

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the Quarterly Period Ended October 3, 2004

OR

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

For the transition period from _____ to _____

Commission File Number: 0-11674

LSI LOGIC CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State of Incorporation)

94-2712976
(I.R.S. Employer Identification Number)

1621 Barber Lane
Milpitas, California 95035
(Address of principal executive offices)
(Zip code)

(408) 433-8000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

YES NO

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act) YES NO

As of November 5, 2004, there were 384,930,760 shares of the registrant's Common Stock, \$.01 par value, outstanding.

LSI LOGIC CORPORATION
Form 10-Q
For the Quarter Ended September 30, 2004
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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

LSI LOGIC CORPORATION
CONSOLIDATED BALANCE SHEETS
(UNAUDITED)

	September 30, 2004	December 31, 2003
	(In thousands, except per-share amounts)	
Assets		
Cash and cash equivalents	\$ 202,627	\$ 269,682
Short-term investments	606,217	544,007
Accounts receivable, less allowances of \$5,494 and \$7,415	264,832	231,184
Inventories	244,272	198,517
Deferred tax assets	8,089	8,116
Prepaid expenses and other current assets	127,240	138,531
Total current assets	1,453,277	1,390,037
Property and equipment, net	237,189	481,489
Intangibles, net	131,324	161,236
Goodwill	973,060	968,483
Deferred tax assets	7,273	7,484
Non-current assets and deposits	260,907	318,176
Investment in equity securities	16,847	35,455
Other assets	77,806	85,541
Total assets	\$ 3,157,683	\$3,447,901
Liabilities and Stockholders' Equity		
Accounts payable	\$ 131,689	\$ 102,632
Accrued salaries, wages and benefits	76,805	75,968
Other accrued liabilities	181,175	153,857
Income taxes payable	67,670	58,417
Current portion of long-term obligations	270	377
Total current liabilities	457,609	391,251
Long-term debt and capital lease obligations	784,225	865,606
Other non-current liabilities	131,986	141,096
Total long-term obligations and other liabilities	916,211	1,006,702
Commitments and contingencies (Notes 14 and 15)		
Minority interest in subsidiary	274	7,498
Stockholders' equity:		
Preferred shares; \$.01 par value; 2,000 shares authorized, none outstanding	—	—
Common stock; \$.01 par value; 1,300,000 shares authorized; 384,929 and 381,491 shares outstanding	3,849	3,815
Additional paid-in capital	2,959,708	2,950,051
Deferred stock compensation	(10,961)	(24,839)
Accumulated deficit	(1,186,895)	(920,790)
Accumulated other comprehensive income	17,888	34,213
Total stockholders' equity	1,783,589	2,042,450
Total liabilities and stockholders' equity	\$ 3,157,683	\$3,447,901

The accompanying notes are an integral part of these Consolidated Financial Statements.

LSI LOGIC CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(UNAUDITED)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2004	2003	2004	2003
	(In thousands, except per share amounts)			
Revenues	\$ 380,217	\$ 450,227	\$ 1,280,471	\$ 1,230,225
Cost of revenues	228,418	265,243	718,424	751,780
Gross profit	151,799	184,984	562,047	478,445
Research and development	108,134	103,803	327,173	330,256
Selling, general and administrative	63,460	57,715	188,375	172,214
Restructuring of operations and other items, net	228,624	24,516	231,055	184,709
Amortization of non-cash deferred stock compensation (*)	2,593	3,398	6,422	22,825
Amortization of intangibles	19,212	19,200	56,884	58,592
Loss from operations	(270,224)	(23,648)	(247,862)	(290,151)
Interest expense	(5,999)	(6,971)	(17,978)	(23,116)
Interest income and other, net	(209)	4,967	17,735	15,106
Loss before income taxes	(276,432)	(25,652)	(248,105)	(298,161)
Provision for income taxes	6,000	6,000	18,000	18,000
Net loss	\$ (282,432)	\$ (31,652)	\$ (266,105)	\$ (316,161)
Net loss per share:				
Basic	\$ (0.73)	\$ (0.08)	\$ (0.69)	\$ (0.84)
Dilutive	\$ (0.73)	\$ (0.08)	\$ (0.69)	\$ (0.84)
Shares used in computing per share amounts:				
Basic	384,876	378,749	383,355	376,931
Dilutive	384,876	378,749	383,355	376,931

(*) Amortization of non-cash deferred stock compensation, if not shown separately, would have been included in cost of revenues, research and development and selling, general and administrative expenses as shown below:

	Three months ended September 30,		Nine months ended September 30,	
	2004	2003	2004	2003
	(In thousands)			
Cost of revenues	\$ 52	\$ 122	\$ 148	\$ 392
Research and development	2,085	2,469	4,796	18,010
Selling, general and administrative	456	807	1,478	4,423
Total	\$ 2,593	\$ 3,398	\$ 6,422	\$ 22,825

The accompanying notes are an integral part of these Consolidated Financial Statements.

LSI LOGIC CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(UNAUDITED)

	Nine Months Ended September 30,	
	2004	2003
	(In thousands)	
Operating activities:		
Net loss	\$(266,105)	\$ (316,161)
Adjustments:		
Depreciation and amortization	136,407	208,615
Amortization of non-cash deferred stock compensation	6,422	22,825
Non-cash restructuring and other items	214,058	145,828
(Gain) on sale of equity securities, net of loss on write down	(2,113)	9,043
(Gain)/loss on repurchase of Convertible Subordinated Notes	(1,767)	3,191
Gain on sale of property and equipment	(5,881)	(2,150)
Changes in deferred tax assets and liabilities	238	(94)
Changes in assets and liabilities, net of assets acquired and liabilities assumed in business combinations:		
Accounts receivable	(32,855)	(14,773)
Inventories	(46,032)	(7,050)
Prepaid expenses and other assets	(2,068)	63,149
Accounts payable	29,908	(1,338)
Accrued and other liabilities	34,343	27,319
Net cash provided by operating activities	<u>64,555</u>	<u>138,404</u>
Investing activities:		
Purchase of debt securities available-for-sale	(641,435)	(1,995,322)
Maturities and sales of debt securities available-for-sale	568,178	1,890,065
Purchases of equity securities	(2,250)	—
Proceeds from sales of equity securities	10,518	—
Purchases of property and equipment	(41,794)	(48,775)
Proceeds from sale of property and equipment	8,597	13,677
Proceeds from the sale-lease back of equipment	—	160,000
Deposit received toward the sale of the Japan manufacturing facility	—	4,869
Increase in non-current assets and deposits	(313,013)	(390,135)
Decrease in non-current assets and deposits	369,464	256,606
Acquisition of companies, net of cash acquired	(32,025)	—
Net cash used in investing activities	<u>(73,760)</u>	<u>(109,015)</u>
Financing activities:		
Repurchase of Convertible Subordinated Notes	(68,117)	(461,983)
Proceeds from borrowings	—	350,000
Cash paid for call spread options	—	(28,000)
Debt issuance costs	—	(10,936)
Repayment of debt obligations	(297)	(264)
Purchase of minority interest in subsidiary	(7,978)	—
Issuance of common stock	17,864	17,763
Net cash used in financing activities	<u>(58,528)</u>	<u>(133,420)</u>
Effect of exchange rate changes on cash and cash equivalents	678	4,937
Decrease in cash and cash equivalents	<u>(67,055)</u>	<u>(99,094)</u>
Cash and cash equivalents at beginning of period	269,682	448,847
Cash and cash equivalents at end of period	<u>\$ 202,627</u>	<u>\$ 349,753</u>

The accompanying notes are an integral part of these Consolidated Financial Statements.

LSI LOGIC CORPORATION

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1 — BASIS OF PRESENTATION

In the opinion of LSI Logic Corporation (the “Company” or “LSI”), the accompanying unaudited consolidated financial statements contain all adjustments (consisting only of normal recurring adjustments and restructuring and other items, net as discussed in Note 5 to the Unaudited Consolidated Financial Statements, hereafter referred to as the “Notes”), necessary to present fairly the financial information included herein. While the Company believes that the disclosures are adequate to make the information not misleading, it is suggested that these financial statements be read in conjunction with the audited consolidated financial statements and accompanying notes included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2003.

For financial reporting purposes, the Company reports on a 13 or 14-week quarter with a year ending December 31. The current quarter ended October 3, 2004. For presentation purposes, the consolidated financial statements refer to the calendar quarters for convenience. The results of operations for the quarter ended October 3, 2004, are not necessarily indicative of the results to be expected for the full year. The nine months ended October 3, 2004 consisted of approximately 40 weeks, while the nine months ended September 28, 2003 consisted of approximately 39 weeks. The third quarter of 2004 and 2003 both consisted of 13 weeks.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting periods. Actual results could differ significantly from these estimates.

Recent Accounting Pronouncements

In October 2004, the Emerging Issues Task Force (“EITF”) issued EITF Issue No. 04-08, “Accounting Issues Related to Certain Features of Contingently Convertible Debt and the Effect on Diluted Earnings Per Share.” This issue addresses when contingently convertible instruments should be included in diluted earnings per share computations. The pronouncement will be effective for reporting periods ending after December 15, 2004. The adoption of this standard is not expected to have an impact on the Company’s computation of diluted earnings per share.

In October 2004, the EITF issued EITF Issue No. 04-10, “Applying Paragraph 19 of Statement of Financial Accounting Standards (“SFAS”) No. 131 in Determining Whether to Aggregate Operating Segments that do not meet the Quantitative Thresholds.” SFAS No. 131, “Disclosures About Segments of an Enterprise and Related Information,” requires that a public business enterprise report financial and descriptive information about its reportable operating segments. This issue addresses how to aggregate operating segments that do not meet the quantitative thresholds in SFAS No. 131. The pronouncement is effective for fiscal years ending after October 13, 2004. The adoption of this standard did not have an impact to the existing reportable operating segments of the Company.

In July 2004, the Emerging Issues Task Force (“EITF”) issued EITF Issue No. 02-14, “Whether an Investor Should Apply the Equity Method of Accounting to Investments Other Than Common Stock.” This issue addresses the determination of whether an investment is in-substance common stock and when to perform that evaluation, but does not address the determination of whether an investor has the ability to exercise significant influence over the operating and financial policies of the investee. The pronouncement is effective for fiscal periods beginning after September 15, 2004. For existing investments, the investor should make an initial determination as to whether the investment is in-substance common stock based on the circumstances existing as of the date of first application of this issue. The Company does not believe that the adoption of this standard will have a material impact on its consolidated balance sheet or statement of operations.

In March 2004, the EITF issued EITF Issue No. 03-06, “Participating Securities and the Two-class Method Under SFAS No. 128, Earnings Per Share.” EITF Issue No. 03-06 addresses a number of questions regarding the computation of earnings per share (“EPS”) by companies that have issued securities other than common stock that contractually entitle the holder to participate in dividends and earnings of the company when, and if, it declares dividends on its common stock. The issue also provides further guidance in applying the two-class method of calculating EPS. It clarifies what constitutes a participating security and how to apply the two-class method of computing EPS once it is determined that a security is participating, including how to allocate undistributed earnings to such a security. This pronouncement is effective for fiscal periods beginning after March 31, 2004. The adoption of this standard did not have an impact on the Company’s computation of EPS.

In March 2004, the EITF reached a consensus on Issue No. 03-01, “The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments.” EITF No. 03-01 provides guidance on recording other-than-temporary impairments of cost method investments and requires additional disclosures for those investments. In September 2003, a FASB Staff Position was issued that delays the recognition and measurement guidance in EITF No. 03-01 until the final issuance of Financial Accounting Standards Board (“FASB”) Staff Position Issue 03-01a. The adoption of the recognition and measurement provisions is not expected to have a material impact on the Company’s consolidated balance sheet or statement of operations. The disclosure requirements are effective for fiscal years ending after June 15, 2004, and are required only for annual periods.

In December 2003, the FASB released a revision to FASB Interpretation No. 46 (“FIN 46”), “Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51.” FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a

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controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. A public entity shall apply the provisions of the FIN 46 revision no later than the end of the first reporting period that ends after March 15, 2004. However, a public entity shall apply FIN 46 to entities considered to be special-purpose entities no later than as of the end of the first reporting period that ends after December 15, 2003. The adoption of this standard did not have a material impact on the consolidated balance sheet or statement of operations.

NOTE 2 — SEPARATION OF LSI LOGIC STORAGE SYSTEMS, INC.

On July 29, 2004, LSI announced jointly with Engenio (“Engenio” or “Storage Systems segment”) the postponement of the initial public offering of its common stock due to market conditions. During the nine months ended September 30, 2004, the Company recorded \$3.5 million in fees related to the initial public offering as selling, general and administrative (“SG&A”) expenses in the statement of operations. The fees include professional services that were directly and solely related to the initial public offering of Engenio common stock.

The separation of Engenio from the Company, including the transfer of related assets, liabilities and intellectual property rights, was substantially completed in December 2003. At that time, the Company and Engenio entered into a Master Separation Agreement, General Assignment and Assumption Agreement, Intellectual Property Agreement, Employee Matters Agreement and an Indemnification and Insurance Matters Agreement, as more fully described in the Company’s Annual Report on Form 10-K. In March 2004, the Company and Engenio entered into the following additional agreements that further specify the terms of the separation.

Tax Sharing Agreement. The Tax Sharing Agreement sets forth the principal arrangements between the Company and Engenio regarding the filing of tax returns, the payment of taxes and the conduct of tax audits or disputes. The Tax Sharing Agreement provides that Engenio’s stand-alone tax liability equals its taxable income multiplied by the highest corporate tax rate in effect for the year, modified by taking into account its losses and loss carryovers from prior years and, to the extent actually used, its credits. Engenio is obligated to pay the Company the amount of its stand-alone tax liability to the extent Engenio is included in any consolidated, combined or unitary tax return with the Company.

Under the Tax Sharing Agreement, the Company is required to prepare and file all consolidated, combined or unitary tax returns of the Company and Engenio through the date that Engenio ceases to be a member of the Company’s consolidated or combined group, including the final consolidated federal income tax return. The Company has the right to review and consent to the federal and state income tax returns filed for the first tax year after Engenio ceases to be a member of the Company’s consolidated group, which may not be withheld unreasonably. In addition, the Company has sole and complete authority to control and resolve all tax audits and other disputes relating to any consolidated, combined or unitary returns filed by the Company. However, the Company may not enter into any dispute settlement that would materially increase Engenio’s liability under the Tax Sharing Agreement without Engenio’s consent, which cannot be withheld unreasonably.

Transition Services Agreement. The Transition Services Agreement governs the provisions by the Company to Engenio of services such as finance, accounting and treasury, human resources, sales support, legal matters and information technology.

Real Estate Matters Agreement. The Real Estate Matters Agreement describes the manner in which the Company will transfer to or share with Engenio various properties leased and owned by the Company. The agreement provides that all reasonable costs required to effect the transfers, including landlord consent fees and landlord attorneys’ fees, will be paid by the Company.

Investor Rights Agreement. The Investor Rights Agreement provides for specified registration and other rights relating to the Company’s ownership of Engenio’s shares of Class B common stock.

NOTE 3 — BUSINESS COMBINATIONS

Acquisition of Accerant Inc. On May 11, 2004, the Company acquired Accerant Inc. (“Accerant”). The acquisition is anticipated to expand consumer product offerings within the Semiconductor segment. The acquisition was accounted for as a purchase of a business.

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The Company paid approximately \$14.1 million in cash for the acquisition. The Company will also issue approximately 234,000 restricted common shares to certain Accerant employees hired as part of the transaction. Resulting deferred stock compensation will be amortized over a vesting period of two years using the straight-line method. The total purchase price was allocated to the estimated fair value of net assets acquired based on management estimates as follows:

	(In thousands)
Fair value of tangible net assets acquired	\$ 31
Current technology	5,700
Non-compete agreements	400
Goodwill	7,972
Total purchase price excluding deferred stock compensation	14,103
Deferred stock compensation	1,765
Total purchase price	<u>\$15,868</u>

The Company may also pay additional cash of up to \$4.0 million if certain revenue targets are achieved over a period ending December 31, 2005. Such contingent consideration will represent additional purchase price and be included in goodwill when and if such targets are met.

Useful life of intangible assets. The amounts allocated to current technology and non-compete agreements are being amortized over their estimated useful lives of 5 and 2 years, respectively using the straight-line method.

Acquisition of Velio Communications. On April 2, 2004, the Company acquired Velio Communications, Inc. (“Velio”). The acquisition is anticipated to expand product offerings for high-speed interconnect and switch fabric application specific standard products (“ASSPs”) in the global communications market within the Semiconductor segment. The acquisition was accounted for as a purchase of a business.

The Company paid approximately \$19.8 million in cash for the acquisition. The Company will also issue approximately 100,000 restricted common shares to certain Velio employees hired as part of the transaction. Resulting deferred stock compensation will be amortized over a vesting period of two years using the straight-line method. The total purchase price was allocated to the estimated fair value of net assets acquired based on management estimates as follows:

	(In thousands)
Fair value of tangible net assets acquired	\$ 1,529
Current technology	8,788
Customer base	8,788
Non-compete agreements	450
Existing purchase orders	200
Total purchase price excluding deferred stock compensation	19,755
Deferred stock compensation	1,000
Total purchase price	<u>\$20,755</u>

Useful life of intangible assets. The amounts allocated to current technology, customer base, non-compete agreements and existing purchase orders are being amortized over their estimated useful lives of 9 months to 5.5 years using the straight-line method.

Pro forma statements of earnings information have not been presented because the effect of these acquisitions was not material either individually or on an aggregate basis.

NOTE 4 — STOCK-BASED COMPENSATION

The following table provides pro forma disclosures as if the Company had recorded compensation costs based on the estimated grant date fair value, as defined by the Statement of Financial Accounting Standards (“SFAS”) No. 123, for awards granted under its stock option and stock purchase plans. The estimated weighted-average grant date fair value, as defined by SFAS No. 123, was calculated using the Black-Scholes model. The Black-Scholes model was developed to estimate the fair value of freely tradable, fully

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transferable options without vesting restrictions, which significantly differ from the Company's stock option awards. These models also require highly subjective assumptions, including future stock price volatility and expected time until exercise, which greatly affect the calculated grant date fair value.

	Three months ended September 30,		Nine months ended September 30,	
	2004	2003	2004	2003
	(In thousands, except per share amounts)			
Net loss, as reported	\$(282,432)	\$(31,652)	\$(266,105)	\$(316,161)
Add: Amortization of non-cash deferred stock compensation expense determined under the intrinsic value method as reported in net loss, net of related tax effects *	749	1,476	2,771	7,605
Deduct: Total stock-based employee compensation expense determined under fair value method for all awards, net of related tax effects	(27,038)	(47,959)	(97,635)	(156,149)
Pro forma net loss **	<u>\$(308,721)</u>	<u>\$(78,135)</u>	<u>\$(360,969)</u>	<u>\$(464,705)</u>
Net loss per share:				
Basic -as reported	\$ (0.73)	\$ (0.08)	\$ (0.69)	\$ (0.84)
Basic -pro forma	\$ (0.80)	\$ (0.21)	\$ (0.94)	\$ (1.23)
Diluted -as reported	\$ (0.73)	\$ (0.08)	\$ (0.69)	\$ (0.84)
Diluted -pro forma	\$ (0.80)	\$ (0.21)	\$ (0.94)	\$ (1.23)

* This amount excludes amortization of non-cash deferred stock compensation on restricted stock awards.

** The amounts for the three and nine months ended September 30, 2003 have been adjusted to reflect higher calculated fair values for the Employee Stock Purchase Plan, which resulted in a 3% and 2% increase in the pro forma net loss in the three months and nine months ended September 30, 2003, respectively.

NOTE 5 — RESTRUCTURING AND OTHER ITEMS

The Company recorded charges of \$229 million and \$231 million in restructuring of operations and other items for the three and nine months ended September 30, 2004, respectively, primarily in the Semiconductor segment. The Company recorded a charge of \$25 million and \$185 million in restructuring of operations and other items for the three and nine months ended September 30, 2003, respectively. For a complete discussion of the 2003 restructuring actions, please refer to the Company's Annual Report on Form 10-K for fiscal year 2003.

Restructuring and impairment of long-lived assets:

First quarter of 2004:

The Company recorded a gain of \$3.3 million on the sale of fixed assets that had previously been held for sale and an expense of \$1.1 million for the abandonment of fixed assets that had previously been held for sale. In addition, an expense of \$1.1 million was recorded for the write-down of fixed assets due to impairment.

An expense of \$0.3 million was recorded to reflect the change in time value of accruals for facility lease termination costs, net of adjustments for changes in sublease assumptions for certain previously accrued facility lease termination costs. An expense of \$0.2 million was recorded primarily for severance and termination benefits for four employees involved in research and development.

Second quarter of 2004:

The Company recorded a gain of \$1.0 million on the sale of fixed assets that had previously been held for sale and an expense of \$4.0 million primarily for the write-down of the Colorado Springs fabrication facility to reflect a decline in fair market value and to write down certain spare parts for fixed assets.

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An expense of \$0.4 million was recorded to reflect the change in time value of accruals for facility lease termination costs, net of adjustments for changes in sublease assumptions for certain previously accrued facility lease termination costs. Previously accrued contract termination fees of \$0.4 million were reversed as the result of more favorable than expected negotiations to terminate those contracts.

Third quarter of 2004:

As a result of the decline in revenues in the semiconductor industry and a corresponding decline in the Company's outlook as of the latter part of the third quarter of 2004, the Company initiated a comprehensive restructuring program, which included asset impairments, a global reduction in workforce and the consolidation of certain facilities as described further below.

The Company concluded in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," that the Gresham manufacturing facility assets were impaired. Accordingly, an asset write-down of \$205.5 million was recorded in the semiconductor segment during the third quarter of 2004 and the Company estimates an additional write-down of approximately \$177 million will be recorded in the fourth quarter of 2004. The fair value of impaired equipment and facilities were estimated by management. The charge in the fourth quarter will reflect the impairment of the equipment that will be purchased in connection with the termination of the operating leases as described in Note 14. The impairment charges will be non-cash charges. The fourth quarter cash flows will reflect the buyout of the leases, net of the return of the cash collateral associated with the leases for a net outflow of \$21 million.

The Company announced workforce reductions for approximately 558 positions worldwide across all job functions and recorded a charge of \$14.6 million in the Semiconductor segment for severance and termination benefits.

The Company recorded a gain of \$1.9 million on the sale of fixed assets that had previously been held for sale and an expense of \$3.4 million for the write-down of the Colorado Springs fabrication facility to reflect a decline in fair market value, the impairment of certain acquired intangible assets in the Semiconductor segment and the write-down of leasehold improvements related to the facility operating leases discussed below.

In the third quarter of 2004, the Company consolidated additional non-manufacturing facilities and recorded \$6.1 million for costs associated with exiting certain operating leases for real estate as the facilities ceased being used. An expense of \$0.4 million was recorded to reflect the change in time value of prior accruals for facility lease termination costs. In addition, an expense of \$1.8 million was recorded for changes in sublease assumptions for certain previously accrued facility lease termination costs.

Assets held for sale of \$24 million and \$30 million were included as a component of prepaid expenses and other current assets as of September 30, 2004 and December 31, 2003, respectively. Assets classified as held for sale are not depreciated. The fair values of impaired equipment and facilities were estimated by management. Given that current market conditions for the sale of older fabrication facilities and related equipment may fluctuate, there can be no assurance that the Company will realize the current net carrying value of the assets held for sale. The Company reassesses the realizability of the carrying value of these assets at the end of each quarter until the assets are sold or otherwise disposed of and additional adjustments may be necessary.

The following table sets forth the Company's restructuring reserves as of September 30, 2004, which are included in other accrued liabilities on the balance sheet:

	Balance at December 31, 2003	Restructur ing Expense Q1 2004	Utilized during Q1 2004	Restructuring Expense Q2 2004	Release of reserves Q2 2004	Utilized during Q2 2004	Restructur ing Expense Q3 2004	Utilized during Q3 2004	Balance at September 30, 2004
(In thousands)									
Write-down of excess assets (a)	\$ 2,661	\$(1,118)	\$ 718	\$3,203	\$(160)	\$(3,414)	\$207,035	\$(207,324)	\$ 1,601
Lease terminations and maintenance contracts (b)	21,021	252	(1,886)	379	(375)	(2,312)	8,336	(2,214)	23,201
Facility closure and other exit costs (c)	2,136	64	(782)	—	—	(369)	—	(234)	815
Payments to employees for severance (d)	874	204	(767)	—	(18)	(227)	14,573	(838)	13,801
Total	\$26,692	\$ (598)	\$(2,717)	\$3,582	\$(553)	\$(6,322)	\$229,944	\$(210,610)	\$39,418

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- (a) The amounts utilized in 2004 reflect \$215.4 million of non-cash write-downs of long-lived assets in the U.S. due to impairment and \$0.8 million in cash payments to decommission and sell assets, offset by a \$6.2 million realized gain on the sale of fixed assets previously held for sale. The write-downs of long-lived assets were accounted for as a reduction of the assets and did not result in a liability. The \$1.6 million balance as of September 30, 2004, relates to machinery and equipment decommissioning costs in the U.S. and estimates of selling costs for assets held for sale and is expected to be utilized during the first half of 2005.
- (b) Amounts utilized represent cash payments. The balance remaining for primarily real estate lease terminations and maintenance contracts will be paid during the remaining terms of these contracts, which extend through 2011.
- (c) Amounts utilized represent cash payments. The balance remaining for facility closure and other exit costs will be paid during the first half of 2005.
- (d) Amounts utilized represent cash severance payments to 68 employees during the nine months ended September 30, 2004. The balance remaining for severance is expected to be paid by the end of 2005.

Other Items

During the second quarter of 2004, the Company reclassified a parcel of land in Colorado with a book value of \$1.4 million from a long-term asset to a current asset held for sale. The land is part of total assets in the Semiconductor segment. The Company expects to sell the property within the next 12 months for an amount not less than book value.

During the third quarter of 2004, the Company reclassified a parcel of land in Japan with a book value of \$1.4 million from a long-term asset to a current asset held for sale. The land is part of the total assets in the Semiconductor segment. The Company expects to sell the property within the next 12 months for an amount not less than book value.

During the third quarter of 2004, the Company entered into two new lease agreements for wafer fabrication equipment (see Note 14). The equipment was previously on lease immediately prior to the closing of the new lease agreements. The Company had capitalized and was amortizing fees related to the previous lease agreements. Upon entering into the new lease agreements, \$2.5 million in remaining unamortized fees for the previous leases were recorded as an expense in the statement of operations.

During the third quarter of 2004, the Company discontinued hedge accounting treatment on the interest rate swap related to the equipment operating leases that were refinanced and recorded the \$3.8 million balance in accumulated comprehensive income as a gain in the statement of operations (see Notes 7 and 14).

NOTE 6 — INVESTMENTS

	September 30, 2004	December 31, 2003
	(In thousands)	
Available-for-sale debt securities		
Asset and mortgage-backed securities	\$300,187	\$345,625
U.S. government and agency securities	235,843	104,173
Corporate and municipal debt securities	70,187	90,730
Auction rate preferred stock	—	3,150
Foreign debt securities	—	329
Total short-term investments	\$606,217	\$544,007
Long-term investment in equity securities	\$ 16,847	\$ 35,455

An unrealized loss on available-for-sale securities of \$0.9 million, net of the related tax effect of \$0.5 million, and an unrealized gain of \$8 million, net of the related tax effect of \$4 million, was included in accumulated other comprehensive income as of September 30, 2004 and December 31, 2003, respectively. Net realized gains on sales of available-for-sale debt securities were \$0.5 million and \$1.1 million for the three and nine months ended September 30, 2004, respectively. Net realized gains on sales of

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available-for-sale debt securities were \$0.1 million and \$9 million for the three and nine months ended September 30, 2003, respectively.

The Company realized pre-tax gains of \$8 million related to the following for the nine months ended September 30, 2004:

- A \$5 million pre-tax gain related to the sales of certain marketable available-for-sale equity securities in the second quarter of 2004; and
- A \$3 million pre-tax gain associated with marketable available-for-sale equity securities of a certain technology company that was acquired by another technology company in the first quarter of 2004.

The following table includes the details of pre-tax losses related to investments in equity securities that the Company has recorded during the nine months ended September 30, 2004 and 2003. Management believed that the declines in value were other than temporary.

	Non-marketable equity investments	Marketable equity investments
	(in millions)	
Pre-tax loss:		
Three months ended September 30, 2004	\$ 1.9	\$ 4.1
Nine months ended September 30, 2004	3.1	4.1
Pre-tax loss:		
Three months ended September 30, 2003	\$ 0.5	\$ —
Nine months ended September 30, 2003	7.8	2.7
Total carrying value of impaired investments as of September 30, 2004	\$ 5.0	\$ 2.0

NOTE 7 — DERIVATIVE FINANCIAL INSTRUMENTS

Foreign currency risk

The Company enters into forward contracts that are designated as foreign currency cash-flow hedges of forecasted payments in Euros. Changes in the fair value of the forward contracts due to changes in time value are excluded from the assessment of effectiveness and are recognized in interest income and other, net. As of September 30, 2004 and December 31, 2003, the Company held forward contracts designated as foreign currency cash flow hedges of forecasted Euro payment transactions that were set to expire over three-month and twelve-month periods, respectively. For the three and nine months ended September 30, 2004 and 2003, the change in time value of these forward contracts was not significant. As of September 30, 2004, unrealized losses included in accumulated other comprehensive income, which will be recorded in the income statement over the next three months, were not significant. There were no unrealized gains or losses included in accumulated other comprehensive income as of December 31, 2003. The expense for the three and nine months ended September 30, 2004 and the benefit for three and nine months ended September 30, 2003 recorded in the income statement was not significant. The Company did not record any gains or losses due to hedge ineffectiveness for the three and nine months ended September 30, 2004 and 2003.

Forward exchange contracts and options are also used to hedge certain foreign currency-denominated assets or liabilities. These derivatives do not qualify for SFAS No. 133 hedge accounting treatment. Accordingly, changes in the fair value of these hedges are recorded immediately in earnings to offset the changes in fair value of the assets or liabilities being hedged. The related gains and losses included in interest income and other, net were not significant.

Interest rate risk

With the objective of protecting cash flows and earnings of the Company from the impact of fluctuations in interest rates, while minimizing the cost of capital, the Company may enter into or terminate interest rate swaps, such as the below mentioned transactions.

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In the second quarter of 2003, the Company entered into an interest rate swap transaction to effectively convert the LIBOR-based floating rate interest payments on the equipment operating leases discussed in Note 14, with an initial notional amount of \$395 million, to a fixed interest rate (the "Lease Swap"). The Lease Swap qualified to be accounted for as a cash flow hedge of the forecasted interest payments attributable to the benchmark interest rate on the equipment operating leases through September 2006. In August 2004, the Company entered into two new equipment operating leases for the wafer fabrication equipment that was previously on the above-mentioned leases. As a result of entering into the new leases, the hedged forecasted interest payments are no longer probable to occur. Hedge accounting treatment was discontinued prospectively and the balance in accumulated other comprehensive income was immediately recorded as a gain of \$3.8 million in restructuring and other items in the statement of operations. In September 2004, the Company terminated the Lease Swap. As of September 30, 2004, \$12 million was recorded in other current assets for the amount to be received from the termination and the collateral that will be returned to the Company.

NOTE 8 — BALANCE SHEET DETAIL

	September 30, 2004	December 31, 2003
(In thousands)		
Cash and cash equivalents:		
Cash in financial institutions	\$ 38,070	\$108,989
Cash equivalents	164,557	160,693
	<u>\$202,627</u>	<u>\$269,682</u>
Inventories:		
Raw materials	\$ 21,495	\$ 15,352
Work-in-process	145,056	116,340
Finished goods	77,721	66,825
	<u>\$244,272</u>	<u>\$198,517</u>
Intangible assets, net of accumulated amortization:		
Semiconductor segment	\$116,450	\$137,230
Storage Systems segment	14,874	24,006
	<u>\$131,324</u>	<u>\$161,236</u>

The changes in the carrying amount of goodwill for the nine months ended September 30, 2004 are as follows (in thousands):

	Semiconductor segment	Storage Systems segment	Total
Balance as of January 1, 2004	\$887,992	\$80,491	\$968,483
Goodwill acquired during the year	8,045	—	8,045
Adjustment to goodwill acquired in a prior year for the resolution of a pre-acquisition income tax contingency	(4,463)	—	(4,463)
Adjustment to goodwill acquired in prior periods	—	142	142
Purchase of minority interest	853	—	853
Balance as of September 30, 2004	<u>\$892,427</u>	<u>\$80,633</u>	<u>\$973,060</u>

The Company monitors the recoverability of goodwill recorded in connection with acquisitions annually, or sooner if events or changes in circumstances indicate that the carrying amount may not be recoverable. An impairment, if any, would be determined in accordance with SFAS No. 142, which uses a fair value model for determining the carrying value of goodwill. As a result of the decline in revenues in the semiconductor industry and the corresponding decline in the Company's outlook as of the latter part of the third quarter of 2004 and the conclusion that the Gresham manufacturing facility was impaired (see Note 5), the Company reviewed goodwill by reporting unit for impairment as of September 30, 2004. The Company's reporting units are Semiconductor and Storage

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Systems or Engenio. The impairment testing is a two-step process. The first step requires comparing the fair value of each reporting unit to its net book value. The Company uses management estimates of future cash flows to perform the first step of the goodwill impairment test. These estimates include assumptions about future conditions such as future revenues, gross margins and operating expenses. Two methodologies were used to obtain the fair value for each reporting unit as of September 30, 2004: Discounted Cash Flow and Market Multiple. The Company concluded that goodwill was not impaired under the first step as of September 30, 2004. The second step is only performed if impairment exists, as it involves measuring the actual impairment to goodwill.

NOTE 9 — DEBT

	<u>Maturity</u>	<u>Interest Rate *</u>	<u>Conversion Price</u>	<u>September 30, 2004</u>	<u>December 31, 2003</u>
				(In thousands)	
2003 Convertible Subordinated Notes	2010	4%	\$13.4200	\$350,000	\$350,000
2001 Convertible Subordinated Notes	2006	4%	\$26.3390	421,500	490,000
Deferred gain on terminated swaps				12,725	25,416
Capital lease obligations				270	567
				<u>784,495</u>	<u>865,983</u>
Current portion of long-term debt and capital lease obligations				(270)	(377)
Long-term debt and capital lease obligations				<u>\$784,225</u>	<u>\$865,606</u>

* The interest rate on a portion of the Convertible Subordinated Notes (“Convertible Notes”) was converted to floating rates through interest rate swaps. Interest rate swaps with a notional amount of \$740 million were terminated in the second quarter of 2003. The weighted average interest rate on the Convertible Subordinated Notes, after adjusting for the impact of the interest rate swaps, for the three months ended September 30, 2004 and 2003, was 4.00% and 4.02%, respectively, and 4.00% and 3.03% for the nine months ended September 30, 2004 and 2003, respectively.

During the three months ended September 30, 2004, the Company repurchased approximately \$69 million of the 2001 Convertible Subordinated Notes (the “2001 Convertible Notes”). A net pre-tax gain of approximately \$2 million was recognized, in interest income and other, net, on the repurchases of the 2001 Convertible Notes. The pre-tax gain is net of the write-off of debt issuance costs and a portion of the deferred gain on the related terminated interest rate swap.

NOTE 10 — COMMON STOCK

Stock purchase plans. In May 2004, the stockholders approved an increase in the number of shares of common stock reserved for issuance under the Company’s Employee Stock Purchase Plan by 10 million shares. As of September 30, 2004, there were approximately 19 million shares of common stock reserved for issuance under the Employee Stock Purchase Plan.

NOTE 11 — RECONCILIATION OF BASIC AND DILUTED LOSS PER SHARE

A reconciliation of the numerators and denominators of the basic and diluted loss per share computations are as follows:

	Three Months Ended September 30,					
	2004			2003		
	Loss*	Shares+	Per-Share Amount	Loss*	Shares+	Per-Share Amount
	(In thousands except per share amounts)					
Basic EPS:						
Net loss available to common stockholders	\$(282,432)	384,876	\$(0.73)	\$(31,652)	378,749	\$(0.08)
Effect of dilutive securities:	—	—	—	—	—	—
Diluted EPS:						
Net loss available to common stockholders	\$(282,432)	384,876	\$(0.73)	\$(31,652)	378,749	\$(0.08)

	Nine Months Ended September 30,					
	2004			2003		
	Loss*	Shares+	Per-Share Amount	Loss*	Shares+	Per-Share Amount
	(In thousands except per share amounts)					
Basic EPS:						
Net loss available to common stockholders	\$(266,105)	383,355	\$(0.69)	\$(316,161)	376,931	\$(0.84)
Effect of dilutive securities:	—	—	—	—	—	—
Diluted EPS:						
Net loss available to common stockholders	\$(266,105)	383,355	\$(0.69)	\$(316,161)	376,931	\$(0.84)

* Numerator

+ Denominator

Options to purchase 70,078,980 shares and 68,664,265 shares were outstanding at September 30, 2004 and 2003, respectively, and were excluded from the computation of diluted shares because of their antidilutive effect on loss per share for the three and nine months then ended. The exercise price of these options ranged from \$0.06 to \$72.25 at September 30, 2004 and 2003.

For the three months and nine months ended September 30, 2004, weighted average potentially dilutive common shares of 43,413,634 and 44,266,694, respectively, associated with the 2003 and 2001 Convertible Notes were excluded from the calculation of diluted shares because of their antidilutive effect on net loss per share. For the three and nine months ended September 30, 2003 weighted average potentially dilutive common shares of 57,882,950 and 52,527,478, respectively, associated with the 2003, 2001, 2000 and 1999 Convertible Notes were excluded from the calculation of diluted shares because of their antidilutive effect on loss per share.

NOTE 12 — COMPREHENSIVE LOSS

Comprehensive loss is defined as a change in equity of a company during a period from transactions and other events and circumstances, excluding transactions resulting from investments by owners and distributions to owners. Comprehensive loss, net of taxes for the current reporting period and comparable period in the prior year is as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2004	2003	2004	2003
	(In thousands)			
Net loss	\$(282,432)	\$(31,652)	\$(266,105)	\$(316,161)
Change in unrealized gain/loss on derivative instruments designated as and qualifying as cash-flow hedges	(3,473)	1,059	(2,003)	1,523
Change in unrealized gain on available for sale securities	2,687	2,735	(8,725)	4,446
Change in foreign currency translation adjustments	(1,109)	10,643	(5,597)	19,057
Comprehensive loss	\$(284,327)	\$(17,215)	\$(282,430)	\$(291,135)

NOTE 13 — SEGMENT REPORTING

The Company operates in two reportable segments: the Semiconductor segment and the Storage Systems segment. The Storage Systems segment may also be referred to as Engenio. In the Semiconductor segment, the Company uses advanced process technology and comprehensive design methodologies to design, develop, manufacture and market highly complex integrated circuits. These system-on-a-chip solutions include application specific integrated circuits, commonly referred to as ASICs, RapidChip® Platform ASICs and application specific standard products in silicon, or ASSPs. Semiconductor segment product offerings also include RAID host bus adapters and related products and services. In the Storage Systems segment, the Company provides modular, high-performance, disk storage systems and sub-assemblies to server and storage original equipment manufacturers. Products of the Storage Systems segment are sold as complete storage systems or sub-assemblies configured from modular components, including storage controller modules, disk drive enclosure modules and related management software.

The following is a summary of operations by segment for the three and nine months ended September 30, 2004 and 2003:

	Three months ended September 30,		Nine months ended September 30,	
	2004	2003	2004	2003
	(In thousands)			
Revenues:				
Semiconductor	\$ 283,542	\$346,447	\$ 956,066	\$ 925,661
Storage Systems	96,675	103,780	324,405	304,564
Total	<u>\$ 380,217</u>	<u>\$450,227</u>	<u>\$1,280,471</u>	<u>\$1,230,225</u>
(Loss)/ income from operations:				
Semiconductor	\$(265,102)	\$ (33,835)	\$ (259,936)	\$ (302,261)
Storage Systems	(5,122)	10,187	12,074	12,110
Total	<u>\$(270,224)</u>	<u>\$ (23,648)</u>	<u>\$ (247,862)</u>	<u>\$ (290,151)</u>

Intersegment revenues for the periods presented above were not significant. For the three and nine months ended September 30, 2004, restructuring of operations and other items, net of \$229 million and \$231 million, respectively, were primarily included in the Semiconductor segment. For the three months ended September 30, 2003, charges of \$25 million for restructuring of operations and other items, net primarily impacted the Semiconductor segment. For the nine months ended September 30, 2003, restructuring of operations and other items, net of \$170 million and \$15 million were included in the Semiconductor segment and the Storage Systems segment, respectively.

Significant Customers. The following table summarizes the number of our significant customers, each of whom accounted for 10% or more of our revenues, along with the percentage of revenues they individually represent on a consolidated basis and by segment:

	Three months ended September 30,		Nine months ended September 30,	
	2004	2003	2004	2003
Semiconductor segment:				
Number of significant customers	2	1	—	1
Percentage of segment revenues	12%, 11%	27%	—	18%
Storage Systems segment:				
Number of significant customers	3	3	3	3
Percentage of segment revenues	54%, 15%, 12%	58%, 12%, 11%	53%, 14%, 11%	50%, 14%, 12%
Consolidated:				
Number of significant customers	1	2	1	2
Percentage of consolidated revenues	15%	21%, 15%	15%	14%, 14%

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The following is a summary of total assets by segment as of September 30, 2004 and December 31, 2003:

	September 30, 2004	December 31, 2003
	(In thousands)	
Total assets:		
Semiconductor	\$2,821,671	\$3,115,610
Storage Systems	336,012	332,291
Total	<u>\$3,157,683</u>	<u>\$3,447,901</u>

Revenues from domestic operations were \$194 million, representing 51% of consolidated revenues for the third quarter of 2004 compared to \$209 million, representing 46% of consolidated revenues for the same period of 2003.

Revenues from domestic operations were \$682 million, representing 53% of consolidated revenues, for the first nine months of 2004 compared to \$633 million, representing 51% of consolidated revenues, for the same period of 2003.

NOTE 14— COMMITMENTS AND CONTINGENCIES

On March 28, 2003, the Company entered into two lease and security agreements, each with Bank of America, National Association (“BANA”), acting as the Lessor, and Wells Fargo Bank Northwest, as the Agent, for a total of \$395 million for certain wafer fabrication equipment (the “Equipment”). The leases qualify for operating lease accounting treatment. Each lease has a term of 3.5 years with no option for renewal. The Company may, at the end of the lease term, return or purchase, at a pre-determined amount, all of the Equipment. The first lease was for \$235 million and was for equipment that was previously on lease immediately prior to closing this transaction. In October 2003, BANA, with the Company’s approval, assigned its rights as Lessor on the first lease to Bank of the West. The second lease was for \$160 million and was for Equipment that was sold to BANA and then immediately leased back in a transaction commonly referred to as a sale-leaseback. The Equipment sold had a book value of approximately \$103 million. These two leases were terminated on August 6, 2004.

On August 6, 2004, the Company entered into two lease and security agreements, each with Wells Fargo Bank Northwest, acting as the Agent. One lease for \$134 million is with Bank of the West acting as the Lessor, and the second lease for \$201 million is with BTM Capital Corporation acting as the Lessor. As of September 30, 2004, the amount under both leases was fully drawn. The leases are for wafer fabrication equipment (the “Equipment”) that was previously on the above-mentioned lease immediately prior to closing this transaction. The new leases qualify for operating lease accounting treatment. Each lease has a term of 3 years. The Company may, at the end of the lease term, return or purchase, at a pre-determined amount, all of the Equipment. The Company has \$311 million in cash that is posted as collateral for the leases as of September 30, 2004. The lessor has access to the Company’s cash collateral only in the event of a default. Of this cash collateral, \$50 million, representing the amount of cash collateral to be released in the next 12 months, is reflected in other current assets and the remaining cash collateral of \$261 million is recorded in other non-current assets. The Company is required to maintain unrestricted cash and short-term investments reserves in an amount no less than the higher of a) the sum of \$100 million plus the principal amount of the Company’s 2001 Convertible Subordinated Notes due in 2006 or b) \$350 million. The Company was in compliance with this requirement as of September 30, 2004. The \$56 million gain on the sale of the Equipment on the former lease will be deferred until the end of the new lease term and has been recorded as a non-current liability as of September 30, 2004. No officer or employee of the Company has any financial interest in these leasing arrangements.

