

# SCIO DIAMOND TECHNOLOGY CORP

## FORM 8-K (Current report filing)

Filed 12/07/12 for the Period Ending 11/30/12

Address	411 UNIVERSITY RIDGE, SUITE D GREENVILLE, SC 29601
Telephone	864.346.2733
CIK	0001488934
Symbol	SCIO
SIC Code	3290 - Abrasive, Asbestos, And Miscellaneous
Industry	Constr. - Supplies & Fixtures
Sector	Capital Goods
Fiscal Year	03/31

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

**FORM 8-K**

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

Date of Report (Date of earliest event reported): **November 30, 2012**

**SCIO DIAMOND TECHNOLOGY CORPORATION**  
(Exact Name of Registrant As Specified in Its Charter)

**Nevada**  
(State or Other Jurisdiction of Incorporation)

**000-54529**  
(Commission File Number)

**45-3849662**  
(I.R.S. Employer Identification No.)

**411 University Ridge, Suite D, Greenville, South Carolina 29601**  
(Address of Principal Executive Offices) (Zip Code)

**(864) 751-4880**  
(Registrant's Telephone Number, Including Area Code)

**Not Applicable**  
(Former Name or Former Address, if Changed Since Last Report.)

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

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

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

(b) and (e)

On November 30, 2012, Joseph D. Lancia resigned from the Board of Directors (the “Board”) of Scio Diamond Technology Corporation, a Nevada corporation (the “Company”). Also on November 30, 2012, Mr. Lancia resigned as President and Chief Executive Officer of the Company. In connection with his resignations, Mr. Lancia entered into an Agreement of Separation, Waiver, and Release (the “Lancia Release”). Pursuant to the Lancia Release, Mr. Lancia will be paid (1) a gross amount of \$225,000 payable over the twelve-month period commencing in December 2012, and (2) the gross amount of \$1,200 per month for each of the twelve consecutive months commencing with December 2012. In addition, pursuant to the Lancia Release, (1) Mr. Lancia will promptly transfer 1,000,000 shares of Common Stock of the Company, \$0.001 par value (“Common Stock”) to the Company, (2) Mr. Lancia grants an irrevocable proxy to Edward S. Adams, Chairman of the Board, to vote 500,000 shares of Common Stock retained by Mr. Lancia, which 500,000 shares shall also be subject to a one year restriction on transfer and sale, and (3) options to purchase 3,500,000 shares of Common Stock held by Mr. Lancia shall be immediately canceled and may not be exercised. In addition, for a period of six (6) months after the date of the Lancia Release, Mr. Lancia agrees to provide “Transition Assistance” (as defined in the Lancia Release) as may be reasonably needed and requested by the Company. The Lancia Release includes a mutual release provision and mutual non-disparagement provision. In general and in accordance with the terms of the Lancia Release, Mr. Lancia shall continue to be subject to the confidentiality, non-compete and customer and employee non-solicitation restrictions and other restrictive covenants contained in his Amended and Restated Employment Agreement, Effective as of November 29, 2011 (including in the Proprietary Information and Inventions Agreement that is incorporated by reference into his Amended and Restated Employment Agreement, Effective as of November 29, 2011).

On November 30, 2012, Charles G. Nichols resigned as Chief Financial Officer of the Company. In connection with his resignation, Mr. Nichols entered into an Agreement of Separation, Waiver, and Mutual Release (the “Nichols Release”). Pursuant to the Nichols Release, Mr. Nichols will be paid (1) an amount equal to \$20,833.33, and (2) an amount equal to two months of health insurance premiums that would become due as a result of Mr. Nichols’ election to continue his health insurance coverage under applicable South Carolina law. In addition, pursuant to the Nichols Release, options to purchase 625,000 shares of Common Stock held by Mr. Nichols shall be immediately canceled and may not be exercised, but Mr. Nichols shall continue to hold options to purchase 100,000 shares of Common Stock and shall have a period of six months from November 30, 2012 to exercise such options at an exercise price of \$0.70 cents per share (which exercise price is consistent with the terms of an earlier option grant to Mr. Nichols). The Nichols Release includes a mutual release provision and mutual non-disparagement provision. In general and in accordance with the terms of the Nichols Release, Mr. Nichols shall continue to be subject to the confidentiality, non-compete and customer and employee non-solicitation restrictions and other restrictive covenants contained in his Amended and Restated Employment Agreement, Effective as of November 30, 2011 (including in the Proprietary Information and Inventions Agreement that is incorporated into his Amended and Restated Employment Agreement, Effective as of November 30, 2011).

(c) and (e)

Effective December 5, 2012, the Company appointed Stephen D. Kelley, age 50, as its Chief Executive Officer, to serve until his resignation, removal or termination. Mr. Kelley most recently served as Chief Operating Officer and Executive Vice President of Cree, Inc., which is a manufacturer of silicon carbide based semiconductors. Prior to his employment at Cree, Inc., Mr. Kelley was a Vice President at Texas Instruments, Inc., which is a global semiconductor design and manufacturing company. There are no family relationships among Mr. Kelley and any of the Company’s directors and executive officers. There are no relationships between Mr. Kelley and the Company that would require disclosure pursuant to Item 404(a) of Regulation S-K.

In connection with the appointment of Mr. Kelley as Chief Executive Officer of the Company, the Company entered into an Employment Letter Agreement (the “Kelley Agreement”) with Mr. Kelley on December 5, 2012. Pursuant to the Kelley Agreement, Mr. Kelley will be paid a base annual salary of \$275,000, subject to potential increases (but not decreases) in connection with a salary review by the Board. The Board, in its sole and unilateral discretion, may award Mr. Kelley with an annual bonus for the 2013 fiscal year of up to \$150,000 based upon the

achievement of performance targets. Mr. Kelley will be entitled to reimbursement of actual relocation expenses in an amount not to exceed \$30,000. Mr. Kelley is entitled, during his term of employment, to 20 days paid vacation each calendar year and to such medical and other employee benefits as the Company may offer from time to time to similarly situated employees, subject to applicable eligibility requirements.

Pursuant to the Kelley Agreement, unless Mr. Kelley is terminated for “Cause” (as defined in the Kelley Agreement) or voluntarily resigns, Mr. Kelley generally will be entitled to severance pay equal to his base salary for one year and \$2,700 per month for one year to offset potential medical, dental and life insurance expenses and any premiums for continuation coverage of the same. In addition, if Mr. Kelley is terminated during the four month period before or twelve month period after a “change in control” (as defined in the Kelley Agreement) that implies a Company value of \$50,000,000 or more, he will be entitled to certain payments as more fully described in the Kelley Agreement. Mr. Kelly will receive options to purchase 3,200,000 shares of Common Stock at an exercise price of \$1.01 per share, and these options will vest in accordance with the following conditions (as set forth in the Kelley Agreement): (1) options to purchase 600,000 shares of Common Stock vested on December 5, 2012; (2) options to purchase 500,000 shares of Common Stock will vest upon the six month anniversary of Mr. Kelley’s start date (assuming Mr. Kelley remains employed with the Company); (3) options to purchase 1,000,000 shares of Common Stock will vest when the Company achieves cumulative revenue of \$5 million (cumulative from January 1, 2013 forward); (4) options to purchase 500,000 shares of Common Stock will vest when the Company achieves cumulative EBITDA of \$1 million (cumulative from January 1, 2013 forward); and (5) options to purchase 600,000 shares of Common Stock will vest when the Company achieves cumulative EBITDA of \$2.5 million (cumulative from January 1, 2013 forward). In general, these options may be exercised by Mr. Kelley for five years from the vesting date (subject to any earlier expiration contained in the Company’s 2012 Share Incentive Plan or Mr. Kelley’s Stock Option Grant Agreement), and are subject to the Company’s 2012 Share Incentive Plan and Mr. Kelley’s Stock Option Grant Agreement. If Mr. Kelley’s employment is terminated for any reasons other than for “Cause” (as defined in the Kelley Agreement) or Mr. Kelley’s voluntary resignation, the Company will, in exchange for a general release from Mr. Kelley to the Company and its officers, directors, employees, shareholders and agents from liability, (1) extend the period during which Mr. Kelley may exercise his vested options to purchase shares to within twelve months following his date of separation, and (2) not exercise any right of repurchase with respect to any shares of Common Stock purchased by Mr. Kelley pursuant to the options he holds to purchase shares of Common Stock. All of Mr. Kelley’s granted options will automatically vest in the event of a “change in control” (as defined in the Kelley Agreement) that implies a Company value of \$50,000,000 or more.

