocated or paid to any dealer, and the proposed selling price to the public.

Unless requested by the initial selling securityholder and required under the Letter Agreement and related Securities Purchase Agreement Standard Terms, we do not intend to list the warrant on any exchange. No assurance can be given as to the liquidity of the trading market, if any, for the warrant.

We have agreed to indemnify the selling securityholders against certain liabilities, including certain liabilities under the Securities Act. We have also agreed, among other things, to bear substantially all expenses (other than underwriting discounts and selling commissions) in connection with the registration and sale of the securities covered by this prospectus.

**SELLING SECURITYHOLDERS**

On December 5, 2008, we issued the securities covered by this prospectus to the United States Department of the Treasury, which is the initial selling securityholder under this prospectus, in a transaction exempt from the registration requirements of the Securities Act. The initial selling securityholder, or its successors, including transferees, may from time to time offer and sell, pursuant to this prospectus or a supplement to this prospectus, any or all of the securities they own. The securities to be offered under this prospectus for the account of the selling securityholders are:

- a warrant to purchase 770,867 shares of our common stock, representing beneficial ownership of approximately 5.73% of our common stock as of December 31, 2008; and
- 770,867 shares of our common stock issuable upon exercise of the warrant, which shares, if issued, would represent ownership of approximately 5.73% of our common stock as of December 31, 2008.

For purposes of this prospectus, we have assumed that, after completion of the offering covered by this prospectus, none of the securities covered by this prospectus will be held by the selling securityholders.

Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to the securities. To our knowledge, the initial selling securityholder has sole voting and investment power with respect to the securities.

We do not know when or in what amounts the selling securityholders may offer the securities for sale. The selling securityholders might not sell any or all of the securities offered by this prospectus. Because the selling securityholders may offer all or some of the securities pursuant to this offering, and because currently no sale of any of the securities is subject to any agreements, arrangements or understandings, we cannot estimate

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the number of the securities that will be held by the selling securityholders after completion of the offering.

Other than with respect to the acquisition of the securities, the initial selling securityholder has not had a material relationship with us.

Information about the selling securityholders may change over time and changed information will be set forth in supplements to this prospectus if and when necessary.

### **LEGAL MATTERS**

The validity of the warrant and the common stock offered hereby have been passed upon for us by the law firm of Kennedy & Baris, L.L.P., Bethesda, Maryland. Attorneys at Kennedy & Baris, L.L.P. own an aggregate of approximately 8,250 shares of common stock.



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**EXPERTS**

The consolidated financial statements of Eagle and the report on the effectiveness of Eagle's internal control over financial reporting incorporated in this prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2007, as amended, have been so incorporated in reliance on the reports of Stegman & Company, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

The consolidated financial statements of Fidelity at December 31, 2007 and 2006 and for each of the two years in the period ended December 31, 2007 incorporated by reference in this prospectus have been audited by Deloitte & Touche, LLP, an independent registered public accounting firm, as stated in their reports, incorporated by reference herein, and have been incorporated in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

**WHERE YOU CAN FIND ADDITIONAL INFORMATION ABOUT EAGLE BANCORP**

**AND DOCUMENTS INCLUDED WITH THIS PROSPECTUS**

We file annual, quarterly, and current reports, proxy statements and other information with the Securities and Exchange Commission. You may read and copy, at prescribed rates, any documents we have filed with the SEC at its Public Reference Room located at 100 F Street, N.E., Washington, DC 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. We also file these documents with the SEC electronically. You can access the electronic versions of these filings on the SEC's internet website found at <http://www.sec.gov>. You may also obtain free copies of the documents we have filed with the SEC (other than exhibits to such documents unless we specifically incorporate by reference an exhibit in this proxy statement/prospectus) by contacting Jane E. Cornett, Corporate Secretary, Eagle Bancorp, Inc. 7815 Woodmont Avenue, Bethesda, Maryland 20814, telephone 301.986.1800 or from our internet website at <http://www.eaglebankcorp.com>.

We have filed with the SEC a registration statement on Form S-3 relating to the securities covered by this prospectus. This prospectus is a part of the registration statement and does not contain all the information in the registration statement. Whenever a reference is made in this prospectus to a contract or other document, the reference is only a summary and you should refer to the exhibits that are a part of the registration statement for a copy of the contract or other document. You may review a copy of the registration statement at the SEC's Public Reference Room in Washington, D.C., as well as through the SEC's internet website.

The SEC allows us to incorporate by reference information into this prospectus from the documents listed below that we have previously filed with the SEC (file no. 000-25923) This means that we can disclose important information to you by referring you to another document without restating that information in this document. Any information incorporated by reference into this prospectus is considered to be part of this prospectus from the date we file that document. Any reports filed by us with the SEC after the date of this prospectus supplement will automatically update and, where applicable, supersede, any information contained in this prospectus or incorporated by reference in this prospectus.

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We incorporate by reference into this prospectus the following documents or information filed with the SEC (other than, in each case, documents, or information deemed to have been furnished and not filed in accordance with SEC rules):

- (a) Our Annual Report on Form 10-K for the year ended December 31, 2007, as amended;
- (b) Our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008; and
- (c) Our Current Reports on Form 8-K and 8-K/A filed on January 23, 2008, January 24, 2008, April 25, 2008, July 16, 2008, July 18, 2008, July 25, 2008, August 15, 2008, September 2, 2008, October 23, 2008, October 28, 2008, November 10, 2008, November 24, 2008 December 8, 2008 and December 22, 2008.

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Also incorporated by reference are additional documents that we may file with the SEC under Section 13(a), 13(c), 14, or 15(d) of the Securities Exchange Act of 1934 after the date of this prospectus and before the termination of the offering. These additional documents will be deemed to be incorporated by reference, and to be a part of, this prospectus from the date of their filing. These documents include proxy statements and periodic reports, such as Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and, to the extent they are considered filed, Current Reports on Form 8-K. Information incorporated by reference from later filed documents supersedes information that is included in this prospectus or any applicable prospectus supplement or is incorporated by reference from earlier documents, to the extent that they are inconsistent.