The Company guarantees residual values related to the leased equipment. As of September 30, 2004, the Company’s maximum potential exposure to residual value guarantees was approximately \$141 million. The Company concluded that exposure related to residual value guarantees existed in connection with the conclusion that the Gresham manufacturing facility was impaired as discussed in Note 5. The fair value of the guarantee of the residual value of the equipment was determined using management estimates and was recorded as a non-current asset and liability each in the amount of \$6 million as of September 30, 2004.

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On October 27, 2004, the Company notified the required parties of its intention to exercise its early buyout right to purchase all of the Equipment under the two lease and security agreements discussed above, dated August 6, 2004. The date on which the purchase is to occur under each lease is November 29, 2004. The early termination or buyout amount is a total of \$332 million for both leases. Termination fees under the lease agreements are not considered to be material. The Company expects to record an impairment charge of approximately \$177 million in the fourth quarter of 2004 in connection with the termination of the operating leases. The impairment charges will be non-cash charges. The fourth quarter cash flows will reflect the buyout of both leases, net of the return of collateral associated with the leases for a net outflow of \$21 million.

The Company leases the majority of its facilities under non-cancelable operating leases, which expire through 2014. The facility lease agreements typically provide for base rental rates that are increased at various times during the terms of the lease and for renewal options at the fair market rental value. During the nine months ended September 30, 2004, the Company renegotiated the existing lease agreements for six buildings located in California and established one new lease in California and one new lease in India. The future minimum payments for these new and renegotiated building leases will be \$1 million, \$5 million, \$6 million, \$6 million, \$6 million and \$24 million for the years ending December 31, 2004, 2005, 2006, 2007, 2008 and thereafter, respectively.

The Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party with respect to certain matters. Typically, these obligations arise in connection with contracts and license agreements or the sale of assets, under which the Company customarily agrees to hold the other party harmless against losses arising from a breach of warranties, representations and covenants related to such matters as title to assets sold, validity of certain intellectual property rights, non-infringement of third-party rights, and certain income tax related matters. In each of these circumstances, payment by the Company is typically subject to the other party making a claim to and cooperating with the Company pursuant to the procedures specified in the particular contract. This usually allows the Company to challenge the other party's claims or, in case of breach of intellectual property representations or covenants, to control the defense or settlement of any third-party claims brought against the other party. Further, the Company's obligations under these agreements may be limited in terms of activity (typically to replace or correct the products or terminate agreement with a refund to the other party), duration and/or amounts. In some instances, the Company may have recourse against third parties and/or insurance covering certain payments made by the Company.

NOTE 15 — LEGAL MATTERS

In February 1999, a lawsuit alleging patent infringement was filed in the United States District Court for the District of Arizona by the Lemelson Medical, Education & Research Foundation, Limited Partnership ("Lemelson") against 88 electronics industry companies, including us. The case number is CIV990377PHXRGS. The patents involved in this lawsuit are alleged to relate to semiconductor manufacturing and computer imaging, including the use of bar coding for automatic identification of articles. The plaintiff has sought a judgment of infringement, an injunction, treble damages, attorneys' fees and further relief as the court may provide. In September 1999, the Company filed an answer denying infringement and raising affirmative defenses. In addition, the Company asserted a counterclaim for declaratory judgment of non-infringement, invalidity and unenforceability of Lemelson's patents. As of September 30, 2004, a claim construction hearing has been set to be held in November 2004, but no trial date has been set. While the Company cannot make any assurance regarding the eventual resolution of this matter, the Company does not believe it will have a material adverse effect on the consolidated results of operations or financial condition.

On May 4, 2001, Ning "Frank" Hui caused a lawsuit to be filed against C-Cube Microsystems Inc. in the Superior Court of California for the County of Santa Clara. Hui caused the lawsuit to be filed on his behalf and on behalf of all others similarly situated, approximately 600 employees of C-Cube Microsystems who were employed by C-Cube Microsystems in May 2000 at the time of the acquisition of certain C-Cube Microsystems' assets by Harmonic, Inc. Subsequent to the filing of the lawsuit, the Superior Court granted Hui's motion for class certification. In the Complaint, Hui alleges that C-Cube Microsystems' management improperly reduced the conversion factor for unvested employee stock options when such options were converted at the time of the Harmonic transaction. The Company denies these allegations. While the Company cannot make any assurance regarding the eventual resolution of this matter, the Company does not believe it will have a material adverse effect on the consolidated results of operations or financial condition.

The Company is a party to other litigation matters and claims that are normal in the course of its operations, and while the results of such litigation and claims cannot be predicted with certainty, the Company believes that the final outcome of such matters is not expected to have a material adverse effect on the Company's consolidated results of operations and financial condition.

NOTE 16 — SUBSEQUENT EVENTS

See Note 14 of the Notes for a discussion on the termination of the operating leases for Gresham manufacturing equipment on October 27, 2004.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

This Form 10-Q contains forward-looking statements. In many cases you can identify forward-looking statements by terminology such as “may”, “will”, “should”, “expect”, “plan”, “anticipate”, “believe”, “estimate”, “predict”, “potential”, “intend” or “continue,” or the negative of such terms and other comparable terminology. In addition, forward-looking statements in this document include, but are not limited to, the following: projected revenues in the fourth quarter of 2004, projections of gross profit margins in the fourth quarter of 2004, projected savings as a result of restructuring actions and projected capital expenditures in 2004. We assume no obligation to update any such forward-looking statements, and these statements involve risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements. For a summary of such risks and uncertainties, please see the paragraphs located at the end of this Item 2 entitled “Factors that May Affect Future Operating Results” and please also see the risk factors located in the Form 10-K for our fiscal year ended December 31, 2003.

OVERVIEW

Revenues for the three months ended September 30, 2004 were \$380 million representing a 16% decrease compared to the same period of 2003 and a 15% decrease from the three months ended June 30, 2004. The decline in revenues reflects customer end-demand reassessments and the ongoing semiconductor industry-wide effort to decrease excess supply chain inventory. As a result of the decline in revenues in the semiconductor industry and a corresponding decline in our outlook as of the latter part of the third quarter of 2004, we initiated a comprehensive restructuring program, which included a reduction in global workforce, asset impairment charges that were mainly for the impairment of our Gresham manufacturing facility and the consolidation of certain non-manufacturing facilities. See Note 5 of the Notes for a more complete description of the actions and related charges.

Cash, cash equivalents and short-term investments were \$809 million as of September 30, 2004. We generated positive operating cash flows for the tenth consecutive quarter. We repurchased approximately \$69 million in principal of the 2001 Convertible Notes during the quarter, recognizing a slight gain. See Note 9 of the Notes.

Customer interest in our RapidChip Platform ASIC accelerated in the third quarter of 2004 with a corresponding increase in our design-win rate. This heightened level of sales activity is expected to continue into the fourth quarter of 2004.

We expect revenues to be in the \$360 million to \$390 million range in the fourth quarter of 2004.

Separation of our Storage Systems business. On July 29, 2004, we announced jointly with Engenio Information Technologies, Inc. (“Engenio” or “Storage Systems segment”) the postponement of the initial public offering of its common stock due to market conditions.

Significant acquisitions. We are continually exploring strategic acquisitions that build upon our existing library of intellectual property, human capital and engineering talent, and increase our leadership position in the markets in which we operate. We acquired Velio Communications, Inc. (“Velio”) during the first quarter of 2004 and Accerant Inc. (“Accerant”) during the second quarter of 2004. Both were accounted for as purchases of businesses and, accordingly, the estimated fair value of assets acquired and liabilities assumed and the results of operations were included in our Consolidated Financial Statements as of the effective date of the acquisitions. The transactions are summarized in the table below. There were no significant differences between our accounting policies and those of the companies acquired. (See Note 3 of the Notes.)

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Entity Name; Segment Included in; Description of Acquired Business	Acquisition Date	Total Purchase Price	Type of Consideration	Fair Value of Tangible Net Assets/ (Liabilities) Acquired (in millions)	Goodwill	Amortizable Intangible Assets	IPR&D	Deferred Stock Compensation
Accerant Inc.; Semiconductor segment; Consumer product applications	May 11, 2004	\$15.9	\$14.1 cash; and 0.2 million restricted common shares	—	\$8.0	\$ 6.1	—	\$ 1.8
Velio Communications, Inc; Semiconductor segment; High-speed interconnect and switch fabric application specific standard products	April 2, 2004	\$20.8	\$19.8 cash; and 0.1 million restricted common shares	\$ 1.5	—	\$ 18.3	—	\$ 1.0

Where more than one significant factor contributed to changes in results from year to year, we have quantified such factors throughout the Management's Discussion & Analysis, where practicable.

RESULTS OF OPERATIONS

Revenues:

	Three months ended			Nine months ended	
	Sept. 30, 2004	June 30, 2004	Sept. 30, 2003	Sept. 30, 2004	Sept. 30, 2003
	(in millions)				
Semiconductor segment	\$283.5	\$335.6	\$346.4	\$ 956.1	\$ 925.6
Storage Systems segment	96.7	112.3	103.8	324.4	304.6
Consolidated	\$380.2	\$447.9	\$450.2	\$1,280.5	\$1,230.2

There were no significant intersegment revenues during the periods presented.

Third quarter of 2004 compared to the second quarter of 2004

Total consolidated revenues for the third quarter of 2004 decreased \$67.7 million or 15% from the second quarter of 2004.

Revenues for the Semiconductor segment decreased \$52.1 million or 16% in the third quarter of 2004 as compared to the second quarter of 2004. The decrease in the Semiconductor segment was primarily attributable to a decrease in demand for semiconductors used in storage and communication product applications. The decline in semiconductors used in storage product applications is mainly due to the continued softening demand in the SAN adapter and server markets. The decline in semiconductors used in communication product applications is due primarily to lower demand for office automation products. These decreases were partially offset by a seasonal increase in demand for semiconductors used in consumer product applications, in particular the video game products.

Revenues for the Storage Systems segment decreased \$15.6 million or 14% from the second quarter of 2004. The majority of this decline related to lower demand for products sold to IBM. Revenues from IBM decreased \$9.3 million for the three months ended September 30, 2004 as compared to the three months ended June 30, 2004. As a percentage of total Storage Systems segment revenues, revenues from IBM represented 54% in the third quarter of 2004 and 55% in the second quarter of 2004.

Three and nine months ended September 30, 2004 compared to the same period of 2003

Total consolidated revenues for the third quarter of 2004 decreased \$70.0 million or 16% as compared to the third quarter of 2003. For the nine months ended September 30, 2004, revenues increased \$50.3 million or 4% as compared to the same period of 2003.

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Revenues for the Semiconductor segment decreased \$62.9 million or 18% for the third quarter of 2004 and increased \$30.5 million or 3% for the nine months ended September 30, 2004 as compared to the same periods of the previous year. The decrease in revenues in the Semiconductor segment in the third quarter of 2004, as compared to the same period of 2003, is attributable to a decrease in demand for semiconductors used in consumer product applications, specifically videogame platforms, communication and storage product applications. For the nine months ended September 30, 2004 compared to the same period of the previous year, the increase in revenues for the Semiconductor segment was primarily due to an increase in demand for semiconductors used in storage and communication product applications. In addition, the demand for semiconductors used in consumer product applications, such as DVD recordable increased, partially offset by a decrease in demand for semiconductors used in consumer products applications, such as video game platforms.

Revenues for the Storage Systems segment decreased \$7.1 million or 7% for the third quarter of 2004 and increased \$19.8 million or 7% for the nine months ended September 30, 2004 as compared to the same periods of 2003. The decrease in revenues in the Storage Systems segment for the third quarter of 2004 as compared to the same period of 2003 is primarily due to a decrease in demand for products sold to IBM, offset in part by increased revenues for products sold to StorageTek. The increase in revenues for the Storage Systems segment for the nine months ended September 30, 2004 compared to the same period of 2003, is primarily due to an increase in demand from IBM, StorageTek and SGI for new controller products that were introduced in late April 2003 and increased demand for our other controller and disk enclosure related products.

Significant Customers. The following table summarizes the number of our significant customers, each of whom accounted for 10% or more of our revenues, along with the percentage of revenues they individually represent on a consolidated basis and by segment (See Note 13 of the Notes):

	Three months ended September 30,		Nine months ended September 30,	
	2004	2003	2004	2003
Semiconductor segment:				
Number of significant customers	2	1	—	1
Percentage of segment revenues	12%, 11%	27%	—	18%,
Storage Systems segment:				
Number of significant customers	3	3	3	3
Percentage of segment revenues	54%, 15%, 12%	58%, 12%, 11%	53%, 14%, 11%	50%, 14%, 12%
Consolidated:				
Number of significant customers	1	2	1	2
Percentage of consolidated revenues	15%	21%, 15%	15%	14%, 14%

Revenues by geography. The following table summarizes our revenues by geography:

	Three months ended			Nine months ended	
	Sept. 30, 2004	June 30, 2004	Sept. 30, 2003	Sept. 30, 2004	Sept. 30, 2003
(In millions)					
Revenues:					
North America	\$194.1	\$243.3	\$209.3	\$ 682.2	\$ 633.0
Asia, including Japan	156.7	164.9	207.6	486.2	487.1
Europe	29.4	39.7	33.3	112.1	110.1
Total	\$380.2	\$447.9	\$450.2	\$1,280.5	\$1,230.2

Third quarter of 2004 compared to the second quarter of 2004

In the third quarter of 2004, revenues decreased in North America, Asia, including Japan and Europe, as compared to the second quarter of 2004. The decrease in North America is primarily attributable to a decline in demand for semiconductors used in storage product applications, such as disk drive solutions and modular storage products associated with Engenio. The decrease in revenues for

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Asia, including Japan is primarily due to the decline in demand for communication product applications, such as office automation products. The decrease in revenues for Europe represents decreased demand across all semiconductor product applications.

Three and nine months ended September 30, 2004 compared to the same periods of 2003

Revenues in North America and Asia, including Japan and Europe decreased in the third quarter of 2004 as compared to the third quarter of 2003. The decrease in North America is mainly due to the decrease in demand for semiconductors used in storage product applications, such as disk drive solutions and modular storage products associated with Engenio. The decrease in revenues for Asia, including Japan is primarily due to decreased demand for semiconductors used in consumer product applications, such as video game platforms, offset in part by an increase in demand for semiconductors used in consumer product applications, such as DVD-recordable. The decrease in revenues for Europe represents decreased demand across all semiconductor product applications.

During the nine months ended September 30, 2004, revenues increased in North America and Europe, and declined slightly in Asia, including Japan, as compared to the same period in 2003. The increase in demand in North America and Europe was for semiconductors used in storage component and communication product applications, such as routers and switches and modular storage products associated with Engenio, partially offset by a decrease in demand for semiconductors used in consumer product applications, such as DVD-recordable. The decrease in revenues in Asia, including Japan was mainly due to a decline in demand for semiconductors used in certain consumer product applications, such as video game platforms and communication product applications, such as office automation products. This decrease was offset by an increase in demand for semiconductors used in storage component applications, such as Ultra 320 SCSI, and certain consumer product applications, such as DVD-recordable.

Operating costs and expenses. Key elements of the consolidated statements of operations for the respective segments are as follows:

Gross profit margin:

	Three months ended			Nine months ended	
	Sept. 30, 2004	June 30, 2004	Sept. 30, 2003	Sept. 30, 2004	Sept. 30, 2003
			(In millions)		
Semiconductor segment	\$119.8	\$166.5	\$144.1	\$442.5	\$362.8
Percentage of revenues	42%	50%	42%	46%	39%
Storage Systems segment	\$ 32.0	\$ 42.3	\$ 40.9	\$119.5	\$115.6
Percentage of revenues	33%	38%	39%	37%	38%
Consolidated	\$151.8	\$208.8	\$185.0	\$562.0	\$478.4
Percentage of revenues	40%	47%	41%	44%	39%

Third quarter of 2004 compared to the second quarter of 2004

The consolidated gross profit margin as a percentage of revenues decreased to 40% in the third quarter of 2004 from 47% in the second quarter of 2004.

The gross profit margin as a percentage of revenues for the Semiconductor segment decreased to 42% in the third quarter of 2004 from 50% in the second quarter of 2004. The decrease in gross profit margin for the Semiconductor segment was primarily attributable to the following factors:

- Higher inventory charges for non-marketable inventories in the third quarter of 2004 as compared to the second quarter of 2004; and
- An unfavorable shift in product mix to selling products with relatively lower margins.

The gross profit margin as a percentage of revenues for the Storage Systems segment decreased to 33% for the third quarter of 2004 from 38% for the second quarter of 2004. The decrease is mainly a result of an unfavorable change in the mix of products sold

and lower utilization of manufacturing facilities due to lower revenues in the third quarter of 2004 as compared to the second quarter of 2004.

We expect our consolidated gross profit margin to be in the range of 41% to 43% in the fourth quarter of 2004.

Three and nine months ended September 30, 2004 compared to the same periods of 2003

The consolidated gross profit margin as a percentage of revenues decreased to 40% for the third quarter of 2004 from 41% for the same period of 2003. The consolidated gross profit margin as a percentage of revenues increased to 44% for the nine months ended September 30, 2004 as compared to 39% for the same period of 2003.

The gross profit margin as a percentage of revenues for the Semiconductor segment remained unchanged at 42% in the third quarters of 2004 and 2003. The gross profit margin as a percentage of revenues for the Semiconductor segment increased to 46% for the nine months ended September 30, 2004 as compared to 39% in the same period of 2003. The improvement in gross profit margin for the Semiconductor segment was primarily attributable to the following factors:

- Higher revenues and a favorable shift in product mix to products with higher margins for the nine months ended September 30, 2004 as compared to the same period of 2003;
- Lower manufacturing variances for the Gresham manufacturing facility associated with yield improvements, improved operating efficiencies and better factory utilization; and
- A reduction in cost of revenues as a result of the sale of our Japan manufacturing facility in the fourth quarter of 2003.

Sales of previously reserved inventory for the nine months ended September 30, 2004 compared to the same period of 2003 was not significant.

The gross profit margin as a percentage of revenues for the Storage Systems segment decreased to 33% in the third quarter of 2004 as compared with 39% for the third quarter of 2003. The gross profit margin as a percentage of revenues for the Storage Systems segment decreased to 37% for the nine months ended September 30, 2004 as compared to 38% in the same period of 2003. The decrease in gross profit margin as a percentage of Storage Systems segment revenues is primarily a result of an unfavorable shift in mix of products sold.

Factors that may affect gross profit margins

We have wafer-manufacturing operations in Gresham, Oregon. We also acquire wafers from foundries in other locations. Utilizing a diversity of manufacturing locations allows us to better manage potential disruption in the manufacturing process due to economic and geographic risks associated with each location.

Our operating environment, combined with the resources required to operate in the Semiconductor and Storage Systems industries, requires that we manage a variety of factors which could have a significant impact on our gross margin in future periods. These factors include, among other things:

- Competitive pricing pressures;
- Product mix;
- Factory capacity and utilization;
- Manufacturing yields;
- Availability of certain raw materials;
- Terms negotiated with third-party subcontractors; and
- Foreign currency fluctuations.

Research and development:

	Three months ended			Nine months ended	
	Sept. 30, 2004	June 30, 2004	Sept. 30, 2003	Sept. 30, 2004	Sept. 30, 2003
			(in millions)		
Semiconductor segment	\$ 93.3	\$ 96.1	\$ 91.7	\$284.2	\$297.3
Percentage of revenues	33%	29%	26%	30%	32%
Storage Systems segment	\$ 14.8	\$ 14.0	\$ 12.1	\$ 43.0	\$ 33.0
Percentage of revenues	15%	12%	12%	13%	11%
Consolidated	\$108.1	\$110.1	\$103.8	\$327.2	\$330.3
Percentage of revenues	28%	25%	23%	26%	27%

Third quarter of 2004 compared to the second quarter of 2004

Research and development (“R&D”) expenses decreased \$2.0 million or 2% in the third quarter of 2004 as compared to the second quarter of 2004 on a consolidated basis.

R&D expenses in the Semiconductor segment decreased \$2.8 million or 3% in the third quarter of 2004 as compared to the second quarter of 2004. The decrease in R&D expenses for the Semiconductor segment is primarily related to lower manufacturing spending on test chips. R&D expenses for the Semiconductor segment increased to 33% of revenues in the third quarter of 2004 from 29% in the second quarter of 2004.

We continued the build-out of the RapidChip platform infrastructure in the third quarter of 2004. Products utilizing RapidChip technology combine the high-density, high-performance and proven intellectual property benefits of cell-based ASICs with the advantages of lower development costs and faster time to market. We expect products utilizing RapidChip technology to have performance comparable to cell-based ASICs at a cost significantly lower than Field Programmable Gate Arrays (“FPGAs”). Markets for our RapidChip platform ASIC solutions will include communications, storage, consumer, industrial and others. Our customer base for RapidChip technology encompasses a range from small start-up companies to major system OEMs throughout all of our geographic markets. We shipped our first RapidChip platform products in the fourth quarter of 2003. Design wins and product shipments for RapidChip platform products continued to increase in the third quarter of 2004.

R&D expenses in the Storage Systems segment increased \$0.8 million or 6% in the third quarter of 2004 as compared to the second quarter of 2004 primarily due to higher expenses for materials and outside service providers related to development programs. R&D expenses for the Storage Systems segment increased to 15% of revenues in the third quarter of 2004 from 12% in the second quarter of 2004.

Three and nine months ended September 30, 2004 compared to the same period of 2003

R&D expenses, on a consolidated basis, increased \$4.3 million or 4% during the third quarter of 2004 as compared to the same period of 2003. R&D expenses for the nine months ended September 30, 2004 decreased by \$3.1 million or 1% as compared to the same period of the prior year on a consolidated basis.

R&D expenses for the Semiconductor segment increased \$1.6 million or 2% in the third quarter of 2004 and decreased \$13.1 million or 4% for the nine months ended September 30, 2004 as compared to the same periods of 2003. The increase in the third quarter of 2004 as compared to the same period of 2003 is due primarily to R&D expenses associated with acquisitions made in the first half of 2004 (see Note 3 of the Notes). The decrease in R&D expenses for the Semiconductor segment for the nine months ended September 30, 2004 as compared to the same period of the prior year is primarily a result of benefits from the cost-cutting measures implemented as part of the restructuring actions in 2003 (see Note 5 of the Notes).

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R&D expenses as a percentage of revenues for the Semiconductor segment increased to 33% in the third quarter of 2004 compared to 26% in the same quarter of 2003. R&D expenses as a percentage of revenues for the Semiconductor segment decreased to 30% in the nine months ended September 30, 2004 as compared to 32% in the same period of 2003.

R&D expenses for the Storage Systems segment increased by \$2.7 million or 22% in the third quarter of 2003 and \$10.0 million or 30% in the nine months ended September 30, 2004 as compared to the same periods of 2003. This is primarily a result of increased compensation costs due to higher headcount, higher expenses for outside service providers related to development programs and higher depreciation expense related to new assets purchased for product development.

R&D expenses as a percentage of revenues for the Storage Systems segment increased to 15% in the third quarter of 2004 from 12% in the same quarter of 2003. R&D expenses as a percentage of revenues for the Storage Systems segment increased to 13% in the nine months ended September 30, 2004 as compared to 11% in the same period of 2003.

Selling, general and administrative:

	Three months ended			Nine months ended	
	Sept. 30, 2004	June 30, 2004	Sept. 30, 2003	Sept. 30, 2004	Sept. 30, 2003
			(In millions)		
Semiconductor segment	\$44.0	\$45.2	\$42.2	\$133.1	\$126.0
Percentage of revenue	16%	13%	12%	14%	14%
Storage Systems segment	\$19.4	\$18.6	\$15.5	\$ 55.3	\$ 46.2
Percentage of revenue	20%	17%	15%	17%	15%
Consolidated	\$63.4	\$63.8	\$57.7	\$188.4	\$172.2
Percentage of revenue	17%	14%	13%	15%	14%

Third quarter of 2004 compared to the second quarter of 2004

Selling, general and administrative (“SG&A”) expenses remained flat in the third quarter of 2004 as compared to the second quarter of 2004 on a consolidated basis. As a percentage of revenues, consolidated SG&A expenses increased to 17% in the third quarter of 2004 from 14% in the second quarter of 2004.

SG&A expenses for the Semiconductor segment decreased \$1.2 million or 3% in the third quarter of 2004 as compared to the second quarter of 2004. This decrease is mainly due to lower spending for professional services, such as legal services. For the Semiconductor segment, SG&A expenses, as a percentage of revenues, increased to 16% in the third quarter of 2004 from 13% in the second quarter of 2004.

SG&A expenses for the Storage Systems segment increased \$0.8 million or 4% in the third quarter of 2004 as compared to the second quarter of 2004. The increase is primarily due to \$1.5 million of expenses associated with the proposed initial public offering and the separation from us, which includes fees for professional services that were directly and solely related to the initial public offering; lower reimbursements of selling expenses related to the master distributor agreement with StorageTek due to the timing of billings and the underlying level of revenues; partially offset by lower commissions and compensation-related costs as a result of lower revenues from the second quarter to the third quarter of 2004. On July 29, 2004, we announced jointly with Engenio the postponement of the initial public offering of its common stock due to market conditions.

For the Storage Systems segment, SG&A expenses, as a percentage of revenues increased to 20% in the third quarter of 2004 as compared with 17% in the second quarter of 2004.

Three and nine months ended September 30, 2004 compared to the same period of 2003

Consolidated SG&A expenses increased \$5.7 million or 10% during the third quarter of 2003 and increased \$16.2 million or 9% during the nine months ended September 30, 2004 as compared to the same periods of 2003. As a percentage of revenues, SG&A expenses increased to 17% in the third quarter of 2004 as compared with 13% in the third quarter of 2003. As a percentage of revenues, SG&A expenses increased to 15% in the nine months ended September 30, 2004 as compared with 14% for the same period in 2003.

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SG&A expenses for the Semiconductor segment increased \$1.8 million or 4% for the third quarter of 2004 and \$7.1 million or 6% for the nine months ended September 30, 2004, as compared to the same periods of 2003. The increase for the Semiconductor segment in the third quarter of 2004 as compared to the same period in 2003 is primarily attributable to higher compensation-related costs, higher selling expenses including bad debt expenses and one-time distributor commissions. The increase for the Semiconductor segment in the nine months ended September 30, 2004 as compared to the same period of 2003 is primarily due to higher compensation-related costs, higher spending on professional services including legal services, higher selling expenses including bad debt expenses and one-time distributor commissions.

SG&A expenses as a percentage of revenues for the Semiconductor segment increased to 16% in the third quarter of 2004 as compared with the 12% in the same quarter of 2003. SG&A expenses as a percentage of revenues for the Semiconductor segment remained unchanged at 14% in the nine months ended September 30, 2004 as compared to the same period of 2003.

SG&A expenses for the Storage Systems segment increased by \$3.9 million or 25% in the third quarter of 2004 and by \$9.1 million or 20% in the nine months ended September 30, 2004 as compared to the same periods of 2003. During the three and nine months ended September 30, 2004 we recorded \$2.5 million and \$3.5 million, respectively, in expenses associated with the proposed initial public offering and the separation from us, which includes fees for professional services that were directly and solely related to the initial public offering. On July 29, 2004, we announced jointly with Engenio the postponement of the initial public offering of its common stock due to market conditions. Compensation-related costs also increased during both the three and nine months ended September 30, 2004 as a result of employees hired for customer training and customer engineering positions, as well as administrative employees hired in anticipation of the initial public offering of Engenio's common stock. During the nine months ended September 30, 2004, these increases were offset in part by higher reimbursements of selling expenses related to the master distributor agreement with StorageTek due to the timing of billings and the underlying level of revenues.

SG&A expenses as a percentage of revenues for the Storage Systems segment increased to 20% in the third quarter of 2004 from 15% in the same quarter of 2003. SG&A expenses as a percentage of revenues for the Storage Systems segment increased to 17% in the nine months ended September 30, 2004 as compared to 15% in the same period of 2003.

Restructuring of operations and other items: We recorded charges of \$228.6 million and \$231.1 million in restructuring of operations and other items for the three and nine months ended September 30, 2004, respectively, which was primarily associated with the Semiconductor segment. We recorded a charge of \$24.5 million and \$184.7 million in restructuring of operations and other items for the three and nine months ended September 30, 2003, respectively. For a complete discussion of the 2003 restructuring actions, please refer to our Annual Report on Form 10-K for fiscal year 2003.

Restructuring and impairment of long-lived assets:

First quarter of 2004:

We recorded a gain of \$3.3 million on the sale of fixed assets that had previously been held for sale and an expense of \$1.1 million for the abandonment of fixed assets that had previously been held for sale. In addition, an expense of \$1.1 million was recorded for the write-down of fixed assets due to impairment.

An expense of \$0.3 million was recorded to reflect the change in time value of accruals for facility lease termination costs, net of adjustments for changes in sublease assumptions for certain previously accrued facility lease termination costs. An expense of \$0.2 million was recorded primarily for severance and termination benefits for four employees involved in research and development.

Second quarter of 2004:

We recorded a gain of \$1.0 million on the sale of fixed assets that had previously been held for sale and an expense of \$4.0 million primarily for the write-down of the Colorado Springs fabrication facility to reflect a decline in fair market value and to write down certain spare parts for fixed assets.

An expense of \$0.4 million was recorded to reflect the change in time value of accruals for facility lease termination costs, net of adjustments for changes in sublease assumptions for certain previously accrued facility lease termination costs. Previously accrued contract termination fees of \$0.4 million were reversed as the result of favorable negotiations to terminate those contracts.

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Third quarter of 2004:

As a result of the decline in revenues in the semiconductor industry and a corresponding decline in our outlook as of the latter part of the third quarter of 2004, we initiated a comprehensive restructuring program, which included a reduction in workforce, asset impairment charges and the consolidation of certain facilities as discussed further below.

We concluded in accordance with SFAS No. 144 "Accounting for the Impairment or Disposal of Long-Lived Assets," that the Gresham manufacturing facility assets were impaired. Accordingly, an asset write down of \$205.5 million was recorded in the semiconductor segment during the third quarter of 2004 and we estimate an additional write down of approximately \$177 million will be recorded in the fourth quarter of 2004. The fair value of impaired equipment and facilities were estimated by management. The charge in the fourth quarter will reflect the impairment of the equipment that will be purchased in connection with the termination of the operating leases as described in Note 14 of the Notes. The impairment charges will be non-cash charges. The fourth quarter cash flows will reflect the buyout of the leases, net of the return of the cash collateral associated with the leases for a net outflow of \$21 million.

We announced workforce reductions of approximately 558 positions worldwide across all job functions and recorded a charge of \$14.6 million in the Semiconductor segment for severance and termination benefits.

We recorded a gain of \$1.9 million on the sale of fixed assets that had previously been held for sale and an expense of \$3.4 million for the write-down of the Colorado Springs fabrication facility to reflect a decline in fair market value, the impairment of certain acquired intangible assets in the Semiconductor segment and the write down of leasehold improvements related to the facility operating leases discussed below.

In the third quarter of 2004, we consolidated additional non-manufacturing facilities and recorded \$6.1 million for costs associated with exiting certain operating leases for real estate as the facilities ceased being used. An expense of \$0.4 million was recorded to reflect the change in time value of accruals for facility lease termination costs. In addition, an expense of \$1.8 million was recorded for changes in sublease assumptions for certain previously accrued facility lease termination costs.

Assets held for sale of \$24 million and \$30 million were included as a component of prepaid expenses and other current assets as of September 30, 2004 and December 31, 2003, respectively. Assets classified as held for sale are not depreciated. The fair values of impaired equipment and facilities were estimated by management. Given that current market conditions for the sale of older fabrication facilities and related equipment may fluctuate, there can be no assurance that we will realize the current net carrying value of the assets held for sale. We reassess the realizability of the carrying value of these assets at the end of each quarter until the assets are sold or otherwise disposed of and additional adjustments may be necessary.

The following table sets forth our restructuring reserves as of September 30, 2004, which are included in other accrued liabilities on the balance sheet:

	Balance at December 31, 2003	Restruc- turing Expense Q1 2004	Utilized during Q1 2004	Restructuring Expense Q2 2004	Utilized during Q2 2004	Release of reserves Q2 2004	Restructur- ing Expense Q3 2004	Utilized during Q3 2004	Balance at September 30, 2004
(In thousands)									
Write-down of excess assets (a)	\$ 2,661	\$(1,118)	\$ 718	\$3,203	\$(160)	\$(3,414)	\$207,035	\$(207,324)	\$ 1,601
Lease terminations and maintenance contracts (b)	21,021	252	(1,886)	379	(375)	(2,312)	8,336	(2,214)	23,201
Facility closure and other exit costs (c)	2,136	64	(782)	—	—	(369)	—	(234)	815
Payments to employees for severance (d)	874	204	(767)	—	(18)	(227)	14,573	(838)	13,801
Total	\$26,692	\$ (598)	\$(2,717)	\$3,582	\$(553)	\$(6,322)	\$229,944	\$(210,610)	\$39,418

(a) The amounts utilized in 2004 reflect \$215.4 million of non-cash write-downs of long-lived assets in the U.S. due to impairment and \$0.8 million in cash payments to decommission and sell assets, offset by a \$6.2 million realized gain on the sale of fixed assets previously held for sale. The write-downs of long-lived assets were accounted for as a reduction of the assets and did not result in a liability. The \$1.6 million balance as of September 30, 2004, relates to machinery and equipment decommissioning costs in the U.S. and estimates of selling costs for assets held for sale and is expected to be utilized during the first half of 2005.

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- (b) Amounts utilized represent cash payments. The balance remaining for primarily real estate lease terminations and maintenance contracts will be paid during the remaining terms of these contracts, which extend through 2011.
- (c) Amounts utilized represent cash payments. The balance remaining for facility closure and other exit costs will be paid during the first half of 2005.
- (d) Amounts utilized represent cash severance payments to 68 employees during the nine months ended September 30, 2004. The balance remaining for severance is expected to be paid by the end of 2005.

We expect to realize savings of approximately \$100 million as a result of these restructuring actions.

Other Items

During the second quarter of 2004, we reclassified a parcel of land in Colorado with a book value of \$1.4 million from a long-term asset to a current asset held for sale. The land is part of total assets in the Semiconductor segment. We expect to sell the property within the next 12 months for an amount not less than book value.

During the third quarter of 2004, we reclassified a parcel of land in Japan with a book value of \$1.4 million from a long-term asset to a current asset held for sale. The land is part of the total assets in the Semiconductor segment. We expect to sell the property within the next 12 months for an amount not less than book value.

During the third quarter of 2004, we entered into two new lease agreements for wafer fabrication equipment (see Note 14 of the Notes). The equipment was previously on lease immediately prior to the closing of the new lease agreements. We had capitalized and were amortizing fees related to the previous lease agreements. Upon entering into the new lease agreements, \$2.5 million in remaining unamortized fees for the previous leases were recorded as an expense in the statement of operations.

During the third quarter of 2004, we discontinued hedge accounting treatment on the interest rate swap related to the equipment operating lease that were refinanced and recorded the \$3.8 million balance in accumulated comprehensive income as a gain in the statement of operations (see Note 7 and 14 of the Notes).

Amortization of non-cash deferred stock compensation: Amortization of non-cash deferred stock compensation was \$2.6 million for the three months ended September 30, 2004, \$2.0 million for the three months ended June 30, 2004, \$3.4 million for the three months ended September 30, 2003. For the nine months ended September 30, 2004 and 2003, the amortization of non-cash deferred stock compensation was \$6.4 million and \$22.8 million, respectively. The acquisitions for which deferred stock compensation and related amortization were recorded consisted primarily of the Accerant transaction in the second quarter of 2004 and the Velio transaction in the first quarter of 2004 (see Note 3 of the Notes); an acquisition in the fourth quarter of 2002; the acquisition of C-Cube, and the RAID business from AMI in 2001; and the acquisition of DataPath in 2000. We also recorded non-cash deferred stock compensation for restricted common shares issued to our employees, Engenio employees and the non-employee directors of Engenio during the nine months ended September 30, 2004. We amortize deferred stock compensation ratably over the related vesting periods. Deferred stock compensation is adjusted to reflect the forfeitures prior to vesting.

Amortization of intangibles: Amortization of intangible assets was \$19.2 million for the third quarter of 2004 as compared to \$19.4 million for the second quarter of 2004.

Amortization of intangible assets for the third quarter of 2004 remained flat as compared to the same period in 2003. For the nine months ended September 30, 2004 and 2003, amortization of intangible assets was \$56.9 million and \$58.6 million, respectively. The decrease is attributable to the write-down in the first quarter of 2003 of \$15.1 million of intangible assets in the Semiconductor segment and \$9.0 million of intangible assets in the Storage Systems segment. In the third quarter of 2003, we wrote-down an additional \$21.0 million of intangible assets originally acquired in connection with the acquisition of C-Cube, which was added to our Semiconductor segment in the second quarter of 2001. The charges were recorded in restructuring and other items, net in 2003. These decreases were offset in part by amortization of intangible assets acquired in the first and second quarters of 2004. As of September 30, 2004, we had approximately \$131.3 million of intangible assets, net of accumulated amortization, which will continue to amortize.

We monitor the recoverability of goodwill recorded in connection with acquisitions annually, or sooner if events or changes in circumstances indicate that the carrying amount may not be recoverable. Impairment, if any, would be determined in accordance with

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SFAS No. 142, which uses a fair value model for determining the carrying value of goodwill. As a result of the decline in revenues in the semiconductor industry and the corresponding decline in our outlook as of the latter part of the third quarter of 2004 and the conclusion that the Gresham manufacturing facility was impaired (see Note 5 of the Notes), we reviewed goodwill by reporting unit for impairment as of September 30, 2004. Our reporting units are Semiconductor and Storage Systems or Engenio. The impairment testing is a two-step process. The first step requires comparing the fair value of each reporting unit to its net book value. We use management estimates of future cash flows to perform the first step of the goodwill impairment test. These estimates include assumptions about future conditions such as future revenues, gross margins and operating expenses. Two methodologies were used to obtain the fair value for each reporting unit as of September 30, 2004: Discounted Cash Flow and Market Multiple. We concluded that goodwill was not impaired under the first step as of September 30, 2004. The second step is only performed if impairment exists, as it involves measuring the actual impairment to goodwill.

Interest expense: Interest expense decreased to \$6.0 million in the third quarter of 2004 from \$6.1 million in the second quarter of 2004. Interest expense decreased by \$1.0 million during the three months ended September 30, 2004 from \$7.0 million during the same period of 2003. Interest expense decreased \$5.1 million to \$18.0 million for the nine months ended September 30, 2004 from \$23.1 million in the same period of 2003. The decrease is due to the repurchase/redemption of approximately \$710.0 million of Convertible Notes during 2003, \$68.5 million in the third quarter of 2004 and changes in the benefit received from the interest rate swaps before/after termination (see Note 9 of the Notes), offset by the issuance of \$350.0 million of Convertible Notes during the second quarter of 2003.

Interest income and other, net: Interest income and other, net, was an expense of \$0.2 million for the third quarter of 2004 as compared to income of \$8.8 million for the second quarter of 2004. Interest income increased to \$4.6 million in the third quarter of 2004 from \$3.5 million in the second quarter of 2004. The increase in interest income is mainly due to higher realized gains on our short-term investments. Other expense, net of \$4.8 million in the third quarter of 2004 included a net pre-tax gain of \$1.8 million on repurchase of 2001 Convertible Notes (see Note 9 of the Notes), a pre-tax loss of \$6.0 million for the impairment of certain marketable and non-marketable available-for-sale equity securities determined by management to be other than temporary (see Note 6 of the Notes) and other miscellaneous items. Other income, net of \$5.3 million in the second quarter of 2004 included a pre-tax gain of \$5.1 million on sales of certain marketable available-for-sale equity securities and other miscellaneous items.

In the third quarter of 2003, interest income and other, net, was \$5.0 million. Interest income was \$5.2 million in the third quarter of 2003. The decrease in interest income for the third quarter of 2004 as compared to the third quarter of 2003 is mainly due to lower realized gains on the sale of short-term investments and lower returns. Other expense, net of \$0.2 million in the third quarter of 2003 included a net pre-tax loss of \$1 million on the redemption of \$172 million in principal of our 1999 Convertible Notes, offset in part by net gains on foreign exchange and the sale of miscellaneous assets.

Interest income and other, net increased to \$17.7 million in the nine months ended September 30, 2004 from \$15.1 million in the same period of 2003. Interest income decreased by \$11.1 million to \$13.6 million in the nine months ended September 30, 2004 from \$24.7 million in the same period of 2003. The decrease in interest income is mainly due to lower realized gains on the sale of short-term investments and lower returns during the nine months ended September 30, 2004. Other income, net of \$4.1 million in the nine months ended September 30, 2004 included a pre-tax gain of \$3.0 million associated with our investment in marketable available-for-sale equity securities of a certain technology company that was acquired by another publicly traded technology company during the first quarter of 2004, a pre-tax gain of \$5.1 million on sales of certain marketable available-for-sale equity securities in the second quarter of 2004, pre-tax gain of \$1.8 million on repurchase of 2001 Convertible Notes (see Note 9 of the Notes), a pre-tax loss of \$6.0 million on impairment of certain marketable and non-marketable available-for-sale equity securities (See Note 6 of the Notes) and other miscellaneous items. Other expense, net of \$9.6 million in the nine months ended September 30, 2003 included \$9.1 million in charges for write-downs of investments in equity securities due to impairment considered to be other than temporary, a net loss on the redemption/repurchase of Convertible Notes of \$3.2 million, and currency option premium expenses, offset in part by net foreign exchange gains, gains on sale of miscellaneous assets, and other expenses that were individually insignificant.

Provision for income taxes: We recorded an income tax expense of \$6.0 million for the three months ended September 30, 2004 and 2003, and \$18.0 million for the nine months ended September 30, 2004 and 2003. The expense relates to foreign income taxes. Excluding certain foreign jurisdictions, the future benefit of temporary differences, including operating losses, is not being recognized.

FINANCIAL CONDITION, CAPITAL RESOURCES AND LIQUIDITY

Cash, cash equivalents and short-term investments decreased to \$808.8 million at September 30, 2004, from \$813.7 million at December 31, 2003. As described below, the decrease is mainly due to net cash inflows from operating activities and net cash outflows from investing and financing activities.

Working capital. Working capital decreased by \$3.1 million to \$995.7 million at September 30, 2004, from \$998.8 million at December 31, 2003. Working capital for the nine months ended September 30, 2004 was impacted by the following activities:

- Accounts payable increased by \$29.1 million to \$131.7 million at September 30, 2004 from \$102.6 million at December 31, 2003, primarily due to the timing of invoice receipt and payments;
- Other accrued liabilities increased by \$27.3 million to \$181.2 million as of September 30, 2004 from \$153.9 million as of December 31, 2003. The primary reasons for the increase are:
 - Our restructuring reserves increased by \$14.4 million during the nine months ended September 30, 2004 primarily as a result of the restructuring actions taken in the third quarter, net of utilization during the nine-month period (see Note 5 of the Notes).
 - Accrued interest payable increased due to the timing of interest payments on our Convertible Subordinated Notes.
 - In addition, there was an increase in accrued rent payments for the equipment operating leases that resulted from the timing of payments subsequent to entering into the new leases during the third quarter of 2004 (see Note 14 of the Notes).
- Prepaid expenses and other current assets decreased by \$11.3 million primarily due to:
 - A \$7.5 million decrease in the current portion of the collateral balance on the equipment operating leases (see Note 14 of the Notes);
 - The receipt of a \$6.6 million income tax refund in the first quarter of 2004;
 - A \$5.5 million decrease in assets held for sale due to sales and retirements, net of additions (see Note 5 of the Notes); and
 - Normal amortization of software maintenance contracts.
 - These decreases were offset by a \$12.3 million increase in an other receivable due to the termination of the interest rate swap on the equipment operating leases (see Note 7 of the Notes).
- Income taxes payable increased by \$9.3 million primarily due to the timing of income tax payments made and the income tax provision recorded in the first nine months of 2004; and
- Cash, cash equivalents and short-term investments decreased by \$4.9 million to \$808.8 million at September 30, 2004, as compared to \$813.7 million at December 31, 2003.