Mr. Kelley is subject to a Proprietary Information and Inventions Agreement, which is incorporated by reference into and attached as an exhibit to the Kelley Agreement and contains, among other things, an intellectual property assignment provision and confidentiality, non-solicitation and non-competition restrictions, each as set forth in the Proprietary Information and Inventions Agreement attached as an exhibit to the Kelley Agreement. Mr. Kelley is an employee at will.

The Company is in the process of searching for a new Chief Financial Officer.

The foregoing descriptions of the Lancia Release, the Nichols Release and the Kelley Agreement are qualified in their entirety by reference to the full text of such agreements, copies of which are attached hereto as Exhibits 10.1 — 10.3 and incorporated herein by reference.

A copy of the Company’s press release announcing the appointment of Mr. Kelley as the Company’s Chief Executive Officer is attached hereto as Exhibit 99.1.

#### **Item 9.01 Financial Statements and Exhibits**

##### (d) Exhibits

Exhibit 10.1	Agreement of Separation, Waiver, and Release of Joseph D. Lancia
Exhibit 10.2	Agreement of Separation, Waiver, and Mutual Release of Charles G. Nichols
Exhibit 10.3	Employment Letter Agreement of Stephen D. Kelley
Exhibit 99.1	Press Release dated December 7, 2012

**SIGNATURES**

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

**SCIO DIAMOND TECHNOLOGY CORPORATION**

By: /s/ Stephen D. Kelley  
Name: Stephen D. Kelley  
Title: Chief Executive Officer

Dated: December 7, 2012

Date this agreement provided to Joseph Lancia: November 30, 2012

**AGREEMENT OF SEPARATION, WAIVER, AND RELEASE**

WHEREAS, Joseph Lancia (hereinafter the "Employee") has been employed by Scio Diamond Technology Corporation (hereinafter the "Company") as President and CEO, pursuant to that Amended and Restated Offer of Employment Effective as of November 29, 2011 (the "Employment Agreement"); and

WHEREAS, Employee and the Company are also parties to the following agreements: the Change in Control Agreement dated August 3, 2012 (the "Change in Control Agreement"); the two Qualified Stock Option Grant Agreements dated May 7, 2012, as amended on November 6, 2012 (the "May 7 Option Grants"); and the Qualified Stock Option Grant Agreement dated August 3, 2012, as amended on November 6, 2012 (the "August 3 Option Grant"); and

WHEREAS, the parties hereto now wish to terminate that employment relationship and to resolve any and all claims and disputes that might exist between them.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual promises contained in this Agreement of Separation, Waiver, and Release (this "Agreement"), the receipt and sufficiency of which are hereby acknowledged, Employee and the Company agree as follows:

1. Employee's employment with the Company is terminated effective at the close of business on November 30, 2012. Except as provided in this Agreement, the Company's obligation to pay salary, bonus or provide other benefits terminates on November 30, 2012. Employee also resigns from the Board of Directors of the Company effective as of November 30, 2012.
2. In consideration for this Agreement and the release contained herein, the Company will pay to Employee the following amounts:
  - a. The gross amount of Two Hundred Twenty Five Thousand Dollars (\$225,000.00);
  - b. Payment for any accrued and unused vacation and/or personal leave days due to Employee as of November 30, 2012, up to a maximum of ten (10) days;
  - c. The gross amount of Twelve Hundred Dollars (\$1,200.00) per month for each of the twelve consecutive months commencing with December 2012; provided, however, that such payments shall cease in the first such month in which Employee is employed in a position that gives him the right or option to obtain health insurance reasonably comparable to that provided him by the Company during his Employment, and such payments shall not thereafter recommence.

The payments provided for in items a. and c. above will be paid to Employee in equal installments over the twelve-month period commencing in December 2012, subject to normal and required withholdings, and in accordance with the Company's normal payroll practices and timing. Any payment under item b. shall be made in a lump sum payable on or before December 14, 2012, and subject to normal and required withholdings. No payment will be made until after the expiration of the revocation period provided for in paragraph 25(g) below.

3. Upon execution of this Agreement, the Company will also pay up to \$3000.00 of Employee's actual and documented attorneys' fees in connection with the negotiation and execution of this Agreement.
4. Employee currently holds 2,000,000 shares of Common Stock of the Company, \$0.001 par value ("Common Stock"). As part of this Agreement, Employee agrees to promptly transfer ownership of 1,000,000 shares of such Common Stock to the Company, for no consideration other than the provisions of this Agreement. In addition, Employee agrees to take all such actions and execute and deliver any documents reasonably required to effectuate the foregoing transfer. Employee confirms and agrees that Employee has full ownership of the remaining 1,000,000 shares of such Common Stock in his name (the "Lancia Shares"); provided, that (a) Employee shall not be able to transfer, sell, assign or dispose of 50% of the Lancia Shares for a period of one (1) year from the date of this Agreement, and (b) Employee hereby irrevocably constitutes and appoints, for the duration of that one-year period, Edward S. Adams as his attorney-in-fact and proxy, with full power of substitution, to vote and otherwise act (by written consent or otherwise) with respect to 50% of the Lancia Shares which Employee would otherwise be entitled to vote at any meeting of stockholders of the Company (whether annual or special and whether or not at an adjourned or postponed meeting) or consent to vote in lieu of any such meeting or otherwise, on any matter coming before the stockholders for a vote. Employee intends and agrees that the proxy granted hereby is coupled with an interest and shall be irrevocable during said one-year period, and Employee hereby revokes any and all previous proxies or powers of attorney with respect to 50% of the Lancia Shares and shall not during said one-year period purport to grant any other proxy or power of attorney with respect to 50% of the Lancia Shares, pledge 50% of the Lancia Shares as security for a loan, deposit 50% of the Lancia Shares into a voting trust, or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting 50% of the Lancia Shares. With respect to 50% of the Lancia Shares that are not subject to the one-year restriction, the Company shall reasonably cooperate and promptly, as requested by Employee or his representative, provide all documents, instructions and opinions reasonably required (at the Company's sole expense) so that Employee may freely trade such shares following the effective date hereof.
5. Pursuant to the May 7 Option Grants, Employee was granted options for the purchase of up to 3,000,000 shares of Common Stock at an exercise price of \$0.70 cents per share. In accordance with the November 6, 2012 amendment to the May 7 Option Grants, the options to purchase

3,000,000 shares of Common Stock pursuant to the May 7 Option Grants shall be immediately canceled and may not now or hereafter be exercised.

6. Pursuant to the August 3 Option Grant, Employee was granted options for the purchase of up to 500,000 shares of Common Stock at an exercise price of \$0.80 cents per share. In accordance with the November 6, 2012 amendment to the August 3 Option Grants, the options to purchase 500,000 shares of Common Stock pursuant to the August 3 Option Grant shall be immediately canceled and may not now or hereafter be exercised.
7. Employee recognizes and agrees that Employee is solely responsible for any federal, state, or other tax obligations, including but not limited to all reporting and payment obligations that could arise as a consequence of Employee's receipt of any payments or benefits pursuant to this Agreement, and with respect to any other transfer or transaction provided for herein, including but not limited to transfers of shares of Common Stock and the cancellation or exercise of options to purchase Common Stock. The Company shall cooperate and provide any documents to Employee reasonably necessary for Employee to comply with tax obligations in connection with this Agreement.
8. Employee hereby releases and waives all claims Employee may have against the Company and the parties identified in this paragraph as Released Parties who are connected with the Company. This means that, in consideration of the promises made by the Company herein, Employee, for Employee and for Employee's heirs, executors, administrators, personal representatives, successors, and assigns, does hereby release, waive, and forever discharge the Company and its related entities, their respective benefit plans, officers, directors, employees, representatives, agents, successors and assigns, and the respective heirs, executors, administrators, personal representatives, successors and assigns of the foregoing (collectively, the "Released Parties"), from any claim Employee may have against them. This release, and the term "claim" or "claims" as used in this Agreement, includes all benefits, grievances, proceedings, investigations, hearings, charges, complaints, claims, demands, actions, causes of action, and suits of whatever nature, whether known or unknown, fixed, absolute or contingent, matured or unmatured, foreseeable and unforeseeable, past, present, and future, asserted or unasserted, however arising or by reason of any matter, cause or thing whatsoever done, omitted or suffered to be done, and whether legal, equitable, or administrative except for claims arising out of this Agreement. Employee understands and agrees that in exchange for the benefits provided herein, Employee is giving up all such claims against the Released Parties.