You should rely only on the information contained or incorporated by reference in this prospectus. We have not authorized anyone to provide you with information that is different from what is contained in this prospectus. This prospectus is dated January 1, 2009. You should not assume that the information contained in this prospectus is accurate as of any date other than that date.



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**PART II**

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**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

SEC Registration Fee	\$ 225
*Legal Fees and Expenses	\$ 10,000
*Accountant's Fees and Expenses	\$ 5,000

**EXECUTIVE COMPENSATION****Summary of Cash and Certain Other Compensation**

The following table summarizes the annual and long-term compensation, for the fiscal years indicated, of the Company's chief executive officer, all other persons who served as executive officers at the end of fiscal 2006 and the Company's former Chief Financial Officer and Treasurer.

*Summary Compensation Table*

Name and Principal Position	Year	Long Term				
		Annual Compensation		Compensation Awards		
		Salary (\$)	Bonus (\$)	Restricted Stock Awards (\$)(1)	Securities Underlying Options (#)	All Other Compensation (\$)(2)
Charles M. Swoboda						
Chairman, Chief Executive Officer and President	2006	\$ 540,378		\$ 764,100	6,000	\$ 3,413
	2005	490,378	\$ 322,350		50,000	2,490
	2004	440,391	225,000		50,000	336
Michael E. McDevitt	2006	\$ 178,543	\$ 10,480		15,000	\$ 2,710
Chief Financial Officer and Treasurer (3)						
John W. Palmour, Ph.D.	2006	\$ 208,073	\$ 18,376	\$ 152,820	10,000	\$ 3,602
	2005	197,108	55,972		30,000	2,193
	2004	182,112	57,000		35,000	333
Executive Vice President, Advanced Devices						
Robert C. Glass, Ph.D.	2006	\$ 239,990	\$ 22,080	\$ 152,820	10,000	\$ 4,307
	2005	238,071	73,550		30,000	3,340
Executive Vice President, Materials and Optoelectronics (4)						

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Cynthia B. Merrell Former Chief Financial Officer and Treasurer, Senior Financial Advisor (5)	2006	\$ 271,121	\$ 33,342		\$ 4,323
	2005	270,005	118,746	30,000	1,957
	2004	266,156	100,925	35,000	336

(1) As of June 25, 2006, the aggregate number of shares of restricted stock owned by the named executive officers, and the value of such shares based on the closing market price of \$23.49 per share on June 23, 2006, were as follows: Mr. Swoboda, 30,000 shares valued at \$704,700; Dr. Palmour, 6,000 shares valued at \$140,940; and Dr. Glass, 6,000 shares valued at \$140,940. One-fifth of the shares of restricted stock will vest on each of September 1, 2006, September 1, 2007, September 1, 2008, September 1, 2009 and September 1, 2010, provided the executive officer continues service as an employee of the Company or a related Employer as defined in the Company's Long-Term Incentive Compensation Plan or as a member of the Company's Board of Directors. The executive officers are eligible to receive dividends with respect to restricted stock, although the Company has never paid dividends on its common stock and does not anticipate that it will do so in the foreseeable future. Any dividends will be automatically reinvested in additional shares of restricted stock subject to the same restrictions as the underlying restricted stock.

(2) The amounts listed for fiscal 2004 represent group term life insurance premiums paid by the Company. The amounts listed for fiscal 2005 and fiscal 2006 include group term life insurance premiums paid by the Company and Company matching contributions to the 401(k) retirement plan. In fiscal 2005, the respective group term life insurance premiums and 401(k) matching contributions for the named executive officers were as follows: Mr. Swoboda, \$336 and \$2,154; Dr. Palmour, \$336 and \$1,857; Dr. Glass, \$336 and \$2,816; and Ms. Merrell, \$336 and \$1,621. The amount listed for Dr. Glass in fiscal 2005 also includes a payment of \$188 representing a patent award payment in connection with the Company's intellectual property reward program. In fiscal 2006, the respective group term life insurance premiums and 401(k) matching contributions for the named executive officers were as follows: Mr. Swoboda, \$336 and \$3,077;

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Mr. McDevitt, \$336 and \$2,374; Dr. Palmour, \$336 and \$3,266; Dr. Glass, \$336 and \$3,971; and Ms. Merrell, \$308 and \$4,015.

- (3) Mr. McDevitt was appointed to the position of Chief Financial Officer and Treasurer on an interim basis effective May 5, 2006. The table does not include information about any compensation paid to Mr. McDevitt for any fiscal year in which he did not serve as an executive officer.
- (4) Dr. Glass was appointed to the position of Executive Vice President effective May 26, 2005. The table does not include information about any compensation paid to Dr. Glass for any fiscal year in which he did not serve as an executive officer.
- (5) Ms. Merrell resigned from her position as Chief Financial Officer and Treasurer effective May 5, 2006, and currently serves as a Senior Financial Advisor.

**Stock Option Grants**

The following table provides information about stock options granted to the named executive officers during fiscal 2006.

*Option Grants in Last Fiscal Year*

Name	No. of Securities Underlying Options Granted	% Total Options Granted to Employees in Fiscal Year	Exercise Price (\$/sh)	Expiration Date (1)	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
Charles M. Swoboda	6,000	0.6%	\$ 25.47	09/01/12	\$ 62,213	\$ 144,983
Michael E. McDevitt	5,000	0.5%	25.47	09/01/12	51,844	120,819
John W. Palmour	10,000	0.9%	30.85	05/05/13	125,590	292,679
Robert C. Glass	10,000	0.9%	25.47	09/01/12	103,688	241,638
Cynthia B. Merrell	10,000	0.9%	25.47	09/01/12	103,688	241,638

- (1) The options listed were granted under the Company's Long-Term Incentive Compensation Plan. Each option expires on the earlier of the expiration date shown or 90 days after termination of the recipient's employment, except in cases of death or disability. The option may be exercised to purchase vested shares

only. Upon termination of employment, the option is forfeited with respect to any shares not then vested, except in cases of death or disability.

**Table of Contents****Stock Option Exercises**

The following table provides information about stock options exercised by the named executive officers during fiscal 2006.