The decrease in working capital was offset, in part, by the following:

- Accounts receivable increased by \$33.6 million to \$264.8 million at September 30, 2004 from \$231.2 million at December 31, 2003. The increase is mainly attributable to slower collections in the third quarter of 2004 as compared to the fourth quarter of 2003 and higher billings in the last month of the third quarter of 2004 as compared to the last month of the fourth quarter of 2003; and
- Inventories increased by \$45.8 million to \$244.3 million as of September 30, 2004 from \$198.5 million as of December 31, 2003. This is mainly due to lower than expected revenues in the later part of the third quarter of 2004 as well as the purchase of raw materials and the manufacture of inventory to support expected future sales.

Cash and cash equivalents generated from operating activities. During the nine months ended September 30, 2004, we generated \$64.6 million of net cash and cash equivalents from operating activities compared to \$138.4 million generated in the same period of 2003. Cash and cash equivalents generated by operating activities for the nine months ended September 30, 2004 were the result of the following:

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- Income (before depreciation and amortization, non-cash restructuring and other items, amortization of non-cash deferred stock compensation, gains on sale and exchange of equity securities, loss on write-down of equity securities, gain on repurchase of Convertible Subordinated Notes, and gain on the sale of property and equipment), offset by a net decrease in assets and liabilities, net of assets acquired and liabilities assumed in business combinations. The non-cash items and other non-operating adjustments are quantified in our Consolidated Statements of Cash Flows included in this Current Report on Form 10-Q; and
- Changes in working capital components from December 31, 2003 to September 30, 2004 as discussed above.

Cash and cash equivalents used in investing activities. Cash and cash equivalents used in investing activities were \$73.8 million for the nine months ended September 30, 2004, compared to \$109.0 million in the same period in 2003. The primary investing activities during the nine months ended September 30, 2004 were as follows:

- Purchases of debt and equity securities available for sale, net of sales and maturities;
- Purchases of property and equipment;
- Proceeds from the sale of property and equipment;
- Acquisition of companies, net of cash acquired (see Note 3 of the Notes); and
- A reduction in non-current assets and deposits during the nine months ended September 30, 2004, primarily as a result of a decrease in collateral during the third quarter as a result of entering into the new equipment operating leases, the refund of collateral from the former equipment operating leases during the first six months of 2004 (see Note 14 of the Notes) and the termination of a letter of credit arrangement during the first quarter of 2004.

We believe that maintaining technological leadership in the highly competitive worldwide semiconductor manufacturing industry requires access to advanced manufacturing capacity. Our focus is on establishing strategic supplier alliances with foundry semiconductor manufacturers, which enables us to supplement internal manufacturing capability with additional external manufacturing capacity, and reduces our capital spending requirements. We expect capital expenditures to be approximately \$80 million in 2004.

Cash and cash equivalents used in financing activities. Cash and cash equivalents used in financing activities during the nine months ended September 30, 2004 were \$58.5 million as compared to \$133.4 million in the same period in 2003. The primary financing activities during the nine months ended September 30, 2004 were as follows:

- The repurchase of a portion of the Convertible Subordinated Notes due in 2006;
- Additional purchase of minority interests in our Japanese subsidiary;
- The issuance of common stock under our employee stock option and purchase plans; and
- The repayment of debt obligations.

We may seek additional equity or debt financing from time to time. We believe that our existing liquid resources and funds generated from operations, combined with funds from such financing and our ability to borrow funds, will be adequate to meet our operating and capital requirements and obligations for the foreseeable future. However, we cannot be certain that additional financing will be available on favorable terms. Moreover, any future equity or convertible debt financing will decrease the percentage of equity ownership of existing stockholders and may result in dilution, depending on the price at which the equity is sold or the debt is converted.

On July 29, 2004, we announced jointly with Engenio the postponement of the initial public offering of its common stock due to market conditions.

Contractual Obligations

The following table summarizes our contractual obligations at September 30, 2004, and the effect these obligations are expected to have on our liquidity and cash flow in future periods.

Contractual Obligations	Payments due by period				Total
	Less than 1 year	1 – 3 years	4 – 5 years	After 5 years	
	(in millions)				
Convertible Subordinated Notes	\$ —	\$421.5	\$ —	\$350.0	\$ 771.5
Operating lease obligations	84.1	79.2	38.9	38.6	240.8
Capital lease obligations	0.3	—	—	—	0.3
Purchase commitment	273.1	2.7	—	—	275.8
Total	<u>\$357.5</u>	<u>\$503.4</u>	<u>\$38.9</u>	<u>\$388.6</u>	<u>\$1,288.4</u>

Convertible Subordinated Notes

As of September 30, 2004, we have \$422 million of Convertible Subordinated Notes due in October 2006 (“2001 Convertible Notes”) and \$350 million of Convertible Subordinated Notes due in May 2010 (“2003 Convertible Notes”). All of the Convertible Notes are subordinated to all existing and future senior debt and are convertible at the holder’s option, at any time prior to the maturity date of the Convertible Notes, into shares of our common stock. The 2001 and 2003 Convertible Notes have conversion prices of approximately \$26.34 per share and \$13.42 per share, respectively. The 2001 Convertible Notes are redeemable at our option, in whole or in part, on at least 30 days notice at any time on or after the call date, which is two years before the due date. We cannot elect to redeem the 2003 Convertible Notes prior to maturity. Each holder of the 2001 and 2003 Convertible Notes has the right to cause us to repurchase all of such holder’s convertible notes at 100% of their principal amount plus accrued interest upon the occurrence of any fundamental change to us, which includes a transaction or event such as an exchange offer, liquidation, tender offer, consolidation, merger or combination. Interest is payable semiannually.

Fluctuations in our stock price impact the prices of our outstanding convertible securities and the likelihood of the convertible securities being converted into cash or equity. If we are required to redeem any of the Convertible Notes for cash, it may affect our liquidity position. However, in the event they do not convert to equity, we believe that our current cash position and expected future operating cash flows will be adequate to meet these obligations as they mature. From time to time, we may buy back Convertible Notes.

Operating Lease Obligations

On August 6, 2004, we entered into two lease and security agreements, each with Wells Fargo Bank Northwest, acting as the Agent. One lease for \$134 million is with Bank of the West acting as the Lessor, and the second lease for \$201 million is with BTM Capital Corporation acting as the Lessor. The leases are for wafer fabrication equipment (the “Equipment”) that was previously on lease immediately prior to closing this transaction. See Note 14 of the Notes for a discussion of these former leases entered into on March 28, 2003. The new leases qualify for operating lease accounting treatment. Each lease has a term of 3 years. We may, at the end of the lease term, return or purchase, at a pre-determined amount, all of the Equipment. We have \$311 million in cash that is posted as collateral for the leases as of September 30, 2004. We are required to maintain unrestricted cash and short-term investments reserves in an amount no less than the higher of a) the sum of \$100 million plus the principal amount of our 2001 Convertible Subordinated Notes due in 2006 or b) \$350 million. We were in compliance with this requirement as of September 30, 2004.

We guarantee residual values related to the leased equipment. As of September 30, 2004, our maximum potential exposure to residual value guarantees was approximately \$141 million. We concluded that exposure related to residual value guarantees existed in connection with the conclusion that the Gresham manufacturing facility was impaired as discussed in Note 5 of the Notes. The fair value of the guarantee of the residual value of the equipment was determined using management estimates and was recorded as a non-current asset and liability each in the amount of \$6 million as of September 30, 2004.

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On October 27, 2004, we notified the required parties of our intention to exercise our early buyout right to purchase all of the Equipment under the two lease and security agreements discussed above, dated August 6, 2004. The date on which the purchase is to occur under each lease is November 29, 2004. The early termination or buyout amount is a total of \$332 million for both leases. Termination fees under the lease agreements are not considered to be material. We expect to record an impairment charge of \$177 million in the fourth quarter in connection with the termination of the operating leases. The impairment charges will be non-cash charges. The fourth quarter cash flows will reflect the buyout of both leases, net of the return of collateral associated with the leases. The table above includes the buyout payment of \$332 million to be made in the fourth quarter of 2004, net of the effect of the return of collateral of \$311 million.

We also lease real estate, certain other equipment and software under non-cancelable operating leases. We renegotiated the existing lease agreements for six buildings located in California and established one new lease in California and one new lease in India in the nine months ended September 30, 2004. The future minimum payments for these new and renegotiated building leases will be \$1 million, \$5 million, \$6 million, \$6 million, \$6 million and \$24 million for the years ending December 31, 2004, 2005, 2006, 2007, 2008 and thereafter, respectively.

Purchase Commitments

We maintain certain purchase commitments primarily for raw materials with suppliers and for some non-production items. Purchase commitments for inventory materials are generally restricted to a forecasted time-horizon as mutually agreed upon between the parties. This forecast time-horizon can vary amongst different suppliers.

Critical Accounting Policies

The discussion and analysis of our financial condition and results of operations are based on the consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires estimates and assumptions that affect the reported amounts and disclosures. For a detailed discussion of our critical accounting policies, please see the Critical Accounting Policies contained in Part II, Item 7 of the Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for the year ended December 31, 2003.

Recent Accounting Pronouncements

In October 2004, the Emerging Issues Task Force ("EITF") issued EITF Issue No. 04-08, "Accounting Issues Related to Certain Features of Contingently Convertible Debt and the Effect on Diluted Earnings Per Share." This issue addresses when contingently convertible instruments should be included in diluted earnings per share computations. The pronouncement will be effective for reporting periods ending after December 15, 2004. The adoption of this standard is not expected to have an impact to our computation of diluted earnings per share.

In October 2004, the EITF issued EITF Issue No. 04-10, "Applying Paragraph 19 of Statement of Financial Accounting Standards ("SFAS") No. 131 in Determining Whether to Aggregate Operating Segments that do not meet the Quantitative Thresholds." SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information," requires that a public business enterprise report financial and descriptive information about its reportable operating segments. This issue addresses how to aggregate operating segments that do not meet the quantitative thresholds in SFAS No. 131. The pronouncement is effective for fiscal years ending after October 13, 2004. The adoption of this standard did not have an impact to our existing reportable operating segments.

In July 2004, the EITF issued EITF Issue No. 02-14, "Whether an Investor Should Apply the Equity Method of Accounting to Investments Other Than Common Stock." This issue addresses the determination of whether an investment is in-substance common stock and when to perform that evaluation, but does not address the determination of whether an investor has the ability to exercise significant influence over the operating and financial policies of the investee. The pronouncement is effective for fiscal periods beginning after September 15, 2004. For existing investments, the investor should make an initial determination as to whether the investment is in-substance common stock based on the circumstances existing as of the date of first application of this issue. We do not believe that the adoption of this standard will have a material impact on our consolidated balance sheet or statement of operations.

In March 2004, the Emerging Issues Task Force ("EITF") issued EITF Issue No. 03-06, "Participating Securities and the Two-class Method Under SFAS No. 128, Earnings Per Share." EITF Issue No. 03-06 addresses a number of questions regarding the computation of earnings per share ("EPS") by companies that have issued securities other than common stock that contractually entitle the holder to participate in dividends and earnings of the company when, and if, it declares dividends on its common stock. The issue also provides further guidance in applying the two-class method of calculating EPS. It clarifies what constitutes a participating security and how to apply the two-class method of computing EPS once it is determined that a security is participating, including how to allocate undistributed earnings to such a security. This pronouncement is effective for fiscal periods beginning after March 31, 2004. The adoption of this standard did not have an impact on our computation of EPS.

In March 2004, the Emerging Issues Task Force ("EITF") reached a consensus on Issue No. 03-01, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments." EITF No. 03-01 provides guidance on recording other-than-temporary impairments of cost method investments and requires additional disclosures for those investments. In September 2003, a Financial Accounting Standards Board ("FASB") Staff Position was issued that delays the recognition and measurement guidance in EITF No. 03-01 until the final issuance of FASB Staff Position Issue 03-01 a. The adoption of the recognition and measurement provisions is not expected to have a material impact on our consolidated balance sheet or statement of operations. The disclosure requirements are effective for fiscal

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years ending after June 15, 2004 and are required only for annual periods. We do not believe that the adoption of this standard will have a material impact on our consolidated balance sheet or statement of operations.

In December 2003, the FASB released a revision to FASB Interpretation No. 46 (“FIN 46”), “Consolidation of Variable Interest Entities, an Interpretation of ARB No. 51.” FIN 46 requires certain variable interest entities to be consolidated by the primary beneficiary of the entity if the equity investors in the entity do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the entity to finance its activities without additional subordinated financial support from other parties. A public entity shall apply the provisions of the FIN 46 revision no later than the end of the first reporting period that ends after March 15, 2004. However, a public entity shall apply FIN 46 to entities considered to be special-purpose entities no later than as of the end of the first reporting period that ends after December 15, 2003. The adoption of this standard did not have a material impact on our consolidated balance sheet or statement of operations.

FACTORS THAT MAY AFFECT FUTURE OPERATING RESULTS

We believe that our future operating results will continue to be subject to quarterly variations based upon a wide variety of factors detailed in the Risk Factors in Part I of our Annual Report on Form 10-K for the year ended December 31, 2003, which information is incorporated by reference. Our actual results in future periods may be significantly different from any future performance suggested in this report. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Risks and uncertainties that may affect our results include, among others:

- **A general economic weakness may further reduce our revenues.**
- **Engenio represents a significant portion of our business, and an initial public offering, sale or spin-off of Engenio, may cause our operating results to suffer and may cause net revenues and income to decline.**
- **The separation and possible IPO, sale or spin-off of Engenio from us is a substantial undertaking that may disrupt our ongoing business and may increase expenses, which may adversely affect our results of operations and financial condition.**
- **We operate in highly competitive markets.**
- **Our new products may not achieve market acceptance.**
- **The manufacturing facility we operate maintains high fixed costs.**
- **The manufacturing facility we operate is highly complex.**
- **We outsource the manufacturing of a substantial portion of the wafers we supply.**
- **We have significant capital requirements to maintain and grow our business.**
- **We are exposed to fluctuations in foreign currency exchange rates.**
- **We procure parts and raw materials from limited domestic and foreign sources.**
- **We are dependent on a limited number of customers.**
- **We utilize indirect channels of distribution over which we have limited control.**
- **Our operations are affected by cyclical fluctuations.**
- **We engage in acquisitions and alliances giving rise to economic and technological risks.**
- **The price of our securities may be subject to wide fluctuations.**
- **We may rely on capital and bank markets to provide liquidity.**
- **We design and develop products that are highly complex.**
- **Our global operations expose us to numerous international business risks.**
- **The high technology industry in which we operate is prone to intellectual property litigation.**

- **Our manufacturing facilities may not achieve desired margins.**
- **Our manufacturing facilities are subject to disruption.**
- **We must attract and retain key employees in a highly competitive environment.**
- **Future changes in financial accounting standards or practices or existing taxation rules or practices may cause adverse unexpected fluctuations and affect our reported results of operations.**
- **Uncertainties related to attestation of internal controls.**

Public companies in the United States are required to review their internal controls over financial reporting under the Sarbanes-Oxley Act of 2002. It should be noted that any system of controls, however well designed and operated, can provide only reasonable, and not absolute, assurance that the objectives of the system are met. In addition, the design of any control system is based in part upon certain assumptions about the likelihood of future events. Because of these and other inherent limitations of control systems, there can be no assurance that any design will achieve its stated goal under all potential future conditions, regardless of how remote. We are currently undergoing a comprehensive effort in preparation for compliance with Section 404 of the Sarbanes-Oxley Act of 2002. This effort includes the documentation, testing and review of our internal controls over financial reporting under the direction of senior management. If our internal controls over financial reporting are not adequate or in conformity with the requirements of the Sarbanes-Oxley Act of 2002 and the rules and regulations of the Securities and Exchange Commission, we may be required to disclose deficiencies and take other actions which could result in the use of significant financial and managerial resources, as well as be subject to penalties and other enforcement actions, any of which may have a material adverse effect on our business, financial condition, results of operations and/or market price of our common stock.

While management believes that the discussion and analysis in this report is adequate for a fair presentation of the information, we recommend that you read this discussion and analysis in conjunction with the Annual Report on Form 10-K.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Interest rate sensitivity. We are subject to interest rate risk on our investment portfolio, outstanding debt and equipment operating leases. Our objective in managing interest rate risk is to protect cash flows and earnings from the impact of fluctuations in interest rates while minimizing cost of capital.

In May 2003, we entered into an interest rate swap transaction to effectively convert the LIBOR-based floating rate interest payments on the equipment operating lease discussed in Note 14 of the Notes, with an original notional amount of \$395 million, to a fixed interest rate (“Lease Swap”). In August of 2004, the Company entered into two new equipment operating leases for the wafer fabrication equipment that was previously on the above-mentioned leases. As a result of entering into the new leases, the hedged forecasted interest payments are no longer probable to occur. Hedge accounting treatment was discontinued prospectively and the balance in accumulated comprehensive income was immediately recorded as a gain of \$3.8 million in restructuring and other items in the statement of operations. In September 2004, the Company terminated the Lease Swap. As of September 30, 2004, \$12 million was recorded in other current assets for the amount to be received from the termination and the collateral that will be returned to the Company. See Note 7 of the Notes.

On October 27, 2004, the Company notified the required parties of its intention to exercise its early buyout right to purchase all of the Equipment under the two lease and security agreements discussed above, dated August 6, 2004. The date on which the purchase is to occur under each lease is November 29, 2004. See Note 14 of the Notes.

An interest rate move of 40 basis-points (10% of our weighted-average worldwide interest rate on outstanding debt in the nine months ended September 30, 2004) affecting our floating rate financial instruments as of September 30, 2004, including debt obligations, investments and fabrication equipment leases, would not have had a significant effect on our financial position, results of operations and cash flows over the next fiscal year, assuming that the investment balance remains consistent.

There have been no significant changes in the foreign currency exchange risk or equity price risk during the nine months ended September 30, 2004, as compared to the discussion in Part II of our Annual Report on Form 10-K for the year ended December 31, 2003.

Item 4. Controls and Procedures

Our management evaluated, with the participation of our chief executive officer and our chief financial officer, the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 promulgated under the Securities Exchange Act of 1934 as of September 30, 2004. Based on this evaluation, our chief executive officer and our chief financial officer have concluded that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms.

There was no change in our internal control over financial reporting that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting. We are aware that any system of control, however well designed and operated, can only provide reasonable, and not absolute, assurance that the objectives of this system are met, and that maintenance of disclosure controls and procedures is an ongoing process that may change over time.

PART II – OTHER INFORMATION**Item 1. Legal Proceedings**

This information is included in Note 15 (“Legal Matters”) of the Notes to the Unaudited Consolidated Financial Statements, which information is incorporated herein by reference from Item 1 of Part I hereof.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

On July 28, 2000, the Company’s Board of Directors authorized a new stock repurchase program in which up to 5 million shares of the Company’s common stock may be repurchased in the open market from time to time. There is no expiration date for the plan. No shares were repurchased under this plan during the first nine months of 2004. There are 3.5 million shares available for repurchase under this plan as of September 30, 2004.

ISSUER PURCHASES OF SECURITIES

Period	(a) Total Number of Shares (or Units) Purchased	(b) Average Price Paid per Share (or Unit)	(c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs	(d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs
August 2004 *	68,500 units	0.99438	n/a	n/a

* During the three months ended September 30, 2004, the Company repurchased approximately \$69 million of the 2001 Convertible Subordinated Notes (the “2001 Convertible Notes”) in open-market purchase transactions. The purchase was an opportunistic buy back of convertible subordinated notes. A net pre-tax gain of approximately \$2 million was recognized, in interest income and other, net, on the repurchases of the 2001 Convertible Notes. The pre-tax gain is net of the write-off of debt issuance costs and a portion of the deferred gain on the related terminated interest rate swap (see Note 9 of the Notes).

Item 6. Exhibits

- 2.1 Real Estate Matters Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of December 31, 2003.
- 2.2 Tax Sharing Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 2.3 Transition Services Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 2.4 Investor Rights Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 10.1 LSI Logic Corporation 1991 Equity Incentive Plan Nonqualified Stock Option Agreement.
- 10.2 Form of Notice of Grant under LSI Logic Corporation Nonqualified Stock Option Agreement.
- 10.3 LSI Logic Corporation 2003 Equity Incentive Plan Restricted Stock Unit Agreement.
- 10.4 Lease and Security Agreement (Lease A) dated as of August 6, 2004, among LSI Logic Corporation, BTM Capital Corporation and Wells Fargo Bank Northwest, National Association.
- 10.5 Omnibus Amendment to Lease and Security Agreement (Lease A) dated as of September 16, 2004 among LSI Logic Corporation, BTM Capital Corporation and Wells Fargo Bank Northwest, National Association.
- 10.6 Lease and Security Agreement (Lease B) dated as of August 6, 2004, among LSI Logic Corporation, Bank of the West and Wells Fargo Bank Northwest, National Association.
- 10.7 Omnibus Amendment to Lease and Security Agreement (Lease B) dated as of September 16, 2004, among LSI Logic Corporation, Bank of the West, and Wells Fargo Bank Northwest, National Association.
- 10.8 Engenio Information Technologies, Inc. Amended and Restated 2004 Equity Incentive Plan. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 10.9 Engenio Information Technologies, Inc. 2004 Equity Incentive Plan Nonqualified Stock Option Agreement. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 10.10 Form of Notice of Grant under Engenio Information Technologies, Inc. 2004 Equity Incentive Plan Nonqualified Stock Option Agreement. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 31.1 Certification of the Chief Executive Officer pursuant to Securities Exchange Act Rules 13a-15(e) and 15d-1(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-15(e) and 15d-1(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *

* Furnished not filed.

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 thereunto duly authorized.

LSI LOGIC CORPORATION
(Registrant)

Date: November 12, 2004

By /s/ Bryon Look
Bryon Look
Executive Vice President & Chief Financial Officer

INDEX TO EXHIBITS

- 2.1 Real Estate Matters Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of December 31, 2003.
- 2.2 Tax Sharing Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 2.3 Transition Services Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 2.4 Investor Rights Agreement between LSI Logic Corporation and Engenio Information Technologies, Inc., effective as of March 15, 2004.
- 10.1 LSI Logic Corporation 1991 Equity Incentive Plan Nonqualified Stock Option Agreement.
- 10.2 Form of Notice of Grant under LSI Logic Corporation Nonqualified Stock Option Agreement.
- 10.3 LSI Logic Corporation 2003 Equity Incentive Plan Restricted Stock Unit Agreement.
- 10.4 Lease and Security Agreement (Lease A) dated as of August 6, 2004, among LSI Logic Corporation, BTM Capital Corporation and Wells Fargo Bank Northwest, National Association.
- 10.5 Omnibus Amendment to Lease and Security Agreement (Lease A) dated as of September 16, 2004 among LSI Logic Corporation, BTM Capital Corporation and Wells Fargo Bank Northwest, National Association.
- 10.6 Lease and Security Agreement (Lease B) dated as of August 6, 2004, among LSI Logic Corporation, Bank of the West and Wells Fargo Bank Northwest, National Association.
- 10.7 Omnibus Amendment to Lease and Security Agreement (Lease B) dated as of September 16, 2004, among LSI Logic Corporation, Bank of the West, and Wells Fargo Bank Northwest, National Association.
- 10.8 Engenio Information Technologies, Inc. Amended and Restated 2004 Equity Incentive Plan. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 10.9 Engenio Information Technologies, Inc. 2004 Equity Incentive Plan Nonqualified Stock Option Agreement. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 10.10 Form of Notice of Grant under Engenio Information Technologies, Inc. 2004 Equity Incentive Plan Nonqualified Stock Option Agreement. Incorporated by reference from exhibits filed with the Current Report on Form 8-K on November 4, 2004.
- 31.1 Certification of the Chief Executive Officer pursuant to Securities and Exchange Act Rules 13a-15(e) and 15d-1(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of the Chief Financial Officer pursuant to Securities and Exchange Act Rules 13-15(e) and 15d-1(e), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. *

* Furnished not filed.

REAL ESTATE MATTERS AGREEMENT

between
LSI LOGIC CORPORATION
and
LSI LOGIC STORAGE SYSTEMS, INC.
March 15, 2004

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REAL ESTATE MATTERS AGREEMENT

This Real Estate Matters Agreement (this "*Agreement*") is executed on March 15, 2004, and made effective as of December 31, 2003, between LSI Logic Corporation, a Delaware corporation ("*LSI Logic*"), and LSI Logic Storage Systems, Inc., a Delaware corporation ("*SSI*"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Separation Agreement (as defined below).

RECITALS

1. LSI Logic and SSI are entering into a Master Separation Agreement dated as of December 31, 2003 (the "*Separation Agreement*") and other Ancillary Agreements to delineate and clarify their relationship and further separate the businesses conducted by LSI Logic and SSI (the "*Separation*").

2. In connection with the Separation, the parties wish to clarify certain real estate matters.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE I

PROPERTY

1.1 *Owned Property.* LSI Logic shall convey the Owned Property (together with all rights and easements appurtenant thereto) to SSI, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such conveyance shall be completed as of the Separation Date.

1.2 *Leased Property.*

(a) LSI Logic shall assign or cause its Subsidiary to assign to SSI, and SSI shall accept and assume, LSI Logic's interest in the Leased Properties, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such assignment shall be completed on the later of: (i) the Separation Date; and (ii) the earlier of (A) the fifth (5th) business day after the relevant Lease Consent has been granted and (B) the date agreed upon by the parties in accordance with *Section 1.6(a)* below.

(b) Subject to the completion of the assignment to SSI of the relevant Leased Property, with respect to each Leased Property which is also a Shared Property, SSI shall grant to LSI Logic a license to occupy those parts of the relevant Leased Properties identified in *Section A of Schedule 1* of this Agreement currently occupied by LSI Logic and LSI Logic shall accept the same. Such license shall be completed immediately following completion of the transfer of the relevant Leased Property to SSI.

1.3 *Shared Properties.* LSI Logic shall grant or cause its applicable Subsidiary to grant to SSI or its applicable Subsidiary a license to occupy those parts of the Shared Properties identified in *Section B of Schedule 1* of this Agreement currently occupied by LSI Logic or its applicable Subsidiary and SSI shall accept or cause its Subsidiary to accept the same, subject to the other provisions of this Agreement and (to the extent not inconsistent with the provisions of this Agreement) the terms of the Separation Agreement and the other Ancillary Agreements. Such license shall be completed on the Separation Date.

1.4 *Obtaining the Lease Consents.*

(a) LSI Logic confirms that, with respect to each Leased Property, an application has been made or will promptly be made to the relevant Landlord for the Lease Consents required with respect to the transactions contemplated by this Agreement.

(b) LSI Logic and SSI will each use their reasonable commercial efforts to obtain the Lease Consents as to the Leased Properties, but LSI Logic shall not be required to commence judicial proceedings for a declaration that a Lease Consent has been unreasonably withheld or delayed, nor shall LSI Logic be required

to pay any consideration in excess of that required by the Relevant Lease or that which is typical in the open market to obtain the relevant Lease Consent.

(c) SSI and LSI Logic will promptly satisfy the lawful requirements of the Landlord, and SSI will take all steps to assist LSI Logic in obtaining the Lease Consents as to the Leased Properties, including, without limitation:

(i) if properly required by the Landlord, entering into an agreement with the relevant Landlord to observe and perform the tenant's obligations contained in the Relevant Lease throughout the remainder of the term of the Relevant Lease, subject to any statutory limitations of such liability;

(ii) if properly required by the Landlord, providing a guarantee, surety or other security (including, without limitation, a security deposit) for the obligations of SSI as tenant under the Relevant Lease, and otherwise taking all steps which are necessary and which SSI is capable of doing to meet the lawful requirements of the Landlord so as to ensure that the Lease Consents are obtained; and

(iii) using all reasonable commercial efforts to assist LSI Logic with obtaining the Landlord's consent to the release of any guarantee, surety or other security which LSI Logic or its Subsidiary may have previously provided to the Landlord and, if required, offering the same or equivalent security to the Landlord in order to obtain such release.

Notwithstanding the foregoing, (1) except with respect to guarantees, sureties or other security referenced in *Section 1.4(c)(ii)* above, SSI shall not be required to obtain a release of any obligation entered into by LSI Logic or its Subsidiary with any Landlord or other third party with respect to any Property and (2) SSI shall not communicate directly with any of the Landlords unless SSI can show LSI Logic reasonable grounds for doing so.

(d) If, with respect to any Leased Properties, LSI Logic and SSI are unable to obtain a release by the Landlord of any guarantee, surety or other security which LSI Logic or its Subsidiary has previously provided to the Landlord, SSI shall indemnify, defend, protect and hold harmless LSI Logic and its Subsidiary from and after the Separation Date against all losses, costs, claims, damages, or liabilities incurred by LSI Logic or its Subsidiary as a result of SSI's occupancy of the Leased Property with respect to such guarantee, surety or other security.

1.5 Occupation by SSI.

(a) Subject to compliance with *Section 1.5(b)* below, in the event that the Actual Completion Date for any Leased Property does not occur on the Separation Date, SSI shall, commencing on the Separation Date, be entitled to occupy the relevant Property (except to the extent that the same is a Retained Part) as a licensee upon the terms and conditions contained in LSI Logic's Lease. Such license shall not be revocable prior to the date for completion as provided in *Section 1.2(a)* unless an enforcement action or forfeiture by the relevant Landlord due to SSI's occupation of the Property constituting a breach of LSI Logic's Lease cannot, in the reasonable opinion of LSI Logic, be avoided other than by requiring SSI to immediately vacate the relevant Property, in which case LSI Logic may by notice to SSI immediately require SSI to vacate the relevant Property. SSI will be responsible for all costs, expenses and liabilities incurred by LSI Logic or its applicable Subsidiary as a consequence of such occupation, except for any losses, claims, costs, demands and liabilities incurred by LSI Logic or its Subsidiary as a result of any enforcement action taken by the Landlord against LSI Logic or its Subsidiary with respect to any breach by LSI Logic or its Subsidiary of the Relevant Lease in permitting SSI to so occupy the Property without obtaining the required Lease Consent, for which LSI Logic or its Subsidiary shall be solely responsible. SSI shall not be entitled to make any claim or demand against, or obtain reimbursement from, LSI Logic or its applicable Subsidiary with respect to any costs, losses, claims, liabilities or damages incurred by SSI as a consequence of being obliged to vacate the Property or in obtaining alternative premises, including, without limitation, any enforcement action which a Landlord may take against SSI.

(b) In the event that the Actual Completion Date for any Leased Property does not occur on the Separation Date, whether or not SSI occupies a Property as licensee as provided in *Section 1.5(a)* above, SSI

shall, effective as of the Separation Date, (i) pay LSI Logic all rents, service charges, insurance premiums and other sums payable by LSI Logic or its applicable Subsidiary under any Relevant Lease, (ii) observe the tenant's covenants, obligations and conditions contained in LSI Logic's Lease and (iii) indemnify, defend, protect and hold harmless LSI Logic and its applicable Subsidiary from and against all losses, costs, claims, damages and liabilities arising on account of any breach thereof by SSI.

(c) LSI Logic shall supply promptly to SSI copies of all invoices, demands, notices and other communications received by LSI Logic or its or its applicable Subsidiaries or agents in connection with any of the matters for which SSI may be liable to make any payment or perform any obligation pursuant to *Section 1.5(b)*, and shall, at SSI's cost, take any steps and pass on any objections which SSI may have in connection with any such matters. SSI shall promptly supply to LSI Logic any notices, demands, invoices and other communications received by SSI or its agents from any Landlord while SSI occupies any Property without the relevant Lease Consent.

1.6 *Obligation to Complete.*

(a) If, with respect to any Leased Property, at any time the relevant Lease Consent is formally and unconditionally refused in writing, LSI Logic and SSI shall commence good faith negotiations and use commercially reasonable efforts to determine how to allocate the applicable Property, based on the relative importance of the applicable Property to the operations of each party, the size of the applicable Property, the number of employees of each party at the applicable Property and the potential risk and liability to each party in the event an enforcement action is brought by the applicable Landlord. Such commercially reasonable efforts shall include consideration of alternate structures to accommodate the needs of both parties and the allocation of the costs thereof, including entering into amendments of the size, term or other terms of the Relevant Lease, restructuring a proposed lease assignment to be a sublease and relocating one party. If the parties are unable to agree upon an allocation of the Property within fifteen (15) days after commencement of negotiations between the parties as described above, then either party may, by delivering written notice to the other, require that the matter be referred to the Chief Financial Officers of both parties. In such event, the Chief Financial Officers shall use commercially reasonable efforts to determine the allocation of the Property, including having a meeting or telephone conference within five (5) business days thereafter. If the parties are unable to agree upon the allocation of an applicable Property within five (5) business days after the matter is referred to the Chief Financial Officers of the parties as described above, the disposition of the applicable Property and the risks associated therewith shall be allocated between the parties as set forth in subparts (b) and (c) of this section below.

(b) If, with respect to any Leased Property, the parties are unable to agree upon the allocation of a Property as set forth in *Section 1.6(a)*, LSI Logic may by written notice to SSI elect to apply to the relevant Landlord for consent to sublease all of the relevant Property to SSI for the remainder of the Relevant Lease term less three (3) days at a rent equal to the rent from time to time under the Relevant Lease, but otherwise on substantially the same terms and conditions as the Relevant Lease. If LSI Logic makes such an election, until such time as the relevant Lease Consent is obtained and a sublease is completed, the provisions of *Section 1.5* will apply and, on the grant of the Lease Consent required to sublease the Leased Property in question, LSI Logic shall sublease or cause its applicable Subsidiary to sublease to SSI the relevant Property, which sublease shall be for a term and rent set forth in the Relevant Lease and otherwise on the terms of the Relevant Lease.

(c) If the parties are unable to agree upon the allocation of a Property as set forth in *Section 1.6(a)* and LSI Logic does not make an election pursuant to *Section 1.6(b)* above, LSI Logic may elect by written notice to SSI to require SSI to vacate the relevant Property immediately or by such other date as may be specified in the notice served by LSI Logic (the "*Notice Date*"), in which case SSI shall vacate or cause its applicable Subsidiary to vacate the relevant Property on the Notice Date but shall indemnify LSI Logic and its applicable Subsidiary from and against all costs, claims, losses, liabilities and damages in relation to the relevant Property arising from and including the Separation Date to and including the later of the Notice Date and date on which SSI or its applicable Subsidiary vacates the relevant Property, except for any costs, losses, damages, claims and liabilities incurred by LSI Logic or its Subsidiary with respect to any enforcement action

taken by the Landlord against LSI Logic or its Subsidiary with respect to any breach by LSI Logic or its Subsidiary of the Relevant Lease in permitting SSI or its Subsidiary to so occupy the Property without obtaining the required Lease Consent. Neither SSI nor its applicable Subsidiary shall be entitled to make any claim or demand against or obtain reimbursement from LSI Logic or its applicable Subsidiary with respect to any costs, losses, claims, liabilities or damages incurred by SSI or its Subsidiary as a consequence of being obliged to vacate the Property or obtaining alternative premises, including, without limitation, any enforcement action which a Landlord may take against SSI or its applicable Subsidiary.

1.7 *Form of Transfer.*

(a) The transfer or assignment to SSI of the Owned Property and each relevant Leased Property shall be in substantially the form attached in *Schedule 2* or *3*, as applicable, with such amendments as are reasonably required by LSI Logic with respect to a particular Property, including, without limitation, in all cases where a relevant Landlord has required a guarantor or surety to guarantee the obligations of SSI contained in the relevant Lease Consent or any other document which SSI is required to complete, the giving of such guarantee by a guarantor or surety, and the giving by SSI and any guarantor or surety of SSI's obligations of direct obligations to LSI Logic or third parties where required under the terms of any of the Lease Consent or any covenant, condition, restriction, easement, lease or other encumbrance to which the Property is subject. Such amendments shall be submitted to SSI for approval, which approval shall not be unreasonably withheld or delayed.

(b) The licenses to be granted by SSI to LSI Logic, and LSI Logic or its applicable Subsidiary to SSI or its applicable Subsidiary, with respect to the Shared Properties shall be at the rental rates and terms set forth in *Schedule 1* hereof and shall be substantially in the form of the License Form, with such amendments as are, in the reasonable opinion of LSI Logic, necessary with respect to a particular Property. Such amendments shall be submitted to SSI for approval, which approval shall not be unreasonably withheld or delayed.

1.8 *Tenant's Fixtures and Fittings.* The provisions of the Separation Agreement and the other Ancillary Agreements shall apply to any trade fixtures and personal property located at each Property (excluding any trade fixtures and personal property owned by third parties). The licenses as to the Shared Properties shall include the rental of the furniture at such Properties.

1.9 *Costs.* LSI Logic shall pay all reasonable costs and expenses incurred in connection with obtaining the Lease Consents, including, without limitation, Landlord's consent fees and attorneys' fees and any costs and expenses relating to re-negotiation of LSI Logic's Leases. LSI Logic shall also pay all reasonable costs and expenses in connection with the transfer of the Owned Property and Leased Properties, including title insurance premiums, escrow fees, recording fees, and any transfer taxes arising as a result of the transfers.

ARTICLE II

MISCELLANEOUS

2.1 *Limitation of Liability.* IN NO EVENT SHALL ANY MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP BE LIABLE TO ANY OTHER MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; *PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN THE INDEMNIFICATION AND INSURANCE MATTERS AGREEMENT.*

2.2 *Entire Agreement.* This Agreement, the Separation Agreement, the other Ancillary Agreements and the exhibits and schedules referenced or attached hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall supersede all prior written

and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof and thereof.

2.3 *Governing Law.* This Agreement shall be construed in accordance with, and all Disputes hereunder shall be governed by, the laws of the State of California, excluding its conflict of law rules, and the United Nations Convention on Contracts for the International Sale of Goods. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have jurisdiction and venue over all Disputes between the parties that are permitted to be brought in a court of law pursuant to *Section 2.4* below. Notwithstanding the forgoing, the applicable Property transfers shall be performed in accordance with the laws of the state in which the applicable Property is located.

2.4 *Dispute Resolution.* Any Disputes under this Agreement shall be addressed using the same procedure set forth in the Separation Agreement.

2.5 *Notices.* Notices, offers, requests or other communications required or permitted to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties at the following addresses:

if to LSI Logic:

LSI Logic Corporation
1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-6896

if to SSI:

LSI Logic Storage Systems, Inc.
1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-8323

or to such other address as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by fax, confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.

2.6 *Counterparts.* This Agreement, including the exhibits and schedules hereto, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

2.7 *Binding Effect; Assignment.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors in interest, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be enforced separately by each member of the LSI Logic Group and each member of the SSI Group. Neither party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, and any such assignment shall be void. Any permitted assignee shall agree to perform the obligations of the assignor of this Agreement, and this Agreement shall inure to the benefit of and be binding upon any permitted assignee.

2.8 *Severability.* If any term or other provision of this Agreement or the exhibits or schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon

such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

2.9 *Failure or Indulgence Not Waiver; Remedies Cumulative.* No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise or waiver of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the exhibits or schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

2.10 *Amendment.* No change or amendment shall be made to this Agreement or the exhibits or schedules attached hereto except by an instrument in writing signed on behalf of each of the parties to such agreement.

2.11 *Interpretation.* The headings contained in this Agreement, in any exhibit or schedule hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any exhibit or schedule but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an article, section, exhibit or schedule, such reference shall be to an article or section of, or an exhibit or schedule to, this Agreement, unless otherwise indicated.

ARTICLE III

DEFINITIONS

The following terms, as used herein, shall have the following meanings:

3.1 *Actual Completion Date.* “*Actual Completion Date*” means, with respect to each Property, the date upon which completion of the transfer, assignment, lease or sublease of that Property actually takes place.

3.2 *Landlord.* “*Landlord*” means the landlord under LSI Logic’s Lease, and its successors and assigns, and includes the holder of any other interest which is superior to the interest of the landlord under LSI Logic’s Lease.

3.3 *Lease Consents.* “*Lease Consents*” means all consents, waivers or amendments required from the Landlord or other third parties under the Relevant Leases to assign the Relevant Leases to SSI.

3.4 *Leased Properties.* “*Leased Properties*” means those Properties listed in *Section A of Schedule 1* of this Agreement.

3.5 *License Form.* “*License Form*” means the form lease attached hereto as Schedule 4.

3.6 *LSI Logic’s Lease.* “*LSI Logic’s Lease*” means, in relation to each Property, the lease(s) or sublease(s) or license(s) under which LSI Logic or its applicable Subsidiary holds such Property and any other supplemental document completed prior to the Actual Completion Date.

3.7 *Owned Property.* “*Owned Property*” means the Property owned by LSI Logic located at 3718 N. Rock Road, Wichita, Kansas.

3.8 *Property.* “*Property*” means the Owned Property, the Leased Properties and the Shared Properties.

3.9 *Relevant Leases.* “*Relevant Leases*” means those of LSI Logic’s Leases with respect to which the Landlord’s consent is required for assignment, sublease or license to a third party or which prohibit assignments, subleases or licenses.

3.10 *Retained Parts.* “*Retained Parts*” means those parts of the Leased Properties which, following transfer or assignment to SSI, are intended to be licensed to LSI Logic.

3.11 *Shared Properties*. “*Shared Properties*” means those Properties listed in (a) *Section A* of *Schedule 1* as a Property involving a license back to LSI Logic or (b) *Section B* of *Schedule 1* of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have signed this Real Estate Matters Agreement effective as of the date first set forth above.

LSI LOGIC CORPORATION

LSI LOGIC STORAGE SYSTEMS, INC.

By: /s/ WILFRED J. CORRIGAN

By: /s/ THOMAS GEORGENS

Name: Wilfred J. Corrigan

Name: Thomas Georgens

Title: Chairman/CEO

Title: President

[Signature Page to Real Estate Matters Agreement]

TAX SHARING AGREEMENT

Between
LSI LOGIC CORPORATION
and
LSI LOGIC STORAGE SYSTEMS, INC.
March 15, 2004

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TAX SHARING AGREEMENT

This Tax Sharing Agreement (the "*Agreement*") is entered into as of March 15, 2004 between LSI Logic Corporation, a Delaware corporation (as further defined below, "*LSI Logic*"), and LSI Logic Storage Systems, Inc., a Delaware corporation ("*SSI*"). Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in *Article I* hereof.