This release also includes, but is not limited to, claims arising under federal, state, or local statute, ordinance, common law, regulation, equity or other sources including, but not limited to, any and all claims of disability, race, color, sex, age, national origin, ancestry, religion, or other discrimination, retaliation, or harassment, and claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq.; the Civil Rights Act of 1866, 1871, and 1964, as amended; the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq.; Section 1981 of Title 42 of the U.S. Code; the Americans with Disabilities Act, §§ 29



U.S.C. 12101 et seq.; the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.; the Age Discrimination in Employment Act; claims arising under the statutory or common laws of the State of South Carolina or any other state, and claims asserting breach of contract (whether express or implied), promissory estoppel, wrongful termination, defamation, failure to pay wages or commissions, failure to provide benefits, breach of implied covenant of good faith and fair dealing, promissory estoppel, invasion of privacy, injury to credit, outrage, negligent or intentional infliction of emotional distress, retaliation, interference with contract, fraud, distress, extortion, humiliation, loss of standing and prestige, personal injury, loss of consortium, negligence, tort, or other common law causes of action, including, but not limited to, those related in any way to Employee's employment by the Company, the terms of the Employment Agreement, the May 7 Option Grants, the August 3 Option Grant and the Change in Control Agreement, benefits or wages provided in connection with that employment, severance or other post-termination pay or benefits, and/or the termination of that employment. Employee does not waive any rights or claims that arise from events occurring after execution of this Agreement by Employee. Except as provided in this Agreement, the released claims include, but are not limited to, any claims for back pay, front pay, benefits of any sort, severance pay, damages, expenses, court costs, attorneys' fees, special damages, punitive damages, treble or other multiple damages, statutory or other penalties, reinstatement or any other monetary or equitable relief. It is the parties intent to release all claims that can legally be released but no more than that.

9. The Company does hereby release and forever discharge Employee in his capacity as an officer, employee and director of the Company from any and all manner of causes, causes of action, claims, demands, losses, expenses, damages, special damages, punitive damages, attorney's fees, court costs, remedies and rights to payment of every kind and nature, legal and equitable, known or unknown, foreseeable and unforeseeable, past, present, and future, upon, resulting from, or by reason of any matter, cause, or thing whatsoever done, omitted or suffered to be done from the date of Employee's employment with the Company through the effective date of this Agreement. It is the parties intent to release all claims that can legally be released but no more than that.
10. Employee acknowledges that if Employee sues the Company or any other Released Party in violation of this Agreement, Employee may be directed to pay some or all costs and expenses incurred by the Company or the Released Party in defending the suit, including reasonable attorneys' fees, to the extent provided by law and determined by the court. The Company acknowledges that if the Company sues Employee in violation of this Agreement, the Company may be directed to pay some or all costs and expenses incurred by the Employee in defending the suit, including reasonable attorneys' fees to the extent provided by law and determined by the court.
11. Each party agrees not to claim, receive, or accept any monies, damages, or relief in conflict with this Agreement and each party's waiver of rights, and not to pursue any of the claims released in this Agreement. Employee shall waive any right to, and will not accept, any

remedy obtained through the efforts of any other individual or agency, state or federal, relating to Employee's employment with the Company. This Agreement does not affect Employee's ability or responsibility to participate in or cooperate with any future legal or other investigation, whether conducted by the Company or any governmental agency.

12. Employee represents and warrants that Employee has not made a claim for worker's compensation related to Employee's employment with the Company, and that Employee is currently unaware of any injury or illness that would support such a claim.
13. Following any transition period provided in paragraph 19 hereof, Employee agrees to return to the Company all property of the Company, including but not limited to company data and information, records, files and lists (in each case, whether hard copy or electronic) in his possession, including but not limited to, any confidential information, trade secrets, or any Company information not otherwise available to the general public or shareholders of the Company. Employee agrees not to access and not to attempt to gain access to any aspect of the Company's computer, electronic or IT systems, except as expressly allowed by the Company on conjunction with Employee's cooperation in transition after the date hereof, as provided in paragraph 19 hereof.
14. Employee represents and warrants that Employee has not assigned, transferred, or conveyed to any individual or entity not a party to this Agreement any alleged right, claim or cause of action of any kind which is included within the above releases. Employee further represents and warrants that Employee is executing this Agreement knowingly and voluntarily, without any duress, coercion or undue influence by the Company, its representatives or any other person.
15. Employee acknowledges and agrees that neither the Company nor any of the Released Parties owes Employee any wages, salary, bonus, cost reimbursement, vacation pay, commissions, or other compensation in any amount whatsoever other than as expressly agreed to herein. The consideration being paid for this Agreement encompasses any such amounts Employee might claim. The Company's only obligation is to pay the amounts provided herein. Employee further acknowledges that neither the Company nor any of the Released Parties compelled Employee to execute this Agreement as a condition to the payment of any amounts previously and admittedly due to Employee.
16. The parties hereto recognize and agree that the Change in Control Agreement is terminated as of the date hereof and shall be of no further force and effect. Without loss of generality of the foregoing, no payment is or will become due to Employee under the Change in Control Agreement, and the Restrictive Covenants contained in paragraph 4 of the Change in Control Agreement shall not apply to Employee.
17. Employee shall have no further right under any agreement or plan to receive any grant of shares of Common Stock or options or other rights to purchase shares of Common Stock.

18. The parties hereto confirm and agree that the following agreements between them continue to govern their relationships to the extent applicable: Paragraphs 8 and 9 of the Employment Agreement, headed respectively “Confidentiality, Non-Competition and Invention Assignment Agreement” and “Prior Apollo Patents,” as well as the Proprietary Information and Inventions Agreement that is incorporated into the Employment Agreement by paragraph 8 of the Employment Agreement and attached to the Employment Agreement, to the extent that the Proprietary Information and Inventions Agreement provides (in its paragraph 8) that it survives termination. Notwithstanding the foregoing, Employee’s obligation under Section 7 of the Proprietary Information and Inventions Agreement (“Non-Compete”), shall cease at such time as the Company commits a material breach of this Agreement. In addition, 50% of the Lancia Shares shall be subject to the transfer restrictions and irrevocable proxy as set forth in paragraph 4 of this Agreement.
19. For a period of six (6) months after the date of this Agreement, Employee agrees to provide such information, advice, consultation, and assistance (the “Transition Assistance”) as may be reasonably needed and requested by the Company for the purpose of effecting a smooth transition between Employee and any successor CEO of the Company. The Transition Assistance shall include but not be limited to the execution of documents reasonably desirable or necessary to effect Employee’s departure and the installation of Employee’s successor. Employee shall not be entitled to any additional compensation or consideration for the Transition Assistance beyond the amounts provided for herein, except that the parties may mutually agree on the reimbursement of reasonable costs incurred by Employee in connection with the Transition Assistance.
20. Until this Agreement is disclosed or described in a filing with the SEC, Employee and the Company agree to keep confidential the terms of this Agreement and not to discuss or disclose the terms of this Agreement by any means whatsoever, including but not limited to social media posting or other electronic means. Notwithstanding the foregoing, either party may share this Agreement with and disclose the terms hereof to his or its attorney or tax advisor, and Employee may disclose it to members of Employee’s immediate family, provided those persons also undertake to keep such information confidential. Either party may also disclose such information regarding this Agreement as required by a validly issued subpoena or court order, or as otherwise required by law or in accordance with SEC requirements.
21. a. Employee agrees not to directly or indirectly make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, including but not limited to any statements made via social media, on websites or blogs, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Company, or any of the Released Parties. Employee acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to the news media, competitors, vendors, employees (past and present), volunteers and clients. Employee agrees not to directly or indirectly attempt to, or assist in any attempt to, takeover the Company (or the Board of Directors of the Company) or effectuate a change in control of the Company (or in the

Board of Directors of the Company). In addition, Employee agrees not to directly or indirectly assist with any litigation or claim against the Company or any Released Party, except as required or protected by law. Employee further understands and agrees that this paragraph is a material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that the Company would be irreparably harmed by violation of this provision.

b. The Company agrees to direct its officers and directors not to disparage Employee to future employers of the Employee or to any third parties and agrees that its officers and directors will not send, or direct any other third party to send, false or slanderous information about Employee. Nothing herein prevents disclosure, in the sole discretion of the Company and its management, of this Agreement and discussion of Employee's employment with and separation of employment from the Company and the circumstances regarding his separation from the Company (i) by and among employees, representatives and agents of the Company and the Released Parties as required by securities or other applicable laws; or (iii) to or in response to any governmental entity or other legal request.