*Aggregated Option Exercises in Last Fiscal Year and**Fiscal Year-End Option Values*

Name	Shares Acquired on Exercise (#)	Value Realized (\$)(1)	Number of Securities Underlying Unexercised Options at FY-End (#)	Value of Unexercised In-the-
				Money Options at FY-End (\$) Exercisable/Unexercisable (2)
Charles M. Swoboda	40,000	\$ 847,839	840,000 / 6,000	\$ 549,700 / \$ 0
Michael E. McDevitt			22,800 / 26,200	\$ 59,456 / \$49,264
John W. Palmour	8,000	\$ 184,500	504,000 / 20,000	\$ 2,324,235 / \$36,100
Robert C. Glass	10,000	\$ 169,100	175,000 / 15,000	\$ 518,050 / \$18,050
Cynthia B. Merrell			259,200 / 10,000	\$ 602,385 / \$36,100

(1) Represents the market value of shares acquired at the date of exercise less the exercise price paid to the Company, without adjustment for income and other taxes payable upon exercise.

(2) Represents the value of the shares issuable upon exercise, calculated using the value at the fiscal year end, less the exercise price. The fiscal year end value was \$23.49 per share based on the last sale price on June 23, 2006 as reported by The Nasdaq Stock Market.

**Employment Agreements**

The Company has entered into an employment agreement with Mr. Swoboda and a letter agreement with Ms. Merrell in connection with her resignation and continuation as an at-will employee beyond the date of her resignation, as described below.

*Agreement with Mr. Swoboda.* On October 13, 2004, the Company and Charles M. Swoboda entered into an employment agreement pursuant to which Mr. Swoboda



will continue to serve as the Company's President and Chief Executive Officer as an at-will employee. In addition, the agreement requires Mr. Swoboda to be nominated each year to serve as a member of the Company's Board of Directors.

The agreement has an initial term of three years, with automatic one-year renewals commencing on the third anniversary, unless one party provides the other with at least 120 days' prior written notice that the term shall not be extended. Under the agreement, Mr. Swoboda's annual base salary was initially set at \$500,000, and is to be reviewed annually by the Compensation Committee of the Company's Board of Directors. Mr. Swoboda will be eligible to receive a bonus upon the achievement of certain performance goals set by the Compensation Committee, and his target bonus for each calendar year will be at least 70% of his base salary.

The agreement also provides that Mr. Swoboda is entitled to participate in certain benefit plans of the Company as well as to be reimbursed for certain travel, entertainment and other expenses in connection with his services for the Company.

Although Mr. Swoboda is an at-will employee, meaning that he can be terminated at any time with or without cause upon written notice by the Company, he is entitled to severance benefits depending on the circumstances of the termination. In the event the Company terminates Mr. Swoboda for any reason, he will be entitled to any (i) unpaid base salary accrued up to the effective date of termination, (ii) unpaid, but earned and accrued annual incentive for any completed fiscal year as of the termination, (iii) pay for accrued but unused vacation that the Company is legally obligated to pay, (iv) benefits or compensation as provided under the terms of any applicable employee benefit and compensation agreements or plans, (v) unreimbursed business expenses

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required to be reimbursed and (vi) rights to indemnification under the Company's Articles of Incorporation, Bylaws, the agreement or separate indemnification agreement, as applicable.

If Mr. Swoboda's employment is terminated by the Company without cause or by Mr. Swoboda for good reason, and the termination is not in connection with a change of control, then Mr. Swoboda will receive (i) continued payment of his base salary until the later of (a) the date 24 months following the termination of Mr. Swoboda's employment or (b) the date that the term of the agreement otherwise expires (the

Continuance Period), (ii) a lump-sum payment, paid at the time fiscal year bonuses are paid to other Company executive officers, equal to twice the average of Mr. Swoboda's earned annual incentives for the two fiscal years immediately preceding the fiscal year in which the termination occurs, (iii) reimbursement for premiums paid to continue medical benefits for Mr. Swoboda and his eligible dependents under the Company's benefit plans for 12 months and (iv) accelerated vesting with respect to 50% of his then outstanding, unvested equity awards that (y) were granted prior to the effective date of the agreement and are underwater as of the same date, or (z) are granted on or after the effective date of the agreement.

If Mr. Swoboda's employment is terminated by the Company without cause or by Mr. Swoboda for good reason, and the termination is in connection with a change of control, then he will receive (i) continued payment of his base salary for the Continuance Period, (ii) a lump-sum payment of an amount equal to his current target annual incentive, pro-rated to the date of termination, paid within 30 days of termination, (iii) a lump-sum payment, paid at the time fiscal year bonuses are paid to other Company executive officers, equal to twice the average of Mr. Swoboda's earned annual incentives for the two fiscal years immediately preceding the fiscal year in which the termination occurs, (iv) reimbursement for premiums paid to continue medical benefits for Mr. Swoboda and his eligible dependents under the Company's benefit plans for 24 months and (v) full accelerated vesting with respect to Mr. Swoboda's then outstanding, unvested equity awards. In addition, Mr. Swoboda also will receive a gross-up payment equal to the amount of any excise tax incurred as a result of any payments made by the Company, together with any income, employment and excise taxes related to such gross-up payment, as well as any related interest and penalties, that would not have been imposed absent such payments in an amount sufficient to restore him to the same after-tax position he would have been in if the excise tax had not been imposed.

In the event of a dispute relating to any provision of the agreement, the Company will reimburse Mr. Swoboda for the fees and expenses he incurs in connection with the dispute on a quarterly basis. In the event Mr. Swoboda does not prevail on at least one material issue or if an arbitrator determines that Mr. Swoboda's legal positions were frivolous or without legal foundation, (i) Mr. Swoboda will repay the Company amounts previously reimbursed and (ii) Mr. Swoboda will reimburse the Company for its fees and expenses.