RECITALS

1. LSI Logic is the parent of an affiliated group of corporations, as defined in section 1504(a) of the Internal Revenue Code of 1986, as amended (the "*Code*"), of which SSI is a member.
2. LSI Logic on behalf of its affiliated group, has filed for previous taxable years consolidated federal income tax returns in accordance with section 1501 of the Code and is required to file consolidated federal income tax returns for subsequent taxable years.
3. LSI Logic currently owns all of the issued and outstanding stock of SSI.
4. Heretofore, LSI Logic and SSI have conducted their businesses separately.
5. LSI Logic and SSI desire to delineate and clarify their relationship by entering into certain agreements to further separate the businesses conducted by LSI Logic and SSI (the "*Separation*").
6. The parties wish to provide for the allocation between them of their consolidated tax liabilities, including federal income tax liability, various other federal, state, local, non-U.S. and other tax liabilities, and certain related matters.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and agreements set forth below, the parties agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Agreement, the terms set forth below shall be defined as follows:

- 1.1 "*Code*" has the meaning set forth in the Recitals hereof.
- 1.2 "*Consolidated Returns*" means any consolidated, combined or unitary Tax Returns filed by LSI Logic with respect to United States federal, state, local or non-U.S. Taxes, including Taxes imposed or based on net income, net worth or gross receipts.
- 1.3 "*Deconsolidation*" with respect to a Group filing a Consolidated Return shall mean an event which causes the Group to cease to be eligible to file such Consolidated Return.
- 1.4 "*Distribution*" shall mean a distribution of SSI stock by LSI Logic to LSI Logic's shareholders in a transaction intended to qualify as a tax-free distribution under section 355 of the Code.
- 1.5 "*Group*" shall mean LSI Logic, SSI, and all other corporations (whether now existing or hereafter formed or acquired) that are required to join with LSI Logic in filing a Consolidated Return.
- 1.6 "*Group Tax Liability*" shall mean the consolidated tax liability of a Group reported on a Group's Consolidated Return.
- 1.7 "*LSI Logic*" shall mean (i) LSI Logic, (ii) any successor common parent corporation described in Treas. Reg. § 1.1502-75(d)(2)(i) or (ii), or (iii) any corporation as to which LSI Logic (or successor corporation described in clause (ii) hereof) is the "predecessor" within the meaning of Treas. Reg. § 1.1502-1(f)(4), if such corporation acquires LSI Logic (or a successor corporation described in clause (ii) hereof) in a "reverse acquisition" within the meaning of Treas. Reg. § 1.1502-75(d)(3).
- 1.8 "*LSI Logic Group*" shall have the meaning given in the Master Separation Agreement.

1.9 “*Master Separation Agreement*” shall mean the Master Separation Agreement between LSI Logic and SSI effective as of December 31, 2003 (as may be amended from time to time).

1.10 “*Member*” shall mean any corporation that is included in a Group, or any successor to such corporation. “*Member*” shall also include SSI after a Deconsolidation or the Distribution with respect to SSI’s inclusion in Consolidated Returns.

1.11 “*Person*” shall have the meaning given in the Master Separation Agreement.

1.12 “*Separate Return Tax Liability*” relates to any Tax reported on a Consolidated Return and shall mean, for any taxable year (or portion of a year), the hypothetical tax liability of each Member equal to the highest corporate tax rate in effect for such year multiplied by such Member’s taxable income, provided that the hypothetical tax liability shall be modified by taking into account losses and carryovers of losses of such Member from prior years and, to the extent actually used, credits of such Member. The Separate Return Tax Liability of Member shall be calculated by employing the methods and principles of accounting, elections and conventions that are used by the Group. A Member’s taxable income shall be determined on a pro forma basis as if the Member had filed its own separate tax return for such year. The Separate Return Tax Liability of a Member shall include any interest or penalties that would have been shown as due had such Member filed a separate tax return for the taxable year or period in accordance with this *Section 1.12*.

For purposes of determining the Separate Return Tax Liability of a Member, the following special rules shall apply:

(a) The Separate Return Tax Liability of SSI shall include all Taxes relating to, arising out of or resulting from the conduct of the SSI Business for any Tax period or portion of a period, whether before or after Separation, Deconsolidation or the Distribution.

(b) LSI Logic may from time to time establish any other special rules that LSI Logic in its sole discretion deems necessary or appropriate to carry out the purposes of this Agreement.

1.13 “*Separation*” has the meaning set forth in the Recitals hereof.

1.14 “*SSI Business*” shall have the meaning given in the General Assignment and Assumption Agreement between LSI Logic and SSI effective as of December 31, 2003 (as may be amended from time to time).

1.15 “*SSI Group*” shall have the meaning given in the Master Separation Agreement.

1.16 “*Tax Returns*” means all returns, reports and information statements (including all exhibits and schedules thereto and including amendments) required to be filed with a taxing authority with respect to any Taxes.

1.17 “*Taxes*” means all federal, state, local and foreign income, profits, franchise, sales, use, occupation, property, severance, excise, payroll, withholding and any other taxes (including interest and penalties thereon), including any contractual or legal liability for other persons’ liability for such amounts.

ARTICLE II

FILING OF RETURNS

2.1 *LSI Logic Filings*. LSI Logic shall, on a timely basis, file or cause to be filed, Consolidated Returns and estimated Tax Returns for each taxable year during the term of this Agreement and shall pay in full any Tax shown as due thereon. Each Member shall execute and file such consents, elections, and other documents as may be required or appropriate for the proper filing of such returns. Each Member shall also maintain such books and records and provide such information as LSI Logic may request in connection with the matters contemplated by this Agreement.

2.2 *LSI Logic Discretion*. LSI Logic shall have the right, in its sole discretion, to (i) make any elections which are employed in the filing of such Consolidated Returns, including any elections denominated

as such in the Code such as choice of methods of accounting and depreciation; (ii) determine the manner in which such returns shall be prepared and filed, including without limitation, the manner in which any item of income, gain, loss, deduction or credit shall be reported; (iii) contest, compromise or settle any adjustment or deficiency proposed, asserted or assessed as a result of any audit of any such returns; (iv) file, prosecute, compromise or settle any claim for refund; (v) determine whether any refunds to which the Group may be entitled shall be paid by way of refund or credit against the tax liability of the Group and (vi) allocate Tax assets and attributes including losses, credits and earnings and profits.

2.3 *New Members.* Upon formation or acquisition of a corporation that is a Member of the Group, LSI Logic shall cause such corporation to execute and be bound by this Agreement as of the first date on which such corporation becomes a Member of the Group. LSI Logic shall accept delivery, as agent of each Member of the Group, of the counterpart of this Agreement executed by such corporation.

2.4 *Review of Tax Returns.* LSI Logic shall have the right to review and consent to the federal income tax return and all state income tax returns filed by a Member for such Member's first tax year after such Member ceases to be a Member of the Group, such consent not to be unreasonably withheld.

ARTICLE III

PAYMENTS

For each taxable year of the Group with respect to which a Consolidated Return is filed, the Members of the Group shall make payments to LSI Logic in the following manner:

3.1 *Payments of Separate Return Tax Liability.* Each Member shall pay to LSI Logic the amount of such Member's Separate Return Tax Liability not later than forty-five (45) days after the date on which the relevant tax return is required to be filed (taking account of any extensions thereof).

3.2 *Estimated Income Tax Payments.* In the case of income taxes, each Member shall pay to LSI Logic (provided that LSI Logic, in its sole discretion, may waive payment or permit later payment), not later than forty-five (45) days after the date such Member would be required to make payment of estimated income taxes were such Member to file a separate income tax return for the taxable year (including any payment due at the time any extension of time for the filing of such hypothetical return is obtained), an amount, as determined by LSI Logic in a manner consistent with *Section 1.12*, equal to the portion of such Member's Separate Return Tax Liability that would be due were such Member to file a separate income tax return for the taxable year. Any payments made by a Member to LSI Logic under this *Section 3.2* with respect to a taxable year shall be applied to reduce the amount, if any, owing by the Member under *Section 3.1* with respect to income taxes due for such year. Any excess of such payments over the amount determined under *Section 3.1* for such year shall be repaid by LSI Logic to the Member not later than forty-five (45) days after the date on which the appropriate Group income tax return is filed or, to the extent that such excess represents all or a part of a tax refund claimed by the Group, not later than forty-five (45) days after the receipt of such refund.

ARTICLE IV

CHANGES IN TAX LIABILITY

4.1 *Adjustments.* If with respect to any taxable year (i) the Group files an amended Consolidated Return reporting a consolidated tax liability different from the Group Tax Liability, (ii) the Group Tax Liability or any Member's tax liability is adjusted and such adjustment is a part of a final "determination" as the term is defined in section 1313(a) of the Code or similar provisions of applicable law, or (iii) the Group is assessed and pays income taxes in excess of the Group Tax Liability by reason of any of the events specified in section 6213(b) or (d) of the Code or similar provisions of applicable law, then the amounts of the payments required under *Article III* shall be recomputed, subject to the limitations of *Section 4.3*, to give effect to such amended return, adjustment or assessment, as the case may be. Each Member shall then pay to LSI Logic, or LSI Logic shall then pay to each Member, as the case may be, any difference between the amounts

determined by such recomputation and the amounts previously paid. Such payments shall be made no later than (i) where an additional payment of tax by the Group is due as a result of such amended return, adjustment or assessment, the later of (a) forty-five (45) days after the date of which such additional payment of tax is due and (b) forty-five (45) days after the date on which LSI Logic notifies a Member of the amount of payment due from such Member pursuant to this *Section 4.1*; or (ii) where the Group receives a refund arising from such amended return or adjustment, forty-five (45) days after the receipt of such refund.

4.2 *Adjustments if Group Tax Liability Unchanged.* If with respect to any taxable year the Group files an amended Consolidated Return reporting a consolidated tax liability identical to the Group Tax Liability, then the amounts of the payments required under *Article III*, subject to the limitations of *Section 4.3*, shall be recomputed to give effect to such amended return. Not later than forty-five (45) days after the filing of such amended return, each Member shall pay to LSI Logic, or LSI Logic shall pay to each Member, as the case may be, any difference between the amounts determined by such recomputation and the amounts previously paid.

4.3 *Carrybacks.* SSI will elect under section 172(b)(3) of the Code or similar provisions of other applicable tax laws to forego the ability to carry back any loss, credit or similar tax attribute recognized after Deconsolidation to tax periods ending on or before Deconsolidation. If with respect to any taxable year a Member realizes a loss or credit that would be permitted under the Code or other applicable tax law (taking into account any election under section 172(b)(3) of the Code or similar provisions of other applicable tax laws) to be carried to one or more taxable years that precede such taxable year if such Member had filed a separate tax return for all such taxable years, then the amounts of the payments required under *Article III* for such taxable years shall be recomputed to give effect to such carryback. Each Member shall pay to LSI Logic, or LSI Logic shall pay to each Member, as the case may be, any difference between the amounts determined by such recomputation and the amounts previously paid not later than forty-five (45) days after the date on which the Group's federal income tax return for the taxable year is filed, or to the extent that such difference represents all or part of a tax refund claimed by the Group, not later than forty-five (45) days after the receipt of such refund.

4.4 *More than One Recomputation.* The parties recognize that a recomputation under *Sections 4.1, 4.2 or 4.3* of the amounts of the payments required under *Article III* for any taxable year will not necessarily be the final determination of the amounts of such payments for such year, and the amounts of such payments may be recomputed more than once.

4.5 *Penalties; Interest.* In the event that a change in the tax liability of the Group arising from an amended return, adjustment or assessment described in *Section 4.1* results or will result in the receipt or payment of interest, or the payment or recovery of penalties in excess of the aggregate interest or penalties included in determining the aggregate Separate Return Tax Liability of all of the Members, such interest or penalties shall be allocated to each Member as follows: The total amount of such excess interest or penalty shall be multiplied by a fraction, the denominator of which is the amount of the change in the Group Tax Liability on which the interest or penalty is computed, and the numerator of which is the amount of the change in the Member's allocated tax liability, in both cases with respect to the most recent prior computation of the Group Tax Liability and the Member's Separate Return Tax Liability. Each Member shall pay to LSI Logic, or LSI Logic shall pay to each Member, as the case may be, the excess interest or penalties allocated to each Member pursuant to this *Section 4.5* at the same time the amounts payable pursuant to *Section 4.1* become payable.

4.6 *Separately Stated Interest.* Except as provided in *Article VI*, payments made pursuant to *Sections 4.1, 4.2, 4.3, 4.4 or 4.5* shall not themselves bear interest.

ARTICLE V

INDEMNIFICATION

5.1 *Indemnification by SSI.* SSI shall indemnify and hold harmless LSI Logic against the amount of any and all liability, loss, expense or damage LSI Logic may suffer or incur as a result of any or all claims,

demands, costs or expenses (including, without limitation, attorneys' and accountants' fees), interest, penalties or judgments made against it arising from or incurred in relation to (i) any failure of SSI to pay any amount to LSI Logic with respect to SSI's obligations under *Articles III and IV* of this Agreement; (ii) all Taxes (other than Taxes in respect of Consolidated Returns) due or payable by SSI for any Tax period or portion of a Tax period, whether before or after Separation, Deconsolidation or the Distribution; (iii) all Taxes relating to, arising out of or resulting from the conduct of the SSI Business for any Tax period or portion of a period, whether before or after Separation, Deconsolidation or the Distribution; (iv) any Taxes in the nature of transfer Taxes incurred on any transfer of assets by LSI Logic or any of its subsidiaries to SSI or any of its subsidiaries; (v) any Taxes resulting from the application of section 355(e) of the Code or similar provisions of other applicable law to the Distribution as a result of one or more acquisitions of SSI stock after the Distribution, except for any Taxes which would result taking into account only (A) issuances and dispositions of SSI stock prior to the Distribution and (B) dispositions of SSI stock by LSI Logic Corporation after the Distribution; and (vi) any Taxes resulting from any action or failure to act by SSI, or any condition known to SSI to exist (and not known to LSI Logic to exist), which action, failure to act or condition causes any representation made in connection with the opinion provided to LSI Logic regarding the qualification of the Distribution under section 355 of the Code to be untrue.

5.2 *Indemnification by LSI Logic.* LSI Logic (i) shall indemnify and hold harmless SSI against the amount of any and all liability, loss, expense or damage SSI may suffer or incur as a result of any or all claims, demands, costs or expenses (including, without limitation, attorneys' and accountants' fees), interest, penalties or judgments made against it arising from or incurred in relation to all Taxes in respect of all Consolidated Returns other than those Taxes for which SSI is responsible under this Agreement and (ii) shall make any payment, remove any lien and take any action reasonably necessary to prevent SSI from incurring such liabilities, losses, expenses or damages. SSI shall not be entitled to indemnification by LSI Logic pursuant to this *Article V* unless SSI has made all payments required of it pursuant to *Articles III and IV* of this Agreement.

5.3 *Indemnification Payments Due.* Payment pursuant to the indemnities provided in this *Article V* shall be made within forty-five (45) days of notice that a payment requiring indemnification under this *Article V* has been made by LSI Logic or SSI.

5.4 *Taxes and Tax Benefits on Indemnification Payments.* If the receipt or accrual of any payment under this Agreement is subject to any Tax and/or generates any Tax benefit, the payor shall adjust the amount of the payment so that the total amount received by the payee, adjusted by applicable Taxes and/or Tax benefits, equals the amount of the required payment.

ARTICLE VI

DEFAULT INTEREST

Where payment required by this Agreement to be made from one party to another is not made within the time provided, the amount not timely paid shall bear interest at the rate established pursuant to section 6621(a)(2) of the Code.

ARTICLE VII

RESOLUTION OF DISPUTES

7.1 *Before Deconsolidation.* Any dispute or ambiguity concerning the amount of any payment provided for under this Agreement shall be resolved by LSI Logic in a manner consistent with the principles and procedure set forth in this Agreement. The judgment of LSI Logic shall be conclusive and binding upon each of the parties to this Agreement.

7.2 *After Deconsolidation.* Notwithstanding this *Section 7.2*, in the event of a Deconsolidation, disputes arising between SSI and LSI Logic under this Agreement after the Deconsolidation shall be resolved

by the procedure specified in *Section 3.7* of the Master Separation Agreement, provided that if practicable the arbitrators shall be drawn from nationally recognized accounting firms.

ARTICLE VIII

INFORMATION AND EXPENSES; TAX AUDITS

8.1 *Group Tax Returns; Records.* LSI Logic is authorized to retain accountants and attorneys for the purpose of preparing the Group's Tax Returns provided for herein, and SSI agrees to pay all costs incurred by SSI in furnishing records, documents or information in the form requested by LSI Logic in connection with the preparation of any such returns. SSI shall promptly forward to LSI Logic any notice relating to any Consolidated Return. Each of LSI Logic and SSI shall promptly (i) forward to the other party any notice relating to any Tax for which the other party might be responsible and (ii) provide the other party with such records, documents and information as the other party shall request in connection with the preparation of such returns or in connection with any dispute with the IRS or any other taxing authority. Each of LSI Logic and SSI shall retain all Tax returns, schedules, work papers and other Tax records relating to matters or periods covered by this Agreement until the expiration of the statute of limitations applicable to such underlying Taxes.

8.2 *Refunds; Disputes with Taxing Authorities.* LSI Logic shall be authorized to retain accountants and attorneys for the purpose of preparing any of the refund claims provided for herein, and for representation in connection with any SSI disputes with the IRS or any other taxing authority, including any SSI dispute arising after Deconsolidation to the extent such post-Deconsolidation disputes relate to Consolidated Returns. LSI Logic shall have sole and complete authority to control and resolve any dispute relating to any Consolidated Return with the IRS or any other taxing authority. SSI hereby delegates LSI Logic as its agent and attorney-in-fact for the purpose of filing Group Tax Returns and contesting Group Tax disputes. In cases where the action taken is specific to SSI or where SSI has agreed that the action taken is appropriate, SSI agrees to pay the costs reasonably allocated to it by LSI Logic of employing such attorneys and accountants (including associated court costs), and to bear the costs incurred by it in furnishing records, documents and testimony in connection with any such matter. To the extent that a settlement would materially increase SSI's liability under this Agreement, SSI shall have the right to consent to such settlement, such consent not to be unreasonably withheld.

ARTICLE IX

MISCELLANEOUS

9.1 *Limitation of Liability.* IN NO EVENT SHALL ANY MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP BE LIABLE TO ANY OTHER MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; *PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EITHER PARTY'S OBLIGATIONS OR LIABILITIES AS SET FORTH IN THIS AGREEMENT RELATING TO INTEREST AND PENALTIES ASSESSED BY ANY TAX AUTHORITY.*

9.2 *Entire Agreement.* This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof.

9.3 *Governing Law.* This Agreement shall be construed in accordance with, and all Disputes hereunder shall be governed by, the laws of the State of California, excluding its conflict of law rules, and the United Nations Convention on Contracts for the International Sale of Goods. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have

jurisdiction and venue over all Disputes between the parties that are permitted to be brought in a court of law pursuant to *Section 3.7* of the Master Separation Agreement.

9.4 *Termination.* This Agreement may be terminated at any time prior to any issuance of SSI stock to persons other than LSI Logic, any corporation in the Group, or employees, consultants or directors of LSI Logic or SSI by and in the sole discretion of LSI Logic without the approval of SSI. This Agreement may be terminated at any time after any issuance of SSI stock to persons other than LSI Logic, any corporation in the Group, or employees, consultants or directors of LSI Logic or SSI by mutual consent of LSI Logic and SSI. In the event of termination pursuant to this *Section 9.4*, no party shall have any liability of any kind to the other party.

9.5 *Notices.* Notices, offers, requests or other communications required or permitted to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties to the following addresses:

if to LSI Logic:

LSI Logic Corporation

1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-6896

if to SSI:

LSI Logic Storage Systems, Inc.

1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-8323

or to such other address as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by fax, confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.

9.6 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

9.7 *Binding Effect; Assignment.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors in interest, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be enforced separately by each member of the LSI Logic Group and each member of the SSI Group. Neither party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, and any such assignment shall be void; *provided, however*, either party may assign this Agreement to a successor entity in conjunction with such party's reincorporation, or in conjunction with a change of control event. Any permitted assignee shall agree to perform the obligations of the assignor of this Agreement, and this Agreement shall inure to the benefit of and be binding upon any permitted assignee.

9.8 *Severability.* If any term or other provision of this Agreement is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to

modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

9.9 *Failure or Indulgence Not Waiver; Remedies Cumulative.* No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise or waiver of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

9.10 *Amendment.* No change or amendment will be made to this Agreement except by an instrument in writing signed on behalf of each of the parties to such agreement.

9.11 *Interpretation.* The headings contained in this Agreement and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used but not otherwise defined herein shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an article or a section such reference shall be to an article or section of this Agreement unless otherwise indicated.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have signed this Tax Sharing Agreement effective as of the date first set forth above.

LSI LOGIC CORPORATION

LSI LOGIC STORAGE SYSTEMS, INC.

By: /s/ Wilfred J. Corrigan

By: /s/ Thomas Georgens

Name: Wilfred J. Corrigan

Name: Thomas Georgens

Title: Chairman/CEO

Title: President

[SIGNATURE PAGE TO TAX SHARING AGREEMENT]

TRANSITION SERVICES AGREEMENT

between
LSI LOGIC CORPORATION
and
LSI LOGIC STORAGE SYSTEMS, INC.
March 15, 2004

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TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (the "*Agreement*") is entered into as of March 15, 2004 (the "*Effective Date*"), between LSI Logic Corporation, a Delaware corporation ("*LSI Logic*"), and LSI Logic Storage Systems, Inc., a Delaware corporation ("*SSI*"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in *Article I* hereof.

RECITALS

1. LSI Logic and SSI entered into a Master Separation Agreement dated as of December 31, 2003, as may be amended from time to time (the "*Separation Agreement*") and other Ancillary Agreements to delineate and clarify their relationship and further separate the businesses conducted by LSI Logic and SSI (the "*Separation*").

2. In connection with the Separation, the parties desire to set forth certain agreements regarding transition services between the parties.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

For the purpose of this Agreement, the following capitalized terms shall have the following meanings:

1.1 *Additional Services*. "*Additional Services*" has the meaning set forth in *Section 2.2(a)* hereof.

1.2 *Agreement*. "*Agreement*" has the meaning set forth in *Section 2.1* hereof.

1.3 *Ancillary Agreements*. "*Ancillary Agreements*" has the meaning set forth in the Separation Agreement.

1.4 *Confidential Information*. "*Confidential Information*" has the meaning set forth in the Intellectual Property Agreement.

1.5 *Expiration Date*. "*Expiration Date*" has the meaning set forth in the *Section 3.1* hereof.

1.6 *Force Majeure*. "*Force Majeure*" means any act of God or the public enemy, any accident, explosion, fire, storm, earthquake, flood, or any other circumstance or event beyond the reasonable control of the party relying upon such circumstance or event

1.7 *Impracticability*. "*Impracticability*" has the meaning set forth in *Section 2.4* hereof.

1.8 *Intellectual Property Agreement*. "*Intellectual Property Agreement*" means that certain Intellectual Property Agreement between LSI Logic and SSI, dated as of December 31, 2003, as may be amended from time to time.

1.9 *LSI Logic Group*. "*LSI Logic Group*" has the meaning set forth in the Separation Agreement.

1.10 *Master Transition Service Schedule*. "*Master Transition Service Schedule*" has the meaning set forth in *Section 2.1* hereof.

1.11 *Separation*. "*Separation*" has the meaning set forth in the Recitals hereof.

1.12 *Separation Agreement*. "*Separation Agreement*" has the meaning set forth in the Recitals hereof.

1.13 *Separation Date*. "*Separation Date*" has the meaning set forth in the Separation Agreement.

1.14 *Service*. "*Service*" has the meaning set forth in *Section 2.1* hereof.

1.15 *Source Code*. “*Source Code*” means any human readable code, including interpreted code, of LSI Logic, listed and described in the relevant Transition Service Schedule.

1.16 *Source Code Documentation*. “*Source Code Documentation*” means the manuals and other documentation that are reasonably necessary to use the Source Code licensed herein, including those items listed and described in the relevant Transition Service Schedule hereto.

1.17 *SSI Group*. “*SSI Logic Group*” has the meaning set forth in the Separation Agreement.

1.18 *Subcontractor*. “*Subcontractor*” means any individual, partnership, corporation, firm, association, unincorporated organization, joint venture, trust or other entity engaged to perform hereunder.

1.19 *Technology*. “*Technology*” has the meaning set forth in the Intellectual Property Agreement.

ARTICLE II

SERVICES

2.1 *Services Generally; Master Transition Service Schedule*. This Agreement governs the provision of transitional services to, and as requested by, SSI by LSI Logic. Each service shall be provided pursuant to, and governed by, this Agreement and as described in further detail in the schedule of services that is attached hereto and incorporated herein by reference (“*Master Transition Service Schedule*”). Each of the services described on the Master Transition Service Schedule shall be referred to herein as a “*Service*,” and collectively (including Additional Services) as “*Services*.” The parties’ respective obligations with respect to the Services set forth on the Master Transition Service Schedule shall be effective upon execution of this Agreement. This Agreement and the Master Transition Service Schedule shall be defined as the “*Agreement*,” and the terms of the Master Transition Service Schedule shall be incorporated herein wherever reference is made to it.

2.2 *Additional Services*.

(a) From time to time after the Effective Date and during the term of this Agreement, the parties may identify additional services that one party shall provide to the other party in accordance with the terms of this Agreement (the “*Additional Services*”), and in such case, the parties shall modify the Master Transition Service Schedule to provide for such Additional Services.

(b) Except as provided in the next sentence, LSI Logic shall be obligated to perform, at a charge determined using the principles for determining fees under Section 4.1, any Additional Service that: (i) was provided by LSI Logic immediately prior to the Separation Date and that SSI reasonably believes was inadvertently or unintentionally omitted from the Services, or (ii) is essential to effectuate an orderly transition under the Separation Agreement. Notwithstanding the foregoing, if LSI Logic reasonably believes that the performance of Additional Services set forth in subparagraphs (i) or (ii) would significantly disrupt its operations or materially increase the scope of its responsibilities under this Agreement, LSI Logic and SSI shall negotiate in good faith to establish terms under which LSI Logic would provide such Additional Services, but LSI Logic shall not be obligated to provide such Additional Services if, following good faith negotiation, it is unable to reach agreement on such terms.

2.3 *Service Boundaries*. Except as otherwise provided:

(a) LSI Logic shall be obligated to provide the Services only to the extent and only at the locations that such Services were provided by LSI Logic to SSI immediately prior to the Effective Date;

(b) LSI Logic shall be obligated to provide the Services only to the extent necessary to permit SSI to conduct the business of SSI substantially in the manner it was conducted prior to the Effective Date;

(c) LSI Logic shall not be obligated to hire any additional employees or to maintain the employment of any specific employee or any specific number of employees;

(d) LSI Logic shall not be obligated to purchase, lease or license any additional equipment, software or other asset or to maintain any existing leases, licenses or other contracts; and

(e) LSI Logic shall not be obligated to pay any costs related to the transfer or conversion of SSI's data to SSI or any alternate supplier of Services.

2.4 *Impracticability.* LSI Logic shall no longer be obligated to provide any Service to the extent the performance of such Service becomes or would become impracticable as a result of a cause or causes outside the control of LSI Logic (including but not limited to a Force Majeure or unfeasible technological requirements), or to the extent the performance of such Services would require LSI Logic or SSI to violate, or result in LSI Logic's or SSI's violation of, any applicable laws, rules or regulations or would result in LSI Logic's or SSI's breach of any applicable contract (any such reason not to provide Services as a result of this section shall be referred herein to as by reason of "*Impracticability*").

ARTICLE III

TERM; TERMINATION

3.1 *Term.* The term of this Agreement shall commence on the Effective Date and shall remain in effect until the date on which LSI Logic ceases to own securities of SSI representing in excess of 50% of the voting power of all outstanding securities of SSI (the "*Expiration Date*"), unless earlier terminated pursuant to this *Article III*. This Agreement may be extended by the parties in writing, either in whole or with respect to one or more of the Services. The parties shall be deemed to have extended this Agreement with respect to a specific Service if the Master Transition Service Schedule specifies a completion date for such Service beyond the aforementioned Expiration Date. The parties may agree on an earlier expiration date respecting a Service by specifying such date on the Master Transition Service Schedule for that Service. Services shall be provided up to and including the date set forth in the Master Transition Service Schedule, subject to earlier termination as provided herein.

3.2 *Termination.* SSI may terminate this Agreement, either with respect to all or with respect to any one or more of the Services, for any reason or for no reason, at any time upon sixty (60) days prior written notice to LSI Logic. In addition, either party may terminate this Agreement with respect to a specific Service if the other party materially breaches a material provision with regard to that particular Service and does not cure such breach (or does not take reasonable steps required under the circumstances to cure such breach going forward) within sixty (60) days after being given notice of the breach; *provided, however*, that the non-terminating party may request that the parties engage in a dispute resolution negotiation as specified in *Section 8.4* below prior to termination for breach.

3.3 *Survival.* Those Sections of this Agreement that, by their nature, are intended to survive termination will survive in accordance with their terms. Notwithstanding the foregoing, in the event of any termination with respect to one or more, but less than all Services, this Agreement shall continue in full force and effect with respect to any Services not terminated hereby.

ARTICLE IV

COMPENSATION

4.1 *Charges for Services.* SSI shall pay LSI Logic the charges, if any, set forth on the Master Transition Service Schedule for each of the Services listed therein, as adjusted from time to time in accordance with the processes and procedures established under *Section 4.4* hereof. Such charges shall include the direct costs, as determined using the process described in such Transition Service Schedule, and indirect costs of providing the Services unless specifically indicated otherwise on Master Transition Service Schedule. However, if the term of this Agreement is extended beyond the Expiration Date with respect to any Service or if there is any material change in the fundamental assumptions used by the Parties in originally determining the costs to be charged, SSI shall pay LSI Logic adjusted charges that are determined in a manner consistent with such changed assumptions, to the extent that following the Parties' original intent would not be

reasonable to both Parties. The parties shall use good faith efforts to discuss any situation in which the actual charge for a Service is reasonably expected to exceed the estimated charge, if any, set forth on the Master Transition Service Schedule for a particular Service; *provided, however*, that the incurrence of charges in excess of any such estimate on the Master Transition Service Schedule shall not justify stopping the provision of, or payment for, Services under this Agreement.

4.2 *Payment Terms.* LSI Logic shall bill SSI monthly for all charges pursuant to this Agreement. Such bills shall be accompanied by reasonable documentation or other reasonable explanation supporting such charges pursuant to a practice that is mutually acceptable to both Parties. SSI shall pay LSI Logic for all Services provided hereunder within forty-five (45) days after receipt of an invoice therefor. Late payments shall bear interest at the lesser of 12% or the maximum rate allowed by law.

4.3 *Performance Under Ancillary Agreements.* Notwithstanding anything to the contrary contained herein, SSI shall not be charged under this Agreement for any obligations that are specifically required to be performed under the Separation Agreement or any other Ancillary Agreement, and any such other obligations shall be performed and charged for (if applicable) in accordance with the terms of the Separation Agreement or such other Ancillary Agreement.

4.4 *Pricing Adjustments.*

(a) The parties shall agree on a process and procedure for conducting internal audits and making adjustments to charges as a result of the transfer of employees and functions between parties, the discovery of errors or omissions in charges and the true-up of amounts owed to either party.

(b) In the event of a tax audit adjustment relating to the pricing of any or all Services provided pursuant to this Agreement in which it is determined by a taxing authority that any of the charges, individually or in combination, did not result in an arms-length payment, then the parties may agree to make corresponding adjustments to the charges in question for such period to the extent necessary to achieve arms-length pricing. Any adjustment made pursuant to this Section 4.4 at any time during the term of this Agreement or after termination of this Agreement shall be reflected in the parties' legal books and records, and the resulting underpayment or overpayment shall create, respectively, an obligation to be paid in the manner specified in Section 4.2.

ARTICLE V

GENERAL OBLIGATIONS; STANDARD OF CARE

5.1 *LSI Logic Performance Metrics.* Subject to Section 2.3 and Section 2.4 and any other terms and conditions of this Agreement, LSI Logic shall maintain sufficient resources to perform its obligations hereunder. LSI Logic will comply with the same specific performance metrics for a Service that it uses for its own operations regarding services that are comparable to each Service. Where LSI Logic does not use similar services for its own operations, LSI Logic shall use commercially reasonable efforts to provide Services in accordance with the policies, procedures and practices in effect immediately prior to the Effective Date and shall exercise the same care and skill as it exercises in performing similar services for itself.

5.2 *SSI Performance Metrics.* Specific performance metrics for SSI for a Service may be agreed upon by the Parties. Where none is so specifically agreed, SSI shall use commercially reasonable efforts, in connection with receiving Services, to follow the policies, procedures and practices in effect immediately prior to the Effective Date, including providing information and documentation sufficient for LSI Logic to perform the Services as they were performed immediately prior to the Effective Date and making available, as reasonably requested by LSI Logic, sufficient resources and timely decisions, approvals and acceptances in order that LSI Logic may perform its obligations hereunder in a timely manner.

5.3 *Transitional Nature of Services; Changes.* The parties acknowledge the transitional nature of the Services and that LSI Logic may make changes from time to time in the manner of performing the Services if LSI Logic is making similar changes in performing similar services for itself and if LSI Logic furnishes to SSI thirty (30) days written notice regarding such changes.

5.4 *Responsibility for Errors; Delays.* LSI Logic's sole responsibility to SSI for errors or omissions committed by LSI Logic in performing the Services shall be to correct such errors or omissions in the Services, at no additional cost or expense to SSI; *provided, however*, that SSI must promptly advise LSI Logic of any such error or omission of which it becomes aware after having used reasonable efforts to detect any such errors or omissions in accordance with the standard of care set forth in *Section 5.1*.

5.5 *Good Faith Cooperation; Consents.* The parties shall use good faith efforts to cooperate with each other in all matters relating to the provision and receipt of Services. Such cooperation shall include exchanging information, performing true-ups and adjustments, and obtaining all third-party consents, licenses, sublicenses or approvals necessary to permit each party to perform its obligations hereunder (including by way of example, not by way of limitation, rights to use third-party software needed for the performance of Services). The costs of obtaining such third-party consents, licenses, sublicenses or approvals shall be borne by SSI. In accordance with Section 3.3 of the Separation Agreement, each party shall maintain, in accordance with its standard document retention procedures, documentation supporting the information relevant to cost calculations contained in the Master Transition Service Schedule and cooperate with the other party in making such information available as needed.

5.6 *Alternatives.* If LSI Logic reasonably believes it is unable to provide any Service because of a failure to obtain necessary consents, licenses, sublicenses or approvals or because of Impracticability, the parties shall cooperate to determine the best alternative approach. Until such alternative approach is agreed upon by the parties or the problem otherwise resolved to the satisfaction of the parties, LSI Logic shall use reasonable efforts, subject to *Section 2.3* and *Section 2.4*, to continue providing the Service. To the extent an agreed upon alternative approach requires payment above and beyond that which is included in LSI Logic's charge for the Service in question, the parties agree to negotiate in good faith as to each party's share of any such payment.

5.7 *Confidentiality.* The terms of the Intellectual Property Agreement shall apply to any Confidential Information that is the subject matter of this Agreement.

5.8 *Relationship Between the Parties.* The relationship between the parties established under this Agreement is that of independent contractors, and neither party is an employee, agent, partner, or joint venturer of or with the other. LSI Logic shall be solely responsible for any employment-related taxes, insurance premiums or other employment benefits respecting its personnel's performance of Services under this Agreement. SSI agrees to grant LSI Logic personnel access to sites, systems and information (subject to the provisions of confidentiality in *Section 5.7* hereof) as necessary for LSI Logic to perform its obligations hereunder. LSI Logic shall use all commercially reasonable efforts to cause its personnel to obey any and all security regulations and other published policies of SSI.

5.9 *Subcontractor.* LSI Logic may engage a Subcontractor to perform all or any portion of LSI Logic's duties under this Agreement; *provided, however*, that any such Subcontractor agrees in writing to be bound by the confidentiality obligations of *Section 5.7*; and *provided further*, that LSI Logic remains responsible for the performance of such Subcontractor.

5.10 *No Obligations.* NEITHER PARTY ASSUMES ANY RESPONSIBILITY OR OBLIGATIONS WHATSOEVER, OTHER THAN THE RESPONSIBILITIES AND OBLIGATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT OR A SEPARATE WRITTEN AGREEMENT BETWEEN THE PARTIES

5.11 *Disclaimer of Warranties.* LSI LOGIC MAKES NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES, SOFTWARE OR OTHER DELIVERABLES PROVIDED BY IT HEREUNDER.

ARTICLE VI

INTELLECTUAL PROPERTY

6.1 *Allocation of Rights by Ancillary Agreements; Existing Ownership Rights Unaffected.* This Agreement and the performance of this Agreement shall not affect the ownership of any copyrights or other intellectual property rights allocated in the Ancillary Agreements. Neither party shall gain, by virtue of this Agreement, any rights of ownership of copyrights, patents, trade secrets, trademarks or any other intellectual property rights owned by the other.

6.2 *License to Works.* SSI grants LSI Logic a non-exclusive, worldwide, royalty-free license to use, copy, and make derivative works of, distribute, display, perform and transmit any Technology of SSI solely to the extent necessary to perform its obligations under this Agreement.

ARTICLE VII

SOFTWARE LICENSE

7.1 *License.* Unless otherwise agreed by the parties under an Ancillary Agreement or any separate agreement: (a) third-party technology or software provided to SSI or used on behalf of SSI is subject to *Section 5.5* hereof, and (b) technology or software owned by LSI Logic and provided to SSI or used on behalf of SSI is subject to the following license: LSI Logic hereby grants SSI a non-exclusive license to use such technology or software, only during the term of this Agreement, and only in connection with the service with which such technology or software is provided.

7.2 *As-Is Warranty; Implied Warranty Disclaimer.* THE SOFTWARE AND TECHNOLOGY PROVIDED HEREUNDER IS LICENSED ON AN "AS-IS" BASIS ONLY, WITHOUT ANY EXPRESS WARRANTIES OF ANY KIND. LSI LOGIC MAKES NO WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE OR TECHNOLOGY (INCLUDING DOCUMENTATION AND SOURCE CODE DOCUMENTATION), ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.

ARTICLE VIII

MISCELLANEOUS

8.1 *Limitation of Liability.* IN NO EVENT SHALL ANY MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP BE LIABLE TO ANY OTHER MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; *PROVIDED, HOWEVER,* THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN THE INDEMNIFICATION AND INSURANCE MATTERS AGREEMENT.

8.2 *Entire Agreement.* This Agreement, the Separation Agreement and the other Ancillary Agreements and the exhibits and schedules referenced or attached hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof and thereof.

8.3 *Governing Law.* This Agreement shall be construed in accordance with, and all Disputes hereunder shall be governed by, the laws of the State of California, excluding its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have

jurisdiction and venue over all Disputes between the parties that are permitted to be brought in a court of law pursuant to *Section 8.4* below.

8.4 *Dispute Resolution.* Any Disputes under this Agreement shall be resolved pursuant to the procedures set forth in the Separation Agreement.

8.5 *Notices.* Notices, offers, requests, or other communications required or permitted to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties at the following addresses:

if to LSI Logic:

LSI Logic Corporation

1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-6896

if to SSI:

LSI Logic Storage Systems, Inc.

1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-8323

or to such other address as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by fax, confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.

8.6 *Counterparts.* This Agreement, including the exhibits and schedules hereto, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

8.7 *Binding Effect; Assignment.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors in interest, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be enforced separately by each member of the LSI Logic Group and each member of the SSI Group. Except as specifically permitted under *Article VI* above, neither party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, and any such assignment shall be void. Any permitted assignee shall agree to perform the obligations of the assignor of this Agreement, and this Agreement shall inure to the benefit of and be binding upon any permitted assignee.

8.8 *Severability.* If any term or other provision of this Agreement or the exhibits or schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

8.9 *Failure or Indulgence Not Waiver; Remedies Cumulative.* No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise or waiver of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the exhibits or schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

8.10 *Amendment.* No change or amendment shall be made to this Agreement or the exhibits or schedules attached hereto except by an instrument in writing signed on behalf of each of the parties to such agreement.

8.11 *Interpretation.* The headings contained in this Agreement, in any exhibit or schedule attached hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any exhibit or schedule but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an article, section, exhibit or schedule, such reference shall be to an article or section of, or an exhibit or schedule to, this Agreement, unless otherwise indicated.

8.12 *Force Majeure.* Each party shall be excused for any failure or delay in performing any of its obligations under this Agreement, other than the obligations of SSI to make certain payments to LSI Logic pursuant to *Article IV* hereof for Services rendered, if such failure or delay is caused by a Force Majeure.

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IN WITNESS WHEREOF, the parties have signed this Transition Services Agreement effective as of the date first set forth above.

LSI LOGIC CORPORATION

LSI LOGIC STORAGE SYSTEMS, INC.

By: /s/ Wilfred J. Corrigan

By: /s/ Thomas Georgens

Name: Wilfred J. Corrigan

Name: Thomas Georgens

Title: Chairman/CEO

Title: President

[Signature Page to Transition Services Agreement]

INVESTOR RIGHTS AGREEMENT

between
LSI LOGIC CORPORATION
and
LSI LOGIC STORAGE SYSTEMS, INC.
March 15, 2004

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INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (this "*Agreement*") is entered into as of March 15, 2004, between LSI Logic Corporation, a Delaware corporation ("*LSI Logic*"), and LSI Logic Storage Systems, Inc., a Delaware corporation ("*SSI*"). Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in *Article IV* hereof.

RECITALS

1. LSI Logic and SSI entered into a Master Separation Agreement dated as of December 31, 2003, as may be amended from time to time (the "*Separation Agreement*") and other Ancillary Agreements to delineate and clarify their relationship and further separate the businesses conducted by LSI Logic and SSI (the "*Separation*").

2. In connection with the Separation, the parties intend that SSI grant to LSI Logic certain rights, as provided for in this Agreement, with respect to the registration of the shares of SSI capital stock held by LSI Logic and the right of first refusal of LSI Logic to purchase certain securities of SSI.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth below, the parties hereto agree as follows:

ARTICLE I

REGISTRATION RIGHTS

1.1 Requested Registration.

(a) *Request for Registration.* Subject to the conditions set forth in this *Section 1.1*, if SSI shall receive from LSI Logic a written request signed by an authorized officer of LSI Logic that SSI effect the registration of all or any portion of the Registrable Securities (which request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by LSI Logic), SSI shall, as soon as practicable, use its commercially reasonable efforts to effect such registration and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request.

(b) *Limitations on Requested Registration.* SSI shall not be obligated to effect, or to take any action to effect, any such registration pursuant to this *Section 1.1*:

(i) Prior to the time set forth in the applicable "lock up" provisions of the underwriting agreement executed by SSI and the underwriters in connection with SSI's Initial Public Offering;

(ii) After the Company has initiated two such registrations pursuant to this *Section 1.1* (counting for these purposes only registrations that have been declared or ordered effective and pursuant to which securities have been sold) in any twelve-month period; or

(iii) If LSI Logic proposes to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made under *Section 1.3* hereof.

(c) *Deferral.* If (i) in the good faith judgment of the Board of Directors of SSI, the filing of a registration statement covering the Registrable Securities would be materially detrimental to SSI and the Board of Directors of SSI concludes, as a result, that it is in the best interests of SSI to defer the filing of such registration statement at such time, and (ii) SSI shall furnish to LSI Logic a certificate signed by the Chairman of the Board of Directors of SSI stating that in the good faith judgment of the Board of Directors of SSI, it would be materially detrimental to SSI for such registration statement to be filed in the near future and that it is, therefore, in the best interests of SSI to defer the filing of such registration statement, then SSI shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of LSI Logic; *provided, however*, that SSI shall not defer its obligation in this manner more than once in any twelve-month period.

(d) *Underwriting.* If LSI Logic intends to distribute the Registrable Securities covered by its request by means of an underwriting, it shall so advise SSI as a part of its request made pursuant to this *Section 1.1*. In such event, the right of LSI Logic to include all or any portion of its Registrable Securities in a registration pursuant to this *Section 1.1* shall be conditioned upon LSI Logic's participation in an underwriting and the inclusion of LSI Logic's Registrable Securities to the extent provided herein. If SSI shall request inclusion in any registration pursuant to *Section 1.1* of securities being sold for its own account, or if other persons shall request inclusion in any registration pursuant to *Section 1.1*, LSI Logic may, in its sole discretion, offer to include such securities in the underwriting and such offer shall be conditioned upon the participation of SSI or such other persons in such underwriting and the inclusion of SSI's and such person's other securities of SSI and their acceptance of the further applicable provisions of this *Section 1*. SSI shall (together with LSI Logic and other persons proposing to distribute their securities through such underwriting) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected for such underwriting. LSI Logic and SSI shall jointly select the underwriter or underwriters for such registration.