22. Employee agrees that Employee will not seek reinstatement, reemployment or a contract with the Company after the execution of this Agreement.

23. This Agreement is entered solely to effect an amicable separation and avoid the expense of any future dispute, and nothing contained herein is to be construed as an admission by the Company (or any Released Party) or by the Employee of any wrongdoing.

24. There is no other agreement between the parties hereto related to the subject matter of this Agreement that is not set forth herein. This Agreement constitutes the entire agreement of the parties hereto with respect to its subject matter. Neither this Agreement nor any provision herein shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement executed and delivered by the parties hereto.

25. To comply with the Older Workers Benefits Protection Act of 1990, the Company has advised Employee of the legal requirements of that Act and this Agreement fully incorporates those legal requirements by reference and as follows:

- a. This Agreement is written in layman's terms, and Employee hereby represents to the Company that Employee understands and comprehends its terms;
- b. Employee is hereby advised to consult an attorney to review this Agreement prior to executing it;
- c. This Agreement specifically refers to rights and claims arising under the Age Discrimination in Employment Act;

- d. Employee does not waive any rights or claims that result from events occurring after the date this Agreement is executed by Employee;
  - e. Employee hereby acknowledges that Employee is receiving consideration beyond anything of value to which Employee already is entitled;
  - f. Employee has twenty-one days from his receipt hereof to consider this proposed Agreement. Employee's failure to accept this proposed Agreement by close of business on the twenty-first day following Employee's receipt of this Agreement may be deemed rejection of its terms;
  - g. Employee has the right to revoke this Agreement for seven days following Employee's signing of this Agreement, and after the expiration of that seven days the executed Agreement shall be of full validity, force, and effect. Employee shall provide notice of such revocation in writing to Ted Gentry; such notice shall be delivered to the office of Wyche, P.A., 44 East Camperdown Way, Greenville, South Carolina 29601 before the end of the revocation period in order to be effective.
26. Notwithstanding anything contained herein to the contrary, nothing contained herein shall be deemed to release the Company of any indemnity obligations that it may have to Employee or any rights, benefits or claims that Employee may have under any of the Company's applicable directors and officers' insurance policy or any other applicable Company insurance policy.
27. Notwithstanding anything contained herein to the contrary, Employee shall not be prohibited from cooperating as required and requested by any regulatory or law enforcement authorities whatsoever with respect to any legal action or possible action against the Company or any Released Parties. Notwithstanding anything contained herein to the contrary, the Company shall not be prohibited from cooperating as required and requested by any regulatory or law enforcement authorities whatsoever with respect to any legal action or possible action against Employee.
28. All communications in connection with this Agreement shall be in writing and by any one or more of the following means: (i) if mailed by prepaid certified mail, return receipt requested, such notice shall be deemed to have been received on the date shown on the receipt; (ii) if delivered by hand, such notice shall be deemed effective when delivered; or (iii) if delivered by national overnight courier, such notice shall be deemed to have been received on the next business day following delivery to such courier. All communications under this Agreement shall be given to the parties hereto at the following addresses:

If to the Company:

Attn: Edward S. Adams  
60 South Sixth Street  
Suite 2540

Minneapolis, MN 55402

With a copy to:

David Anna  
Wyche, P.A.  
44 E. Camperdown Way  
Greenville, S.C. 29607

If to Employee:

Joe Lancia  
109 Thornblade Blvd.  
Greer, SC 29650

With a copy to:

Betty O. Temple  
Womble Carlyle Sandridge & Rice, LLP  
550 South Main Street  
Greenville, SC 29690

29. Employee has read and fully understands this Agreement and the terms and release contained herein, and has had an opportunity to seek advice and counsel before executing this Agreement. Employee enters this Agreement of Employee's own free will.
30. This Agreement shall be governed in all respects by the laws of the State of South Carolina and federal law as applicable, without regard to choice of law principles. Venue for any action arising under or relating to this Agreement shall lie exclusively in the appropriate state or federal court in South Carolina.
31. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in this Agreement in any other jurisdiction.
32. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

\*\*\*\*\*

**READ CAREFULLY BEFORE SIGNING.**

**THIS AGREEMENT ENDS ALL CLAIMS AGAINST THE COMPANY AND THE RELEASED PARTIES IDENTIFIED HEREIN.**

Witnesses:

Scio Diamond Technology Corporation

/s/ Witness

By: /s/ Edward S. Adams

Name: Edward S. Adams

Title: Chairman of the Board of Directors

/s/ Witness

December 4, 2012

Date

Witnesses:

/s/ Witness

/s/ Joseph Lancia

Joseph Lancia

/s/ Witness

December 4, 2012

Date of Execution by Joseph Lancia

**Date this agreement provided to Charles Nichols: November 30, 2012**

**AGREEMENT OF SEPARATION, WAIVER, AND MUTUAL RELEASE**

WHEREAS, Charles Nichols (hereinafter the "Employee") has been employed by Scio Diamond Technology Corporation (hereinafter the "Company") as Chief Financial Officer, pursuant to that Amended and Restated Offer of Employment Effective as of November 30, 2011 (the "Employment Agreement"); and

WHEREAS, Employee and the Company are also parties to the following agreements: the Change in Control Agreement dated August 3, 2012 (the "Change in Control Agreement"); the two Qualified Stock Option Grant Agreements dated May 7, 2012, as amended on November 6, 2012 (the "May 7 Option Grants"); and the Qualified Stock Option Grant Agreement dated August 3, 2012, as amended on November 6, 2012 (the "August 3 Option Grant"); and

WHEREAS, the parties hereto now wish to terminate that employment relationship and to resolve any and all claims and disputes that might exist between them.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual promises contained in this Agreement of Separation, Waiver, and Release (this "Agreement"), the receipt and sufficiency of which are hereby acknowledged, Employee and the Company agree as follows:

1. Employee's employment with the Company is terminated effective at the close of business on November 30, 2012. The Company's obligation to pay salary, bonus or provide other benefits terminates on that date, except as provided herein.
2. In consideration for this Agreement and the release contained herein, the Company will pay to Employee an amount equal to two months of his current annual salary (\$20,833.33), plus up to seven days of any accrued, unused vacation. This amount will be paid to Employee in a lump sum, subject to normal and required withholdings, and in accordance with the Company's normal payroll practices. The Company will also pay an amount equal to two months of health insurance premiums that would become due as the result of Employee's election to continue his health insurance coverage under S.C. Code Ann. §§38-71-360 and 38-71-770. These payments will be made after the expiration of the revocation period provided for in paragraph 23(g) below.
3. Employee currently holds 0 shares of Common Stock of the Company, \$0.001 par value ("Common Stock").
4. Pursuant to the May 7 Option Grants, Employee was granted options for the purchase of up to 425,000 shares of Common Stock at an exercise price of \$0.70 cents per share. The options to purchase 325,000 shares of Common Stock pursuant to the May 7 Option Grants shall be immediately canceled and may not now or hereafter be exercised. Thus, Employee will continue to hold options to purchase 100,000 shares of Common Stock pursuant to the May 7 Option Grants, which options shall, except to the extent expressly provided in this Agreement, in all respects be governed by the May 7 Option Grants and the Company's 2012 Share Incentive Plan. Notwithstanding the provisions of the May 7 Option Grants, as amended, Employee shall have the right to exercise such options to purchase 100,000 shares of Common Stock pursuant to the May 7 Option Grants for a period of six (6) months from November 30, 2012 (subject to any restrictions



in the Company's 2012 Share Incentive Plan).

5. Pursuant to the August 3 Option Grant, Employee was granted options for the purchase of up to 300,000 shares of Common Stock at an exercise price of \$0.80 cents per share. The options to purchase 300,000 shares of Common Stock pursuant to the August 3 Option Grant shall be immediately canceled and may not now or hereafter be exercised.
6. Employee recognizes and agrees that Employee is solely responsible for any federal, state, or other tax obligations, including but not limited to all reporting and payment obligations that could arise as a consequence of Employee's receipt of any payments or benefits pursuant to this Agreement, and with respect to any other transfer or transaction provided for herein, including but not limited to any transfers of shares of Common Stock and the cancellation or exercise of options to purchase Common Stock.
7. Employee hereby releases and waives all claims Employee, other than Indemnification Rights (as defined below), may have against the Company and the parties identified in this paragraph as Company Released Parties who are connected with the Company.