The agreement also provides that Mr. Swoboda will execute the Company's standard form of employee agreement regarding confidential information, intellectual property and noncompetition. This employee agreement contains standard provisions

regarding the treatment and disclosure of confidential information, intellectual property assignment and rights and restrictions on competition. Under the non-competition provisions of the employee agreement and subject to certain limited exceptions, an employee is restricted while employed by the Company and for a period of time following the termination of his or her employment from (i) performing services for any competing business, (ii) holding office as an officer or director or like position in any competing business or being the beneficial owner of an equity interest in any competing business, (iii) requesting any present or future customers or suppliers of the Company to curtail or cancel business with the Company or (iv) inducing or attempting to induce any employee of the Company to terminate his or her employment with the Company. Under the agreement, Mr. Swoboda has agreed to be subject to these noncompetition provisions for the later of the date 12 months following termination of his employment or the expiration of the Continuance Period.

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*Agreement with Ms. Merrell.* On August 10, 2005, the Company and Cynthia B. Merrell entered into a letter agreement in connection with Ms. Merrell's resignation as Chief Financial Officer and Treasurer. As amended by letter agreement dated January 18, 2006, the agreement with Ms. Merrell provided that she would continue as the Company's Chief Financial Officer and Treasurer until the date (the Resignation Effective Date) that was the earlier of (a) the date a successor CFO, including any acting or interim CFO, became CFO by appointment of the Company's Board of Directors or (b) May 5, 2006, unless her employment was terminated earlier by Ms. Merrell or the Company. Ms. Merrell's resignation became effective on May 5, 2006. Until the Resignation Effective Date, she was compensated at her current base salary and was eligible to participate in all Company employee benefit plans, policies and arrangements that were applicable to regular, full-time employees, including the Company's Management Incentive Compensation Plan, with any incentive payment award under the plan prorated as of the Resignation Effective Date.

Beginning on the Resignation Effective Date and until December 31, 2006, unless her employment is terminated earlier, Ms. Merrell will serve as Senior Financial Advisor to the Company's Chief Executive Officer on a part-time basis, up to 80 hours per month. During that period, she will continue to be compensated at her current base salary and will be eligible to participate in all Company employee benefit plans, policies and arrangements that are applicable to part-time employees, except that she will not participate in the Company's quarterly Employee Incentive Compensation Plan. She will also not be eligible to participate in the Company's medical, vision and dental plans, unless she timely elects to extend coverage pursuant to COBRA. The Company will increase her salary by an amount equal to the applicable COBRA premium during the period she is a part-time employee under the Agreement.

Ms. Merrell's stock options will continue to vest until the termination of her employment with the Company, subject to the provisions of the Company's Equity Compensation Plan and applicable agreements between Ms. Merrell and the Company. The non-qualified stock option granted to Ms. Merrell on October 1, 2004 to purchase up to 30,000 shares of the Company's stock, which became fully vested and exercisable as of April 15, 2005 subject to certain contractual restrictions on sale or other transfer of the purchased shares, may be exercised by Ms. Merrell free of such restrictions, subject to the expiration provisions of the applicable option agreement and the Company's trading window policy.

If the Company terminates Ms. Merrell's employment without cause (as defined in the Agreement) prior to December 31, 2006, Ms. Merrell will be entitled to receive a severance payment equal to the sum of (1) the remaining base salary she would have earned through December 31, 2006, (2) the value of any accrued and unused vacation days and holiday hours as of the last day of her employment and (3) her cost (grossed up for taxes) to continue medical, vision and dental coverage for herself and her dependents through the first anniversary of the Resignation Effective Date. If Ms. Merrell remains employed by the Company through December 31, 2006, Ms. Merrell will be entitled to receive a severance payment equal to the sum of the amounts described in (2) and (3) above.

If Ms. Merrell terminates her employment with the Company or the Company terminates Ms. Merrell for cause (as defined in the Agreement) prior to December 31, 2006, the Company shall have no obligation to pay Ms. Merrell any severance payments. Cause includes among other things Ms. Merrell's death, disability or incapacity, acts or omission of gross negligence or willful misconduct, willful and continued failure to perform duties and responsibilities, material breach of her confidential information, intellectual property and non-compete agreement with the Company or, prior to the Resignation Effective Date, her employment by another entity.

Payment of any severance amounts is conditioned upon Ms. Merrell providing the Company a release of customary claims.

**Table of Contents****Equity Compensation Plans**

The following table provides information, as of June 25, 2006, for all of the Company's compensation plans (including individual compensation arrangements) under which it is authorized to issue equity securities.

**Equity Compensation Plan Information**

Plan Category	(a)	(b)	(c)
	Number of securities to be issued upon exercise of outstanding options, warrants and rights (1)	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (1)
Equity compensation plans approved by security holders	8,681,100(2)	\$ 27.36	3,930,741(3)
Equity compensation plans not approved by security holders	1,507,095(4)	\$ 19.96	
<b>Total</b>	<b>10,188,195</b>	<b>\$ 26.27</b>	<b>3,930,741</b>

(1) Refers to shares of the Company's common stock.

(2) Includes shares issuable upon exercise of outstanding options under the following plans in the amounts indicated: Equity Compensation Plan 7,294,096 shares; Stock Option Plan for Non-Employee Directors ( Director Plan ) 48,000 shares; and 2004 Long-Term Incentive Compensation Plan ( LTIP ) 1,339,004 shares.

(3) Includes shares remaining for future issuance under the following plans in the amounts indicated: the LTIP 3,411,308 shares, 892,250 shares of which are available for issuance as restricted shares; and 2005 Employee Stock Purchase Plan 519,433 shares.

(4) Includes shares issuable upon exercise of outstanding options under the following plans in the amounts indicated: 2001 Nonqualified Stock Option Plan ( Nonqualified Plan ) 1,303,032 shares; Fiscal 2002 Stock Option Bonus Plan ( Fiscal 2002 Bonus Plan ) 19,824 shares; Fiscal 2001 Stock Option Bonus Plan ( Fiscal 2001 Bonus Plan ) 142,734 shares; and Nitres, Inc. 1999 Stock Option/Stock Issuance Plan ( Nitres Plan ) 41,505 shares. The Company assumed

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the options outstanding under the Nitres Plan, which have a weighted average exercise price of \$0.005 per share, in connection with the Company's acquisition of Nitres, Inc. in May 2000.