Notwithstanding any other provision of this *Section 1.1*, if the underwriters advise LSI Logic in writing that marketing factors require a limitation on the number of shares to be underwritten, the number of Registrable Securities that may be so included shall be allocated as follows: (i) first, to LSI Logic; and (ii) second, to SSI, which SSI may allocate, at its discretion, for its own account, or for the account of other holders or employees of SSI.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from SSI, the underwriter or LSI Logic. The securities so excluded shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to this *Section 1.1(d)*, then SSI shall offer to LSI Logic the right to include additional Registrable Securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among LSI Logic or such other persons requesting additional inclusion, in the manner set forth above.

1.2 *Company Registration.*

(a) *Company Registration.* If SSI shall determine to register any of its securities either for its own account or the account of a security holder or holders, other than a registration pursuant to *Section 1.1* or *Section 1.3*, a registration relating solely to employee benefit plans, a registration relating to the offer and sale of debt securities, a registration relating to a corporate reorganization or other Rule 145 transaction, or a registration on any registration form that does not permit secondary sales, SSI shall:

(i) promptly give written notice of the proposed registration to LSI Logic; and

(ii) use its commercially reasonable efforts to include in such registration (and any related qualification under state securities laws or other compliance), except as set forth in *Section 1.2(b)* below, and in any underwriting involved therein, all of such Registrable Securities as are specified in a written request or requests made by LSI Logic received by SSI within twenty (20) days after such written notice from SSI is mailed or delivered. Such written request may specify all or any portion of the Registrable Securities.

(b) *Underwriting.* If the registration of which SSI gives notice is for a registered public offering involving an underwriting, SSI shall so advise LSI Logic as a part of the written notice given pursuant to *Section 1.2(a)(i)*. In such event, the right of LSI Logic to registration pursuant to this *Section 1.2* shall be conditioned upon LSI Logic's participation in such underwriting and the inclusion of such LSI Logic's Registrable Securities in the underwriting to the extent provided herein. If LSI Logic proposes to distribute its securities through such underwriting it shall (together with SSI) enter into an underwriting agreement in customary form with the representative of the underwriter or underwriters selected by SSI, subject to LSI Logic's written consent, which shall not be unreasonably withheld.

Notwithstanding any other provision of this *Section 1.2*, if the underwriters advise SSI in writing that marketing factors require a limitation on the number of shares to be underwritten, the underwriters may

(subject to the limitations set forth below) limit the number of Registrable Securities to be included in the registration and underwriting. SSI shall so advise LSI Logic, and the number of shares of securities that are entitled to be included in the registration and underwriting shall be allocated as follows: (i) first, to SSI for securities being sold for its own account, and (ii) second, to LSI Logic; and (iii) third, to any other holders of SSI securities.

If a person who has requested inclusion in such registration as provided above does not agree to the terms of any such underwriting, such person shall be excluded therefrom by written notice from SSI or the underwriter. The securities so excluded shall also be withdrawn from such registration. If shares are so withdrawn from the registration and if the number of shares to be included in such registration was previously reduced as a result of marketing factors pursuant to *Section 1.2(b)*, then SSI shall offer to LSI Logic the right to include additional Registrable Securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among LSI Logic or such other persons requesting additional inclusion, in the manner set forth above.

(c) *Right to Terminate Registration.* SSI shall have the right to terminate or withdraw any registration initiated by it under this *Section 1.2* prior to the effectiveness of such registration whether or not LSI Logic has elected to include securities in such registration.

1.3 *Registration on Form S-3.*

(a) *Request for Form S-3 Registration.* After its Initial Public Offering, SSI shall use its commercially reasonable efforts to qualify for registration on Form S-3 or any comparable or successor form or forms. After SSI has qualified for the use of Form S-3, in addition to the rights contained in the foregoing provisions of this *Section 1* and subject to the conditions set forth in this *Section 1.3*, if SSI shall receive from LSI Logic a written request that SSI effect any registration on Form S-3 or any similar short form registration statement with respect to all or any portion of the Registrable Securities (which request shall state the number of shares of Registrable Securities to be disposed of and the intended methods of disposition of such shares by LSI Logic), SSI shall use its commercially reasonable efforts to effect such registration and to permit or facilitate the sale and distribution of all or such portion of such Registrable Securities as are specified in such request.

(b) *Deferral.* The provisions of *Section 1.1(c)* shall apply to any registration pursuant to this *Section 1.3*.

(c) *Underwriting.* If LSI Logic requests registration under this *Section 1.3* intending to distribute the Registrable Securities covered by its request by means of an underwriting, the provisions of *Sections 1.1(d)* shall apply to such registration.

1.4 *Expenses of Registration.* All Registration Expenses incurred in connection with registrations pursuant to *Section 1.1*, *Section 1.2* and *Section 1.3* hereof shall be borne by SSI; *provided, however*, that SSI shall not be required to pay for any expenses of any registration proceeding begun pursuant to *Section 1.1* or *Section 1.3* if the registration request is subsequently withdrawn at the request of LSI Logic. All Selling Expenses relating to securities registered on behalf of LSI Logic and any other holders of securities shall be borne by LSI Logic and such other holders of securities included in such registration pro rata among each other on the basis of the number of Registrable Securities so registered.

1.5 *Registration Procedures.* In the case of each registration effected by SSI pursuant to *Section 1*, SSI shall keep LSI Logic advised in writing as to the initiation of each registration and as to the completion thereof. At its expense, SSI shall use its commercially reasonable efforts to:

(a) Keep such registration effective for a period of ending on the earlier of the date which is sixty (60) days from the effective date of the registration statement or such time as LSI Logic has completed the distribution described in the registration statement relating thereto;

(b) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in *Section 1.5(a)* above;

(c) Furnish such number of prospectuses, including any preliminary prospectuses, and other documents incident thereto, including any amendment of or supplement to the prospectus, as LSI Logic from time to time may reasonably request;

(d) Register and qualify the securities covered by such registration statement under such other securities laws of such jurisdiction as shall be reasonably requested by LSI Logic;

(e) Notify each seller of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing, and following such notification promptly prepare and furnish to such seller a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in light of the circumstances then existing;

(f) Furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the counsel representing SSI for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, and reasonably satisfactory to LSI Logic and (ii) a “comfort” letter dated as of such date, from the independent certified public accountants of SSI, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters;

(g) Provide a transfer agent and registrar for all Registrable Securities registered pursuant to such registration statement and a CUSIP number for all such Registrable Securities, in each case not later than the effective date of such registration;

(h) Comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve months, but not more than eighteen months, beginning with the first month after the effective date of the Registration Statement, which earnings statement shall satisfy the provisions of *Section 11(a)* of the Securities Act;

(i) Cause all such Registrable Securities registered pursuant hereunder to be listed on each securities exchange on which similar securities issued by SSI are then listed; and

(j) In connection with any underwritten offering pursuant to a registration statement filed pursuant to *Section 1.1* or *Section 1.3* hereof, enter into an underwriting agreement in form reasonably necessary to effect the offer and sale of Common Stock; *provided, however*, that such underwriting agreement contains reasonable and customary provisions, and *provided further, however*, that LSI Logic shall also enter into and perform its obligations under such an agreement.

1.6 *Indemnification.*

(a) To the extent permitted by law, SSI will indemnify and hold harmless LSI Logic, each of its officers, directors and partners, legal counsel, and accountants and each person controlling LSI Logic within the meaning of Section 15 of the Securities Act, with respect to which registration, qualification, or compliance has been effected pursuant to this *Section 1*, and each underwriter, if any, and each person who controls within the meaning of Section 15 of the Securities Act any underwriter, against all expenses, claims, losses, damages, and liabilities (or actions, proceedings, or settlements in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any prospectus, offering circular, or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) any omission (or alleged

omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or (iii) any violation (or alleged violation) by SSI of the Securities Act, any state securities laws or any rule or regulation thereunder applicable to SSI and relating to action or inaction required of SSI in connection with any offering covered by such registration, qualification, or compliance, and SSI will reimburse LSI Logic, each of its officers, directors, partners, legal counsel, and accountants and each person controlling LSI Logic, each such underwriter, and each person who controls any such underwriter, for any legal and any other expenses reasonably incurred in connection with investigating and defending or settling any such claim, loss, damage, liability, or action; *provided, however*, that SSI will not be liable in any such case to the extent that any such claim, loss, damage, liability, or action arises out of or is based on any untrue statement or omission based upon written information furnished to SSI by LSI Logic, any of LSI Logic's officers, directors, partners, legal counsel or accountants, any person controlling LSI Logic, such underwriter or any person who controls any such underwriter and stated to be specifically for use therein; and *provided further, however*, that the indemnity agreement contained in this *Section 1.6(a)* shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, or action if such settlement is effected without the consent of SSI (which consent shall not be unreasonably withheld).

(b) To the extent permitted by law, LSI Logic will, if Registrable Securities held by LSI Logic are included in the securities as to which such registration, qualification, or compliance is being effected, indemnify and hold harmless SSI, each of its directors, officers, partners, legal counsel, and accountants and each underwriter, if any, of SSI's securities covered by such a registration statement, each person who controls SSI or such underwriter within the meaning of Section 15 of the Securities Act, LSI Logic, and each of its officers, directors, and partners, and each person controlling LSI Logic, against all claims, losses, damages and liabilities (or actions in respect thereof) arising out of or based on: (i) any untrue statement (or alleged untrue statement) of a material fact contained or incorporated by reference in any such registration statement, prospectus, offering circular, or other document, or (ii) any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse SSI and SSI's directors, officers, partners, legal counsel, and accountants, persons, underwriters, or control persons for any legal or any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to SSI by LSI Logic and stated to be specifically for use therein; *provided, however*, that the obligations of LSI Logic hereunder shall not apply to amounts paid in settlement of any such claims, losses, damages, or liabilities (or actions in respect thereof) if such settlement is effected without the consent of LSI Logic (which consent shall not be unreasonably withheld); and *provided further, however*, that in no event shall any indemnity under this *Section 1.6* exceed the net proceeds from the offering received by LSI Logic.

(c) Each party entitled to indemnification under this *Section 1.6* (the "*Indemnified Party*") shall give notice to the party required to provide indemnification (the "*Indemnifying Party*") promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of such claim or any litigation resulting therefrom; *provided, however*, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or any litigation resulting therefrom, shall be approved by the Indemnified Party (whose approval shall not be unreasonably withheld), and the Indemnified Party may participate in such defense at such party's expense; and *provided further, however*, that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this *Section 1.6*, to the extent such failure is not prejudicial. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement that does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. Each Indemnified Party shall furnish such information regarding itself or the claim in question as an Indemnifying Party may reasonably request in writing and as shall be reasonably required in connection with defense of such claim and litigation resulting therefrom.

(d) If the indemnification provided for in this *Section 1.6* is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to herein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

1.7 *Information by LSI Logic.* LSI Logic shall furnish to SSI such information regarding LSI Logic and the distribution proposed by LSI Logic as SSI may reasonably request in writing and as shall be reasonably required in connection with any registration, qualification, or compliance referred to in this *Section 1*.

1.8 *Rule 144 Reporting.* With a view to making available the benefits of certain rules and regulations of the Commission that may permit the sale of the Restricted Securities to the public without registration, SSI agrees to use its best efforts to:

(a) Make and keep public information regarding SSI available as those terms are understood and defined in Rule 144 under the Securities Act, at all times from and after ninety (90) days following the effective date of the first registration under the Securities Act filed by SSI for an offering of its securities to the general public;

(b) File with the Commission in a timely manner all reports and other documents required of SSI under the Securities Act and the Exchange Act at any time after it has become subject to such reporting requirements; and

So long as LSI Logic owns any Restricted Securities, furnish to LSI Logic forthwith upon written request a written statement by SSI as to its compliance with the reporting requirements of Rule 144 (at any time from and after ninety (90) days following the effective date of the first registration statement filed by SSI for an offering of its securities to the general public), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of SSI, and such other reports and documents so filed as LSI Logic may reasonably request in availing itself of any rule or regulation of the Commission allowing LSI Logic to sell any such securities without registration.

1.9 *Limitations on Subsequent Registration Rights.* From and after the date of this Agreement, SSI shall not, without the prior written consent of a LSI Logic, enter into any agreement with any holder or prospective holder of any securities of SSI giving such holder or prospective holder any registration rights the terms of which are pari passu with or senior to the registration rights granted to LSI Logic hereunder.

1.10 *Termination of Registration Rights.* The right of LSI Logic to request registration or inclusion in any registration pursuant to *Section 1.1*, *Section 1.2* or *Section 1.3* and the limitations on SSI with respect to the granting of subsequent registration rights pursuant to *Section 1.9* shall terminate on the earlier of (i) such date, on or after the closing of the Company's Initial Public Offering, on which all shares of Registrable Securities held or entitled to be held upon conversion by LSI Logic may immediately be sold under Rule 144 during any ninety (90)-day period, and (ii) three (3) years after the closing of SSI's Initial Public Offering.

ARTICLE II

RIGHT OF FIRST REFUSAL

2.1 *Right of First Refusal to LSI Logic.* SSI hereby grants to LSI Logic (subject to subsequent adjustments for stock splits, stock dividends, reverse stock splits and the like), the right of first refusal to purchase its pro rata share of New Securities (as defined in *Section 2.1(a)*) that SSI may, from time to time, propose to sell and issue after the date of this Agreement. LSI Logic's pro rata share, for purposes of this right of first refusal, is equal to the ratio of (a) the number of shares of Common Stock owned by LSI Logic immediately prior to the issuance of New Securities (assuming exercise of all outstanding convertible securities, rights, options and warrants, directly or indirectly, into Common Stock held by LSI Logic) to (b) the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities (assuming exercise of all outstanding convertible securities, rights, options and warrants, directly or indirectly, held by all of holders of all of SSI's securities).

(a) "*New Securities*" shall mean any capital stock (including Common Stock and/or Preferred Stock) of SSI whether now authorized or not, and rights, convertible securities, options or warrants to purchase such capital stock, and securities of any type whatsoever that are, or may become, exercisable or convertible into capital stock; *provided, however*, that the term "*New Securities*" does not include:

(i) securities issued or issuable to officers, employees, directors, consultants, placement agents, and other service providers of SSI (or any subsidiary) pursuant to stock grants, option plans, purchase plans, agreements or other employee stock incentive programs or arrangements approved by the Board of Directors of SSI;

(ii) securities issued pursuant to the conversion or exercise of any outstanding convertible or exercisable securities as of this date of this Agreement;

(iii) securities offered pursuant to SSI's Initial Public Offering;

(iv) securities issued or issuable pursuant to the acquisition of another corporation by SSI by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of SSI;

(v) securities issued or issuable to banks, equipment lessors or other financial institutions pursuant to a commercial leasing or debt financing transaction approved by the Board of Directors of SSI;

(vi) securities issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of SSI;

(vii) securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of SSI;

(viii) securities of SSI which are otherwise excluded by the affirmative unanimous vote of the Board of Directors of SSI; and

(ix) any right, option or warrant to acquire any security convertible into the securities excluded from the definition of New Securities pursuant to *Section 2.1(a)(i)* through *Section 2.1(a)(viii)* above.

(b) In the event SSI proposes to undertake an issuance of New Securities, it shall give LSI Logic written notice of its intention, describing the type of New Securities, and their price and the general terms upon which SSI proposes to issue the same. LSI Logic shall have twenty (20) days after any such notice is mailed or delivered to agree to purchase LSI Logic's pro rata share of such New Securities for the price and upon the terms specified in the notice by giving written notice to SSI and stating therein the quantity of New Securities to be purchased.

(c) In the event LSI Logic fails to exercise fully the right of first refusal within said twenty (20) day period (the "*Election Period*"), SSI shall have sixty (60) days thereafter to sell or enter into an agreement (pursuant to which the sale of New Securities covered thereby shall be closed, if at all, within sixty (60) days

from the date of said agreement) to sell that portion of the New Securities with respect to which LSI Logic's right of first refusal option set forth in this Section 2.1 was not exercised, at a price and upon terms no more favorable to the purchasers thereof than specified in SSI's notice to LSI Logic delivered pursuant to Section 2.1(b). In the event SSI has not sold within such sixty (60) day period following the Election Period, or such sixty (60) day period following the date of said agreement, SSI shall not thereafter issue or sell any New Securities, without first again offering such securities to LSI Logic in the manner provided in this Section 2.1.

(d) The right of first refusal granted under this Agreement shall expire upon the earlier of (i) three (3) years after the Initial Public Offering and (ii) the distribution by LSI Logic to the holders of its common stock, by means of a pro rata distribution, of shares of SSI Common Stock then owned by LSI Logic in a transaction intended to qualify as a tax-free distribution under section 355 of the Internal Revenue Code of 1986, as amended.

ARTICLE III

MISCELLANEOUS

3.1 *Limitation of Liability.* IN NO EVENT SHALL ANY MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP BE LIABLE TO ANY OTHER MEMBER OF THE LSI LOGIC GROUP OR SSI GROUP FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; *PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS FOR LIABILITIES AS SET FORTH IN SECTION 1.6 HEREOF OR IN THE INDEMNIFICATION AND INSURANCE MATTERS AGREEMENT.*

3.2 *Entire Agreement.* This Agreement, the Separation Agreement, the other Ancillary Agreements and the exhibits and schedules referenced or attached hereto and thereto, constitute the entire agreement between the parties with respect to the subject matter hereof and thereof and shall supersede all prior written and oral and all contemporaneous oral agreements and understandings with respect to the subject matter hereof and thereof.

3.3 *Governing Law.* This Agreement shall be construed in accordance with, and all Disputes hereunder shall be governed by, the laws of the State of California, excluding its conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods. The Superior Court of Santa Clara County and/or the United States District Court for the Northern District of California shall have jurisdiction and venue over all Disputes between the parties that are permitted to be brought in a court of law pursuant to Section 3.4 below.

3.4 *Dispute Resolution.* Any Disputes under this Agreement shall be addressed using the same procedure set forth in the Separation Agreement.

3.5 *Notices.* Notices, offers, requests or other communications required or permitted to be given by either party pursuant to the terms of this Agreement shall be given in writing to the respective parties at the following addresses:

if to LSI Logic:

LSI Logic Corporation
1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-6896

if to SSI:

LSI Logic Storage Systems, Inc.
1621 Barber Lane
Milpitas, CA 95035
Attention: General Counsel
Fax: (408) 433-8323

or to such other address as the party to whom notice is given may have previously furnished to the other in writing as provided herein. Any notice involving non-performance, termination, or renewal shall be sent by hand delivery, recognized overnight courier or, within the United States, may also be sent via certified mail, return receipt requested. All other notices may also be sent by fax, confirmed by first class mail. All notices shall be deemed to have been given and received on the earlier of actual delivery or three (3) days from the date of postmark.

3.6 *Counterparts.* This Agreement, including the exhibits and schedules hereto, may be executed in counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

3.7 *Binding Effect; Assignment.* This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives and successors in interest, and nothing in this Agreement, express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Agreement. This Agreement may be enforced separately by each member of the LSI Logic Group and each member of the SSI Group. Neither party may assign this Agreement or any rights or obligations hereunder, without the prior written consent of the other party, and any such assignment shall be void. Any permitted assignee shall agree to perform the obligations of the assignor of this Agreement, and this Agreement shall inure to the benefit of and be binding upon any permitted assignee.

3.8 *Severability.* If any term or other provision of this Agreement or the exhibits or schedules attached hereto is determined by a nonappealable decision by a court, administrative agency or arbitrator to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the fullest extent possible.

3.9 *Failure or Indulgence Not Waiver; Remedies Cumulative.* No failure or delay on the part of either party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise or waiver of any such right preclude other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement or the exhibits or schedules attached hereto are cumulative to, and not exclusive of, any rights or remedies otherwise available.

3.10 *Amendment.* No change or amendment shall be made to this Agreement or the exhibits or schedules attached hereto except by an instrument in writing signed on behalf of each of the parties to such agreement.

3.11 *Interpretation.* The headings contained in this Agreement, in any exhibit or schedule attached hereto and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any exhibit or schedule but not otherwise defined therein, shall have the meaning assigned to such term in this Agreement. When a reference is made in this Agreement to an article, section, exhibit or schedule, such reference shall be to an article or section of, or an exhibit or schedule to, this Agreement, unless otherwise indicated.

ARTICLE IV

DEFINITIONS

- 4.1 *Ancillary Agreement*. “*Ancillary Agreement*” has the meaning set forth in the Separation Agreement.
- 4.2 *Commission*. “*Commission*” shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.
- 4.3 *Common Stock*. “*Common Stock*” means the common stock of SSI, including any and all classes of such common stock.
- 4.4 *Dispute*. “*Dispute*” has the meaning set forth in the Separation Agreement.
- 4.5 *Exchange Act*. “*Exchange Act*” shall mean the Securities Exchange Act of 1934, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.
- 4.6 *Indemnified Party*. “*Indemnified Party*” shall have the meaning set forth in *Section 1.6(c)* hereto.
- 4.7 *Indemnifying Party*. “*Indemnifying Party*” shall have the meaning set forth in *Section 1.6(c)* hereto.
- 4.8 *Initial Public Offering*. “*Initial Public Offering*” shall mean the closing of the SSI’s first firm commitment underwritten public offering of the SSI’s Class A Common Stock registered under the Securities Act.
- 4.9 *LSI Logic Group*. “*LSI Logic Group*” has the meaning set forth in the Separation Agreement.
- 4.10 *New Securities*. “*New Securities*” shall have the meaning set forth in *Section 2.1(a)* hereto.
- 4.11 *Person*. “*Person*” has the meaning set forth in the Separation Agreement.
- 4.12 *Registrable Securities*. “*Registrable Securities*” shall mean (i) any and all shares of Common Stock and (ii) any Common Stock issued as a dividend or other distribution with respect to or in exchange for or in replacement of the shares referenced in (i) above; *provided, however*, that Registrable Securities shall not include any shares of Common Stock described in clause (i) or (ii) above which have previously been registered or which have been sold to the public either pursuant to a registration statement or Rule 144, or which have been sold in a private transaction in which the transferor’s rights under this Agreement are not validly assigned in accordance with this Agreement.
- 4.13 *Register, Registered and Registration*. The terms “register,” “registered” and “registration” shall refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and applicable rules and regulations thereunder, and the declaration or ordering of the effectiveness of such registration statement.
- 4.14 *Registration Expenses*. “*Registration Expenses*” shall mean all expenses incurred in effecting any registration pursuant to this Agreement, including, without limitation, all registration, qualification, and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for SSI and one special counsel for LSI Logic, state securities law fees and expenses, and expenses of any regular or special audits incident to or required by any such registration, but shall not include Selling Expenses, fees and disbursements of other counsel for LSI Logic and the compensation of regular employees of SSI, which shall be paid in any event by SSI.
- 4.15 *Restricted Securities*. “*Restricted Securities*” shall mean any Registrable Securities that have not been registered under the Securities Act.
- 4.16 *Rule 144*. “*Rule 144*” shall mean Rule 144 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

4.17 *Rule 145*. “*Rule 145*” shall mean Rule 145 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission

4.18 *Rule 415*. “*Rule 415*” shall mean Rule 415 as promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar successor rule that may be promulgated by the Commission.

4.19 *Securities Act*. “*Securities Act*” shall mean the Securities Act of 1933, as amended, or any similar successor federal statute and the rules and regulations thereunder, all as the same shall be in effect from time to time.

4.20 *Selling Expenses*. “*Selling Expenses*” shall mean all underwriting discounts, selling commissions and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for LSI Logic (other than the fees and disbursements of one special counsel to LSI Logic included in Registration Expenses).

4.21 *Separation Agreement*. “*Separation Agreement*” has the meaning set forth in the Recitals hereof.

4.22 *SSI Group*. “*SSI Group*” has the meaning set forth in the Separation Agreement.

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IN WITNESS WHEREOF, the parties have signed this Investor Rights Agreement effective as of the date first set forth above.

LSI LOGIC CORPORATION

LSI LOGIC STORAGE SYSTEMS, INC.

By: /s/ WILFRED J. CORRIGAN

By: /s/ THOMAS GEORGENS

Name: Wilfred J. Corrigan

Name: Thomas Georgens

Title: Chairman/CEO

Title: President

[SIGNATURE PAGE TO INVESTOR RIGHTS AGREEMENT]

LSI LOGIC CORPORATION
1991 EQUITY INCENTIVE
STOCK OPTION AGREEMENT

1. Grant of Option. LSI Logic Corporation hereby grants a nonstatutory stock option ("Option"), pursuant to the Company's 1991 Equity Incentive Option Plan (the "Plan"), to purchase Common Stock of the Company to the person named on the Notice of Grant of Stock Options attached to and incorporated into this agreement (the "Optionee") on the date, for the number of shares, and at the exercise price as are each specified on the Notice of Grant of Stock Options. The shares may be purchased as set forth in and subject to the terms and conditions of this Option Agreement and the Plan. Except where the context otherwise requires, the term "Company" shall include the parent and all present and future subsidiaries of the Company as defined in Sections 424(e) and 424(f) of the Internal Revenue Code of 1986, as amended or replaced from time to time (the "Code").

2. Administration. All questions of interpretation concerning this Option Agreement shall be determined by the Company's Board of Directors (the "Board") and/or by a duly appointed committee of the Board having such powers as shall be specified by the Board. Any subsequent reference herein to the Board shall also mean the committee if such committee has been appointed. All determinations by the Board shall be final and binding upon all persons having an interest in the Option.

3. Exercise of Option and Provisions for Termination.

(a) Right to Exercise. The Option shall be exercisable to the extent vested in accordance with the schedule set forth in the Notice of Grant of Stock Options. The Option shall be exercisable only in accordance with the terms of the Plan and this Option Agreement. The Option may not be exercised more than seven years after the date of grant (the "Expiration Date").

(b) Exercise Procedure. Subject to the terms of this Option Agreement, this Option shall be exercised by delivery of written notice of exercise to the Company, specifying the number of shares to be purchased and the purchase price to be paid, accompanied by payment in full in accordance with Section 4 of this Option Agreement. Such exercise shall be effective upon receipt by the Company of such written notice together with the required payment. The Optionee may purchase less than the number shares covered by the vested portion of the Option, provided that no partial exercise of this Option may be for a fraction of a share.

(c) Continuous Employment Required. Except as otherwise provided in this Section 3, this Option may not be exercised unless the Optionee, at the time he or she exercises this Option is, and has been at all times since the date of grant of this Option, an employee of the Company. If this Option shall be assumed or a new Option substituted in a transaction to which Section 424(a) of the Code applies, employment by such assuming

or substituting corporation shall be considered for purposes of this Option to be employment by the Company. The employment relationship shall not be considered interrupted in the case of: (i) sick leave, military leave or any other leave of absence approved by the Board; provided that any such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract, statute or pursuant to formal policy adopted from time to time by the Company and issued and promulgated to Employees in writing, or (ii) transfer between locations of the Company or between the Company, its subsidiaries or its successor. In the case of any employee on an approved leave of absence, the Board may make such provisions respecting suspension of vesting of the Option while on leave from the employ of the Company as it may deem appropriate, if any, except that in no event shall an Option be exercised after the Expiration Date.

Unless there is a written employment agreement for a specified term in effect, Optionee's employment may be terminated at any time, with or without cause, by the Company. Neither the Plan nor this Option shall obligate the Company to employ Optionee for any particular length of time nor confer any right with respect to continuing the Optionee's relationship as an employee with the Company.

(d) Exercise Upon Termination of Employment. If the Optionee ceases to be employed by the Company for any reason, then, except as provided in paragraphs (e) and (f) below, the right to exercise this Option shall terminate 90 days after such cessation (but not after the Expiration Date). In that event, this Option shall be exercisable only to the extent that the Option was unexercised and vested on the date of such cessation. The Company's obligation to deliver shares upon the exercise of this Option shall be subject to the satisfaction of all applicable federal, state and local income and employment tax withholding requirements, arising by reason of this option being treated as a nonstatutory stock option or otherwise.

(e) Exercise Upon Death or Disability. In the event Optionee dies or becomes totally disabled (as defined in Section 22(e)(3) of the Code) prior to the Expiration Date while an employee of the Company, that portion of the Option which had become vested and exercisable as of the date of death or disability shall be exercisable within 12 months of the date of death or disability (but not after the Expiration Date). In the event the Optionee dies within 3 months after termination as an employee (other than discharge for misconduct as specified in paragraph (f) below), that portion of the Option that had become vested and exercisable as of the date of termination shall be exercisable within 6 months of the date of death (but not after the Expiration Date).

(f) Discharge for Misconduct. If the Optionee is discharged due to misconduct (as defined immediately below) prior to the Expiration Date, the right to exercise this Option shall terminate immediately upon cessation of employment. "Misconduct" , include, but it not limited to (i) willful breach or neglect of duty; (ii) failure or refusal to work or to comply with the Company's rules, policies, and practices; (iii) dishonesty; (iv) insubordination; (v) being under the influence of drugs (except to the

extent medically prescribed) or alcohol while on duty or on Company premises; (vi) conduct endangering, or likely to endanger, the health or safety of another employee, any other person or the property of the Company; or (vii) conviction of a felony.

4. **Payment of Purchase Price.** Payment of the purchase price for shares purchased upon exercise of this Option, shall be made by delivery of (i) cash, (ii) a check made payable to the order of the Company, (iii) a promissory note, (iv) other shares of Common Stock of the Company which (x) either have been owned by the Optionee for more than six months on the date of surrender or were not acquired, directly or indirectly, from the Company, and (y) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the shares to be exercised, (v) a properly executed exercise notice together with irrevocable instructions to a broker to promptly deliver to the Company the amount of sale proceeds required to pay the exercise price, (vi) an irrevocable subscription agreement for the shares which obligates the option holder to take and pay for the shares not more than 12 months after the date of delivery of the subscription agreement, (vii) any combination of the foregoing methods of payment, or (viii) such other consideration and method of payment for the issuance of shares to the extent permitted under the Delaware General Corporation Law.

5. **Withholding Taxes.** At the time the Option is exercised the Optionee hereby authorizes withholding from payroll and other amounts payable to Optionee by the Company, or shall remit to the Company, an amount sufficient to satisfy federal, state, and local withholding tax requirements prior to the delivery of any certificate or certificates for such shares.

6. **Non-Transferability of Options.** Except as provided in paragraph (e) of Section 3, this Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

7. **Rights as a Stockholder.** Until the shares are issued, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the shares are issued, except as provided in Section 13 of the Plan.

8. **Recapitalization.** In the event that dividends are payable in Common Stock or in the event there are splits, subdivisions, or combinations of shares of Common Stock, the number of shares deliverable in connection with this Option shall be increased or decreased proportionately, as the case may be, without change in the aggregate purchase price (where applicable).

9. **Reorganization.** In case the Company is merged or consolidated with another corporation and the Company is not the surviving corporation, or in case all of the property or stock of the Company is acquired by another corporation prior to the

Expiration Date, then the Board, or the board of directors of any corporation assuming the obligations of the Company hereunder, shall either (a) assume the outstanding Options or make a substitution on an equitable basis of appropriate stock of the Company or of the merged, consolidated, or otherwise reorganized corporation which will be issuable in respect to the shares of Common Stock, or (b) provide that the Option must be exercised within 30 days of the date of written notice or it will be terminated.

10. Compliance with Securities Law. This Option shall be subject to the requirement that if, at any time, counsel to the Company shall determine that the listing, registration or qualification of the shares subject hereto upon any securities exchange or under any state or federal law, or the consent or approval of any governmental or regulatory body, or that the disclosure of non-public information or the satisfaction of any other condition is necessary as a condition of, or in connection with, the issuance or purchase of shares hereunder, this Option may not be exercised, in whole or in part, unless such listing, registration, qualification, consent or approval, disclosure or satisfaction of such other condition shall have been effected or obtained on terms acceptable to the Board of Directors. Nothing herein shall be deemed to require the Company to apply for, effect or obtain such listing, registration, qualification, or disclosure, or to satisfy such other condition.

11. Rule 16b-3. Options granted to persons subject to Section 16(b) of the Securities Exchange Act of 1934, as amended, must comply with Rule 16b-3 and shall be deemed to contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Securities Exchange Act of 1934, as amended, with respect to Plan transactions.

**Notice of Grant of Stock Options
and Option Agreement**

LSI LOGIC CORPORATION
ID: 94-2712976
1621 BARBER LANE
MILPITAS, CALIFORNIA 95035

OPTIONEE NAME & ADDRESS

OPTION NUMBER:
Plan:

Effective _____, you have been granted a nonstatutory stock option to buy _____ shares of LSI LOGIC CORPORATION common stock at an exercise price of \$ _____ per share.

The total option price of the shares granted is \$ _____.

The number of shares indicated are scheduled to become fully vested on the date shown below. However, vesting will occur only if you have not incurred a Termination of Service prior to such date. The latest this option will expire is the Expiration Date shown below; however, if you incur a Termination of Service, this option may expire sooner, as described in the attached LSI LOGIC CORPORATION Stock Option Agreement (the "Agreement"). Capitalized terms that are not defined in this Notice of Grant or the Agreement have the same meaning as in the LSI LOGIC CORPORATION referenced stock option plan.

<u>Shares</u>	<u>Vest Type</u>	<u>Full Vest</u>	<u>Expiration</u>
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By your signature below, you agree that these options are granted under and governed by the terms and conditions of the Agreement (and the stock option plan referenced therein), which is attached and made a part of this document. You acknowledge that you have received, read and understand this Notice of Grant, the Agreement and the LSI LOGIC CORPORATION referenced stock option plan, and that you have had an opportunity to obtain the advice of counsel prior to signing below. You agree to accept as binding, conclusive and final all decisions or interpretations of the Administrator regarding any questions relating to the LSI LOGIC CORPORATION referenced stock option plan, this Notice of Grant and the Agreement.

OPTIONEE NAME

Date

LSI LOGIC CORPORATION
RESTRICTED STOCK UNIT AGREEMENT

LSI Logic Corporation (the "Company") hereby grants you (the "Employee"), the number of Restricted Stock Units under the Company's 2003 Equity Incentive Plan (the "Plan"), indicated on the attached Notice of Grant of Award and Award Agreement (the "Notice of Grant") effective as of the date indicated on the Notice of Grant (the "Grant Date"). The Notice of Grant and this agreement collectively are referred to as the "Agreement."

IMPORTANT:

Your signature to this Agreement indicates your agreement and understanding that this grant is subject to all of the terms and conditions contained in this Agreement and the Plan. For example, important additional information on vesting and forfeiture of the Restricted Stock Units covered by this grant is contained in the Notice of Grant. PLEASE BE SURE TO READ ALL OF THE NOTICE OF GRANT, WHICH CONTAINS CERTAIN SPECIFIC TERMS AND CONDITIONS OF THIS AGREEMENT.

TERMS AND CONDITIONS OF RESTRICTED STOCK UNIT GRANT

1. Grant. The Company hereby grants to the Employee under the Plan the number of Restricted Stock Units indicated in the Notice of Grant, subject to all of the terms and conditions in this Agreement and the Plan. When the Restricted Stock Units are paid to the Employee, par value will be deemed paid by the Employee for each Restricted Stock Unit by past services rendered by the Employee, and will be subject to the appropriate tax withholdings.
2. Company's Obligation to Pay. Each Restricted Stock Unit has a value equal to the Fair Market Value of a Share on the date of grant. Unless and until the Restricted Stock Units have vested in the manner set forth in paragraphs 3 or 4, the Employee will have no right to payment of such Restricted Stock Units. Prior to actual payment of any vested Restricted Stock Units, such Restricted Stock Units will represent an unsecured obligation.
3. Vesting Schedule/Period of Restriction. Except as otherwise provided in paragraph 4 of this Agreement, the Restricted Stock Units awarded by this Agreement are scheduled to vest in accordance with the vesting schedule set forth in the Notice of Grant. Restricted Stock Units scheduled to vest on any such date actually will vest only if the Employee has not incurred a Termination of Service prior to such date. Vesting will continue during any Company-approved leave of absence.
4. Committee Discretion. The Committee, in its discretion, may accelerate the vesting of the balance, or some lesser portion of the balance, of the Restricted Stock Units at any time, subject to the terms of the Plan. If so accelerated, such Restricted Stock Units will be considered as having vested as of the date specified by the Committee.

5. Payment after Vesting. Any Restricted Stock Units that vest in accordance with paragraph 3 or 4 will be paid to the Employee (or in the event of the Employee's death, to his or her estate) in Shares as soon as practicable following the date of vesting, subject to paragraph 8.

6. Forfeiture. Notwithstanding any contrary provision of this Agreement, the balance of the Restricted Stock Units that have not vested pursuant to paragraphs 3 or 4 at the time of the Employee's Termination of Service will be forfeited and automatically transferred to and reacquired by the Company at no cost to the Company. The Employee shall not be entitled to a refund of the price paid for the Restricted Stock Units forfeited to the Company pursuant to this paragraph 6.

7. Death of Employee. Any distribution or delivery to be made to the Employee under this Agreement will, if the Employee is then deceased, be made to the administrator or executor of the Employee's estate. Any such administrator or executor must furnish the Company with (a) written notice of his or her status as transferee, and (b) evidence satisfactory to the Company to establish the validity of the transfer and compliance with any laws or regulations pertaining to said transfer.

8. Withholding of Taxes. When the Shares are issued as payment for vested Restricted Stock Units, the Employee will recognize immediate U.S. taxable income if the Employee is a U.S. taxpayer. If the Employee is a non-U.S. taxpayer, the Employee will be subject to applicable taxes in his or her jurisdiction. The Company may, in its discretion, withhold a portion of the vested Restricted Stock Units that have an aggregate market value sufficient to pay the federal, state and local income, employment and any other applicable taxes required to be withheld by LSI Logic. No fractional Shares will be withheld or issued pursuant to the grant of Restricted Stock Units and the issuance of Shares thereunder; any additional withholding necessary for this reason will be done by the Company through the Employee's paycheck. Accordingly, to the extent the Fair Market Value of the number of whole Shares withheld by the Company exceeds the withholding taxes, the Company will pay Employee the difference. In the event the withholding requirements are not satisfied through the withholding of Shares (or, through the Employee's paycheck, as indicated above), no payment will be made to the Employee (or his or her estate) for Restricted Stock Units unless and until satisfactory arrangements (as determined by the Committee) have been made by the Employee with respect to the payment of any income and other taxes which the Company determines must be withheld or collected with respect to such Restricted Stock Units.

9. Rights as Stockholder. Neither the Employee nor any person claiming under or through the Employee will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book entry form) will have been issued, recorded on the records of the Company or its transfer agents or registrars, and delivered to the Employee (including through electronic delivery to a brokerage account). After such issuance, recordation and delivery, the Employee will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

10. No Effect on Employment. Subject to any employment contract with the Employee, the terms of such employment will be determined from time to time by the Company, or the Affiliate employing the Employee, as the case may be, and the Company, or the Affiliate employing the Employee, as the case may be, will have the right, which is hereby expressly reserved, to terminate

or change the terms of the employment of the Employee at any time for any reason whatsoever, with or without good cause. The transactions contemplated hereunder and the vesting schedule set forth in the Notice of Grant do not constitute an express or implied promise of continued employment for any period of time.

11. Address for Notices. Any notice to be given to the Company under the terms of this Agreement will be addressed to the Company, in care of Stock Administration Department, at LSI Logic Corporation, 1621 Barber Lane, Milpitas, CA 95035, or at such other address as the Company may hereafter designate in writing.

12. Grant is Not Transferable. Except to the limited extent provided in paragraph 7 above, this grant of Restricted Stock Units and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process, until you have been issued the Shares. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this grant, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this grant and the rights and privileges conferred hereby immediately will become null and void.

13. Restrictions on Sale of Securities. The Shares issued as payment for vested Restricted Stock Units awarded under this Agreement will be registered under the federal securities laws and will be freely tradable upon receipt. However, your subsequent sale of the Shares will be subject to any market blackout-period that may be imposed by the Company and must comply with the Company's insider trading policies (see the "Securities Laws" paragraph of the *LSI Logic Employee Handbook Standards of Business Conduct* section), and any other applicable securities laws.

14. Binding Agreement. Subject to the limitation on the transferability of this grant contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the parties hereto.

15. Additional Conditions to Issuance of Certificates for Shares. The Company shall not be required to issue any certificate or certificates for Shares hereunder prior to fulfillment of all the following conditions: (a) the admission of such Shares to listing on all stock exchanges on which such class of stock is then listed; (b) the completion of any registration or other qualification of such Shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, which the Committee shall, in its absolute discretion, deem necessary or advisable; (c) the obtaining of any approval or other clearance from any state or federal governmental agency, which the Committee shall, in its absolute discretion, determine to be necessary or advisable; and (d) the lapse of such reasonable period of time following the date of vesting of the Restricted Stock Units as the Committee may establish from time to time for reasons of administrative convenience.

16. Plan Governs. This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan, the provisions of the Plan will govern. Capitalized terms used and not defined in this Agreement will have the meaning set forth in the Plan.

17. Committee Authority. The Committee will have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Restricted Stock Units have vested). All actions taken and all interpretations and determinations made by the Committee in good faith will be final and binding upon the Employee, the Company and all other interested persons. No member of the Committee will be personally liable for any action, determination or interpretation made in good faith with respect to the Plan or this Agreement.

18. Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

19. Agreement Severable. In the event that any provision in this Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

20. Modifications to the Agreement. This Agreement constitutes the entire understanding of the parties on the subjects covered. The Employee expressly warrants that he or she is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein. Modifications to this Agreement or the Plan can be made only in an express written contract executed by a duly authorized officer of the Company.

21. Amendment, Suspension or Termination of the Plan. By accepting this award, the Employee expressly warrants that he or she has received a right to purchase stock under the Plan, and has received, read and understood a description of the Plan. The Employee understands that the Plan is discretionary in nature and may be modified, suspended or terminated by the Company at any time.

22. Notice of Governing Law. This grant of Restricted Stock Units shall be governed by, and construed in accordance with, the laws of the State of California without regard to principles of conflict of laws.

LEASE AND SECURITY AGREEMENT (LEASE A)

dated as of August 6, 2004

among Wells Fargo Bank Northwest, National Association,
not in its individual capacity,
except as expressly stated herein, but solely as Agent,
as AGENT,

LSI LOGIC CORPORATION,
as LESSEE

and

BTM CAPITAL CORPORATION,
as LESSOR

MONTGOMERY STREET FINANCIAL SERVICES, LLC,
as Arranger

THIS LEASE AND SECURITY AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS LEASE AND SECURITY AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AND SECURITY AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART HEREOF OTHER THAN THE "ORIGINAL EXECUTED COUNTERPART NO. 1." SEE SECTION 2.4 FOR THE NATURE OF THIS TRANSACTION AND INTENTION OF THE PARTIES. THIS COUNTERPART IS [NOT] THE ORIGINAL EXECUTED COUNTERPART NO. 1.

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LEASE AND SECURITY AGREEMENT (LEASE A)

THIS LEASE AND SECURITY AGREEMENT (LEASE A), dated as of August 6, 2004 (as amended, supplemented, restated or otherwise modified from time to time, this "*Lease*"), is among LSI LOGIC CORPORATION, a Delaware corporation, as Lessee ("*Lessee*") with its principal office at 1621 Barber Lane, Milpitas, California, BTM CAPITAL CORPORATION, as Lessor ("*Lessor*") and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly stated herein, but solely as Agent ("*Agent*").

WITNESSETH:

WHEREAS, on the Delivery Date, Lessor will purchase certain Items of Equipment more particularly described on Schedule I hereto; and

WHEREAS, upon the purchase of the Items of Equipment on the Delivery Date, Lessor will lease such Items of Equipment to Lessee and Lessee will lease such Items of Equipment from Lessor pursuant to the terms of this Lease upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

ARTICLE I

DEFINITIONS

In this Lease and each other Operative Document, unless the context otherwise requires:

(a) *Interpretation.* (i) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;

(ii) words importing the singular include the plural and vice versa;

(iii) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such Operative Document;

(iv) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;

(v) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document;

(vi) a reference to a party to a document includes that party's successors and permitted assigns; and

(vii) references to "*including*" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

(b) *Accounting Terms*. In each Operative Document, unless expressly provided otherwise, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP.