This means that, in consideration of the promises made by the Company herein, Employee, for Employee and for Employee's heirs, executors, administrators, personal representatives, successors, and assigns, does hereby release, waive, and forever discharge the Company and its related entities, their respective benefit plans, officers, directors, employees, representatives, agents, successors and assigns, and the respective heirs, executors, administrators, personal representatives, successors and assigns of the foregoing (collectively, the "Company Released Parties"), from any claim Employee may have against them, except as specifically provided herein. This release, and the term "claim" or "claims" as used in this Agreement, includes all benefits, grievances, proceedings, investigations, hearings, charges, complaints, claims, demands, actions, causes of action, and suits of whatever nature, whether known or unknown, fixed, absolute or contingent, matured or unmatured, asserted or unasserted, however arising, and whether legal, equitable, or administrative. Employee understands and agrees that in exchange for the benefits provided herein, Employee is giving up all such claims against the Company Released Parties.

This release also includes, but is not limited to, claims arising under federal, state, or local statute, ordinance, common law, regulation, equity or other sources including, but not limited to, any and all claims of disability, race, color, sex, age, national origin, ancestry, religion, or other discrimination, retaliation, or harassment, and claims arising under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq.; the Civil Rights Act of 1866, 1871, and 1964, as amended; the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001 et seq.; Section 1981 of Title 42 of the U.S. Code; the Americans with Disabilities Act, §§ 29 U.S.C. 12101 et seq.; the Family and Medical Leave Act, 29 U.S.C. §§ 2601, et seq.; the Age Discrimination in Employment Act; claims arising under the statutory or common laws of the State of South Carolina or any other state, and claims asserting breach of contract (whether express or implied), promissory estoppel, wrongful termination, defamation, failure to pay wages or commissions, failure to provide benefits, breach of implied covenant of good faith and fair dealing, promissory estoppel, invasion of privacy, injury to credit, outrage, negligent or intentional infliction of emotional distress, retaliation, interference with contract, fraud, distress, extortion, humiliation, loss of standing and prestige, personal injury, loss of consortium, negligence, tort, or other common law causes of action, including, but not limited to, those related in any way to Employee's employment by the Company, the terms of the Employment Agreement, the May 7 Option Grants, the August 3 Option

Grant and the Change in Control Agreement, benefits or wages provided in connection with that employment, severance or other post-termination pay or benefits, and/or the termination of that employment. Employee does not waive any rights or claims that arise from events occurring after execution of this Agreement by Employee. The released claims include, but are not limited to, any claims for back pay, front pay, benefits of any sort, severance pay, damages, court costs, attorneys' fees, special damages, punitive damages, treble or other multiple damages, statutory or other penalties, reinstatement or any other monetary or equitable relief. Employee acknowledges that if Employee sues the Company or any other Released Party in violation of this Agreement, Employee may be directed to pay some or all costs and expenses incurred by the Company or the Released Party in defending the suit, including reasonable attorneys' fees, to the extent provided by law and determined by the court.

Notwithstanding the foregoing, this release does not include, and Employee specifically reserves, Employee's rights, in each case only to the extent such rights exist, to indemnification and advancement of expenses by and from Company under 1) the Company's by-laws; 2) Nev. Rev. Stat. Ann. §§ 78.7502, 78.751, and 78.752; and 3) the Company's applicable liability insurance policy(ies) providing coverage for directors and officers (the "Indemnification Rights").

8. Company and the Company Released Parties intending to be legally bound, for and in consideration of the obligations to be performed under this Agreement, knowingly and voluntarily waive and release all known and unknown rights and claims which they may have against Employee, including any and all charges, complaints, accusations, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses of any kind arising or that may have arisen out of or in connection with Employee's employment with Company from the beginning of time through the effective date of this Agreement.
9. Employee agrees not to claim, receive, or accept any monies, damages, or relief in conflict with this Agreement and Employee's waiver of rights, and not to pursue any of the claims released in this Agreement. Employee shall waive any right to, and will not accept, any remedy obtained through the efforts of any other individual or agency, state or federal, relating to Employee's employment with the Company. This Agreement does not affect Employee's ability or responsibility to participate in or cooperate with any future legal or other investigation, whether conducted by the Company or any governmental agency.
10. Employee represents and warrants that Employee has not made a claim for worker's compensation related to Employee's employment with the Company, and that Employee is currently unaware of any injury or illness that would support such a claim.
11. Employee agrees to return to the Company all property of the Company, including but not limited to company data and information, records, files and lists (in each case, whether hard copy or electronic), including but not limited to confidential information and trade secrets, including all copies of any Company information. Employee agrees not to access and not to attempt to gain access to any aspect of the Company's computer, electronic or IT systems.
12. Employee represents and warrants that Employee has not assigned, transferred, or conveyed to any individual or entity not a party to this Agreement any alleged right, claim or cause of action of any kind which is included within the above releases. Employee further represents and warrants that Employee is executing this Agreement knowingly and voluntarily, without any duress, coercion or undue influence by the Company, its representatives or any other person.

13. Employee acknowledges and agrees that neither the Company nor any of the Company Released Parties owes Employee any wages, salary, bonus, cost reimbursement, vacation pay, commissions, or other compensation in any amount whatsoever other than as expressly agreed to herein. The consideration being paid for this Agreement encompasses any such amounts Employee might claim. The Company's only obligation is to pay the amount provided herein, and Employee's salary through the date of termination provided above. Employee further acknowledges that neither the Company nor any of the Company Released Parties compelled Employee to execute this Agreement as a condition to the payment of any amounts previously and admittedly due to Employee.
  14. The parties hereto recognize and agree that the Change in Control Agreement is terminated as of the date hereof and shall be of no further force and effect. Without loss of generality of the foregoing, no payment is or will become due to Employee under the Change in Control Agreement, and the Restrictive Covenants contained in paragraph 4 of the Change in Control Agreement shall not apply to Employee.
  15. Except as set forth in paragraph 4 above, Employee shall have no further right under any agreement or plan to receive any grant of shares of Common Stock or options or other rights to purchase shares of Common Stock.
  16. The parties hereto confirm and agree that the following agreements between them continue to govern their relationships to the extent applicable:
    - a. Paragraphs 8 and 9 of the Employment Agreement, headed respectively "Confidentiality, Non-Competition and Invention Assignment Agreement" and "Prior Apollo Patents," as well as the Proprietary Information and Inventions Agreement that is incorporated into the Employment Agreement by paragraph 8 of the Employment Agreement and attached to the Employment Agreement, to the extent that the Proprietary Information and Inventions Agreement provides (in its paragraph 8) that it survives termination.
    - b. To the extent provided in paragraph 4 above, the May 7 Option Grants and the Company's 2012 Share Incentive Plan.
  17. [Intentionally Deleted.]
  18.
    - a. Employee agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, including but not limited to any statements made via social media, on websites or blogs, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the Company, or any of the Company Released Parties. Employee acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including but not limited to the news media, competitors, vendors, employees (past and present), volunteers and clients. Employee further understands and agrees that this paragraph is a material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that the Company would be irreparably harmed by violation of this provision. Notwithstanding the foregoing, nothing in this Agreement is intended to or shall prevent, impede, or interfere with Employee providing truthful testimony and information required and requested in the course of an investigation or proceeding authorized by law and conducted by an agency of the United States or of the several states.
    - b. The Company also agrees to direct its officers and directors not to make any defamatory or disparaging statements, written or verbal, concerning Employee to future employers of the
-

Employee and agrees that its officers and directors will not send, or direct any other third party to send, false or slanderous information about Employee. Nothing herein prevents disclosure, in the sole discretion of the Company and its management, of this Agreement and discussion of Employee's employment with and separation of employment from the Company and the circumstances regarding his separation from the Company (i) by and among employees, representatives and agents of the Company and the Company Released Parties, (ii) as required by securities or other applicable laws, or (iii) to or in response to any governmental entity or other legal request.