As of June 25, 2006, the only compensation plans or arrangements under which the Company is authorized to issue equity securities and which have not been previously approved by the shareholders are the Nonqualified Plan, the Fiscal 2001 and Fiscal 2002 Bonus Plans and the options assumed under the Nitres Plan. The following is a brief description of the material features of these plans; this description is not intended to be a complete description of the plans and is qualified in its entirety by reference to the full text of the applicable plan:

*Nonqualified Plan.* The Nonqualified Plan was adopted by the Board of Directors in April 2001. It provided for grants to the Company's eligible employees (including employees of its controlled subsidiaries) of nonqualified stock options to purchase shares of the Company's common stock. None of the Company's directors or officers was eligible to receive awards under the Nonqualified Plan. The Nonqualified Plan terminated as to additional grants in January 2003. As of June 25, 2006, there were options to purchase 1,303,032 shares outstanding under the Nonqualified Plan.

*Fiscal 2001 and Fiscal 2002 Bonus Plans.* The Board of Directors adopted the Fiscal 2001 Bonus Plan in October 1999 in order to provide for grants of nonqualified stock options to the Company's eligible employees (including employees of its controlled subsidiaries) for each quarter of fiscal 2001 if the Company achieved pre-established financial targets for the quarter. None of the Company's directors or officers was eligible to

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receive awards under the plan, and employees participating in its cash incentive compensation programs did not participate in the plan. The Fiscal 2001 Bonus Plan expired as to additional grants in September 2001. As of June 25, 2006, there were options to purchase 142,734 shares outstanding under the Fiscal 2001 Bonus Plan.

The Fiscal 2002 Bonus Plan was adopted by the Board of Directors in July 2001 with substantially the same terms as the Fiscal 2001 Bonus Plan. The Fiscal 2002 Bonus Plan expired as to additional grants in September 2002. As of June 25, 2006 there were options to purchase 19,824 shares outstanding under the Fiscal 2002 Bonus Plan.

*Nitres Plan.* In connection with the acquisition of Nitres, Inc. in May 2000, pursuant to which Nitres became the Company's wholly-owned subsidiary, the Company assumed certain outstanding stock options granted under the Nitres Plan. Since the closing of the acquisition, no additional stock options have been awarded, nor are any authorized to be awarded, under the Nitres Plan. As of June 25, 2006 there were 41,505 nonqualified stock options outstanding under the Nitres Plan.

## **Report of the Compensation Committee**

The Compensation Committee approves the compensation of the chief executive officer and all other executive officers. In addition, the Committee administers the Company's equity compensation plans and, in that capacity, reviews and approves awards to executive officers under the plans. This report describes the policies followed by the Committee with respect to the compensation of executive officers for fiscal 2006 and the bases for the fiscal 2006 compensation of Mr. Swoboda, who served as Chairman and Chief Executive Officer ( CEO ) during the year.

*Executive Officer Compensation Policies.* The Committee believes the Company's overall compensation program should relate to creating shareholder value. Accordingly, the Committee seeks to adhere to executive compensation practices that will enable the Company to attract and retain talented executives, align the interests of executives with shareholder interests and motivate executives to achieve targeted Company objectives. The Company historically has relied to a substantial degree on equity compensation to attract and motivate executive officers. In considering proposed equity awards, the Committee takes into account factors it deems appropriate, including the officer's position and level of responsibility, options and restricted stock held by the officer, the potential reward to the officer if the stock price appreciates and the competitiveness of the officer's overall compensation arrangements. Outstanding performance by an individual and significant changes in responsibilities also may be taken into consideration.

In applying these policies in approving the compensation of executive officers for fiscal 2006, the Committee sought to establish each officer's overall compensation at



competitive market levels based on compensation for comparable positions at similarly-situated companies. In approving compensation adjustments the Committee examined both qualitative and quantitative factors relating to corporate and individual performance. The qualitative factors in many instances necessarily involved a subjective assessment by the Committee. The Committee did not base its considerations on any single factor. It instead considered a variety of factors and evaluated individual performance against those factors both in absolute terms and in relation to the executive's peers at similar companies. With respect to executive officers other than the CEO, the Committee also considered Mr. Swoboda's recommendations.

Executive officer compensation approved for fiscal 2006 consisted of base salary, stock option and restricted stock grants and awards under the management incentive compensation plan, in addition to other benefits available to Company employees generally. In the case of Ms. Merrell, who tendered her resignation as Chief Financial Officer in August 2005 and resigned the position effective in May 2006, the Committee determined it was appropriate to make no adjustment to her salary or incentive target award as an executive officer for fiscal 2006 nor to grant her any additional equity awards. To assure her continued availability for a transition period following her resignation, the Committee approved an agreement under which the Company has employed her in an advisory role on a part-time basis through December 2006.

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The options awarded to executive officers during fiscal 2006 were granted at exercise prices equal to the closing market price of the underlying stock on the grant date, are subject to vesting ratably over three years from the grant date and have a maximum term of seven years. The restricted stock awards were granted subject to vesting ratably over five years from the grant date. Awards under the incentive compensation plan were assigned as a target award for each participant, expressed as a percentage of base salary, to be paid if certain goals were achieved. The goals included corporate performance measures for all participants and individual quarterly objectives for participants reporting to the CEO. For executive officers other than the CEO and Chairman, 60% of the target award was based upon fiscal year financial goals and the remainder based upon individual quarterly objectives. Participants were eligible to earn from 0% to 100% of the quarterly awards and from 0% to 150% of the annual awards depending on performance. For the CEO and Chairman, the target awards were based entirely on fiscal year goals. The corporate financial goals were established at the beginning of the fiscal year and included revenue, net income and earnings per share measures. No part of the annual award would be paid unless the minimum revenue and net income or earnings per share goals were met. For fiscal 2006, no part of the annual award was paid because the minimum financial targets were not met.