Further, each of the parties to the Operative Documents and their counsel have reviewed and revised the Operative Documents, or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the Operative Documents.

"*Accrual Rent*" shall mean, individually or collectively, Series A Accrual Rent, Series B Accrual Rent, Series C Accrual Rent and Lessor's Interest Related Accrual Rent.

"*Acquisition*" shall mean any transaction or series of related transactions for the purpose of or resulting in (a) the acquisition, directly or indirectly, of all or substantially all of the assets of a Person or of any business or division of a Person, (b) the acquisition, directly or indirectly, of all or substantially all of the capital stock, obligations or other securities of or interest in a Person, or (c) a merger or consolidation or any other combination by Lessee or any Subsidiary with another Person.

"*Affiliate*" shall mean any Person which, directly or indirectly, controls, is controlled by or is under common control with another Person. For purposes of the foregoing, "control" with respect to any Person shall mean the possession, directly or indirectly, of the power (a) to vote twenty-five percent (25%) or more of the securities having ordinary voting power for the election of directors of such Person, or (b) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"*Agent*" shall mean Wells Fargo Bank Northwest, National Association, in its capacity as agent under the Operative Documents.

"*Agent Fee Letter*" shall mean that certain letter agreement, dated as of June 23, 2004, between Agent and Lessee.

"*Applicable Laws and Regulations*," "*Applicable Laws*" and "*Laws*" shall mean as of any date all applicable laws, rules, regulations (including Environmental Laws), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any

Governmental Agency, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment), to which Lessee or any Item of Equipment is subject.

“*Appraisal*” shall mean the appraisal described in Section 3.1(g).

“*Appraised Value*” shall mean the Fair Market Value of the Equipment as of the Delivery Date as determined pursuant to the Appraisal delivered pursuant to Section 3.1(g).

“*Appraiser*” or “*Appraisers*” shall mean American Appraisal Associates, Inc.

“*Arranger*” shall mean Montgomery Street Financial Services, LLC.

“*Assignee*” shall have the meaning provided in Section 19.1(a)(ii).

“*Assignee’s Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Basic Rent*” shall have the meaning provided in Section 6.1.

“*Bill of Sale*” shall mean a bill of sale delivered in connection with the requirements of Section 3.1(l) and any bill of sale delivered in connection with the requirements of Section 8.4 or 9.1.

“*Break Funding Amount*” shall have the meaning provided in Section 11.5.

“*BTM Cash Collateral Account*” shall have the meaning provided in the Cash Collateral Agreement.

“*BTM Control Agreement*” shall mean that certain Control Agreement, dated as of August 6, 2004, among the BTM Securities Intermediary, the Lessee and Lessor.

“*BTM Securities Intermediary*” shall have the meaning provided in the Cash Collateral Agreement.

“*Business Day*” shall mean any Monday, Tuesday, Wednesday, Thursday or Friday, *other than* a day on which commercial banks are authorized or required to be closed in Boston, Massachusetts, New York, New York, Milpitas, California, Salt Lake City, Utah and solely with respect to determination of the LIBO Rate, London, England.

“*Capital Lease*” shall mean, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as a capital lease in respect of which such Person is liable as lessee.

“*Capital Rent*” shall mean, individually, or collectively, Series A Capital Rent and Series B Capital Rent.

“*Cash Collateral*” shall mean, as the Lessor or applicable Series A Assignee, in each case benefiting from such Cash Collateral may elect, in its sole and absolute discretion, (i)(a) obligations of the United States government and any agency thereof and (b) time deposits and/or certificates of deposit, in each case having the highest rates of return for similar time deposits and/or certificates of deposit with similar terms and similar amounts as the time deposit and/or certificate of deposit offered by the commercial bank holding or issuing such time deposit and/or certificate of deposit and issued by such commercial bank, which commercial bank shall have (x) a combined capital and surplus of not less than \$500,000,000 and (y) a senior unsecured debt credit rating of at least “A3” by Moody’s and “A-” by S&P and which commercial bank shall be incorporated under (A) the laws of the United Kingdom or (B) the laws of the United States of America or any state thereof or the District of Columbia and, in the case of this clause (B), shall be a member of the Federal Reserve System; *provided* that the aggregate amount of the certificates of deposit issued by a financial institution having an unsecured debt credit rating of “A3” by Moody’s and/or “A-” by S&P shall not exceed \$40,000,000 in face amount, (ii) all cash maintained in or credited to the Cash Collateral Account in which such Cash Collateral is held, and (iii) all proceeds of the foregoing, including whatever is receivable or received when Cash Collateral or proceeds are sold, collected, exchanged, returned, substituted or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Cash Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Cash Collateral. All Cash Collateral shall have a final maturity from the date of issuance of not more than 100 days and maturing on or before the next succeeding Payment Date during the Lease Term.

“*Cash Collateral Accounts*” shall mean, collectively, the Cash Collateral Accounts listed in Section 1.1 of the Cash Collateral Agreement.

“*Cash Collateral Agreement*” shall mean the Assignment of Cash Collateral Accounts dated as of August 6, 2004 executed by Lessee in favor of Lessor.

“*Casualty*” or “*Casualties*” shall mean any of the following events in respect of any Item of Equipment: (a) the total loss of such Item of Equipment, the total loss of use thereof due to theft, disappearance, destruction, damage beyond repair or the rendering of such Item of Equipment permanently unfit for normal use for any reason whatsoever (other than obsolescence); (b) any damage to such Item of Equipment which results in an insurance settlement with respect to such Item of Equipment on the basis of a total loss or a constructive total loss; (c) the permanent condemnation, confiscation or seizure of, or the requisition of title to or use of, such Item of Equipment; (d) as a result of any change in Applicable Laws and Regulations or other similar action by any Governmental Agency, the use of such Item of Equipment in the normal course of Lessee’s business shall have been prohibited, directly or indirectly, for a period equal to the lesser of 90 consecutive days and the remaining Lease Term.

“*Casualty Amount*” shall mean, with respect to any Item of Equipment leased hereunder as of any date specified for payment thereof, the sum of (A) a portion of the Lease Balance equal to the product obtained by multiplying the outstanding Lease Balance as of the Casualty Settlement Date by the Item Value Fraction of such Item of Equipment and (B) all other Rent due and owing under the Operative Documents.

“*Casualty Notice*” shall have the meaning provided in Section 9.1.

“*Casualty Recoveries*” shall have the meaning provided in Section 9.1.

“*Casualty Settlement Date*” shall have the meaning provided in Section 9.1(a).

“*Change in Law*” shall have the meaning provided in Section 11.4.

“*Claims*” shall mean liabilities, obligations, damages, actual losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, charges, costs, fees, expenses and disbursements (including, without limitation, out-of-pocket legal fees and expenses and costs of investigation which, in the case of counsel or investigators retained by an Indemnitee, shall be reasonable) of any kind and nature whatsoever, but shall exclude anticipated losses or lost profits of Lessor, any Assignee or Agent.

“*Code*” shall mean the Internal Revenue Code of 1986 and the rules and regulations thereunder, each as amended, supplemented or otherwise modified from time to time.

“*Compliance Certificate*” shall have the meaning provided for in Section 18.1(a)(iii).

“*Consolidated Intangible Assets*” shall mean, as of any date of determination, the total goodwill and other intangible assets of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“*Consolidated Total Assets*” shall mean, as of any date of determination, the total assets of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“*Consolidated Total Liabilities*” shall mean, as of any date of determination, the total liabilities of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“*Contractual Obligation*” of any Person shall mean, any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

“*Control Agreements*” shall mean, collectively, (a) the RBS Control Agreement and (b) the BTM Control Agreement.

“*Delivery Date*” shall mean August 6, 2004.

“*Early Termination Option*” shall have the meaning provided in Section 14.1(a).

“*Early Termination Payment Date*” shall have the meaning provided in Section 14.1(a).

“*Early Termination Purchase Amount*” shall mean, with respect to any Item of Equipment, as of the Early Termination Payment Date, the sum of (a) a portion of the Lease Balance equal to the product obtained by multiplying the outstanding Lease Balance as of the Early Termination Payment Date by the Item Value Fraction of such Item of Equipment and (b) all other Rent then due and owing under the Operative Documents.

“*Eligible Assignee*” shall mean (a) any other Lessor or Assignee, (b) any affiliate of a Lessor or Assignee, (c) any commercial bank, leasing company, finance company or other financial institution which has or is an affiliate of an entity (and such entity provides a guaranty of such affiliate’s obligations under the Operative Documents) which has a combined capital and surplus of at least \$100,000,000 or (d) any institution which is a “qualified institutional buyer” as defined in rule 144A of the Securities Act.

“*Eligible Lessor Assignee*” shall mean any commercial bank, leasing company, finance company or other financial institution which has or is an affiliate of an entity (and such entity provides a guaranty of such affiliate’s obligations under the Operative Documents) which has a combined capital and surplus of at least \$75,000,000.

“*Encumbrance*” shall mean any mortgage, deed of trust, pledge, security interest, assignment, deposit arrangement, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including any conditional sale or other title retention agreement, or any financing lease having substantially the same economic effect as any of the foregoing or any agreement to give any security interest, but excluding any operating lease, regardless of whether precautionary filings are made in respect thereto under Section 9408 of the California Uniform Commercial Code).

“*End of Term Value Ratio*” shall mean, with respect to any Item or Items of Equipment as of any date of determination, the ratio of (a) the expected Fair Market Value of such Item or Items of Equipment as of the end of the Lease Term (as set forth in the Appraisal) to (b) the Fair Market Value of such Item or Items of Equipment as of the Delivery Date (as set forth in the Appraisal).

“*Environmental Laws*” shall mean all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with (including consent decrees), any Governmental Authorities, in each case relating to or imposing liability or standards of conduct concerning public health, safety and environmental protection matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the California Hazardous Waste

Control Law, the California Solid Waste Management, Resource Recovery and Recycling Act, the California Water Code and the California Health and Safety Code.

“*Equipment*” shall mean, individually, each Item of equipment described on Schedule I hereto and as more specifically described in the Bill(s) of Sale and, collectively, each of the foregoing Items of Equipment.

“*ERISA*” shall mean the Employee Retirement Income Security Act of 1974, and any regulations issued pursuant thereto, as amended or replaced and as in effect from time to time.

“*ERISA Affiliate*” shall mean any trade or business (whether or not incorporated) which is under common control with Lessee within the meaning of Section 4001(a)(14) of ERISA and Sections 414(b), (c) and (m) of the Code.

“*ERISA Event*” shall mean (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Lessee or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Pension Plan subject to Title IV of ERISA; (d) a failure by Lessee or any ERISA Affiliate to make required contributions to a Pension Plan or other Plan subject to Section 412 of the Code; (e) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Lessee or any ERISA Affiliate; or (g) an application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan.

“*Extended Remarketing Period*” shall have the meaning provided in Section 15.6(a).

“*Fair Market Value*” shall mean, with respect to any Item of Equipment as of any date, the price which a purchaser would pay to purchase such Item of Equipment in an arm’s-length transaction between an informed and willing buyer and an informed and willing seller, neither of them being under any compulsion to buy or sell. Except for any determination of the Fair Market Value in connection with an appraisal delivered pursuant to Section 9.1 or 14.1, in making any determination of Fair Market Value, any appraiser, if applicable, may assume such Item of Equipment is installed in-place and as-built and (a) has been maintained in accordance with the requirements of this Lease, (b) is in the condition in which it is required to be under this Lease as of the date for which such determination is made and (c) is not subject to a Sublease, and any appraiser, if applicable, shall use such reasonable methods of appraisal as are chosen by Agent and which are acceptable to Lessee.

“*FASB 94*” shall have the meaning provided in Section 2.4.

“*FIN 46R*” shall have the meaning provided in Section 2.4.

“*Financial Statements*” shall mean, with respect to any accounting period for any Person, statements of income, shareholders’ equity and cash flows of such Person for such period, and a balance sheet of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year if such period is less than a full fiscal year or, if such period is a full fiscal year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP.

“*Foreign Plan*” shall mean any employee benefit plan maintained by Lessee or any of its Subsidiaries which is mandated or governed by any Governmental Rule of any Governmental Authority other than the United States.

“*F.R.S. Board*” shall mean the Board of Governors of the Federal Reserve System or any successor thereto, and any Governmental Authority succeeding to any of its principal functions.

“*Funding*” shall mean an advance of funds by the Lessor to the Agent pursuant to Article II hereof.

“*Generally Accepted Accounting Principles*” or “*GAAP*” shall mean, as of any date of determination, accounting principles (a) set forth as generally accepted in then currently effective Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants, (b) set forth as generally accepted in then currently effective Statements of the Financial Accounting Standards Board or (c) that are then approved by such other entity as may be approved by a significant segment of the accounting profession in the United States of America. The term “*consistently applied*,” as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

“*Governmental Action*” shall mean all applicable permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Agency, or required by any Applicable Laws and Regulations.

“*Governmental Agency*” or “*Authority*” shall mean any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, the Federal Deposit Insurance Corporation, the F.R.S. Board, the Comptroller of the Currency, any central bank or any comparable authority.

“*Governmental Charges*” shall mean, with respect to any Person, all levies, assessments, fees, claims or other charges imposed by any Governmental Authority upon such Person or any of its property or otherwise payable by such Person.

“*Governmental Rule*” shall mean any law, rule, regulation, ordinance, order, code, interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

“*Grossed-Up Basis*” shall have the meaning provided in Section 11.6.

“*Guaranty Obligation*” shall mean, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person:

(a) With respect to any Indebtedness, lease (other than an operating lease), dividend, or other obligation (the “*primary obligations*”) of another Person (the “*primary obligor*”), including any obligation of that Person (i) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (ii) to advance or provide funds (A) for the payment or discharge of any such primary obligation, or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof;

(b) (i) With respect to letters of credit, acceptances, bank guaranties, surety bonds or similar instruments issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (ii) as a partner or joint venturer in any partnership or joint venture;

(c) With respect to leases that are treated by Lessee as operating leases for accounting purposes and as a loan for all other purposes; or

(d) Net obligations with respect to Rate Contracts, other than Rate Contracts entered into in connection with a bona fide hedging operation that provides offsetting benefits to such Person.

“*Hazardous Material*” shall mean any toxic or hazardous substances, materials, wastes, contaminants or pollutants, including asbestos, PCBs, petroleum products and byproducts, and any substances defined or listed as “hazardous substances,” “hazardous materials,” “hazardous wastes” or “toxic substances” (or similarly identified), regulated under or forming the basis for liability under any applicable Environmental Law.

“*Imposition*” or “*Impositions*” shall mean any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever (“*Taxes*”) (including (i) personal property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangible taxes); (iii) any excise taxes; (iv) transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise,

income, value added, gross receipts, privilege and doing business taxes, license and registration fees; and (vi) assessments on any Item of Equipment or any part thereof or any other Lessee Collateral), and in each case all interest, additions to tax and penalties thereon, which at any time may be levied, assessed or imposed by any Federal, state or local authority upon or with respect to (a) any Indemnitee, any Item of Equipment or any part thereof or interest therein or any other Lessee Collateral, or Lessee or any sublessee of Lessee or user of any Item of Equipment; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other disposition of any Item of Equipment or any part thereof or interest therein; (c) indebtedness with respect to any Item of Equipment or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from any Item of Equipment, any other Lessee Collateral or any part thereof or interest therein; (e) the Operative Documents or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Item of Equipment, any other Lessee Collateral or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract relating to the manufacture, acquisition or delivery of any Item of Equipment or any part thereof or interest therein; or (h) otherwise in connection with the Overall Transaction.

Notwithstanding anything in the first paragraph of this definition (except as provided in the final paragraph of this definition) the term “*Imposition*” shall not mean or include:

(i) any Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, value added, rental, transfer, property or ad valorem taxes) that are imposed by any Governmental Agency and that are based upon or measured by the gross or net income or gross or net receipts (including any minimum taxes or taxes on, measured by or in the nature of capital, net worth, excess profits, items of tax preference, capital stock, franchise, business privilege or doing business taxes); *provided* that this clause (i) shall not be interpreted to prevent a payment from being made on an Grossed-Up Basis if such payment is otherwise required to be so made; *provided further* this clause (i) shall not apply to Taxes and Impositions imposed on an Indemnitee solely as a result of Lessee’s activities or the location of the Equipment in the jurisdiction imposing such Taxes or Impositions;

(ii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that first occurs, or relates to a period, after the termination of the Lease, return of the Items of Equipment as required under the Lease and payment in full of all amounts due under the Lease (but not any Tax or imposition that relates to any period prior to such termination, return and payment in full with respect to the Item of Equipment or Items of Equipment to which such Tax or imposition relates);

(iii) any Tax or imposition imposed on an Indemnitee as a result of the failure of such Indemnitee to file any return or report provided to it pursuant to Section 11.2(d) on a timely basis and to pay any Tax or imposition indicated as being due and payable on such return or report other than any withholding or other Tax which may be paid by Lessee directly;

(iv) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 11.2(b); *provided* that the foregoing shall not limit Lessee's obligations under Section 11.2(b) to advance to such Indemnitee amounts with respect to Taxes or impositions that are being contested in accordance with Section 11.2(b) or any expenses incurred by such Indemnitee in connection with such contest;

(v) any Taxes or imposition imposed upon an Indemnitee with respect to any voluntary transfer, sale, financing or other voluntary disposition of any interest in any Item of Equipment or any part thereof, or any interest therein or any interest or obligation under the Operative Documents, or from any sale, assignment, transfer or other disposition of any interest in a Indemnitee or any Affiliate thereof, (other than any transfer in connection with (1) the exercise by Lessee of its Early Termination Option or any termination option or other purchase of any Item or Items of Equipment by Lessee or the exercise by Lessee of the Purchase Option or the Sale Option, (2) the occurrence of an Lease Event of Default, (3) a Casualty affecting any Item or Items of Equipment, or (4) any assignment, sublease, modification or addition of or to any Item or Items of Equipment by Lessee) or any involuntary transfer of any of the foregoing interests resulting or arising from or in connection with the bankruptcy or insolvency of an Indemnitee;

(vi) any Taxes or impositions imposed on a direct or indirect transferee, successor or assign of an Indemnitee to the extent of the excess of such Taxes or impositions over the amount of such Taxes and impositions that would have been imposed had there not been a transfer by the original Indemnitee of an interest arising under the Operative Documents, *provided, however*, that there shall not be excluded under this clause (vi) any such Tax or imposition if such direct or indirect transferee, successor, or assignee of the Lessor acquired its interest as a result of a transfer in connection with a Lease Event of Default; *provided, further*, that there shall not be excluded under this clause (vi) any amount necessary to make any payment on a Grossed-Up Basis;

(vii) any Tax or imposition to the extent that such Tax or imposition is actually reimbursed to the Indemnitee by a Person other than an Affiliate of such Indemnitee;

(viii) any Taxes or impositions imposed on an Indemnitee, to the extent such Indemnitee actually receives a credit (or otherwise has a reduction in a liability for Taxes) in respect thereof against Taxes that are not indemnified hereunder (but only to the extent such credit was not taken into account in calculating the related indemnity payment on an Grossed-Up Basis);

(ix) any gift, inheritance or estate Tax or similar imposition;

(x) any Tax or imposition imposed on or with respect to an Indemnitee as a result of transactions or activities of such Indemnitee unrelated to the transactions or activities referred to in or contemplated by the Operative Documents;

(xi) any Taxes imposed against or payable by an Indemnitee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Indemnitee;

(xii) Taxes imposed on or payable by an Indemnitee to the extent such Taxes would not have been imposed but for a breach by such Indemnitee or any Affiliate thereof of any representations, warranties or covenants set forth in the Operative Documents (unless such breach is caused by Lessee's breach of its representations, warranties or covenants set forth in the Operative Documents);

(xiii) Taxes of an Indemnitee to the extent resulting from such Indemnitee's failure to comply with the provisions of Section 11.2(b), which failure precludes the ability to conduct a contest pursuant to Section 11.2(b) (unless such failure is caused by Lessee's breach of its obligations);

(xiv) any Taxes imposed on the Lessor that are a result of the Lessor not being considered a "United States person" as defined in Section 7701(a)(30) of the Code; or

(xv) any Taxes imposed against or payable by an Indemnitee as a result of the transfer of the Items of Equipment in connection with the exercise by Lessee of the Sale Option pursuant to Section 15.4 which Lessee is not obligated to pay pursuant to Section 15.4.

Notwithstanding the foregoing, the exclusions from the definition of Impositions set forth in clauses (i), (ii), (iv), (v), (vi), (viii), (ix) and (x) above shall not apply (but the other exclusions shall apply) to any Taxes or any increase in Taxes imposed on an Indemnitee (net of any decrease in Taxes realized by such Indemnitee), to the extent that such Tax increase or decrease would not have occurred if on the Delivery Date the Lessor had advanced funds to Lessee in the form of a loan by Lessor to Lessee secured by the Equipment in an amount equal to the amounts funded on the Delivery Date, with debt service for each such loan equal to the Basic Rent payable on each Payment Date and a principal balance at the maturity of such loan in an amount equal to the then outstanding amount of the Lease Balance.

"*Indebtedness*" shall mean, for any Person, without duplication:

(a) All indebtedness or other obligations of such Person for borrowed money;

(b) All obligations of such Person for the deferred purchase price of property or services (including obligations under credit facilities which secure or finance such purchase price and obligations under leases that are treated by Lessee as operating leases for accounting purposes and as a loan for all other purposes), other than trade payables incurred by such Person in the ordinary course of its business on ordinary terms;

(c) All obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses;

(d) All indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);

(e) All obligations under Capital Leases;

(f) All Guaranty Obligations other than Guaranty Obligations described in clauses (a)(iii) and (a)(iv) of the definition of "Guaranty Obligation" where the primary obligor is a Subsidiary; and

(g) All indebtedness of another Person secured by any Encumbrance upon or in property owned by the Person for whom Indebtedness is being determined, whether or not such Person has assumed or become liable for the payment of such indebtedness of such other Person; *provided*, that if such indebtedness is not assumed and recourse is limited solely to such property, the Indebtedness incurred hereunder shall be valued at the lesser of the principal amount of the obligation so secured or the fair market value of the property subject to such Encumbrance.

"*Indemnatee*" shall mean Agent (in its individual capacity), Lessor, Assignees, any additional, separate or co-agent, and the respective Affiliates, successors, permitted assigns, lenders, secured parties, permitted transferees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives and agents of each of the foregoing Persons; *provided, however*, that in no event shall Lessee or any of its Affiliates be an Indemnatee.

"*Insurance Requirements*" shall mean all terms and conditions of any insurance policy required by the terms hereof to be maintained by Lessee and all requirements of the issuer of any such policy.

"*IRS*" shall mean the Internal Revenue Service, or any successor thereto.

"*Item*" or "*Item of Equipment*" shall mean a particular item of Equipment (including a Replacement Item but excluding a Replaced Item) and "*Items*" or "*Items of Equipment*" shall mean, collectively, each item of Equipment (including Replacement Items but excluding Replaced Items), unless the context requires otherwise.

"*Item Value Fraction*" shall mean, with respect to any Item of Equipment leased hereunder, a fraction, the numerator of which is the Purchase Price for such Item of Equipment and the denominator of which is the aggregate Purchase Price of all Items of Equipment then subject to this Lease, including such Item of Equipment.

"*Lease*" shall have the meaning provided in the preamble.

"*Lease B*" shall mean that certain Lease and Security Agreement (Lease B), dated as of August 6, 2004, among LSI Logic Corporation, a Delaware corporation, as lessee, Bank of the

West, as lessor and Wells Fargo Bank Northwest, National Association, not in its individual capacity except as expressly stated therein, but solely as agent.

“*Lease Balance*” shall mean collectively, the Series A Lease Balance, the Series B Lease Balance, the Series C Lease Balance and the Lessor’s Interest Related Lease Balance.

“*Lease Default*” shall mean any event, condition or failure which, with notice or lapse of time or both, would become a Lease Event of Default.

“*Lease Event of Default*” shall mean any event condition or failure designated as a “*Lease Event of Default*” in Section 12.1.

“*Lease Expiration Date*” shall mean the last day of the Lease Term, subject to any other date on which the Lease is terminated.

“*Lease Term*” shall have the meaning provided in Section 5.1.

“*Lessee*” shall mean LSI Logic Corporation, a Delaware corporation.

“*Lessee Collateral*” shall mean all of Lessee’s right, title and interest in and to each of the following, however arising and whether now existing or hereafter acquired or arising:

(a) the Items of Equipment (including all Parts thereof, accessions thereto and replacements and substitutions therefor);

(b) the Subleases;

(c) all contracts necessary to operate and maintain the Items of Equipment;

(d) any rights to a rebate, offset or other assignment, warranty or service under a purchase order, invoice or purchase agreement with any manufacturer of any Item of Equipment;

(e) all books, manuals, logs, records, writings, software, information and other property solely relating to any of the foregoing;

(f) the Cash Collateral and all cash, monies, certificates of deposit and investments held in the Cash Collateral Accounts; and

(g) all products, accessions, rents, issues, profits, returns, income and proceeds of and from any and all of the foregoing collateral (including proceeds which constitute property of the types described in clauses (a), (b), (c), (d), (e) and (f) above and, to the extent not otherwise included, all payments under insurance (whether or not Lessor is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral).

“*Lessee Obligations*” shall mean all obligations of Lessee at any time and from time to time owed to any one or more or all of the Lessor, Agent (both individually and in its capacity as Agent), each other Indemnitee and their respective successors and permitted assigns, under one or more of the Operative Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, *including* obligations of performance as well as obligations of payment (including all Rent, Lease Balance, Casualty Amount, Purchase Amount and Sale Recourse Amount), and *including* interest that accrues after the commencement of any bankruptcy or insolvency proceeding by or against Lessee or any other Person.

“*Lessee Permitted Investments*” shall mean any investments selected by Lessee in accordance with its Cash Investment Policy and Procedures as adopted by Lessee on March 1, 2004 (as the same may be amended from time to time with the approval of Agent); *provided* that any investments not meeting the standards set forth in such Cash Investment Policy and Procedures shall nevertheless be deemed to be “*Lessee Permitted Investments*” if they do not exceed at any time, in the aggregate, ten percent (10%) of all Lessee Permitted Investments at such time.

“*Lessor*” shall have the meaning provided in the preamble.

“*Lessor Assignment Agreement*” shall mean the Lessor Assignment Agreement dated as of August 6, 2004 among Agent, Lessor, the Assignees and each Securities Intermediary.

“*Lessor’s Interest*” shall mean \$16,080,000.

“*Lessor’s Interest Related Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Lessor’s Interest Related Lease Balance outstanding during such Rent Period at the Lessor’s Interest Related Yield Rate.

“*Lessor’s Interest Related Cash Collateral*” shall mean the Required Lessor’s Interest Related Cash Collateral Amount.

“*Lessor’s Interest Related Cash Collateral Account*” shall have the meaning provided in Section 1.1 of the Cash Collateral Agreement.

“*Lessor’s Interest Related Lease Balance*” shall mean, as of any date of determination, the Lessor’s Interest, *less* the sum of all amounts paid and attributable to the Lessor’s Interest Related Lease Balance pursuant to Section 6.1, 9.1 or 12.2, Article XIV or Article XV.

“*Lessor’s Interest Related Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Lessor’s Interest Related Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of Lessor’s Interest Related Accrual Rent for the Rent Period ending on such Payment Date.

“*Lessor’s Interest Related Yield Rate*” shall mean the LIBO Rate plus 3.00%.

“*Lessor Liens*” shall mean Liens on or against any Item of Equipment, the Lease, the Cash Collateral, the Cash Collateral Accounts or any payment of Rent (a) which result from any act of, or any Claim against Lessor or Agent unrelated to the transactions contemplated by the Operative Documents, (b) which result from any Tax owed by Lessor, except any Tax for which Lessee is obligated to indemnify Lessor or (c) which result from any act or omission of Lessor that is in breach of Lessor’s covenants or agreements under the Operative Documents.

“*LIBO Rate*” shall mean with respect to any Rent Period at any time, the applicable London interbank offered rate for deposits in U.S. dollars appearing on Bloomberg LIBO page, British Bankers Association as of 11:00 a.m.(London time) two (2) Business Days prior to the first day of such Rent Period, and having a maturity approximately equal to such Rent Period; or if no London interbank offered rate of such maturity then appears on Bloomberg LIBO page, then the rate equal to the London interbank offered rate for deposits in U.S. dollars maturing immediately before or immediately after such maturity, whichever is higher, as determined by the Agent from Bloomberg LIBO page; or if Bloomberg LIBO page is not available, the applicable LIBO Rate for the relevant Rent Period shall be the rate determined by the Agent to be the arithmetic average of the rates at which Agent offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Rent Period, in the approximate amount of the Lease Balance on such date and having a maturity approximately equal to such Rent Period.

“*LIBOR Reserve Percentage*” shall mean, relative to any Rent Period, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including “Eurocurrency Liabilities,” as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Rent Period.

“*Lien*” shall mean any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any Item of Equipment or any other Lessee Collateral, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of or agreement to give any financing statement (other than a precautionary financing statement with respect to a lease or other agreement that is not in the nature of a security interest) under the Uniform Commercial Code or comparable law of any jurisdiction with respect to any Item of Equipment or any other Lessee Collateral.

“*LSI*” shall mean LSI Logic Corporation, a Delaware corporation.

“*Manufacturer*” shall mean, individually, any manufacturer of an Item of Equipment and “*Manufacturers*” shall mean, collectively, the Manufacturers of all Items of Equipment.

“*Material Adverse Effect*” shall mean (i) for purposes of Sections 12.1(o), 17.1(p), 18.1(a)(xvi) and 18.2(c)(iv), that the Tangible Net Worth of Lessee is \$600,000,000 or less as determined at the end of the most recently ended fiscal quarter of the Lessee, and (ii) for all other purposes, a materially adverse effect on (A) the assets, business, operations, properties, income or condition (financial or otherwise) or prospects of the Lessee and its consolidated Subsidiaries taken as a whole, (B) the ability or authority of the Lessee to perform its obligations under any of the Operative Documents, (C) the validity or enforceability of any of the Operative Documents or any rights or remedies under any thereof, (D) the rights or interests of the Lessor or any Assignee in the Equipment or the other Lessee Collateral or (E) the Fair Market Value, use, utility, useful life or residual value of the Equipment.

“*Material Lease Default*” shall mean a Lease Default of the type described in Section 12.1(a), (f) or (g).

“*Moody’s*” shall mean Moody’s Investor Service, Inc., or any successor thereto.

“*Multiemployer Plan*” shall mean a “multiemployer plan” as defined in Sections 3(37) and 4001(a)(3) of ERISA.

“*Offeree Letter*” shall have the meaning provided in Section 3.1(s).

“*Operative Documents*” shall mean, as the context requires:

- (a) the Lease;
- (b) the Cash Collateral Agreement;
- (c) each Control Agreement; and
- (d) the Lessor Assignment Agreement.

“*Original Part*” shall have the meaning provided in Section 8.4.

“*Overall Transaction*” shall mean all the transactions and activities referred to in or contemplated by the Operative Documents and the Bill of Sale.

“*Overdue Rate*” shall mean the lesser of (a) the highest interest rate permitted by Applicable Laws and Regulations and (b) an interest rate per annum equal to, in the case of Series A Rent, the Series A Yield Rate *plus* 2%, in the case of the Series B Rent, the Series B Yield Rate *plus* 2%, in the case of the Series C Rent, the Series C Yield Rate *plus* 2% and, in the case of the Lessor’s Interest Related Rent, the Lessor’s Interest Related Yield Rate *plus* 2%.

“*Part*” shall have the meaning provided in Section 8.4.

“*Payment Date*” shall mean (a) the 28th day of each March, June, September and December and (b) the last day of the Lease Term or, in each case, the next succeeding Business Day if such day is not a Business Day, unless the result would be that the Payment Date would

be in the next succeeding calendar month, in which case such Payment Date shall be on the next preceding Business Day.

“*Payment Default*” shall have the meaning provided in Section 20.3.

“*PBGC*” shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

“*Pension Plan*” shall mean any-employee pension benefit plan covered by Title IV of ERISA (other than a Multiemployer Plan) that is maintained for employees of Lessee or any ERISA Affiliate or with regard to which Lessee or an ERISA Affiliate is a contributing sponsor within the meaning of Sections 4001(a)(13) or 4069 of ERISA.

“*Permitted Contest*” shall mean actions taken by a Person to contest in good faith, by appropriate proceedings (judicial or otherwise) initiated timely and diligently prosecuted, including to contest the legality, validity or applicability to any Item of Equipment or any other Lessee Collateral or any interest therein of any Person of: (a) any Applicable Laws and Regulations; (b) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action or any contract or arrangement or obligation; or (c) any Lien or Tax; *provided* that the initiation and prosecution of such contest would not: (i) result in, or materially increase the risk of, the imposition of any criminal liability or material civil liability on any Indemnitee; (ii) be reasonably likely to adversely affect the lien and security interests created by the Operative Documents or the right, title or interest of Lessor in or to any of the Items of Equipment or any other Lessee Collateral or the right of Lessor to receive payment of Rent or the Lease Balance or any other amount payable under the Operative Documents or any interest therein; (iii) be reasonably likely to adversely affect in any material respect the fair market value, utility or remaining useful life of any Item of Equipment or any interest therein; (iv) involve any material risk of the sale, forfeiture or loss of any Item of Equipment or any other Lessee Collateral, title thereto or any material interest therein or materially interfere with the use or disposition of any Item of Equipment or the payment of Rent or (v) otherwise be reasonably expected to result in a Material Adverse Effect; and *provided further* that in any event reserves to the extent required by GAAP are maintained against any adverse determination of such contest.

“*Permitted Encumbrances*” shall mean:

(a) Encumbrances which may at any time be granted in favor of Lessor to secure the Lessee Obligations;

(b) Encumbrances in existence as of the Delivery Date listed on Schedule IV, and any substitutions or renewals thereof, provided that (i) any substitute or renewal Encumbrance is limited to the property encumbered by the existing Encumbrance, and (ii) the principal amount of the obligations secured thereby is not increased;

(c) Encumbrances for current taxes, assessments or other Governmental Charges which are not delinquent or remain payable without any penalty or which are

being contested in good faith via appropriate proceedings, with appropriate reserves established therefor in accordance with GAAP;

(d) Encumbrances in connection with workers' compensation, unemployment insurance or other social security obligations;

(e) Mechanics', workers', materialmen's, landlords', carriers' or other like Encumbrances arising in the ordinary and normal course of business with respect to obligations which are not past due or which are being contested in good faith via appropriate proceedings, with appropriate reserves established therefor in accordance with GAAP;

(f) Purchase money security interests (including by way of installment sales and title retention agreements) in personal or real property hereafter acquired when the security interest is granted contemporaneously with such acquisition (or within nine months thereafter), Encumbrances created to secure the cost of construction or improvement of property and Encumbrances created to secure Indebtedness incurred to finance such purchase price or cost (including Encumbrances of Lessee in favor of the United States or any state, or any department, agency, instrumentality or political subdivision thereof, securing any real property or other assets in connection with the financing of industrial revenue bond facilities or of any equipment or other property designed primarily for the purpose of air or water pollution control); *provided* that (i) any such Encumbrance shall attach only to the property so purchased, constructed or improved, together with attachments and accessions thereto, and rents, proceeds, products, substitutions, replacements and profits thereof and attachments and accessories thereto, and (ii) the amount of Indebtedness secured by any such Encumbrance shall not exceed the purchase or construction price of such property plus transaction costs and financing charges relating to the acquisition or construction thereof;

(g) Encumbrances arising from attachments or similar proceedings, pending litigation, judgments or taxes or assessments in any such event whose validity or amount is being contested in good faith by appropriate proceedings and for which adequate reserves have been established and are maintained in accordance with GAAP;

(h) Encumbrances arising in the ordinary course of business or by operation of law, not securing Indebtedness, but securing such obligations as (i) judgments or awards, which (A) are covered by applicable insurance or (B) have been outstanding less than thirty (30) consecutive days, (ii) interests of landlords or lessors under leases of real or personal property entered into in the ordinary course of business arising by contract or operation of law, (iii) Encumbrances in favor of customs and revenue authorities which secure payment of customs in connection with the importation of goods, (iv) Encumbrances which constitute rights of set-off of a customary nature or bankers' liens on amounts on deposit, whether arising by contract or by operation of law, in connection with arrangements entered into with depository institutions in the ordinary course of business, (v) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to similar properties

which do not, individually or in the aggregate, materially impair the property affected thereby or the use thereof and (vi) subleases, licenses, and sublicenses granted to third parties, the granting of which does not result in a Material Adverse Effect;

(i) Encumbrances securing reimbursement obligations of Lessee under documentary letters of credit; *provided* that such Encumbrances shall attach only to documents relating to such letters of credit, goods covered thereby and products and proceeds thereof;

(j) Encumbrances on insurance policies or the proceeds of insurance policies other than policies and the proceeds of policies required pursuant to Section 9.2 hereof incurred solely to secure the financing of premiums owing with respect thereto;

(k) Encumbrances existing on property (including the proceeds and accessions thereto) acquired by Lessee (including Encumbrances on assets of any corporation at the time it becomes a Subsidiary), but excluding any Encumbrances created in contemplation of any such acquisition; and

(l) Encumbrances encumbering customary initial deposits and margin deposits, and other Encumbrances that are within the general parameters customary in the industry and incurred in the ordinary course of business in connection with Rate Contracts or portfolio investments maintained with financial intermediaries.

“*Permitted Investments*” shall mean (a) full faith and credit obligations of the United States of America, or fully guaranteed as to interest and principal by the full faith and credit of the United States of America, maturing in not more than one year from the date such investment is made, (b) certificates of deposit having a final maturity of not more than one year after the date of issuance thereof of an Assignee or of any other commercial bank incorporated under the laws of the United States of America or any state thereof or the District of Columbia, which bank is a member of the Federal Reserve System and has a combined capital and surplus of not less than \$500,000,000 and with a senior unsecured debt credit rating of at least “A3” by Moody’s and “A-” by S & P, (c) commercial paper of Lessor or any Assignee having a remaining term until maturity of not more than 180 days from the date such investment is made, (d) commercial paper of Lessee, banks, trust companies or national banking associations (in each case excluding Lessee and its Affiliates) incorporated or doing business under the laws of the United States or one of the States thereof, in each case having a remaining term until maturity of not more than 180 days from the date such investment is made and rated at least “P-1” by Moody’s or at least “A-1” by S&P and (e) repurchase agreements maturing within one year with any financial institution having combined capital and surplus of not less than \$500,000,000 with any of the obligations described in clauses (a) through (d) as collateral so long as title to the underlying obligations pass to Agent and such underlying obligations shall be segregated in a custodial or trust account for the benefit of Agent.

“*Permitted Liens*” shall mean (a) the respective rights and interests of Lessee, Agent and Lessor, as provided in the Operative Documents, (b) Lessor Liens, (c) Liens for current Taxes either not yet delinquent or being contested by a Permitted Contest, (d) the leasehold interest of

any Person under any Sublease permitted under Section 8.2 of the Lease, (e) materialmen's, mechanic's, worker's, artisan's, repairmen's, employee's or other like Liens securing payment of the price of goods or services rendered arising in the ordinary course of business for amounts either not yet due or being contested by a Permitted Contest, (f) statutory Liens, other than those described in clauses (a) or (e) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested by a Permitted Contest; *provided that*, if delinquent, adequate reserves have been set aside with respect thereto and, by reason of nonpayment, no Item of Equipment or any other Lessee Collateral is subject to a material risk of loss or forfeiture, and (g) Liens created by or resulting from any litigation or legal proceeding involving Lessee or any of its Subsidiaries in the ordinary course of its business which is currently being contested by a Permitted Contest.

"Permitted Modification" shall have the meaning provided in Section 8.4.

"Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a limited liability company, a joint venture, a trust or other entity or a Governmental Authority.

"Plan" shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which Lessee or any ERISA Affiliate sponsors or maintains, or to which Lessee or any ERISA Affiliate makes, is making, or is obligated to make contributions, and includes any Pension Plan.

"Prohibited Transaction" shall mean a transaction that is prohibited under Code Section 4975 or ERISA Section 406 and not exempt under Code Section 4975 or ERISA Section 408.

"Purchase Amount" shall mean, as of any date of determination, the sum of (a) the Lease Balance as of such date of determination, *plus* (b) all Rent and other sums then due and payable pursuant to the terms of the Operative Documents by Lessee, including, without limitation, all Supplemental Rent.

"Purchase Option" shall have the meaning provided in Section 15.1(a).

"Purchase Price" (i) for an Item of Equipment shall mean the Appraised Value of such Item of Equipment, *plus* applicable sales, use or similar taxes financed by the Lessor through the Funding and as more specifically described on Schedule I hereto and (ii) the aggregate Purchase Price of all Items of Equipment leased hereunder shall mean, collectively, the Series A Purchase Price, the Series B Purchase Price, the Series C Purchase Price and the Lessor's Interest, *plus* applicable sales, use or similar taxes financed by the Lessor through the Funding. The Purchase Price for a Replacement Item shall be deemed to be the Purchase Price of the Item of Equipment replaced by such Replacement Item.

"Rate Contracts" shall mean interest rate swaps, caps, floors and collars, currency swaps, or other similar financial products designed to provide protection against fluctuations in interest, currency or exchange rates.

“RBS Cash Collateral Account” shall have the meaning provided in the Cash Collateral Agreement.

“RBS Control Agreement” shall mean that certain Control Agreement, dated as of August 6, 2004, among the RBS Securities Intermediary, the Lessee and Lessor.

“RBS Securities Intermediary” shall have the meaning provided in the Cash Collateral Agreement.

“Regulatory Requirement” shall have the meaning provided in Section 11.4(b).

“Related Party” shall have the meaning provided in Section 18.2(g).

“Release” shall mean the release, deposit, disposal or leak of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by shall mean of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

“Removable Part” shall have the meaning provided in Section 8.4.

“Rent” shall mean Basic Rent and Supplemental Rent, collectively.

“Rent Period” shall mean (a) for the initial Rent Period, a period commencing on the Delivery Date to but excluding the first Payment Date and (b) for each other Rent Period, each period commencing on a Payment Date to but excluding the next Payment Date; *provided* that any Rent Period that would otherwise extend beyond the Lease Expiration Date shall end on the Lease Expiration Date.

“Replaced Item” or “Replaced Items” shall have the meaning provided in Section 8.7.

“Replacement Items” or “Replacement Items” shall have the meaning provided in Section 8.7.

“Replacement Parts” shall have the meaning provided in Section 8.4.

“Reportable Event” shall mean any of the events set forth in Section 4043(b) of ERISA or the regulations promulgated thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“Required Alteration” shall have the meaning provided in Section 8.4.

“Required Cash Collateral Amount” shall mean, as the context may require, any or all of the Required RBS Cash Collateral Amount, the Required BTM Cash Collateral Amount, the Required Series C Cash Collateral Amount and the Required Lessor’s Interest Related Cash Collateral Amount.

“*Required BTM Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series A Lease Balance held by BTM Capital Corporation, plus 100% of the Series A Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date.

“*Required RBS Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series A Lease Balance held by RBS Lombard, Inc., plus 100% of the Series A Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date.

“*Required Series C Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series C Lease Balance, plus 100% of the Series C Accrual Rent due on the next succeeding Payment Date.

“*Required Lessor’s Interest Related Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Lessor’s Interest Related Lease Balance, plus 100% of the Lessor’s Interest Related Accrual Rent due on the next succeeding Payment Date.

“*Residual Value*” shall mean the Fair Market Value of the Equipment as of the end of the Lease Term as determined by the Appraisal.