19. Employee agrees that Employee will not seek reinstatement, reemployment or a contract with the Company after the execution of this Agreement. Company will provide to Employee a letter of reference in the form attached hereto as Exhibit 1.
20. This Agreement is entered solely to effect an amicable separation and avoid the expense of any future dispute, and nothing contained herein is to be construed as an admission by the Company (or any Released Party) of any wrongdoing.
21. Except for the Employment Agreement, the Proprietary Information and Inventions Agreement and the May 7 Option Grants, there are no other agreements between the parties hereto related to the subject matter of this Agreement that is not set forth herein. Together these agreements constitute the entire agreement of the parties hereto with respect to their subject matters. Neither this Agreement nor any provision herein shall be amended, modified, waived or discharged orally or by course of conduct, but only by a written agreement executed and delivered by the parties hereto.
22. Company represents and warrants that this Agreement, and the terms of the May 7 Option Grants, has been duly authorized by Company's board of directors and that the undersigned on behalf of Company is authorized to execute this Agreement.
23. To comply with the Older Workers Benefits Protection Act of 1990, the Company has advised Employee of the legal requirements of that Act and this Agreement fully incorporates those legal requirements by reference and as follows:
  - a. This Agreement is written in layman's terms, and Employee hereby represents to the Company that Employee understands and comprehends its terms;
  - b. Employee is hereby advised to consult an attorney to review this Agreement prior to executing it;
  - c. This Agreement specifically refers to rights and claims arising under the Age Discrimination in Employment Act;
  - d. Employee does not waive any rights or claims that result from events occurring after the date this Agreement is executed by Employee;
  - e. Employee hereby acknowledges that Employee is receiving consideration beyond anything of value to which Employee already is entitled;
  - f. Employee has twenty-one days from his receipt hereof to consider this proposed Agreement. Employee's failure to accept this proposed Agreement by close of

business on the twenty-first day following Employee's receipt of this Agreement may be deemed rejection of its terms;

- g. Employee has the right to revoke this Agreement for seven days following Employee's signing of this Agreement, and after the expiration of that seven days the executed Agreement shall be of full validity, force, and effect. Employee shall provide notice of such revocation in writing to Ted Gentry; such notice shall be delivered to the office of Wyche, P.A., 44 East Camperdown Way, Greenville, South Carolina 29601 before the end of the revocation period in order to be effective.

- 24. Employee has read and fully understands this Agreement and the terms and release contained herein, and has had an opportunity to seek advice and counsel before executing this Agreement. Employee enters this Agreement of Employee's own free will.
- 25. This Agreement shall be governed in all respects by the laws of the State of South Carolina and federal law as applicable, without regard to choice of law principles. Venue for any action arising under or relating to this Agreement shall lie exclusively in the appropriate state or federal court in South Carolina.
- 26. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision or part thereof in such jurisdiction and shall not in any manner affect such clause or provision in this Agreement in any other jurisdiction.
- 27. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

\*\*\*\*\*

**READ CAREFULLY BEFORE SIGNING.**  
**THIS AGREEMENT ENDS ALL CLAIMS AGAINST THE COMPANY AND THE RELEASED PARTIES IDENTIFIED HEREIN.**

Witnesses:

/s/ Witness

/s/ Witness

**Scio Diamond Technology Corporation**

By: /s/ Edward S. Adams

Name: Edward S. Adams

Title: Chairman of the Board of Directors

December 5, 2012

Date

Witnesses:

/s/ Witness

/s/ Witness

/s/ Charles Nichols

Charles Nichols

December 6, 2012

Date of Execution by Charles Nichols



November 30, 2012

Re: Charles G. Nichols, Chief Financial Officer, Scio Diamond Technology Corporation

To Whom It May Concern:

Charles Nichols was employed by Scio Diamond Technology Corporation as its Chief Financial Officer from January 2012 through November 2012. During this period, Mr. Nichols contributed to the successful start-up of operations. The board of directors appreciates Mr. Nichols' efforts in this regard and his work on behalf of the company's shareholders.

---

Edward S. Adams  
Chairman of the Board  
Scio Diamond Technology Corporation



December 5, 2012

Mr. Stephen D. Kelley  
7248 Ryehill Drive  
Cary, NC 27519

Dear Steve:

We are delighted to make this offer of employment with Scio Diamond Technology Corporation, Inc. (“SCIO” or the “Company”) as the Chief Executive Officer. The terms of the offer are as follows:

**Compensation** : Your base salary shall be fixed at \$22,917.00 per month, less applicable withholdings, payable in periodic installments in accordance with the Company’s payroll policies as established from time to time. You will receive a review by the Compensation Committee at least annually (typically, within ninety days following the end of the Company’s fiscal year), and the Compensation Committee, or in the absence of such a committee, the Company’s Board of Directors (the “Board”), may, in its sole and unilateral discretion, increase (but without your consent may not decrease) your base salary at any time it shall determine to do so. At the discretion and direction of the Company’s Chairman of the Board, you will report directly to the Company’s Chairman of the Board.

**Performance Bonus** : You will be eligible for a 2013 fiscal year performance bonus of up to \$100,000 for achieving performance targets, as determined in the sole and unilateral discretion of the Board, for the Company’s 2013 fiscal year plan. For performance in excess of the plan you may be eligible in the sole and unilateral discretion of the Board for up to an additional \$50,000 performance bonus. The performance targets, to which award of these bonuses will be subject, must be agreed to by both you and the Company following acceptance of the Company’s 2013 operating plan by the Board. Any such performance bonuses will be paid within 45 days of the close of the fiscal year to which the bonuses relate, provided that you have not voluntarily terminated employment or been terminated for Cause (as defined below) prior to that date, in which event no bonus amount shall be due or payable.

**Relocation Expense Reimbursement** : To assist with your relocation to the Greenville area, you will be entitled to reimbursement of actual relocation expenses in an amount not to exceed \$30,000, net of applicable taxes. Reimbursable relocation expenses shall include the costs of moving household belongings, transportation to the Greenville area, up to 12 months of temporary living expenses, and miscellaneous expenditures, but do not include interest charges, penalties, points, deposits, commissions, or any other expenses related to the purchase, sale or lease of a residence or property. If you voluntarily leave the Company or are terminated for Cause within one year of your start date, you will owe a pro-rated portion (determined by the ratio of the days remaining in that initial year to 365) of the relocation benefit back to the Company.

**Severance**: Upon termination during the effectiveness of this letter for all reasons other than for Cause or your voluntary resignation, the Company agrees that in exchange for a general release by you to the Company and its officers, employees, shareholders, and agents from liability to be reasonably agreed upon by you and the Company and one-year non-solicitation and non-competition restrictions from you,



you will be entitled to receive for a period of twelve months from your date of termination, (i) your base salary plus (ii) \$2,700, which \$2,700 per month payments are intended to offset your potential medical, dental and life insurance expenses and any premiums required under COBRA or comparable state law, each paid in accordance with the Company's payroll and benefit policies. If the termination of your employment is for Cause or due to your voluntary resignation, you will not be entitled to any severance or benefit payment.

**Fringe Benefits** . You will be entitled to participate in all employee benefit plans and programs available to similarly situated employees of the Company, which the Company shall have in force from time to time. You will be entitled to 20 days of paid vacation each calendar year.

**Equity** : You are offered herein an incentive stock option grant to purchase 3,200,000 common shares, of Scio Diamond Technology Corporation, Inc. Common Stock, \$0.001 par value, at an exercise price of \$1.01 per share. These stock options shall vest according to the following schedule: options to purchase 600,000 shares immediately upon your start date, options to purchase 500,000 shares upon the six-month anniversary of your start date, options to purchase 1,000,000 shares when SCIO achieves cumulative revenue of \$5 million (U.S.) (cumulative from January 1, 2013 forward), options to purchase 500,000 shares when SCIO achieves cumulative EBITDA of \$1 million (U.S.) (cumulative from January 1, 2013 forward), and options to purchase 600,000 shares when SCIO achieves cumulative EBITDA of \$2.5 million (U.S.) (cumulative from January 1, 2013 forward). In the event of termination for all reasons other than for Cause or your voluntary resignation, the Company agrees that, in exchange for a general release by you to the Company and its officers, directors, employees, shareholders, and agents from liability to be reasonably agreed upon by you and the Company, the Company will: 1) extend the period during which you may exercise your option with respect to any portion or all of your vested options to purchase shares to within twelve months following your date of separation; and 2) agree not to exercise any right of repurchase. All granted options will automatically vest in the event of a "change in control" (as defined below) of the Company. The options may be exercised for five years from the vesting date, subject to approval of the Board (and in no event, and despite anything contained herein to the contrary, may any option be exercised after ten years from the grant date). Notwithstanding anything contained herein to the contrary, the grant of incentive stock options and the terms therein are at all times subject to approval of the Board and subject to compliance with the Company's Share Incentive Plan, the relevant qualified stock option grant agreement and applicable law.