*Bases for CEO Compensation.* The Compensation Committee followed the general policies described above in approving Mr. Swoboda's compensation for fiscal 2006. The Committee took into consideration both individual and corporate performance, including the Company's financial results for fiscal 2005, and competitive market data regarding compensation of chief executive officers at similarly-situated companies. Based on these factors, the Committee approved an annual salary of \$550,000 for Mr. Swoboda, effective as of September 2005, with a target incentive award equal to 70% of his base salary. The incentive award was conditioned upon achievement of the corporate performance goals for the year as described above. Based on the fiscal 2006 financial results, no part of the incentive award was paid.

Mr. Swoboda also received one option grant during fiscal 2006, representing the right to purchase 6,000 shares of common stock at \$25.47 per share, with the exercise price equal to the closing market price on the grant date. The option is scheduled to vest over three years from the grant date. In addition, the Committee approved a restricted stock award of 30,000 shares to Mr. Swoboda, vesting ratably over five years from the grant date.

THE COMPENSATION COMMITTEE

James E. Dykes, Chairman

Dolph W. von Arx

Clyde R. Hosein

Robert J. Potter, Ph.D.

Harvey A. Wagner

Thomas H. Werner

**Compensation Committee Interlocks and Insider Participation**

None of the members of the Compensation Committee who served during fiscal 2006 has ever served as an officer or employee of the Company or any of its subsidiaries. No interlocking relationships exist between the Company's Board of Directors or Compensation Committee and the board of directors or compensation committee of any other company.

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**PROPOSAL NO. 2 RATIFICATION OF APPOINTMENT OF  
INDEPENDENT AUDITORS**

The Audit Committee has reappointed Ernst & Young LLP to audit the consolidated financial statements of the Company for fiscal 2007. Ernst & Young was first engaged as the Company's independent auditors for fiscal 1999 and has served as the Company's independent auditors for each subsequent fiscal year. A representative from Ernst & Young is expected to be present at the 2006 Annual Meeting, will have the opportunity to make a statement if he or she desires to do so and is expected to be available to respond to appropriate questions.

Although shareholder ratification of the appointment is not required by law or the Company's Bylaws, the Audit Committee determined that, as a matter of corporate governance, the selection of independent auditors should be submitted to the shareholders for approval. If the appointment of Ernst & Young is not ratified by a majority of the shares cast at the 2006 Annual Meeting, the Audit Committee will consider the appointment of other independent auditors for subsequent fiscal years.

**The Board of Directors recommends**

**shareholders vote FOR Proposal No. 2.**

**Report of the Audit Committee**

The role of the Audit Committee is to assist the Board of Directors in its oversight of the Company's financial reporting process and audits of the Company's financial statements including its internal controls over financial reporting. The full responsibilities of the Audit Committee are described in a written charter adopted by the Board of Directors, a copy of which is posted on the Company's website at [www.cree.com](http://www.cree.com). The management of the Company is responsible for the preparation, presentation and integrity of the Company's financial statements, the Company's accounting and financial reporting principles, internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The independent auditors are responsible for auditing the Company's financial statements and expressing an opinion as to their conformity with generally accepted accounting principles, as well as expressing opinions on management's assessment of the effectiveness of the Company's internal controls and the auditors' own assessment of the effectiveness of the Company's internal controls.

In the performance of its oversight function, the Audit Committee has reviewed and discussed with management and the independent auditors the audited financial statements, management's assessment and report on the effectiveness of the Company's internal controls, the independent auditors' attestation report on the

Company's internal controls and the processes that support certifications of the Company's financial statements by the Company's Chief Executive Officer and Chief Financial Officer. The Audit Committee has also discussed with the independent auditors the matters required by Statement on Auditing Standards No. 61, Communication with Audit Committees, as currently in effect. In addition, the Audit Committee has received the written disclosures and the letter from the independent auditors required by Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees, as currently in effect, has considered whether the provision of non-audit services by the independent auditors to the Company is compatible with maintaining the auditors' independence and has discussed with the auditors the auditors' independence.

The members of the Audit Committee in carrying out their duties are not engaged in the practice of accounting and do not act as auditors. Members of the Committee rely without independent verification on the information provided to them and on the representations made by management and the independent auditors. Accordingly, the Audit Committee's oversight does not provide an independent basis to determine that management has maintained appropriate accounting and financial reporting principles or appropriate internal controls and procedures designed to assure compliance with accounting standards and applicable laws and regulations. The Audit Committee's considerations and discussions referred to above do not assure that the audit

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of the Company's financial statements has been carried out in accordance with generally accepted auditing standards, that the financial statements are presented in accordance with generally accepted accounting principles or that the Company's auditors are in fact independent.

The Audit Committee routinely meets privately with the Company's internal auditor and the independent auditors.

Based upon the review and discussions described in this report, and subject to the limitations on the role and responsibilities of the Audit Committee referred to above and in the Audit Committee Charter, the Audit Committee recommended to the Board that the audited financial statements be included in the Company's Annual Report on Form 10-K for the year ended June 25, 2006 for filing with the Securities and Exchange Commission.

**THE AUDIT COMMITTEE**

Harvey A. Wagner, Chairman

Dolph W. von Arx

James E. Dykes

Clyde R. Hosein

Robert J. Potter, Ph.D.

Thomas H. Werner

**Independent Auditor Fee Information**

The fees of Ernst & Young LLP for the fiscal years shown were as follows:

	<b>Fiscal 2006</b>	<b>Fiscal 2005</b>
Audit Fees	\$ 578,205	\$ 882,011
Audit-Related Fees	25,083	115,676
Tax Fees		59,588
All Other Fees	640	1,500

Total	\$ 603,928	\$ 1,058,775
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*Audit Fees.* This category includes fees billed for the fiscal year shown for professional services for the audit of the Company's annual financial statements, review of financial statements included in the Company's quarterly reports on Form 10-Q, internal controls attestation under Section 404 of the Sarbanes-Oxley Act of 2002, and services that are normally provided by the independent auditors in connection with statutory and regulatory filings or engagements for the relevant fiscal years.