“*Responsible Official*” or “*Responsible Officer*” shall mean, when used with reference to a Person other than an individual, any corporate officer of such Person, general partner of such Person, corporate officer of a corporate general partner of such Person, or corporate officer of a corporate general partner of a partnership that is a general partner of such Person, or any other responsible official thereof duly acting on behalf thereof. Any document or certificate hereunder that is signed or executed by a Responsible Official of another Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such other Person; *provided, however*, that with respect to Lessee or its Affiliates, Responsible Official or Responsible Officer shall mean, with respect to any Person, the chief executive officer, the president, the chief financial officer or the treasurer of such Person, or any other senior officer of such Person having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of any such Person, or any other senior officer of such Person involved principally in the financial administration or controllership function of such Person and having substantially the same authority and responsibility.

“*Sale Option*” shall have the meaning provided in Section 15.1(b).

“*Sale Proceeds*” shall have the meaning set forth in Section 15.1(b).

“*Sale Recourse Amount*” shall mean the product obtained by multiplying the aggregate Purchase Price for the Items of Equipment then subject to the Lease by 45.61349478607%.

“*SEC*” shall mean the United States Securities and Exchange Commission and any successor thereto.

“*Securities Act*” shall mean the Securities Act of 1933, as amended.

“*Securities Intermediaries*” shall mean, collectively, each Securities Intermediary under the Control Agreements and “*Securities Intermediary*” shall mean any of them, as the context requires.

“*Seller’s Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series*” shall have the meaning set forth in Section 3.1(b)(2)(E) of the Lessor Assignment Agreement.

“*Series A Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series A Lease Balance outstanding during such Rent Period at the Series A Yield Rate.

“*Series A Assignee*” shall mean each Assignee that purchases and assumes an Assignee’s Share with respect to the Series A Lease Balance pursuant to the Lessor Assignment Agreement.

“*Securities Intermediary*” shall have the meaning provided in the Cash Collateral Agreement.

“*Series A Capital Rent*” shall mean, for each Payment Date during the Lease Term, that portion of the installment of Rent payable on such Payment Date designated as Series A Capital Rent under the column heading “Series A Capital Rent” on Schedule III.

“*Series A Cash Collateral*” shall mean, collectively, the Required RBS Cash Collateral Amount and the Required BTM Cash Collateral Amount.

“*Series A Lease Balance*” shall mean, as of any date of determination, the Series A Purchase Price, less (a) the sum of all Series A Capital Rent paid prior to such date of determination, and (b) the sum of all amounts paid and attributable to the Series A Lease Balance pursuant to Section 9.1 or 12.2, Article XIV or Article XV.

“*Series A Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series A Purchase Price*” shall mean \$158,213,124.44.

“*Series A Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of (a) Series A Capital Rent and (b) Series A Accrual Rent for the Rent Period ending on such Payment Date.

“*Series A Yield Rate*” shall mean the LIBO Rate plus 0.55%.

“*Series B Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series B Lease Balance outstanding during such Rent Period at the Series B Yield Rate.

“*Series B Assignee*” shall mean each Assignee that purchases and assumes an Assignee’s Share with respect to the Series B Lease Balance pursuant to the Lessor Assignment Agreement.

“*Series B Capital Rent*” shall mean, for each Payment Date during the Lease Term, that portion of the installment of Rent payable on such Payment Date designated as Series B Capital Rent under the column heading “Series B Capital Rent” on Schedule III.

“*Series B Lease Balance*” shall mean, as of any date of determination, the Series B Purchase Price, less (a) the sum of all Series B Capital Rent paid prior to such date of determination, and (b) the sum of all amounts paid and attributable to the Series B Lease Balance pursuant to Section 9.1 or 12.2, Article XIV or Article XV.

“*Series B Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series B Purchase Price*” shall mean \$14,070,000.

“*Series B Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of (a) Series B Capital Rent and (b) Series B Accrual Rent for the Rent Period ending on such Payment Date.

“*Series B Yield Rate*” shall mean the LIBO Rate plus 2.00%.

“*Series C Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series C Lease Balance outstanding during such Rent Period at the Series C Yield Rate.

“*Series C Cash Collateral*” shall mean the Required Series C Cash Collateral Amount.

“*Series C Lease Balance*” shall mean, as of any date of determination, the Series C Purchase Price, less the sum of all amounts paid and attributable to the Series C Lease Balance pursuant to Section 6.1, 9.1 or 12.2, Article XIV or Article XV.

“*Series C Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series C Purchase Price*” shall mean \$12,636,875.56.

“*Series C Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of Series C Accrual Rent for the Rent Period ending on such Payment Date.

“*Series C Yield Rate*” shall mean the LIBO Rate plus 1.50%.

“*Significant Subsidiary*” shall mean, at any time, any Subsidiary of Lessee having total assets (excluding intercompany assets and liabilities) as of the last day of the preceding fiscal quarter representing 10% or more of the Lessee’s consolidated total assets, excluding goodwill and long-term deferred asset charges, based upon Lessee’s most recent quarterly Financial Statements delivered to Agent under Section 18.1(a), determined in accordance with GAAP.

“*Solvent*” shall mean, with respect to any Person, that as of the date of determination, (a) the then fair saleable value of the property of such Person is (i) greater than the total amount of liabilities (including reasonably anticipated liabilities with respect to contingent obligations) of such Person and (ii) greater than the amount that will be required to pay the probable liabilities on such Person’s then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person, and (b) such Person has not incurred and does not intend to incur, nor does it believe that it will incur, debts beyond its ability to pay such debts as they become due.

“*S&P*” shall mean Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

“*Sublease*” shall have the meaning provided in Section 8.2.

“*Sublessee*” shall have the meaning provided in Section 8.2.

“*Subsidiary*” shall mean any corporation, association, partnership, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other equity interest is owned directly or indirectly by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

“*Supplemental Rent*” shall mean any and all amounts, liabilities and obligations other than Basic Rent which Lessee assumes or agrees or is otherwise obligated to pay under the Lease or any other Operative Document (whether or not designated as Supplemental Rent) to Lessor or any other Person, including, without limitation, Purchase Amount, Break Funding Amounts and indemnities and damages for breach of any covenants, representations, warranties or agreements.

“*Surplus Collateral*” is defined in Section 18.3(b)(ii).

“*Surviving Corporation*” shall have the meaning provided in Section 18.2(c)(iv).

“*Swap Termination Value*” shall mean, in respect of any one or more Rate Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Rate Contracts, (a) for any date on or after the date such Rate Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) the amount(s) determined as the mark-to-market value(s) for such Rate Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Rate Contracts (which may include any Assignee).

“*Tangible Net Worth*” shall mean, as of any date of determination, Consolidated Total Assets, *minus* Consolidated Total Liabilities, *minus* Consolidated Intangible Assets, adjusted to add back all non-cash charges recorded after the Delivery Date (other than customary depreciation and amortization and non-cash charges related to Consolidated Intangible Assets).

“*Taxes*” and “*Tax*” shall have the meaning provided in the definition herein of “*Imposition*.”

“*Transaction Costs*” shall mean reasonable properly documented out-of-pocket costs, expenses and fees incurred by Agent, Lessor, Lessee and Arranger, in connection with the consummation of the transactions contemplated by the Operative Documents, and the preparation, negotiation, execution and delivery, modification and/or enforcement of the Operative Documents, including (a) the reasonable fees and expenses of Chapman and Cutler LLP, document counsel; (b) the reasonable fees and expenses of Latham & Watkins LLP, special counsel to the Lessee; (c) the initial and ongoing fees and expenses of the Agent and its special counsel payable in accordance with the Agent Fee Letter; (d) all reasonable fees and expenses of the Appraiser with respect to the Appraisal; (e) all taxes and search fees, recording fees and filing fees incurred in connection with lien searches and the recording, registering or filing any Operative Document, any security agreement, notice or financing statement with any public office, registry or governmental agency; (f) all fees and expenses incurred in connection with residual value insurance; (g) the initial and ongoing reasonable fees and expenses of each Securities Intermediary; and (h) all fees and expenses of Arranger in connection with the syndication of the transaction.

“*UCC*” shall mean the Uniform Commercial Code of any applicable jurisdiction.

“*Unfunded Pension Liability*” shall mean the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Plan pursuant to Section 412 of the Code for the applicable year.

“*Unrestricted Cash Reserves*” shall mean, in respect of the Lessee and its wholly-owned Subsidiaries on a consolidated basis at any time, the sum of (a) cash, *plus* (b) cash equivalents (as determined in accordance with GAAP), *plus* (c) readily marketable debt securities that are current assets (in accordance with GAAP) and which are rated A-/A3 or better by S&P and Moody’s, respectively, *minus* (d) the amount of assets specified in clause (a), (b) and (c) of this definition that are subject to the Cash Collateral Agreement, any Control Agreement, the cash collateral agreement or control agreements entered into in connection with the Lease A or any other Encumbrance, other than Encumbrances permitted under clauses (c) and (h)(iv) of the definition of “*Permitted Encumbrances*.”

“*Upfront Fee*” shall have the meaning provided in Section 2.10.

“*USA Patriot Act*” shall mean United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

ARTICLE II

ACQUISITION AND LEASE; GENERAL PROVISIONS

Section 2.1. Funding; Payment of Purchase Price. (a) Subject to the terms and conditions of this Lease and the other Operative Documents, and in reliance on the representations and warranties contained herein or made pursuant hereto, on the Delivery Date, Lessor shall transfer to Agent an amount equal to the Purchase Price.

(b) Remittances pursuant to this Section 2.1 shall be made in immediately available funds by wire transfer to the account of Agent set forth below and must be received by Agent by 10:00 a.m., California time, on the Delivery Date:

Bank:	Wells Fargo Bank Northwest, National Association
ABA Routing #:	121-000-248
Account #:	A/C: 0510922115
Payee:	Corporate Trust Department
Notify:	DeAnn Madsen
Reference:	LSI Logic 2004 Lease

Section 2.2. Application of Funds; Purchase and Lease of Equipment. On the Delivery Date, upon (a) receipt by Agent of all amounts to be paid by Lessor pursuant to Section 2.1(a), and (b) satisfaction or waiver consented to by Agent, Lessor and each Assignee of each of the conditions set forth in Article III, (i) Agent, on behalf of Lessor, shall pay, from the funds made available by Lessor pursuant to Section 2.1(a), an amount equal to the Purchase Price of the Items of Equipment in immediately available funds remitted by wire transfer to the account(s) specified by Lessee and (ii) Lessor shall lease to Lessee the Items of Equipment and Lessee shall accept delivery of and lease from Lessor the Items of Equipment pursuant to this Lease.

Section 2.3. Delivery Date Notice and Delivery Date. At least two (2) Business Days prior to the Delivery Date, Lessee shall deliver to Agent and Lessor an irrevocable written notice (the "Delivery Date Notice") substantially in the form of Exhibit A, setting forth, *inter alia*,

- (a) a description of the Purchase Price and the amounts thereof; and
- (b) wire transfer instructions for the disbursement of funds.

All documents and instruments required to be delivered on the Delivery Date pursuant to this Lease shall be delivered at the offices of Chapman and Cutler LLP, 595 Market Street, Suite 2600, San Francisco, California 94104-2839. On the Delivery Date, subject to the terms and conditions of this Lease, and upon receipt of funds by Agent from Lessor sufficient therefor, Agent shall pay the Purchase Price for the Items of Equipment on behalf of Lessor and Lessor shall thereby purchase and lease the Items of Equipment to Lessee.

Section 2.4. Nature of Transaction. It is the intent of the parties that the transaction contemplated hereby constitutes an operating lease from Lessor to Lessee under Financial Accounting Standard Board Statement No. 13 for Lessee's financial reporting and a non-consolidated transaction under Financial Accounting Standard Board Interpretation No. 46R ("*FIN 46R*") or Financial Accounting Standard Board Statement No. 94 ("*FASB 94*") or related interpretations, as applicable. The parties agree that for Federal and state and local income tax, bankruptcy, insolvency, conservatorship, receivership, commercial law and UCC purposes (including the substantive law upon which such bankruptcy, insolvency, conservatorship and receivership proceedings are based) (a) this Lease will be treated as a financing transaction, (b) the transaction contemplated hereby preserves ownership in the Items of Equipment in Lessee, (c) this Lease grants a Lien in the Items of Equipment and the other Lessee Collateral to Lessor, (d) the obligations of Lessee to pay deemed principal portion and deemed interest portion of Rent shall be treated as payments of principal and interest, respectively, and (e) Lessee will be treated as the owner of the Items of Equipment and Lessor shall be treated as having advanced funds to Lessee in the form of a loan secured by a Lien on the Items of Equipment and the other Lessee Collateral. Except as specifically provided for herein, Lessor shall be deemed to have a first priority, perfected security interest in and Lien on the Items of Equipment and the other Lessee Collateral, free and clear of all Liens other than Permitted Liens, as security for the obligations of Lessee under the Operative Documents. Except as otherwise provided by law or in connection with a settlement, compromise or adjudication made under the provisions of Section 11.2(c), each of the parties to this Lease agrees that it will not, nor will it permit any Affiliate to at any time, take any action or fail to take any action with respect to the filing of any income tax return, including an amended income tax return, inconsistent with the intention of the parties expressed in this Section 2.4.

Section 2.5. [Reserved].

Section 2.6. Cash Collateral. On the Delivery Date, Lessee shall cause (by delivery to the Securities Intermediaries of, or by otherwise depositing into the Cash Collateral Accounts, sufficient Cash Collateral):

- (a) Cash Collateral to be deposited into the RBS Cash Collateral Account in an amount equal to \$144,569,109.90; and
- (b) Cash Collateral to be deposited into the BTM Cash Collateral Account in an amount equal to \$43,031,001.24;

in each case, to be held in such Cash Collateral Accounts, which Required Cash Collateral Amounts shall be assigned and pledged by Lessee to the Lessor pursuant to the Cash Collateral Agreement as security for the obligations of Lessee under the Operative Documents with respect to the Series A Lease Balance, the Series C Lease Balance and the Lessor's Interest Related Lease Balance and all other amounts due with respect to the Series A Lease Balance, Series C Lease Balance and Lessor's Interest Related Lease Balance; *provided* that pursuant to the Lessor Assignment Agreement, a portion of the Lessor's right, title and interest in and to the Series A Cash Collateral shall be assigned and sold by Lessor to each Series A Assignee in an amount equal to the Series A Lease Balance held by such Series A Assignee *plus* 100% of the Series A

Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date, in each case to secure such Series A Lease Balance and all other amounts due with respect to such Series A Lease Balance; *provided further*, that, if a Securities Intermediary has an unsecured debt credit rating of “A3” by Moody’s and “A-” by S&P, then the aggregate amount of the certificates of deposit constituting Cash Collateral which is issued by such Securities Intermediary shall not exceed \$40,000,000 in face amount.

Section 2.7. [Reserved].

Section 2.8. Legal, Accounting and Tax Representation. Lessee and Lessor acknowledge and agree that none of Agent, Lessor, any Assignee or Arranger has made or will make any representation or warranty concerning the tax, accounting or legal characteristics of this Lease, any of the other Operative Documents or the Overall Transaction, and that each of Lessee and Lessor has obtained and relied on such tax, accounting and legal advice regarding this Lease, the other Operative Documents and the Overall Transaction as it deems appropriate.

Section 2.9. Computations.

(a) *Determination of Accrual Rent.* All computations of Accrual Rent and other accrued amounts (including, without limitation, the Overdue Rate), in each case pursuant to the Operative Documents shall be made on the basis of a 360-day year and the actual days elapsed for Accrual Rent calculated by reference to the LIBO Rate.

(b) *Conclusive Determinations.* Each determination of Accrual Rent pursuant to any provision of this Lease or any of the other Operative Documents shall be conclusive in the absence of manifest error.

Section 2.10. Fees. Lessee agrees to pay the fees set forth in this Section 2.10.

(a) An upfront fee payable on the Delivery Date to Agent, on behalf of Lessor, in an amount mutually agreed to by Lessee and Lessor (the “*Upfront Fee*”).

(b) The fee payable on the Delivery Date to the Agent, as provided in the Agent Fee Letter.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1. Conditions to Delivery Date. The effectiveness of this Lease, and the obligation of Agent, Lessor and each Assignee to perform their respective obligations on the Delivery Date, shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof), or the waiver by

Agent, Lessor and each Assignee of, the conditions precedent set forth in this Section 3.1 on or before the Delivery Date (except that the obligation of any party hereto shall not be subject to the performance or compliance of such party or of any of such party's Affiliates). In the event the Lessor and the Assignees fund on the Delivery Date, all of the conditions precedent shall be deemed satisfied or waived.

(a) *Authorization, Execution and Delivery of Operative Documents; No Lease Default.* The Operative Documents and the Bill of Sale shall have been duly authorized, executed and delivered by each of the parties thereto, shall be in form and substance satisfactory to Agent, Lessor and each Assignee and an executed counterpart of each thereof shall have been received by Agent, Lessor and each Assignee. Each of the Operative Documents shall be in full force and effect as to all parties and no Lease Default or Lease Event of Default shall have occurred or be continuing or shall occur after giving effect to the Operative Documents.

(b) *Legal Opinions.* Agent, Lessor and each Assignee shall have received favorable opinions, in each case, dated the Delivery Date of (i) Ray, Quinney & Nebeker, special counsel to Agent, substantially in the form attached hereto as Exhibit B, (ii) Senior Corporate Counsel of Lessee, substantially in the form attached hereto as Exhibit C and (iii) Latham & Watkins LLP, special counsel to Lessee, substantially in the form attached hereto as Exhibit D, in each case, in form and substance satisfactory to Agent, Lessor and each Assignee.

(c) *Governmental and Third Party Approvals.* All necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons other than Governmental Agencies, in each case in form and substance satisfactory to Agent, Lessor and each Assignee required as of the Delivery Date in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure of which to obtain, or the appeal of or further procedures with respect to which, could not reasonably be expected to have a Material Adverse Effect.

(d) *Corporate Status and Proceedings.* Agent, Lessor and each Assignee shall have received:

(i) a copy of the certificates of good standing with respect to Lessee from the appropriate Governmental Agency of the jurisdiction of its formation, dated no earlier than the 10th day prior to the Delivery Date; and

(ii) certificates of the Secretary or Assistant Secretary of Lessee, substantially in the form of Exhibit E, and attaching and certifying as to (A) the directors' resolutions in respect of the execution, delivery and performance by Lessee of each Operative Document to which it is or will be a party, (B) its articles of incorporation and by-laws and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of Lessee.

(e) *Agent Secretary's Certificate*. Lessor and each Assignee shall have received (x) a certificate of the Secretary or Assistant Secretary of Agent attaching and certifying as to: (i) the corporate authority for the execution, delivery and performance by Agent of each Operative Document to which it is or will be a party, (ii) its organizational documents, (iii) its by-laws and (iv) the incumbency and signature of persons authorized to execute and deliver such documents on behalf of Agent, and (y) a good standing certificate from the appropriate Governmental Agency as to Agent's good standing in its jurisdiction of formation.

(f) *Representations and Warranties*. Each representation and warranty of Lessee contained herein or in any other Operative Document and to be made on the Delivery Date shall be true and correct as of the Delivery Date.

(g) *Appraisal*. Agent, Lessor and each Assignee shall have received a copy of an appraisal (the "*Appraisal*") on or before the Delivery Date of the Items of Equipment from the Appraiser in form and substance satisfactory to Agent, Lessor and each Assignee, which shall establish (by the use of appraisal methods satisfactory to Agent) the remaining useful life of such Items of Equipment as of the Delivery Date and the Fair Market Value of such Items of Equipment as of the Delivery Date and the last day of the Lease Term on an in-exchange, in-continued use basis.

(h) [*Reserved*].

(i) *Fees and Transaction Costs*. Lessee shall have paid all fees and Transaction Costs due and payable on or prior to the Delivery Date.

(j) *Liens*. Upon the payment by Lessor of the Purchase Price pursuant to Section 2.2, the deposit of the Cash Collateral into the Cash Collateral Accounts, the execution and delivery of each of the Lessor Assignment Agreement and the Control Agreements by the parties thereto and the filing of the UCC financing statements listed on Schedule 3.1(j), (A) the Lessor shall have a first-priority, perfected security interest in the Lessee Collateral (other than the Lessee Collateral described in clause (B) below), subject only to Permitted Liens, (B) each Series A Assignee shall have a first-priority, perfected security interest in the Series A Cash Collateral purchased and assumed by such Series A Assignee pursuant to the Lessor Assignment Agreement and (C) the Items of Equipment and the other Lessee Collateral shall be free and clear of all Liens other than Permitted Liens.

(k) *No Casualty*. No Casualty or other event or circumstance that, with the giving of notice or lapse of time or both, would constitute a Casualty with respect to the Items of Equipment, shall have occurred and be continuing.

(l) *Bills of Sale*. The Lessor shall have received the Bills of Sale duly executed by the respective sellers of the Equipment, conveying free and clear title to the Lessor of all of the Items of Equipment.

(m) *Insurance*. Lessee shall have delivered to Agent, Lessor and each Assignee the insurance Certificates required by Section 9.3.

(n) *Absence of Material Adverse Effect.* Since December 31, 2003, no Material Adverse Effect shall have occurred.

(o) *Filings and Recordings.* Evidence that, upon filing of all UCC financing statements with respect to the Items of Equipment (including applicable UCC-3 termination statements and fixture filings with respect to the Equipment), all filings and recordings shall have been recorded or filed in such places or offices as may be necessary or advisable in the reasonable opinion of Agent, Lessor and each Assignee, to perfect the rights, title and interest of Lessor intended to be created by the Operative Documents. The Agent, Lessor and each Assignee shall have received the reports of lien searches conducted against Lessee and the Items of Equipment in such states and with Governmental Agencies as the Agent, Lessor and each Assignee, may reasonably request.

(p) *Cash Collateral.* Lessee shall have deposited the Required Cash Collateral Amount with the Securities Intermediaries to the satisfaction of Agent, Lessor and each Assignee, in accordance with Section 2.6.

(q) *[Reserved.]*

(r) *Delivery Date Notice.* Lessee shall have delivered to Agent, Lessor and each Assignee the Delivery Date Notice conforming with the requirements of Section 2.3.

(s) *Offeree Letter.* Agent, Lessor, each Assignee and Lessee shall have received a letter, substantially in the form of Exhibit H, from the Arranger, dated the Delivery Date, with respect to the number of offerees of the interests in the Items of Equipment, the Lease and the other Operative Documents (the “*Offeree Letter*”).

(t) *Further Documents.* Agent, Lessor and each Assignee shall have received all such further documents as the Agent, Lessor or any Assignee may reasonably require.

ARTICLE IV

ACCEPTANCE AND LEASING OF EQUIPMENT

Section 4.1. Acceptance and Lease. Lessor hereby agrees (subject to satisfaction or waiver of the conditions set forth in Article III) to accept delivery of each Item of Equipment from the sellers thereof and to lease such Item of Equipment to Lessee hereunder, and Lessee hereby agrees, immediately following such acceptance by Lessor, to lease from Lessor hereunder each such Item of Equipment, such acceptance by Lessor and lease by Lessee to be evidenced by the execution and delivery by Lessee and Lessor of this Lease, all in accordance with Article III. Lessee hereby agrees that its execution and delivery of this Lease shall, without further act, as between Lessor and Lessee irrevocably constitute an agreement by Lessee to lease each Item of Equipment for all purposes of this Lease.

Section 4.2. No Warranty. THE ITEMS OF EQUIPMENT ARE LEASED BY LESSEE “AS IS” IN THEIR PRESENT OR THEN CONDITION, AS THE CASE

MAY BE, SUBJECT TO (i) ANY RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (ii) THE STATE OF TITLE THERETO EXISTING AT THE TIME LESSOR ACQUIRES ITS INTEREST IN THE ITEMS OF EQUIPMENT, (iii) ANY STATE OF FACT WHICH AN ACCURATE PHYSICAL INSPECTION MIGHT SHOW, AND LESSEE CONFIRMS THAT ITS EXECUTION AND DELIVERY OF THIS LEASE SHALL CONSTITUTE ITS CERTIFICATION THAT IT HAS INSPECTED AND ACCEPTS, AS BETWEEN LESSOR AND LESSEE, EACH ITEM OF EQUIPMENT WHICH IS THE SUBJECT MATTER HEREOF, (iv) ALL APPLICABLE LAWS AND REGULATIONS, AND (v) ANY VIOLATIONS OF APPLICABLE LAWS AND REGULATIONS WHICH MAY EXIST ON THE DELIVERY DATE (OTHER THAN BY LESSOR). LESSEE ACKNOWLEDGES AND AGREES THAT (a) EACH ITEM OF EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE, (b) LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (c) NEITHER LESSOR NOR AGENT IS A MANUFACTURER THEREOF OR A DEALER IN PROPERTY OF SUCH KIND, (d) NEITHER LESSOR NOR AGENT SHALL BE LIABLE FOR ANY LATENT, HIDDEN OR PATENT DEFECT IN ANY ITEM OF EQUIPMENT, OR THE FAILURE OF ANY ITEM OF EQUIPMENT TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS AND (e) NEITHER LESSOR NOR AGENT HAS MADE, OR DOES OR WILL MAKE, (i) ANY REPRESENTATION OR WARRANTY OR COVENANT, WITH RESPECT TO THE TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, OPERATION, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF ANY SUCH ITEM OF EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE OR (ii) ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM OF EQUIPMENT, IT BEING AGREED THAT ALL RISKS, AS BETWEEN LESSOR OR AGENT, ON THE ONE HAND, AND LESSEE ON THE OTHER HAND, SHALL BE BORNE BY LESSEE. Lessor assigns to Lessee, to the extent assignable, all of its interest, if any, in any warranties, covenants and representations of any Manufacturer or vendor of any Item of Equipment; *provided*, that if a Lease Event of Default has occurred and is continuing, Lessor may revoke such assignment in whole or in part by providing notice of such revocation to Lessee; and *provided, further*, that any action taken by Lessee by reason thereof shall be at the expense of Lessee and shall be consistent with Lessee's obligations pursuant to this Lease. Lessor and Agent acknowledge and agree that, at Lessee's expense, Lessor and Agent shall cooperate with Lessee with respect to any claim of Lessee against any Manufacturer and Lessor and Agent further agree that, in the event any such warranties, covenants and representations are not assignable by Lessor to Lessee, Lessor and/or Agent shall, at the direction and expense of Lessee, act on behalf of Lessee in pursuing any such claim.

ARTICLE V

LEASE TERM

Section 5.1. Lease Term. Unless earlier terminated pursuant to the terms of the Operative Documents, the term of this Lease shall commence on the Delivery Date and end on June 30, 2007 (the "*Lease Term*").

ARTICLE VI

RENT

Section 6.1. Rent Payments. On each Payment Date during the Lease Term, Lessee shall pay to Agent for the benefit of Lessor, a payment of rent consisting of (i) Capital Rent (other than with respect to the initial Payment Date on which Lessee shall pay only Accrual Rent) and (ii) Accrual Rent (collectively, “Basic Rent”).

Section 6.2. Supplemental Rent. Lessee shall pay to Agent, for the benefit of Lessor, or to whomever shall be entitled thereto as expressly provided herein or in any other Operative Document (and Lessor hereby directs Lessee, on behalf of Lessor, to so pay any such other Person), any and all Supplemental Rent as the same shall become due and payable (with respect to payments to be made to Agent or Lessor pursuant to the Operative Documents, otherwise, prior to the time such Supplemental Rent is delinquent) and, if a Lease Event of Default is continuing because of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Basic Rent. The expiration or other termination of Lessee’s obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent.

Section 6.3. Method and Amount of Payment. Rent and all other sums due to Lessor hereunder shall be paid to Agent, on behalf of Lessor (or, in the case of Supplemental Rent, to such Person as may be entitled thereto (if such Person is other than Lessor or Agent, payment may be made by wire transfer or such other form of payment as is acceptable to such Person)) in immediately available funds at the office of Agent specified in Schedule II hereto or at such other office of Agent as Agent may from time to time specify to Lessee in a notice pursuant to this Lease. Each payment of Rent shall be accompanied by written designation from Lessee as to the amount of such payment that is being made in respect of Series A Capital Rent, Series A Accrual Rent, Series B Capital Rent, Series B Accrual Rent, Series C Accrual Rent, Lessor’s Interest Related Accrual Rent or Supplemental Rent; *provided* that notwithstanding such written designation by Lessee, each payment of Rent or any other amounts received by Agent related to this Lease shall be applied in accordance with Section 21.1 hereof and Section 2.1 of the Lessor Assignment Agreement. Each payment of Rent shall be made by Lessee prior to 10:00 A.M. California time (and payments made after such time shall be deemed to have been made on the next day) at the place of payment in funds consisting of lawful currency of the United States of America which (in the case of any amount payable to Lessor or Agent or any other Indemnitee) shall be immediately available on the scheduled date when such payment shall be due unless the scheduled date shall not be a Business Day, in which case such payment shall be due and made on the next succeeding Business Day. If the result of the extension contemplated by the preceding sentence would be to carry payment of Rent into another calendar month, such payment of Rent shall be made on the immediately preceding Business Day.

Section 6.4. Late Payment. If any Basic Rent shall not be paid when due, Lessee shall pay to Lessor, or if any Supplemental Rent payable to or

on behalf or for the account of Lessor or Agent or other Indemnitee is not paid when due, Lessee shall pay to whomever shall be entitled thereto, in each case as Supplemental Rent, interest at the Overdue Rate (to the maximum extent permitted by law) on such overdue amount from and including the due date thereof (without regard to any applicable grace period) to but excluding the Business Day of payment thereof. If any payment of Rent shall be due on a day other than a Business Day, such payment shall be due on the succeeding Business Day unless the result of such extension would be to carry such payment into another calendar month, in which case such payment shall be made on the immediately preceding Business Day.

Section 6.5. Set-Off. Notwithstanding any provision to the contrary contained herein or in any other Operative Document, in the event the Series A Lease Balance or any portion thereof is purchased by LSI as an Assignee in accordance with Section 19.1(a)(ii), LSI, as Lessee, shall set-off against and not pay to Agent Basic Rent or Supplemental Rent owed to LSI as an Assignee.

ARTICLE VII

NET LEASE

(a) This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, it is intended that Basic Rent, Supplemental Rent and all other amounts due and payable under the Operative Documents, including, as applicable, the Lease Balance, shall be paid, subject to Section 6.5, without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and Lessee's obligation to pay all such amounts throughout the Lease Term is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall, to the fullest extent permitted by Applicable Laws and Regulations, in no way be released, discharged or otherwise affected for any reason (other than the indefeasible payment or performance in full of such liability or obligation) including: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of any Item of Equipment or any failure of any Item of Equipment to comply with all Applicable Laws and Regulations, including any inability to operate or use any Item of Equipment by reason of such non-compliance; (b) any damage to, abandonment, loss, contamination of or release from or destruction of or any requisition or taking of any Item of Equipment or any part thereof; (c) any restriction, prevention or curtailment of or interference with any use of any Item of Equipment or any part thereof; (d) any defect in title to or rights to any Item of Equipment or any Lien on such title or rights on any Item of Equipment; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Lessor or Agent; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee or Lessor or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, Lessor, Agent or any other Person, or by any court, in any such proceeding; (g) any claim that Lessee has or might have against any Person, including, without limitation, Lessor or Agent (but will not constitute a waiver of such claim); (h) any failure on the part of Lessor or Agent to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement whether or not related to the Overall Transaction (but will not constitute a waiver of such claim); (i) any invalidity or unenforceability or disaffirmance

against or by Lessee, Agent or Lessor of this Lease or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by Lessee, Lessor, Agent or any of them; (k) any action by any court, administrative agency or other Governmental Authority or any restriction, prevention or curtailment of or any use of any Item of Equipment or any part thereof; (l) the failure of Lessee to achieve any accounting or tax benefits or the characterization of the transaction intended by Section 2.4; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing. Except as specifically set forth in Section 9.1 or Section 14.1 hereof, this Lease shall be noncancellable by Lessee for any reason whatsoever, and Lessee, to the fullest extent permitted by Applicable Laws and Regulations, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or to any diminution, abatement or reduction of Rent payable by Lessee hereunder. If for any reason whatsoever this Lease shall be terminated or amended in whole or in part by operation of law or otherwise, except as expressly provided in Section 9.1 or Section 14.1 hereof or, with respect to amendments, as permitted by the Operative Documents, Lessee shall, unless prohibited by Applicable Laws and Regulations, pay to Agent (or, in the case of Supplemental Rent, to whomever shall be entitled thereto) a compensation in an amount equal to each Rent payment (including the Lease Balance or any other amount due and payable under any Operative Documents) at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated or amended in whole or in part. Each payment of Rent and any payment of the Lease Balance made by Lessee hereunder shall be final and, absent error in the computation of the amount thereof, Lessee shall not seek or have any right to recover all or any part of such payment from Lessor, Agent or any party to any agreements related thereto for any reason whatsoever. Lessee assumes the sole responsibility for the condition, use, operation, maintenance, and management of each Item of Equipment and Lessor and Agent shall have no responsibility in respect thereof and shall have no liability for damage to any Item of Equipment or any property relating thereto of Lessee or on any account or for any reason whatsoever other than by reason of such Person's willful misconduct or gross negligence or negligence in the handling of funds or breach of any of the Operative Documents; *provided, however*, any liability of Lessor or Agent with respect to any such willful misconduct or gross negligence or negligence in the handling of funds or breach of any of the Operative Documents shall not limit or affect Lessee's absolute obligations as set forth in this Article VII. Without affecting Lessee's obligation to pay Basic Rent, Supplemental Rent, the Lease Balance and all other amounts due and payable under the Operative Documents or to perform its obligations under the Operative Documents, Lessee may, notwithstanding any other provision of the Operative Documents, seek damages of any kind (which damages may be measured, if appropriate, on the amount of Rent paid by Lessee) or any other remedy at law or equity against Lessor or Agent for such willful misconduct or gross negligence or negligence in the handling of funds or for a breach by such Person of its obligations under this Lease or the other Operative Documents.

(b) Notwithstanding anything to the contrary contained in this Article VII, the parties hereto agree that in the event that the Lessor becomes the subject of any voluntary or involuntary case or proceeding under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, and as a result thereof the Series C Cash Collateral and/or the Lessor's Interest Related Cash Collateral held by Lessor becomes a part of the Lessor's bankruptcy estate,

then (i) the Lessor shall be deemed to have set off and applied such Series C Cash Collateral and/or Lessor's Interest Related Cash Collateral against any amounts due with respect to the portion of the Series C Lease Balance and/or the Lessor's Interest Related Lease Balance secured by such Cash Collateral and (ii) the Lessee shall be deemed to have paid in full any and all Rent due with respect to the Series C Lease Balance and/or the Lessor's Interest Related Lease Balance secured by such Cash Collateral, in each case in an amount not to exceed such Series C Cash Collateral and/or Lessor's Interest Related Cash Collateral.

ARTICLE VIII

POSSESSION, ASSIGNMENT, USE AND MAINTENANCE OF EQUIPMENT

Section 8.1. Possession and Use of Equipment; Compliance with Laws. Lessee shall use each Item of Equipment only in the manner for which it was designed and intended by the original manufacturer thereof (subject to any upgrade in any software used in connection with such Item of Equipment) and shall not use any Item of Equipment or any part thereof for any purpose or in any manner that would adversely affect the Fair Market Value, the utility, remaining useful life or, except to the extent in compliance with the Lease, Residual Value of such Item of Equipment, other than as a result of ordinary wear and tear. Lessee agrees that each Item of Equipment will be used and operated in compliance in all material respects with any and all Applicable Laws and Regulations. Lessee shall procure and maintain in effect all material licenses, registrations, certificates, permits, approvals and consents required by Applicable Laws and Regulations or by any Governmental Authority in connection with the ownership, delivery, installation, use and operation of each Item of Equipment. Lessee shall not (a) use, operate, maintain or store any Item of Equipment or any portion thereof in material violation of Section 8.3 or any Insurance Requirement; (b) sublease, assign or otherwise permit the use of any Item of Equipment except as may be permitted by Sections 8.2, 8.3 or 8.4 hereof; (c) except as set forth in Sections 8.2 or 8.4 hereof, sell, assign or transfer any of its rights hereunder or in any Item of Equipment, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any Item of Equipment, except for Permitted Liens. Lessee shall be entitled to use and operate the Items of Equipment only at the Lessee's semi-conductor manufacturing facility located in Gresham, Oregon or another location or locations reasonably acceptable to the Agent in the continental United States and at Lessee's sole cost and expense, so long as the Lessee holds title in fee simple to the real property on which such Equipment is to be located and, (a) prior to moving any Item of Equipment to such other location, a mortgagee's waiver and consent is executed by the applicable mortgagee and delivered to Agent and Lessor, in form and substance reasonably satisfactory to the Agent and Lessor and (b) all UCC financing statements (including UCC fixture filings) have been filed in all public offices wherein such filings are necessary to perfect the Liens created by the Operative Documents. The Lessee will defend the sale of each Item of Equipment by the seller thereof to Lessor against the claims or demands of all Persons. Lessee shall keep in its possession at all times the items described in clauses (c) and (e) of the definition of Lessee Collateral.

Section 8.2. Subleases and Assignments. LESSEE SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF AGENT, SUBLEASE OR OTHERWISE RELINQUISH POSSESSION OF ANY ITEM OF EQUIPMENT, OR ASSIGN, TRANSFER OR ENCUMBER (EXCEPT FOR PERMITTED LIENS) ITS RIGHTS, INTERESTS OR OBLIGATIONS HEREUNDER OR PERMIT ANY OF THE FOREGOING AND ANY ATTEMPTED SUBLEASE OR OTHER RELINQUISHMENT OF POSSESSION, ASSIGNMENT, TRANSFER OR ENCUMBERING BY LESSEE SHALL BE NULL AND VOID, except as provided in this Section 8.2 or pursuant to a transaction permitted under Section 18.2(d) or a Permitted Lien or in the case of relinquishment of possession pursuant to the performance of Lessee's covenants under Section 8.3 or 8.4 of this Lease. Each sublease entered into in accordance with this Section 8.2 shall be referred to as a "Sublease." So long as no Lease Event of Default shall have occurred and be continuing, Lessee may, without the prior written consent of Agent, enter into subleases of one or more of the Items of Equipment to a direct or indirect wholly-owned Subsidiary of Lessee organized under the laws of the United States of America or any State thereof (a "Sublessee"); *provided*, that any Sublease entered into pursuant to this Section 8.2 must satisfy each of the following conditions:

(a) such Sublease shall (i) automatically expire upon the termination of this Lease, (ii) be expressly subordinate and subject to this Lease and the Liens created hereunder and (iii) expressly require the Items of Equipment subject thereto to be returned as directed by Agent upon notice to Sublessee that a Lease Event of Default shall have occurred and be continuing;

(b) such Sublease shall be in writing and shall expressly prohibit any further assignment, sublease or transfer;

(c) such Sublease shall not contain a purchase option in favor of the Sublessee or any other provision pursuant to which the Sublessee may obtain record or beneficial title to any Item of Equipment leased thereunder from Lessee prior to Lessee acquiring title to such Item of Equipment from Lessor;

(d) such Sublease shall prohibit the Sublessee from making any alterations or modifications to any Item of Equipment that would result in a Lease Default;

(e) all of Lessee's rights, title and interest in, to and under such Sublease shall be pledged by Lessee to Lessor, as collateral for Lessee's obligations under the Operative Documents, by delivery of an executed original counterpart upon the execution and delivery thereof, marked as the sole original execution counterpart for UCC purposes, to the Lessor, and Lessee shall, at its own cost and expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents which the Agent or Lessor may reasonably request in order to create, perfect, preserve and protect Lessor's Lien in such Sublease;

(f) Lessee shall not, without Agent's prior written consent, permit or consent to any renewal or extension of such Sublease at any time when a Material Lease Default or Lease Event of Default has occurred and is continuing;

(g) such Sublease shall require the Sublessee to maintain the Item or Items of Equipment in accordance with Section 8.3;

(h) such Sublease shall require the Sublessee to use and operate the Item or Items of Equipment or any Part thereof in accordance with Section 8.1;

(i) such Sublease shall require the Sublessee to insure the Item or Items of Equipment in accordance with Section 9.2;

(j) such Sublease shall provide that, upon reasonable notice to the Sublessee, any designated representative of Agent or Lessor may inspect the Item or Items of Equipment and the books and records relating thereto, upon reasonable notice, in accordance with Agent's and Lessor's inspection rights set forth in the Operative Documents (but not so as to materially interfere with the business of such Sublessee); and

(k) Lessee shall notify Agent and Lessor in writing not less than 10 days prior to entering into any such Sublease (and promptly after execution of any Sublease furnish Agent and Lessor with an executed copy thereof), which notice shall include (i) a description of the Item or Items of Equipment to be subleased thereunder and (ii) the general location parameters of such Item or Items of Equipment during the term of such Sublease.

The liability of Lessee with respect to this Lease and each of the other Operative Documents shall not be altered or affected in any way by the existence of any Sublease.

Section 8.3. Maintenance. At all times during the term of this Lease, Lessee shall, at its own cost and expense:

(a) unless an Item of Equipment has suffered a Casualty and Lessee is restoring such Item of Equipment, repairing such Item of Equipment (which repairs may be done offsite), replacing such Item of Equipment or paying the Casualty Amount for such Item of Equipment, keep, repair, maintain and preserve each of the Items of Equipment in at least as good order and operating condition and appearance as on the Delivery Date, ordinary wear and tear excepted, and in conformance in all material respects with (A) customary industry standards, (B) the terms of all contracts (including, without limitation, service contracts) and obligations at the time applicable thereto, (C) all Applicable Laws and Regulations and Insurance Requirements (in each case, subject to Lessee's right to contest by a Permitted Contest), and in the event that Applicable Laws and Regulations require any alteration, replacement or addition of or to any Part on any Item of Equipment, Lessee will conform therewith in all material respects at its own expense, (D) standards no lower than the highest of those applied by Lessee or any of its Affiliates in the ordinary course of business for similar equipment owned or leased by it, (E) such mandated or suggested maintenance, repair and deinstallation standards and procedures as are set forth in the manufacturer's manuals pertaining to each Item of Equipment and (F) such standards or procedures as may be

required to enforce warranty claims against each vendor and manufacturer of each Item of Equipment;

(b) (i) conduct or cause to be conducted all scheduled maintenance of each Item of Equipment in conformity in all material respects with Lessee's practices and manufacturers and repair guidelines, for similar equipment (including, without limitation, Lessee's maintenance program for such equipment) and (ii) maintain or cause to be maintained each Item of Equipment so as to preserve its Fair Market Value, remaining economic useful life, utility and, except to the extent in compliance with this Lease, Residual Value, other than as a result of ordinary wear and tear;

(c) in addition to the requirements in Section 8.3(a) and (b), (i) cause maintenance on each Item of Equipment to be provided by the manufacturer thereof or factory authorized technicians or by Lessee's in-house technicians (trained and certified by manufacturer or an entity approved by such manufacturer), (ii) establish such maintenance, refurbishment, rebuilding and repair programs so that the Items of Equipment can be kept in the condition required as set forth herein and (iii) allow Lessor and Agent, at reasonable times, after reasonable notice and in a reasonable manner, to review and approve changes to the Lessee's maintenance procedures (which approval shall not be unreasonably withheld);

(d) cause each Item of Equipment to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to Casualties and customary interruption in the ordinary course of business for maintenance, inspection, service, repair and testing), the functions for which it was specifically designed; *provided* that Lessee shall have the ability to remove any Item of Equipment from service in accordance with the standards set forth in Section 8.3(a);

(e) cause any hazardous or toxic substances used, or resulting or emitting from, the operation or use of the Items of Equipment to be handled in accordance with all applicable Environmental Laws in all material respects and otherwise cause the Items of Equipment to be maintained and operated in accordance with all Environmental Laws in all material respects; and

(f) at any time while a Lease Default or Lease Event of Default has occurred and is continuing or after the Lessee has exercised the Sale Option, make the Items of Equipment available for inspection and testing by an authorized inspector (which shall be at reasonable times and upon reasonable notice in the event the Sale Option was exercised), including unlimited shipping and testing of parts or equipment as required by any such inspector, and if any discrepancies are found as pertaining to the general condition of the Items of Equipment, Agent shall communicate such discrepancies to Lessee in writing and Lessee shall rectify such discrepancies within 30 days of receiving such written notice.