**Change in Control** : In the event of termination, for any reason other than for Cause or your voluntary resignation, during the four-month period before or the twelve-month period after a "change in control" that implies a Company value of \$50,000,000 or more, you will be entitled to (i) a lump-sum cash payment equal to the sum of (a) 2.0 times your annual base salary on the day before the change in control or the day before your termination, whichever is higher, plus (b) any base salary or bonus earned or accrued through the date of termination and not previously paid, and (ii) payment of \$2,700 per month for 24 months, which payments are intended to offset your potential medical, dental and life insurance expenses. In such event, you will remain subject to the terms of the Company's Proprietary Information and Inventions Agreement. For purposes of this letter, a "change in control" shall be deemed to occur on the date of closing of any of the following: (x) a merger in which SCIO is not the surviving entity; (y) a sale of all of the outstanding shares of SCIO's stock; or (z) a sale by SCIO of substantially all of its assets.

**Definition of "Cause"** : As applied to the terms of this letter, the term "Cause" means: (i) conviction of, or plea of guilty or no contest by you of a felony or crime of dishonesty or moral turpitude; (ii) your commission, as determined by the Board, of an intentional act, or an act of fraud, dishonesty, or theft affecting the property, reputation, or business of the Company; (iii) your willful and persistent neglect of the duties and responsibilities of your position; (iv) failure or refusal to carry out the lawful directives of

the Board; (v) diverting any business opportunity of the Company or its affiliates for your own personal gain; (vi) misrepresentation of a significant fact on your employment application and/or resume; (vii) misuse of alcohol or drugs affecting work performance, or (viii) death or disability that prevents you from performing the essential functions of your position with or without reasonable accommodation.

**Employee at Will:** Your employment relationship will be as an employee at will, which means that either you or the Company may terminate your employment at any time and for any reason or for no reason.

**No Obstacle to Acceptance:** You represent and warrant that you are not subject to any non-compete, non-disclosure, or similar agreement or restrictive covenant that would prevent you from accepting this position or that would materially impair your ability to perform the duties of this position.

**Confidentiality, Etc. Agreement:** You agree that you will be subject to, and shall execute, the Company's Proprietary Information and Inventions Agreement, a copy of which is attached hereto as Exhibit A and incorporated herein by reference.

**Amendments:** The terms of your employment may in the future be amended, but only by a writing which is signed by both you and, on behalf of the Company, a duly authorized officer.

**Entire Agreement:** This letter agreement constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, relating to the subject matter of this letter agreement.

**Additional Terms:** This letter agreement shall be governed by and construed in accordance with the substantive law of the State of South Carolina, without regard to choice of law principles. The parties agree that the exclusive jurisdiction and venue for resolution of any disputes arising out of this letter agreement or your employment with the Company shall be solely in the federal or state courts located in South Carolina, and the parties do hereby waive the right to proceed in any other forum. If any portion or provision of this letter agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this letter agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this letter agreement shall be valid and enforceable to the fullest extent permitted by law. This letter agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together, when delivered, will constitute one and the same instrument.

Steve, all of us at SCIO are genuinely enthusiastic about the prospect of your joining the Company and helping to move us forward over what promises to be a very exciting and challenging future. I look forward to your joining us at SCIO.

\*\*\*\*\*

Regards,

/s/ Edward S. Adams

Edward S. Adams  
Chairman, Board of Directors, SCIO DIAMOND TECHNOLOGY CORPORATION

By signature attached below, I accept this offer of employment and the terms herein.

My employment will commence on December 5, 2012.

/s/ Stephen D. Kelley  
Stephen D. Kelley

December 5, 2012  
Date of Acceptance

## EXHIBIT A

### PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

This Proprietary Information and Inventions Agreement (this "Agreement") is made between me, the undersigned employee (sometimes referred to as "Executive"), and Scio Diamond Technology Corporation (the "Company"), and is a material part of the consideration for my employment by the Company, the premises, mutual covenants and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties:

1. No Conflict. I have not entered into, and I agree I will not enter into, any agreement either written or oral in conflict with this Agreement or my employment with the Company. I will not violate any agreement with or rights of any third party or, except as expressly authorized by the Company in writing hereafter, use or disclose my own or any third party's confidential information or intellectual property when acting within the scope of my employment or otherwise on behalf of the Company. Further, I have not retained anything containing any confidential information of a prior employer or other third party, whether or not created by me.

2. Intellectual Property Assignment. The Company shall own all right, title and interest (including, but not limited to, patent rights, copyrights, trade secret rights, mask work rights, *sui generis* database rights and all other intellectual and industrial property rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, mask works, designs, know-how, research, development, trade secrets, techniques, processes, procedures, plans, policies, discoveries, hardware, software, screens, specifications, designs, drawings, ideas and information made or conceived or reduced to practice, in whole or in part, by me or any other employee, independent contractor or agent of the Company during the term of my employment with Company (collectively, "Inventions"), and I will promptly disclose all Inventions to the Company. "Inventions" is to be broadly defined. By way of example only and without limitation, Inventions include all items mentioned in the first sentence of this paragraph and any and all information concerning teaching techniques, processes, formulas, innovations, discoveries, improvements, research or development and test results, data, formats, marketing plans, business plans, strategies, forecasts, unpublished financial information, budgets, projections, and customer and supplier identities, characteristics and agreements.

I hereby make all assignments necessary to accomplish the foregoing. I shall further assist the Company, at the Company's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights specified to be so owned or assigned. I hereby irrevocably designate and appoint the Company and its agents as attorneys-in-fact to act for and in my behalf to execute and file any document and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by me. If I wish to clarify that something created by me prior to my employment that relates to the Company's actual or proposed business is not within the scope of this Agreement, I have listed it on Appendix A. If I use or (except pursuant to this paragraph 2) disclose my own or any third party's confidential information or intellectual property when acting within the scope of my employment or otherwise on behalf of the Company, the Company will have and I hereby grant the Company a perpetual, irrevocable, worldwide, royalty-free, non-exclusive, sublicensable right and license to exploit and exercise all such confidential information and intellectual property rights.

3. Reserved.

4. Moral Rights. To the extent allowed by law, paragraph 2 includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral

rights,” “artist’s rights,” “droit moral,” or the like (collectively “Moral Rights”). To the extent I retain any such Moral Rights under applicable law, I hereby ratify and consent to any action that may be taken with respect to such Moral Rights by or authorized by the Company and agree not to assert any Moral Rights with respect thereto. I will confirm any such ratifications, consents and agreements from time to time as requested by the Company.

5. Confidential Information. I agree that all Inventions and all other business, technical and financial information (including, without limitation, the identity of and information relating to customers, potential customers, suppliers, strategic partners, service providers, employees, agents or shareholders of the Company) I develop, learn or obtain during the term of my employment that relate to the Company or the business or demonstrably anticipated business of the Company or that are received by or for the Company in confidence, constitute “Proprietary Information.” Proprietary Information includes not only information disclosed by the Company or its clients to me in the course of my employment, but also information developed or learned by me during the course of my employment with the Company, such as Inventions (as defined above). Proprietary Information is to be broadly defined. Proprietary Information includes, but is not limited to, all information that has or could have commercial value or other utility in the business in which the Company or clients are engaged or contemplate engaging, which also includes, but is not limited to, all information of which the unauthorized disclosure could be detrimental to the interests of the Company or clients, whether or not such information is identified as Proprietary Information by the Company or clients, which does not rise to the level of a Trade Secret. By way of example only and without limitation, Proprietary Information includes any and all information concerning teaching techniques, processes, innovations, inventions, discoveries, improvements, research or development and test results, specifications, data, know-how, formats, marketing plans, business plans, strategies, forecasts, unpublished financial information, budgets, projections, and customer and supplier identities, characteristics, and agreements which does not rise to the level of a Trade Secret. The term Trade Secret(s), as such term is used herein, means information, without regard to form, including, but not limited to, technical or nontechnical data, a formula, a pattern, a compilation, a program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, or a list of actual or potential customers or suppliers which is not commonly known by or available to the public and which information (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. During the term of my employment and until the fifth anniversary of the conclusion of my employment with the Company, I will hold in confidence and not divulge, disclose or otherwise use any Proprietary Information except within the scope of my employment by the Company. I further covenant and agree that during the term of my employment and at all times thereafter, I will hold in confidence and not divulge, disclose or otherwise use any Trade Secrets of the Company except within the scope of my employment by the Company. However, I shall not be obligated under this paragraph with respect to information I can document is or becomes readily publicly available without restriction through no fault of mine. I acknowledge that all Proprietary Information, in any form or medium, including copies thereof is the sole and exclusive property of the Company. Upon termination of my employment, I will promptly return to the Company any and all items containing or embodying Proprietary Information in any form or medium (including all copies), except that I may keep a single personal copy of (i) my compensation records, (ii) materials distributed to shareholders generally and (iii) this Agreement. I also recognize and agree that I have no expectation of privacy with respect to the Company’s telecommunications, networking or information processing systems (including, without limitation, stored computer files, email messages and voice messages) and that my activity and any files or messages on or using any of those systems may be monitored or retrieved at any time without notice.