*Audit-Related Fees.* This category includes fees billed in the fiscal year shown for assurance and related services that are reasonably related to the performance of the audits and reviews of the Company's financial statements and are not reported under the category Audit Fees. The services comprising the fees disclosed under this category for fiscal 2006 were for employee benefit plan audit services and consents related to various Form S-8 filings and for fiscal 2005 were for employee benefit plan audit services, consents related to various Form S-8 filings and various accounting and related consultations.

*Tax Fees.* This category includes fees billed in the fiscal year shown for professional services for tax compliance, tax planning and tax advice. The services comprising the fees disclosed under this category for fiscal 2005 were for tax provision and other tax consultations.

*All Other Fees.* This category includes fees billed in the fiscal year shown for products and services provided by Ernst & Young LLP that are not reported in any other category. The services comprising the fees disclosed under this category for fiscal 2006 were for FAS 123R training and for fiscal 2005 were for an online research tool.

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All audit and permissible non-audit services provided by the Company's independent auditors, as well as the fees for such services, must be pre-approved by the Audit Committee. The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to pre-approve audit and permissible non-audit services, provided such pre-approval decisions are reported to the full Audit Committee at its next scheduled meeting. The Committee has delegated such authority to the Committee's chairman. Any pre-approval is generally for the current fiscal year, and any pre-approval is detailed as to the particular service or category of services. All audit and non-audit services provided by the Company's independent auditors during fiscal 2006 and fiscal 2005 were pre-approved by or on behalf of the Company's Audit Committee.

**OTHER MATTERS**

**Other Business**

Other than the election of directors and ratification of the appointment of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending June 24, 2007, as described in this proxy statement, the Board of Directors presently knows of no other business to be conducted at the 2006 Annual Meeting. Under the Company's Bylaws, any shareholder desiring to present a proposal for consideration at the meeting, including any director nomination, was required to give the Company written notice of the proposal by a certain date. No timely proposals have been received. Should any other business properly come before the meeting, the persons named in the accompanying form of proxy may vote the shares represented by the proxy in their discretion, except that under the rules of the Securities and Exchange Commission the accompanying proxy cannot be voted for more than eight nominees.

**2007 Annual Meeting of Shareholders**

Pursuant to the rules of the Securities and Exchange Commission, shareholder proposals submitted for inclusion in the Company's proxy statement and form of proxy for the annual meeting to be held in 2007 must be received by the Company not later than May 23, 2007, and must comply with the Commission's rules in other respects.

Other shareholder proposals to be presented at the annual meeting in 2007, including director nominations, must comply with the notice requirements of the Company's Bylaws and be delivered to the Company not later than September 4, 2007, nor earlier than August 5, 2007. Any such proposals should be sent via means that afford proof of delivery to the Secretary at the Company's principal executive offices.



## **Procedures for Director Nominations**

Under the charter of the Governance and Nominations Committee, the Committee is responsible for identifying and selecting, or recommending that the Board select, qualified candidates for membership on the Board of Directors. In identifying candidates, the Committee takes into account such factors as it considers appropriate, which may include (a) ensuring that the Board, as a whole, is diverse and consists of individuals with various and relevant career experience, relevant technical skills, industry knowledge and experience, financial expertise and local or community ties; (b) minimum individual qualifications, including strength of character, mature judgment, familiarity with the Company's business and industry, independence of thought and an ability to work collegially; (c) questions of independence, possible conflicts of interest and whether a candidate has special interests or a specific agenda that would impair his or her ability to effectively represent the interests of all shareholders; and (d) the extent to which the candidate would fill a present need on the Board. The Committee is also authorized to develop additional policies regarding Board size, composition and member qualification.

The Governance and Nominations Committee is responsible for evaluating suggestions concerning possible candidates for election to the Board submitted to the Company, including those submitted by Board members (including self-nominations) and shareholders. All candidates, including those submitted by shareholders, will be

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evaluated by the Committee on the same basis as other candidates using the Board membership criteria described above and in accordance with applicable procedures. Once candidates have been identified, the Committee will determine whether such candidates meet the minimum qualifications for director nominees. A search firm, SpencerStuart, has been engaged to assist the Committee in identifying and evaluating potential candidates.

All nominees for election to the Board of Directors at the 2006 Annual Meeting were recommended by non-management directors. Any shareholder desiring to present a nomination for consideration by the Governance and Nominations Committee prior to the 2007 Annual Meeting must do so in accordance with the Company's Bylaws. See 2007 Annual Meeting of Shareholders above.

### **Shareholder Communications with Directors**

The Board of Directors, as a matter of policy, desires to facilitate communications between shareholders and directors to assist the Board in fulfilling its responsibilities to all shareholders. To that end the Board has established a process for use by shareholders who desire to bring matters to the Board's attention. The process is intended to provide shareholders one means of communicating with directors and is not intended to be exclusive.

Any shareholder who desires to send a communication to members of the Board may submit it either by e-mail addressed to [Corporate\\_Secretary@Cree.com](mailto:Corporate_Secretary@Cree.com) or by mail addressed to the attention of the Corporate Secretary at Cree, Inc., 4600 Silicon Drive, Durham, North Carolina 27703. All such communications should

include the number of shares beneficially owned by the person submitting the communication and his or her mailing address, telephone number and e-mail address, if any. All communications properly submitted under these procedures, except those deemed inappropriate as noted below, will be delivered to all members of the Board periodically, generally in advance of each regularly scheduled Board meeting. The Board has directed that the Secretary not forward communications which (a) are not reasonably related to the business of the Company, (b) concern individual grievances or other interests that are personal to the shareholder submitting the communication and that cannot reasonably be construed to present a matter of concern to shareholders generally or (c) under community standards, contain offensive, scurrilous or abusive content or that advocate engaging in illegal activities. If the Secretary, in his or her judgment, deems a communication inappropriate under the foregoing criteria, it will be returned to the person who submitted it together with a brief explanation of the reason why it has been deemed inappropriate for delivery.

### **Costs of Soliciting Proxies**

The Company will bear the cost of this solicitation, including the preparation, printing and mailing of the proxy statement, proxy card and any additional soliciting materials sent by the Company to shareholders. The Company's directors, officers and employees may solicit proxies personally or by telephone without additional compensation. The Company will also reimburse brokerage firms and other persons representing beneficial owners of shares for reasonable expenses incurred in forwarding proxy soliciting materials to the beneficial owners.

**Availability of Report on Form 10-K**

**A copy of the Company's report on Form 10-K for the fiscal year ended June 25, 2006 (without exhibits), including financial statements, will be furnished without charge to any shareholder whose proxy is solicited hereby upon written request directed to: Director, Investor Relations, Cree, Inc., 4600 Silicon Drive, Durham, North Carolina 27703-8475.**

**Shareholders Sharing the Same Last Name and Address**

Only one annual report and proxy statement may be delivered to multiple shareholders sharing an address unless the Company has received contrary instructions from one or more of the shareholders. The Company will deliver promptly upon written or oral request a separate copy of the annual report and proxy statement to a

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shareholder at a shared address to which a single copy of the documents was delivered. Requests for additional copies should be directed to the Corporate Secretary by e-mail addressed to Corporate\_Secretary@Cree.com, by mail addressed to the attention of the Corporate Secretary at Cree, Inc., 4600 Silicon Drive, Durham, North Carolina 27703-8475 or by telephone at (919) 313-5300. Shareholders sharing an address and currently receiving a single copy may contact the Corporate Secretary as described above to request that multiple copies be delivered in future years. Shareholders sharing an address and currently receiving multiple copies may request delivery of a single copy in future years by contacting the Corporate Secretary as described above.

**Principal Executive Offices**

The Company's principal executive offices are located at 4600 Silicon Drive, Durham, North Carolina 27703-8475, and the main telephone number at that location is (919) 313-5300.

Dated: September 15, 2006

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**CREE, INC.**

**PROXY SOLICITED BY THE BOARD OF DIRECTORS**

**FOR THE 2006 ANNUAL MEETING OF SHAREHOLDERS**

The undersigned hereby appoints Charles M. Swoboda and Adam H. Broome, and each of them individually, as proxies and attorneys-in-fact of the undersigned, with full power of substitution, to represent the undersigned and to vote, in accordance with the directions in this proxy, all of the shares of stock of Cree, Inc. which the undersigned is entitled to vote at the 2006 Annual Meeting of Shareholders of Cree, Inc. to be held at the offices of the corporation at 4425 Silicon Drive, Durham, North Carolina 27703, on Friday, November 3, 2006, at 10:00 a.m. local time, and at any and all adjournments thereof.

**Shares represented by this proxy will be voted as directed on the reverse. Unless a contrary direction is indicated, the shares will be voted FOR election of the director nominees listed on the reverse, and FOR the ratification of the appointment of Ernst & Young LLP as the independent auditors of the Company for the fiscal year ending June 24, 2007, and, in the discretion of the persons acting pursuant to this proxy, on any other matters that properly come before the meeting or any adjournments thereof, all as more specifically set forth in the Notice of Annual Meeting and Proxy Statement dated September 15, 2006, receipt of which is hereby acknowledged.**

*(Please sign and date on the reverse side and promptly return in the enclosed envelope.)*

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**ANNUAL MEETING OF SHAREHOLDERS OF**

**CREE, INC.**

November 3, 2006

**PROXY VOTING INSTRUCTIONS** \_\_\_\_\_

**MAIL** Date, sign and mail your proxy card in the envelope provided as soon as possible.

**COMPANY  
NUMBER**

-or-

**TELEPHONE** Call toll-free **1-800-PROXIES** from any touch-tone telephone and follow the instructions. Have your proxy card available when you call.

**ACCOUNT  
NUMBER**

-or-

**INTERNET** Access **www.voteproxy.com** and follow the on-screen instructions. Have your proxy card available when you access the web page.

You may enter your voting instructions at 1-800-PROXIES or [www.voteproxy.com](http://www.voteproxy.com) up until 11:59 PM Eastern Time the day before the cut-off or meeting date.

**Please detach along perforated line and mail in the envelope provided**

**IF you are not voting via telephone or the Internet.**

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**CONTINUED FROM OTHER SIDE. NOT VALID UNLESS SIGNED AND DATED.**

**PLEASE SIGN, DATE AND RETURN PROMPTLY IN THE ENCLOSED ENVELOPE. PLEASE MARK YOUR**

**VOTE IN BLUE OR BLACK INK AS SHOWN HERE. x**

**FOR    AGAINST    ABSTAIN**  
\_\_\_\_\_  
\_\_\_\_\_

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Election of Directors:

NOMINEES:

- o Charles M. Swoboda
- o John W. Palmour, Ph.D.

- o Dolph W. von Arx
- o James E. Dykes
- o Clyde R. Hosein

- o Robert J. Potter, Ph.D.

- o Harvey A. Wagner
- o Thomas H. Werner

2. Ratification of the appointment of

ERNST & YOUNG LLP

FOR ALL NOMINEES

WITHHOLD AUTHORITY

FOR ALL NOMINEES

FOR ALL EXCEPT

(See instructions below)

as independent auditors for the fiscal year ending June 24, 2007.

Any proxy heretofore given by the undersigned is hereby revoked.

**INSTRUCTION:** To withhold authority to vote for any individual nominee(s), mark FOR ALL EXCEPT and fill in the circle next to each nominee you wish to withhold, as shown here: 1

**Please complete, sign and return this proxy whether or not you intend to attend the meeting.**

To change the address on your account, please check the box at the right and indicate your new address in the address space above. Please note that changes to the registered name(s) on the account may not be submitted via this method.

**Please check box if you intend to attend the annual meeting in person.**

Signature of Shareholder \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_, Signature of Shareholder \_\_\_\_\_ Date \_\_\_\_\_

**Note:** Please sign exactly as your name or names appear on this Proxy. When shares are held jointly, each holder should sign. When signing as executor, administrator, attorney, trustee or guardian, please give full title as such. If the signer is a corporation, please sign full corporate name by duly authorized officer, giving full title as such. If signer is a partnership, please sign in partnership name by authorized person.