6. Non-Solicitation. I agree that during the term of my employment and until the second anniversary of the conclusion of my employment with the Company, I will not encourage or solicit any

employee or consultant of the Company to leave the Company for any reason (except for the bona fide firing of Company personnel within the scope of my employment). I also agree that during the term of my employment (whether or not during business hours) and until the second anniversary of the conclusion of my employment with the Company, I will not solicit business from, divert business from, or attempt to convert to other methods of using or offering the same or similar products or services as provided by the Company or its affiliates to any person or entity that is or was a client or prospective client of the Company or its affiliates at any time during the 24 months prior to the date of termination of my employment.

7. Non-Compete. During Executive's employment with the Company and for a period of 12 months thereafter, Executive shall not (without the prior written consent of the Company) compete with the Company or any of its Affiliates by, directly or indirectly, forming, serving as an organizer, director or officer of, or consultant to, or acquiring or maintaining more than a 5% investment in, a Competing Business located in the Territory. "Affiliate" shall mean any business entity controlled by, controlling or under common control with the Company. "Business" shall mean the production of cultured diamonds, and any other related business engaged in by the Company or any of its Affiliates as of the date of termination. "Competing Business" shall mean any business that, in whole or in part, is the same or substantially the same as the Business. "Territory" shall mean any state in the continental United States of America and the States of Alaska and Hawaii into which the Company has sold products during the 60 day period ending of the date of the Executive's termination.

8. Survival. I agree that my obligations under paragraphs 2, 3, 4, 5, 6 and 7 of this Agreement shall continue in effect after termination of my employment, regardless of the reason or reasons for termination, and whether such termination is voluntary or involuntary on my part, and that the Company is entitled to communicate my obligations under this Agreement to any future employer or potential employer of mine. My obligations under paragraphs 2, 4 and 5 also shall be binding upon my heirs, executors, assigns, and administrators and shall inure to the benefit of the Company, its subsidiaries, successors and assigns.

9. Governing Law: Choice of Forum. Any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of South Carolina without regard to the conflict of laws provisions thereof. I further agree that if one or more provisions of this Agreement are held to be illegal or unenforceable under applicable South Carolina law, such illegal or unenforceable portion(s) shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable in accordance with its terms. I also agree that if any restriction in this Agreement shall be determined to be invalid and unenforceable, it shall automatically be modified, or may be modified by a court of competent jurisdiction, to the extent necessary to make it valid and enforceable. I also understand that any breach of this Agreement will cause irreparable harm to the Company for which damages would not be an adequate remedy, and, therefore, the Company will be entitled to injunctive relief with respect thereto in addition to any other remedies. I hereby waive any requirement that the Company post a bond or similar security or instrument in connection with any action the Company may commence in an effort to enforce this Agreement.

10. Miscellaneous. Except for my employment agreement with the Company, this Agreement supersedes all prior agreements and understandings between the parties—whether communicated in writing, orally or otherwise—and the representations, covenants and agreements herein shall be binding and in full force against the parties effective from the commencement of my employment with the Company. I may not assign this Agreement or any rights or obligations hereunder. This Agreement shall bind and inure to the benefit of each party and its respective successors, heirs and assigns. Any references to the "Company" in this Agreement shall include any subsidiary, affiliate, strategic partner, assign and/or successor of the Company or any similarly situated party.

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS WHICH IT IMPOSES UPON ME WITHOUT RESERVATION. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY, IN DUPLICATE, WITH THE UNDERSTANDING THAT ONE COUNTERPART WILL BE RETAINED BY COMPANY AND THE OTHER COUNTERPART WILL BE RETAINED BY ME.

**EXECUTIVE**

/s/ Stephen D. Kelley  
Stephen D. Kelley

Address:  
7248 Ryehill Drive  
Cary, North Carolina 27519

December 5, 2012  
Date of Commencement of Employment

December 5, 2012  
Date Signed

Accepted and Agreed to:  
**Scio Diamond Technology Corporation**

/s/ Edward S. Adams  
Edward S. Adams  
Chairman of the Board of Directors

**APPENDIX A**  
**PRIOR MATTER**

None



## Scio Diamond Names Steve Kelley as New CEO

Greenville, SC, Dec 7, 2012 — Scio Diamond Technology Corporation (OTCBB: SCIO.OB) (hereinafter “Scio” or the “company”) today announced that its Board of Directors has appointed Steve Kelley as Chief Executive Officer, effective December 5, 2012.

Mr. Kelley has nearly 20 years of leadership experience in technology businesses, most recently as Chief Operating Officer and Executive Vice President of Cree, Inc., a worldwide leader in LED, silicon carbide and gallium nitride material technologies. His responsibilities at Cree included worldwide production, licensing, technology development and the chips & materials business. At Cree, Mr. Kelley directed a capacity expansion program that more than doubled unit output in 24 months while significantly lowering unit cost.

Prior to his employment at Cree, Mr. Kelley was a Vice President at Texas Instruments, Inc. (“TI”), where he led the turnaround of a large business unit. Prior to joining TI, Mr. Kelley was a Senior Vice President at Philips Semiconductors, where he successfully grew sales and profits at a variety of small and large businesses located in North America, Europe and Asia.

Mr. Kelley earned a SB ChE at the Massachusetts Institute of Technology, and a JD at Santa Clara University. He is also member of the board of Switch Lighting, a California-based LED lighting company.

Ed Adams, Chairman of Scio’s Board of Directors, said: “We are delighted that Steve has accepted our offer to lead Scio. His diverse skill set, international business experience and technical acumen are a great fit for the company. In many ways, we see Cree, Steve’s former company, as an aspirational model for Scio and where it might go. From that perspective, Steve’s experience leading high-growth technology businesses fits ideally with Scio’s continuing and rapid evolution toward large-scale production of diamond material. I’d also like to thank Joseph Lancia for his service to the company. He helped make Scio a commercially viable enterprise with excellent growth prospects.”

Steve Kelley commented: “I am very impressed with Scio’s growth potential. The fundamentals are excellent - a well-established and patent-protected technology, strong customer demand, moderate capital intensity and good gross margins. Scio diamonds are an eco-friendly alternative to mined diamonds. Scio has the potential to be a phenomenal business.”

### About Scio

Scio employs a patent-protected chemical vapor deposition process to produce high-quality, single-crystal diamonds in a controlled laboratory setting, with such diamonds referred to as “lab-grown” or cultivated diamonds. These cultivated diamonds have chemical, physical and optical properties identical to mined diamonds. The company’s manufacturing process enables it to produce high-quality, high-purity, single-crystal colorless, near colorless and fancy colored diamonds.

---

Scio's technology offers the flexibility to produce lab-grown diamonds in size, color and quality combinations that are very rare in nature. Scio produces diamonds for industrial, gemstone, medical and semiconductor applications.

**Cautionary Note Regarding Forward-Looking Statements**

This press release contains forward-looking statements that may involve known and unknown risks, uncertainties and other factors which may cause the actual results, performance or achievements of Scio to be materially different from future results, performance or achievements expressed or implied by any forward-looking statements. Forward-looking statements, which involve assumptions and describe future plans, strategies and expectations of the company, are generally identifiable by use of the words "may," "will," "should," "could," "would," "forecast," "potential," "continue," "contemplate," "expect," "anticipate," "estimate," "believe," "intend," "or "project" or the negative of these words or other variations on these words or comparable terminology. These forward-looking statements are based on assumptions that may be incorrect, and there can be no assurance that these projections included in these forward-looking statements will come to pass. Actual results of the company could differ materially from those expressed or implied by the forward-looking statements as a result of various factors. Except as required by applicable laws, the company has no obligation to update publicly any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

**Contact :**

Scio Diamond Technology Corporation  
Steve Kelley  
864-751-4880

---