In no event shall Lessee adversely discriminate as to the use or maintenance of any Item of Equipment (including the periodicity of maintenance or recordkeeping in respect of such Item

of Equipment) based upon such Item of Equipment being leased and financed hereunder and under the other Operative Documents as compared to equipment of a similar nature which Lessee owns or leases. Lessee shall prepare and deliver to Agent or Lessor, as applicable, within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Agent and Lessor) any and all reports required to be filed by Agent or Lessor with any Governmental Authority of any country or subdivision thereof in which any Item of Equipment is located by reason of the ownership by Lessor of the Items of Equipment or the leasing thereof to Lessee (subject, however, to Lessee's right to Permitted Contests). Agent agrees to inform Lessee of any request for such reports received by it or of which it has knowledge. Lessee shall maintain or cause to be maintained, and shall permit Agent and Lessor, their respective agents, representatives, or assignees to inspect at reasonable times during regular business hours and as often as requested (but not so as to materially interfere with the business of Lessee and not more than annually if no Lease Default or Lease Event of Default has occurred and is continuing) upon five (5) Business Days prior notice so long as no Lease Default or Lease Event of Default shall have occurred and be continuing and at any time following the occurrence and continuation of a Lease Default or Lease Event of Default or following the election by the Lessee of the Sale Option, all records, returns, renditions, logs and other materials required by any Governmental Authority having jurisdiction over an Item of Equipment or Lessee, to be maintained in respect of such Item of Equipment (subject, however, to Lessee's right to Permitted Contests). Lessee hereby waives any right now or hereafter conferred by law to make repairs on any Item of Equipment at the expense of Lessor or Agent.

Section 8.4. Alterations and Modifications. In case any Item of Equipment, part or appliance therein (each, a "Part") is required to be altered, added to or modified in order to comply in all material respects with any Applicable Laws and Regulations (a "Required Alteration") pursuant to Section 8.1 or 8.3 hereof, Lessee agrees to make such Required Alteration at its own expense. Lessee shall have the right to make or cause to be made any modification, alteration or improvement to any Item of Equipment (herein referred to as a "Permitted Modification"), or to remove or cause to be removed any Part which has become worn out, broken or obsolete; *provided* in each case that Lessee continues to be in compliance with Sections 8.1 and 8.3 hereof and that such action (a) will not decrease the present or future economic value of the applicable Item of Equipment or impair its originally intended use or function or decrease its economic useful life and (b) will not cause such Item of Equipment to become suitable for use only by Lessee. In the event any Permitted Modification (i) is readily removable without impairing the value or use which the Item of Equipment would have had at such time had such Part not been affixed or placed to or on such Item of Equipment (a "Removable Part"), (ii) is not a Required Alteration and (iii) is not a Part which replaces any Part originally incorporated or installed in or attached to such Item of Equipment on the date on which such Item of Equipment became subject to this Lease, or any Part in replacement of or substitution for any such original Part (each an "Original Part"), any such Permitted Modification, if no Lease Event of Default is continuing, shall be and remain the property of Lessee. To the extent such Permitted Modification is not a Removable Part, or is a Required Alteration or an Original Part, and (if the Removable Part remains the property of Lessee) to the extent a Removable Part is not the property of Lessee because of the continuance of a Lease Event of Default, the same shall immediately and automatically be and become the property of Lessor and subject to the terms of this Lease. Any Required Alterations, and any

Parts installed or replacements made by Lessee upon any Item of Equipment pursuant to its obligation to maintain and keep the Items of Equipment in good order, operating condition and repair under Section 8.3 (collectively, "Replacement Parts") and all other Parts which become the property of Lessor shall be considered, in each case, accessions to such Item of Equipment and title thereto or security interest therein shall be immediately and automatically vested in Lessor. All Replacement Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts and the relevant Items of Equipment were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Part at any time removed from any Item of Equipment shall remain subject to the interests of Lessor under the Operative Documents, no matter where located, until such time as such Part shall be replaced by a Part which has been incorporated or installed in or attached to such Item of Equipment and which meets the requirements for a Replacement Part specified above, whereupon Lessor hereby releases any and all interest in and to such replaced Part. Upon the request of Lessor and no later than 45 days after the end of each fiscal quarter of Lessee, Lessee shall deliver to Lessor, a Bill of Sale evidencing the conveyance by Lessee to Lessor of all Replacement Parts not previously evidenced by a Bill of Sale; *provided* that such Bill of Sale may describe the Replacement Parts generally and need not specifically describe each individual part, and such other documents in respect of such Part or Parts as Lessor may reasonably request in order to confirm that title to such Part or Parts has passed to Lessor, as hereinabove provided. Concurrently with the delivery by Lessee of a Bill of Sale with respect to a Replacement Part, Lessor shall deliver to Lessee a Bill of Sale (without representations or warranties except as to the absence of Lessor Liens) for the Part replaced by such Replacement Part and such other documents as may be required to release the replaced Part from the terms of this Lease, in such form as may reasonably be requested by Lessee. Any such Replacement Part, regardless of whether evidenced by a Bill of Sale, shall be deemed part of such unit, for all purposes hereof to the same extent as the Parts originally incorporated or installed in such unit, and title to such Replacement Part shall thereupon vest in Lessor, subject to the terms of this Lease. All replacements pursuant to this Section 8.4 shall be purchased by Lessee with its own funds. There shall be no obligation on the part of Lessor or Agent to pay for or otherwise finance any such replacement.

Section 8.5. Identifying Numbers and Registration; Legend; Changes; Inspection. (a) Lessee, at its own expense, will cause each Item of Equipment to be kept numbered with the identification number as shall be set forth on Schedule I hereto.

(b) The Lessee will not change the identification number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Agent and filed, recorded and deposited by the Lessee in all public offices where any financing statement has been filed in respect thereof for purposes of perfecting any security interest created hereby and (ii) Lessee shall have furnished the Agent an opinion of counsel in form and substance reasonably satisfactory to the Agent to the effect that once such statement has been so filed, recorded and/or deposited, no other filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to perfect the lien and security interest of Lessor in such Items of Equipment. The

Equipment may be lettered with the names or initials or other insignia used by the Lessee or any Sublessee. Upon the request of Agent or Lessor, Lessee shall make the Items of Equipment available to Agent or Lessor, as applicable, their respective agents, representatives or assignees for inspection at their then location and shall also make Lessee's books, manuals, logs, records and other information pertaining to the Items of Equipment available for inspection and permit such parties to make copies thereof, in each case at reasonable times during regular business hours and as often as requested (but not so as to materially interfere with the business of Lessee and not more than annually if no Lease Default or Lease Event of Default has occurred and is continuing) upon five (5) Business Days prior notice so long as no Lease Default or Lease Event of Default shall have occurred and is continuing or at any time following the occurrence and continuation of a Lease Default or Lease Event of Default or following the election by the Lessee of the Sale Option; *provided* that all costs and expenses of Lessor or Agent in connection with such inspection shall be borne by the inspecting party unless a Lease Event of Default has occurred and is continuing at the time of such inspection, in which case all such costs and expenses shall be borne by Lessee. Agent and Lessor shall have the right to inspect and show the Items of Equipment to prospective purchasers at any time following the occurrence of a Lease Event of Default or following the election by the Lessee of the Sale Option.

Section 8.6. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to (i) any Item of Equipment or any Part thereof or any other Lessee Collateral, or Lessor's title thereto or interest therein or (ii) this Lease or Lessor's interests hereunder. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep this Lease and the Items of Equipment and the other Lessee Collateral, free and clear of, and to duly discharge or eliminate, or bond in a satisfactory manner to Lessor in its reasonable judgment, any such Lien not excepted above if the same shall arise at any time. Lessee will notify Lessor in writing promptly upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to any Item of Equipment or any other Lessee Collateral, and of the full particulars thereof. Without limiting the foregoing, Lessee shall not assign or pledge any of its rights under any Sublease to any Person other than Lessor.

Section 8.7. Replacements and Substitutions. (a) In addition to the rights of Lessee under Section 8.4, Lessee shall have the option at any time to replace any Item or Items of Equipment (a "*Replaced Item*" or "*Replaced Items*") with a substitute Item or Items of Equipment (a "*Replacement Item*" or "*Replacement Items*"), subject to the following conditions:

(i) No Lease Default or Lease Event of Default shall have occurred and be continuing and Lessee shall represent in writing to Agent to such effect;

(ii) The Replacement Item or Replacement Items shall be located in a location permitted by Section 8.1 and Lessee shall represent in writing to Agent to such effect;

(iii) The Replacement Item or Replacement Items shall have a function and utility comparable to or better than the Replaced Item or Replaced Items and Lessee shall represent in writing to Agent to such effect;

(iv) The Replacement Item or Replacement Items shall have a value, useful life, and operating condition equal to or greater than the Replaced Item or Replaced Items and Lessee shall represent in writing to Agent to such effect, which shall be confirmed by an appraisal reasonably satisfactory in scope and form to Lessor and Agent and performed by an appraiser selected by the Lessor and Agent and approved by Lessee (such approval not to be unreasonably withheld) for each Replaced Item being substituted pursuant to this Section 8.7 in which the Purchase Price, or for each series of substitutions pursuant to this Section 8.7 in which the aggregate Purchase Price, is equal to or greater than \$5,000,000;

(v) The aggregate Purchase Price of all Replaced Items leased hereunder and substituted pursuant to this Section 8.7 from and after the Delivery Date to and including the date of substitution and after giving effect thereto, shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date; and

(vi) Prior to the date of any such substitution, Lessee shall replace such Replaced Item or Replaced Items by complying with the applicable terms of Section 9.1 to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Item or Replaced Items, and the Lessor shall transfer title to the Replaced Item or Replaced Items to Lessee in the same manner as provided in the applicable provisions of Section 9.1.

Items of Equipment replaced pursuant to Section 9.1(b) following a Casualty shall not be included for purposes of the calculations set forth above.

(b) All replacements pursuant to Section 8.7(a) shall be purchased by Lessee with its own funds. There shall be no obligation on the part of Lessor or Agent to pay for or otherwise finance any such replacement. No termination of this Lease with respect to any Item of Equipment as contemplated by this Section 8.7 shall result in any reduction of Rent or Lessee's obligation to pay Basic Rent hereunder.

ARTICLE IX

RISK OF LOSS; INSURANCE

Section 9.1. Casualty. Upon the occurrence of a Casualty or a series of Casualties with respect to an Item or Items of Equipment with a Purchase Price aggregating in excess of \$5,000,000 during the Lease Term, Lessee shall give Lessor and Agent prompt notice thereof (a "*Casualty Notice*"). The Casualty Notice shall specify whether Lessee will:

(a) pay to Lessor the Casualty Amount of the Item or Items of Equipment suffering such Casualty or series of Casualties, together with all other Rent then due and owing and if such amount is paid on a date which is not a Payment Date any and all Break Funding Amounts and an amount equal to the sum of the Basic Rent described in

clause (A) of the definition Casualty Amount with respect to such Casualty Amount due on the next succeeding Payment Date divided by 90, multiplied by the number of days from the immediately preceding Payment Date to but excluding the date of payment, which payment shall be made within 30 days after such Casualty or the latest in time of such series of Casualties (the "*Casualty Settlement Date*"); or

(b) replace the Item or Items of Equipment with respect to which the Casualty or series of Casualties has occurred pursuant to the following provisions of this Section 9.1; *provided* that (i) the aggregate Purchase Price of all Items of Equipment replaced pursuant to this Section 9.1(b) with respect to this Lease from and after the Delivery Date to and including the date of replacement and after giving effect thereto, shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date and (ii) upon the occurrence and during the continuance of a Lease Event of Default or a Lease Default, Lessee shall be obligated, at the option of the Agent, to make the payments referred to in clause (a) above and shall not be entitled to exercise any right or election of replacement pursuant to this clause (b).

Notwithstanding the foregoing, if Lessee has elected or is required to pay any Casualty Amount pursuant to clause (a) above and either:

(i) the payment of such Casualty Amount would cause the aggregate amount of all Casualty Amounts paid with respect to the Items of Equipment leased hereunder during the term of the Lease to exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date; or

(ii) after giving effect to the payment of the Casualty Amount, the End of Term Value Ratio of the Items of Equipment remaining subject to this Lease is less than the End of Term Value Ratio of all Items of Equipment originally subject to this Lease (as set forth in the Appraisal),

then Lessee shall not be entitled to pay such Casualty Amount pursuant to clause (a) above, and instead Lessee shall be deemed to have elected the Early Termination Option with respect to all, but not less than all, of the Items of Equipment then subject to this Lease and Lessee shall be required to purchase all but not less than all of the Items of Equipment in accordance with the terms and provisions of Section 14.1 on the Casualty Settlement Date.

If Lessee has elected, or is required, to pay the Casualty Amount with respect to the Items of Equipment leased hereunder pursuant to clause (a) above, Lessee shall continue to make all payments of Rent due under this Lease until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of such Item of Equipment on such Casualty Settlement Date together with all Rent and Supplemental Rent then due and owing, the remaining scheduled Rent payments hereunder shall be reduced by an amount equal to the product of the scheduled amount of each such payment (determined in each case prior to the receipt of such Casualty Amount), multiplied by the Item Value Fraction of such Item of Equipment suffering such Casualty or series of Casualties.

If Lessee has given notice that it intends to replace the Item or Items of Equipment suffering such Casualty or series of Casualties, and such replacement is permitted under the foregoing clause (b), Lessee may make subject to this Lease, not later than 90 days after such Casualty or the latest in time of such series of Casualties with respect to such Item or Items of Equipment, a replacement for such Item or Items of Equipment meeting the suitability standards hereinafter set forth. To be suitable as a Replacement Item of Equipment (including for purposes of Section 8.7), an Item of Equipment (or Items of Equipment) must (i) be of the same function and utility, (ii) have the same or better Residual Value, remaining economic useful life and operating condition (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 8.3) as the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 8.3) of the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties and (iv) be free and clear of any Liens other than Permitted Liens. Lessee shall represent in writing to Agent that such Replacement Item or Items of Equipment meet the standards set forth in clauses (i), (ii) and (iii) of the immediately preceding sentence and shall deliver an appraisal at Lessee's sole expense in form and substance reasonably satisfactory to the Agent from an appraiser selected by the Agent and approved by Lessee (such approval not to be unreasonably withheld) confirming that such Replacement Item or Items of Equipment meet the standards set forth in clauses (ii) and (iii) of the immediately preceding sentence. Lessee shall cause a Bill of Sale and a lease supplement to be executed and delivered to Agent and Lessor in order to subject such replacement Item of Equipment or Items of Equipment to this Lease, and upon such execution and delivery and the receipt by Agent and the Lessor of (i) evidence reasonably satisfactory to them of Lessee's compliance with the insurance provisions of Section 9.2 with respect to such replacement Item of Equipment or Items of Equipment, and (ii) an opinion of counsel to Lessee (which may be in-house counsel) opining as to the authorization, execution and delivery of the Bill of Sale and the lease supplement, the enforceability of the lease supplement and the filing and recording of the UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on the Delivery Date covering such matters, such replacement item or items shall be deemed an "Item of Equipment" or "Items of Equipment" for all purposes hereof.

If (i) Agent or Lessor has received the amount payable with respect to the Casualty or series of Casualties and all other amounts due hereunder (if any), or (ii) the Item or Items of Equipment have been substituted or repaired in accordance herewith, and, in each case, no Material Lease Default or Lease Event of Default exists, Lessee shall be entitled to receive from Agent or Lessor, as applicable, the proceeds of any recovery in respect of the Item or Items of Equipment from insurance or otherwise, to the extent recovered by Agent or Lessor ("*Casualty Recoveries*"), and Agent or Lessor, as applicable, subject to the rights of any insurer insuring the Items of Equipment as provided herein, shall execute and deliver to Lessee, or to its assignee or nominee, a Bill of Sale (without representations or warranties except that each such Item of Equipment is free and clear of Lessor Liens) for the Item or Items of Equipment (other than repaired items), and such other documents as may be required to release the Item or Items of Equipment from the terms of this Lease, in such form as may reasonably be requested by Lessee.

All fees, costs and expenses relating to a substitution or repair as described herein shall be borne by Lessee. Except as otherwise provided in this Section 9.1, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Item of Equipment prior to or during the term of this Lease and thereafter until all of Lessee's obligations hereunder are fully performed.

Any payments (including, without limitation, insurance proceeds) received at any time by Agent, Lessor or Lessee from any Governmental Authority or other party with respect to any loss or damage to any Item or Items of Equipment not constituting a Casualty (i) up to \$5,000,000, shall be paid to Lessee, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, for application to repair or for replacement of property in accordance with Sections 8.1 and 8.3 or (ii) in excess of \$5,000,000, shall be held by Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of Sections 8.1 and 8.3, if not already paid by Lessee, or if already paid by Lessee and no Material Lease Default or Lease Event of Default shall have occurred and be continuing, shall be applied to reimburse Lessee for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) Lessee.

LESSEE HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO EACH ITEM OF EQUIPMENT, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY LESSEE WITH RESPECT TO EACH ITEM OF EQUIPMENT FROM THE DELIVERY DATE AND CONTINUING UNTIL SUCH ITEM OF EQUIPMENT HAS BEEN PURCHASED BY A THIRD PARTY OR RETURNED TO LESSOR IN ACCORDANCE WITH THE TERMS HEREOF. LESSEE AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF LESSEE UNDER THIS LEASE, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PAY RENT.

Section 9.2. Insurance Coverages. Lessee shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Items of Equipment, of the kinds and in the amounts customarily maintained by similar corporations engaged in similar operations in similar jurisdictions and carry such other insurance as is usually carried by such corporations; *provided*, that in any event Lessee will maintain:

(a) Casualty Insurance—insurance against risks of physical loss or damage with respect to the Items of Equipment with deductibles and in such minimum amounts as are consistent with industry standards; *provided, however*, that at no time shall the amount of coverage, on a replacement cost basis, be less than the outstanding Lease Balance as shall be applicable to the Items of Equipment;

(b) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage in amounts at least equal to \$10,000,000 per occurrence, with such

deductibles as are carried by similarly situated companies operating similar facilities and equipment; and

(c) Other Insurance—such other insurance, including environmental/pollution and worker’s compensation insurance, in each case, generally carried by owners of equipment similar to the Items of Equipment and properties in each jurisdiction where the Items of Equipment are located, in such amounts and against such risks as are then customary for equipment and property similar in use.

Such insurance shall be written by reputable insurance companies that are financially sound and solvent, rated in Best’s Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) with a general policyholder rating of “A” and a financial size rating of at least “X” from A.M. Best and Company or any successor thereto (or if there is none, an organization having a similar national reputation) or otherwise acceptable to the Agent. All such insurance shall name Agent as loss-payee and each of Agent, Lessor and the Assignees as additional insured, as their respective interests may appear pursuant to the terms and conditions of this Lease. Each policy referred to in this Section 9.2 shall provide that (i) it will not be cancelled or its limits reduced, or allowed to lapse without renewal, except after not less than 30 days written notice to Lessor and Agent, (ii) the interests of Lessor shall not be invalidated by any act or negligence of, or breach of representation or warranty by, Lessee or any Person having an interest in any Item of Equipment (other than Lessee’s failure to pay premiums), (iii) such insurance is primary with respect to any other insurance carried by or available to Lessor; (iv) the insurer shall waive any right of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against Lessor; and (v) the insurer shall waive any right to claim any premiums or commission against Lessor. Lessee will notify Agent and Lessor promptly of any policy cancellation, reduction in policy limits, modification or amendment.

Nothing in this Section 9.2 shall prohibit Lessor from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto; *provided*, that no such insurance may be obtained which would limit or otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by Lessee pursuant to this Section 9.2.

Section 9.3. Insurance Certificates. On the Delivery Date, and thereafter within 15 days after the expiration dates of the expiring policies theretofore delivered pursuant to Section 9.2, Lessee shall deliver to Lessor and Agent certificates issued by the insurer(s) or insurance broker(s) for the insurance maintained pursuant to Section 9.2; *provided, however*, that if the delivery of any certificate is delayed, Lessee shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 15 day period, Lessee delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

ARTICLE X

CERTAIN DUTIES AND RESPONSIBILITIES

Agent and Lessor undertake to perform such duties and only such duties as are specifically set forth herein and in the other Operative Documents, and no implied covenants or obligations shall be read into this Lease against Agent or Lessor, and Agent and Lessor shall not, nor shall they have a duty to, manage, control, use, sell, maintain, insure, register, lease, operate, modify, dispose of or otherwise deal with the Items of Equipment in any manner whatsoever, except as required by the terms of the Operative Documents and as otherwise provided herein.

ARTICLE XI

INDEMNITIES

Section 11.1. General Indemnification. (a) Subject to clause (b) below, Lessee agrees to indemnify, defend and hold each Indemnitee harmless, on a Grossed-Up Basis, from and against any and all Claims that directly or indirectly relate to, result from or arise out of or are alleged to relate to, result from or arise out of any of the following (whether or not any such Indemnitee is indemnified as to such matter by any other Person and whether or not such Claim arises or accrues prior to the Delivery Date or after the Lease Expiration Date):

(i) the Items of Equipment, the other Lessee Collateral or any part thereof;

(ii) any of the Operative Documents or any of the transactions contemplated thereby, or any investigation, litigation, enforcement or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof;

(iii) the regulation of the ownership, construction, leasing, use or operation of the Items of Equipment or any part thereof, but only to the extent that the Indemnitee is subjected to such regulation as a result of its being a party to or beneficiary of the Operative Documents or its involvement in the transactions contemplated in the Operative Documents;

(iv) the offer, financing, refinancing, inspection, mortgaging, granting of a security interest in, design, manufacture, construction, purchase, ownership, acquisition, acceptance, rejection, delivery, nondelivery, redelivery, possession, transportation, lease, sublease, installation, condition, transfer of title, rental, use, operation, storage, maintenance, modification, alteration, repair, assembly, sale, return, abandonment or other application or disposition of all or any part of the Items of Equipment or any interest therein or improvements, additions or modifications thereto or the imposition of any Lien thereon, or the failure to perform or accomplish any of the foregoing in accordance with the requirements of the Operative Documents, other agreements governing such matters or Applicable Laws and Regulations, including, without limitation: Claims or penalties arising from any violation of law or in tort (strict liability or otherwise), latent or other defects, whether or not discoverable, any Claim based upon

a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Items of Equipment, the making of any alterations or modifications in violation of any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to the Lease which policies are in effect at any time with respect to the Items of Equipment or any part thereof, and any Claim for patent, trademark or copyright infringement and any violations of any environmental noise or pollution control laws;

(v) a breach by Lessee of any of its covenants under any Operative Document, or a misrepresentation by the Lessee (including any omission by Lessee that makes any representation made by Lessee materially misleading) in any Operative Document or in any certificate or other document delivered by the Lessee to the Lessor or Agent pursuant to any Operative Document, or the material inaccuracy of any information provided by Lessee to any third party in connection with the preparation by such third party of a report or other document required to be delivered pursuant to any Operative Document;

(vi) the existence of any Lien on or with respect to the Items of Equipment, title thereto, any interest therein or any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, operation, construction, repair or rebuilding of the Items of Equipment or by reason of labor or materials furnished or claimed to have been furnished to Lessee, or any of its contractors or agents or by reason of the financing of any personality or equipment purchased or leased by the Lessee or alterations or modifications made by the Lessee, except Liens in favor of the Lessor; and

(vii) any Claims related to the Release from any Item of Equipment of any substance into the environment, including (without limitation) Claims arising out of the use of any Item of Equipment for the transportation or storage of any Hazardous Material.

(b) *Exclusions.* The provisions of Section 11.1(a) shall not apply to any Claim:

(i) with respect to any Indemnitee, to the extent attributable to the willful misconduct or gross negligence of, or negligence in the handling of funds by, such Indemnitee, its officers, agents, employees and Affiliates or the breach in any material respect of any representation or covenant made by such Indemnitee under the Operative Documents;

(ii) to the extent attributable to acts or events that occur after the payment in full of the entire Lease Balance and all other amounts due from Lessee to the Agent and Lessor pursuant to the Operative Documents or repossession of the Items of Equipment by Lessor or Agent following a Lease Event of Default (except to the extent fairly attributable to circumstances existing or acts, events, liabilities or damages occurring or accruing prior to such payment in full or repossession, or to the extent relating to the acts or omissions of the Lessee in relation to, or liabilities arising out of, their operation, repair, servicing, maintenance or replacement of the Items of Equipment); or

(iii) in respect of Taxes, which are governed by Section 11.2, other than a payment necessary to make payments under this Section 11.1 on a Grossed-Up Basis.

(c) *Contests.* In respect of the indemnification provided under Section 11.1(a), promptly after receipt by an Indemnitee of notice of any pending or threatened Claim, such Indemnitee shall, if a claim for indemnification in respect thereof is to be made against Lessee give written notice thereof to Lessee; *provided* that the failure to provide such prompt notice shall not limit Lessee's obligations or prejudice any rights of such Indemnitee under Section 11.1(a) with respect to such Claim, except to the extent that such failure to provide prompt notice adversely affects Lessee's indemnification obligations hereunder. So long as no Lease Event of Default is continuing, Lessee at its own expense, may elect to assume the defense of any such Claim through its own counsel, which shall be subject to the reasonable approval of the Indemnitee, on behalf of the Indemnitee (with full right of subrogation to the Indemnitee's rights and defenses). Lessee must indicate its election to assume such defense by written notice to the Indemnitee within 30 days following receipt of Indemnitee's notice of the Claim, or in the case of a third party claim which requires a shorter time for response then within such shorter period as specified in the Indemnitee's notice of Claim; *provided* that such Indemnitee has given Lessee notice thereof. If Lessee denies liability or fails to respond to the notice within the time period set forth above, the Indemnitee may defend or compromise the Claim as it deems appropriate without prejudice to any of Indemnitee's rights hereunder and with no further obligation to inform Lessee of the status of the Claim and no right of Lessee to approve or disapprove any actions taken in connection therewith by the Indemnitee. If Lessee shall have elected to assume the defense of any such Claim, then upon the request of Lessee, the Indemnitee requesting payment of indemnity under Section 11.1(a) shall promptly furnish Lessee with copies of any records or documents pertaining to the matter to be indemnified and, to the extent known by such Indemnitee, a reasonably detailed explanation of the circumstances giving rise to the claim of indemnification and the determination of the amount of the requested indemnity payment. Upon payment in full to Indemnitee of any indemnity pursuant to Section 11.1(a), Lessee shall be subrogated to any right of Indemnitee in respect of the matter against which such indemnity has been paid. If Lessee shall have elected to assume the defense of any such Claim, upon the written request at any time and from time to time of Lessee, Indemnitee shall, at the expense of Lessee, take such reasonable actions and execute such documents as are necessary or reasonably appropriate to assist Lessee in the preservation and enforcement against third parties of Lessee's right of subrogation hereunder. The Indemnitee may employ separate counsel in any such Claim and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnitee unless the Indemnitee shall have been advised by its counsel that a conflict of interest exists in Lessee's counsel's representations of the Indemnitee and Lessee, in which case the fees and expenses of such Indemnitee's counsel shall be for the account of Lessee. All fees and expenses shall be paid periodically as incurred. So long as no Lease Event of Default shall have occurred and be continuing, Lessee shall not be liable for any settlement of any such Claim effected without its consent unless Lessee shall fail to, or elect in writing not to, assume the defense thereof in which case the Indemnitee, without waiving any rights to indemnification hereunder, may defend such Claim and enter into any good faith settlement thereof without the prior written consent of Lessee. Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Indemnitee, effect any settlement of any such Claim unless such settlement includes an unconditional release of the Indemnitee from all

liabilities that are the subject of such Claim. The parties agree to cooperate in any defense or settlement of any such Claim and to give each other reasonable access to all information relevant thereto subject to appropriate confidentiality agreements. The parties will similarly cooperate in the prosecution of any claim or lawsuit against any third party.

(d) *Subrogation.* Upon the payment in full of any claim pursuant to this Section 11.1, Lessee, without any further action, shall be subrogated to any claims the Indemnatee may have relating thereto. The Indemnatee agrees, at Lessee's expense, to give such further assurances or agreements and to cooperate with Lessee to permit the Lessee to pursue such claims, if any, to the extent reasonably requested by Lessee. If Lessee shall have paid an amount to or for an Indemnatee pursuant to this Section 11.1, and such Indemnatee subsequently shall be reimbursed in respect of such indemnified amount from any other Person, such Indemnatee shall promptly pay Lessee, but not before Lessee shall have made all payments then due to such Indemnatee pursuant to this Section 11.1 and any other payments then due hereunder and under any other Operative Document, the amount of such reimbursement, including interest actually received attributable thereto, net of Taxes required to be paid by such Indemnatee as a result of any refund received, after giving effect to such payment to Lessee.

(e) *Not Residual Guaranty.* Nothing in this Section 11.1 shall be construed as a guaranty of residual value of the Items of Equipment.

Section 11.2. General Tax Indemnity.

(a) *Indemnification.* Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Equipment and the other Lessee Collateral and all Indemnitees, and hold the Equipment and the other Lessee Collateral and all Indemnitees harmless against, all Impositions on an Grossed-Up Basis. Each Indemnatee further agrees to make good faith efforts to implement the reasonable recommendations made by Lessee regarding techniques to minimize Taxes indemnifiable hereunder, *provided* that Lessee agrees to indemnify such Indemnatee on a Grossed-Up Basis and to hold each Indemnatee harmless against any cost or expense arising from instituting Lessee's recommendations. Notwithstanding anything to the contrary herein, any indemnification obligation of Lessee with respect to any withholding Taxes incurred by an Indemnatee shall be governed exclusively by Section 11.3.

(b) *Contests.* If any claim shall be made against any Indemnatee or if any proceeding shall be commenced against any Indemnatee (including a written notice of such proceeding) for any Imposition as to which Lessee reasonably may have an indemnity obligation pursuant to this Section 11.2, or if any Indemnatee reasonably shall determine that any Imposition for which Lessee may have an indemnity obligation pursuant to this Section 11.2 may be payable, such Indemnatee shall promptly (and in any event, within 30 days) notify Lessee in writing (*provided* that failure to so notify Lessee within 30 days shall not alter such Indemnatee's rights under this Section 11.2, except to the extent such failure precludes or materially adversely affects the ability to conduct a contest of any indemnified Imposition, in which case Lessee shall have no indemnification obligation hereunder to the extent such failure precludes or materially affects their ability to conduct a contest) and shall not take any action with respect to such claim,

proceeding or Imposition without the written consent of Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 30 days after the receipt of such notice by Lessee; *provided, however*, that in the case of any such claim or proceeding, if such Indemnitee shall be required by law or regulation to take action prior to the end of such 30-day period, such Indemnitee shall in such notice to Lessee, so inform Lessee, and such Indemnitee shall not take any action with respect to such claim, proceeding or Imposition without the consent of Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 10 days after the receipt of such notice by Lessee, unless the Indemnitee shall be required by law or regulation to take action prior to the end of such 10-day period.

Lessee shall be entitled for a period of 30 days from receipt of such notice from the Indemnitee (or such shorter period as the Indemnitee has notified Lessee is required by law or regulation for the Indemnitee to commence such contest), to request in writing that such Indemnitee contest in good faith of such Imposition, at Lessee's expense. If (x) such contest can be pursued in the name of Lessee and independently from any other proceeding involving an Imposition for which Lessee has not agreed to indemnify such Indemnitee, (y) such contest must be pursued in the name of the Indemnitee, but can be pursued independently from any other proceeding involving an Imposition for which Lessee has not agreed to indemnify such Indemnitee or (z) the Indemnitee so requests, then Lessee shall be permitted to control the contest of such claim, *provided* that in the case of a contest described in any of clause (x), (y) or (z) if the Indemnitee determines in good faith that such contest by Lessee reasonably could have a material adverse impact on the business or operations of the Indemnitee and provides a written explanation to Lessee of such determination, the Indemnitee may elect to control or reassert control of the contest, and *provided*, that by taking control of the contest, Lessee acknowledges that it is responsible for the Imposition ultimately determined to be due by reason of such claim, and; *provided, further*, that in determining the application of clauses (x) and (y), each Indemnitee shall take any and all reasonable steps to segregate claims for any Impositions for which Lessee indemnifies hereunder from Impositions for which Lessee is not obligated to indemnify hereunder, so that Lessee can control the contest of the former. In all other claims requested to be contested by Lessee, the Indemnitee shall control the contest of such claim, acting through counsel reasonably acceptable to Lessee. In any contest controlled by an Indemnitee, the Indemnitee shall conduct such contest in good faith. In no event shall Lessee be permitted to contest (or the Indemnitee required to contest) any claim (A) if such Indemnitee provides Lessee with a legal opinion of independent counsel that such action, suit or proceeding involves a material risk of imposition of criminal liability or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on any Item or Items of Equipment or any part thereof or any other Lessee Collateral unless Lessee shall have posted and maintained a bond or other security reasonably satisfactory to the relevant Indemnitee in respect to such risk, (B) if a Lease Event of Default has occurred and is continuing, unless Lessee shall have posted and maintained a bond or other security reasonably satisfactory to the relevant Indemnitee in respect of the Impositions subject to such claim and any and all expenses for which Lessee is responsible hereunder reasonably foreseeable in connection with the contest of such claim, (C) unless Lessee shall have agreed to pay and shall pay to such Indemnitee on demand all reasonable out-of-pocket costs, losses and expenses that such Indemnitee may incur in connection with contesting such Imposition, including all reasonable legal, accounting and investigatory fees and disbursements, or (D) if such contest shall involve the payment of the

Impositions prior to the contest, unless Lessee shall provide to the Indemnitee an interest-free advance in an amount equal to the Imposition that the Indemnitee is required to pay (with no additional net after-tax costs (including Taxes) to such Indemnitee). In addition, for Indemnitee-controlled contests and claims contested in the name of the Indemnitee in a public forum, no contest shall be required: (A) unless the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Indemnitee for which Lessee may be liable to pay an indemnity under this Section 11.2) exceeds \$75,000 and (B) unless, if requested by the Indemnitee, the Lessee shall have provided to the Indemnitee an opinion of counsel selected by Lessee that a reasonable basis exists to contest such claim. In no event shall an Indemnitee be required to appeal an adverse judicial determination to the United States Supreme Court.

The party conducting the contest shall consult in good faith with the other party and its counsel with respect to the contest of such claim for Impositions (or claim for refund) but the decisions regarding what actions to be taken shall be made by the controlling party in its sole judgment; *provided, however*, that if the Indemnitee is the controlling party, no settlement offer with respect to such claims shall be made or accepted by the Indemnitee without the prior consent of the Lessee (which consent shall not unreasonably be withheld); *provided further*, that if the Indemnitee is the controlling party and Lessee recommends the acceptance of a settlement offer made by the relevant Governmental Agency and such Indemnitee rejects such settlement offer then the amount for which Lessee will be required to indemnify such Indemnitee with respect to the Taxes subject to such offer shall not exceed the amount which it would have owed if such settlement offer had been accepted. In addition, the controlling party shall keep the noncontrolling party reasonably informed as to the progress of the contest, and shall provide the noncontrolling party with a copy of (or appropriate excerpts from) any reports or claims issued by the relevant auditing agent or taxing authority to the controlling party thereof, in connection with such claim or the contest thereof.

Each Indemnitee shall supply Lessee with such information and documents reasonably requested by Lessee as is necessary or advisable for Lessee to participate in any action, suit or proceeding to the extent permitted by this Section 11.2(b), and Lessee shall promptly reimburse such Indemnitee for the reasonable out-of-pocket expenses of supplying such information and documents. No Indemnitee shall enter into any settlement or other compromise or fail to appeal an adverse ruling with respect to any claim which is entitled to be indemnified under this Section 11.2 (and with respect to which contest is required under this Section 11.2(b)) without the prior written consent of Lessee (such consent not to be unreasonably withheld), unless such Indemnitee waives its right to be indemnified under this Section 11.2 with respect to such claim.

Notwithstanding anything contained herein to the contrary, an Indemnitee will not be required to contest (and Lessee shall not be permitted to contest) a claim with respect to any Imposition if (i) such Indemnitee shall waive its right to indemnification under this Section 11.2 with respect to such claim (and any claim with respect to such year or any other taxable year, the contest of which is materially adversely affected as a result of such waiver) or (ii) such Imposition is the sole result of a claim of a continuing and consistent nature, which claim has previously been resolved against the relevant Indemnitee (unless a change in law or facts has occurred since such prior adverse resolution and Lessee provides an opinion of independent tax

counsel to the effect that it is more likely than not that such change in law or facts will result in a favorable resolution of the claim at issue).

(c) *Payments.*

(i) *To or for the Account of an Indemnitee.* (x) Any Imposition indemnifiable under this Section 11.2 shall be paid directly when due to the applicable taxing authority if direct payment is practicable and permitted. If direct payment to the applicable taxing authority is not permitted or is otherwise not made, any amount payable to an Indemnitee pursuant to this Section 11.2 shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnitee (accompanied by a written statement describing in reasonable detail the amount so payable), but not before two Business Days prior to the date that the relevant Taxes are due. Any payments made to an Indemnitee pursuant to this Section 11.2 shall be made directly to the Indemnitee entitled thereto in immediately available funds at such bank or to such account as specified by the Indemnitee in written directions to Lessee, or, if no such direction shall have been given, by check of Lessee payable to the order of the Indemnitee by certified mail, postage prepaid at its address as set forth in this Lease. Upon the request of any Indemnitee with respect to an Imposition that Lessee is required to pay, Lessee shall furnish to such Indemnitee the original or a copy of a receipt for Lessee's payment of such Imposition or such other evidence of payment as is reasonably acceptable to such Indemnitee.

(y) At the Lessee's request, the amount of any indemnification payment by Lessee pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the Indemnitee. The fees and expenses of such independent public accounting firm shall be paid by the Lessee unless such verification shall result in an adjustment in the Lessee's favor of 5% or more of the payment as computed by the Indemnitee, in which case such fees and expenses shall be paid by the Indemnitee.

(ii) *To Lessee.* (x) If any Indemnitee actually shall realize a Tax benefit (whether by way of deduction, credit, allocation or apportionment or otherwise) with respect to an Imposition not indemnifiable hereunder which would not have been realized but for any Imposition with respect to which Lessee has reimbursed or indemnified such Indemnitee pursuant to the Operative Documents, which benefit was not previously taken into account in determining the amount of Lessee's payment to such Indemnitee, such Indemnitee shall pay to Lessee an amount equal to the amount of such Tax benefit on a Grossed-Up Basis; *provided, however,* that no payment shall be made as long as Lease Event of Default is continuing; *provided further, however,* that no Indemnitee shall be required to pay to Lessee any Tax benefit to the extent such payment would be greater than the amount of the Impositions in respect of which the reimbursement or indemnification was paid by Lessee, reduced by all prior payments by such Indemnitee under this Section 11.2(c)(ii)(x) in respect of such amount; any payment to Lessee which is so limited shall, to the extent of such unpaid excess, be carried over and shall be available to offset any future obligations of Lessee under this Section 11.2. If such repaid Tax benefit is thereafter lost, the additional Tax payable in respect of such lost Tax benefit shall be treated as an Imposition indemnifiable hereunder without regard to the exclusions set forth in clauses (i), (ii), (iv), (v), (vi), (vii), (viii), (ix), (x) of the definition of Impositions.

(y) Upon receipt by an Indemnitee of a refund or credit of all or part of any Impositions paid or indemnified against by Lessee, which refund or credit was not previously taken into account in determining the amount of Lessee's payment to such Indemnitee, such Indemnitee shall pay to Lessee, on a Grossed-Up Basis, an amount equal to the amount of such refund or credit, plus any interest received by or credited to such Indemnitee with respect to such refund; *provided, however*, that no such payment shall be made as long as a Lease Event of Default is continuing; *provided, further, however*, that no Indemnitee shall be required to pay to Lessee any refund or credit to the extent such refund or credit is greater than the amount of Impositions in respect of which payment or indemnification was made by Lessee, reduced by all prior payments by such Indemnitee under this Section 11.2(c)(ii)(y) in respect of such amount. If such repaid refund or credit is thereafter lost, the additional Tax payable shall be treated as Imposition indemnifiable hereunder without regard to the exclusions set forth in clauses (i), (ii), (iv), (v), (vi) (vii), (viii), (ix), (x) of the definition of Impositions.

(z) The Indemnitee will, at Lessee's expense, pursue refunds and tax benefits that would result in any such payments to Lessee, but only if the Indemnitee has been notified in writing by Lessee that such refunds or tax benefits are available.

(d) *Reports.* In the case of any report, return or statement required to be filed with respect to any Impositions that are subject to indemnification under this Section 11.2 and of which Lessee or the Indemnitee has knowledge, the party having such knowledge shall promptly notify the other of such requirement and, at Lessee's expense (i) if Lessee is permitted (unless otherwise requested by the Indemnitee) by Applicable Laws and Regulations, timely file such report, return or statement in its own name or (ii) if such report, return or statement is required to be in the name of or filed by such Indemnitee or the Indemnitee otherwise requests that such report, return or statement be filed in the name of or by such Indemnitee, Lessee shall prepare such report, return or statement for filing by such Indemnitee in such manner as shall be reasonably satisfactory to such Indemnitee and send the same to the Indemnitee for filing no later than 15 days prior to the due date therefor. In any case in which the Indemnitee will file any such report, return or statement, Lessee shall, upon written request of such Indemnitee, provide such Indemnitee with such information as is reasonably necessary to allow the Indemnitee to file such report, return or statement. Notwithstanding the foregoing, Lessee shall not be required to prepare or file any income tax return or franchise tax return of any Indemnitee.

Section 11.3. Withholding Taxes. (a) (x) Agent shall withhold any Taxes required by Applicable Laws and Regulations to be withheld on any payment to Lessor or any Assignee, except to the extent that Lessor or such Assignee has furnished to Agent the information set forth in Section 11.3(a)(y) entitling such Person to an exemption from withholding Taxes. Except to the extent set forth in Section 11.6, the amount payable to Lessor or any Assignee shall be reduced by the amount of any withholding Taxes required to be withheld by Agent pursuant to the preceding sentence and Lessee and Agent shall have no liability or obligation to Lessor or such Assignee with respect to any such withholding Taxes, except to the extent that the Agent is required to withhold such withholding Taxes as the result of a change in Applicable Laws and Regulations (only if such change in Applicable Laws and Regulations occurs after Lessor or the relevant Assignee has become a party to this Lease or the Lessor Assignment Agreement, as applicable), in which case

Lessee shall be responsible for, and shall indemnify and hold harmless Agent (without duplication of any indemnification required in Section 11.2(a)) on a Grossed-Up Basis against, any claims regarding such withholding taxes made against the Agent, to the extent, but only to the extent, Agent has actually paid funds to a taxing authority with respect to such withholding Taxes or receives a demand for such payments from any taxing authority. In accepting and carrying out its duties with respect to withholding Taxes pursuant to this Section 11.3, Agent shall act as the duly authorized agent of Lessee to act on behalf of Lessee under the withholding provisions of Chapter 3 of the Code. Lessee shall file notice of such appointment with the Director of Foreign Operations District of Internal Revenue Service in accordance with Treas. Reg. §1.1441-7(b). Such agency shall terminate in the event that Applicable Laws and Regulations are amended so as to release Lessee of the obligation to withhold Taxes with respect to payments made by Lessee to Agent under this Lease and in any event upon termination or expiration of this Lease.

(y) Lessor and each Assignee (whether now or hereafter a party to this Lease or the Lessor Assignment Agreement, as applicable) that is not incorporated under the laws of the United States of America or a state thereof shall: (1) deliver to Lessee and Agent (A) two (2) duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI or successor applicable form, as the case may be, and (B) an Internal Revenue Service Form W-8 or W-9 or successor applicable form; (2) deliver to Lessee and Agent after written request therefor two (2) further copies of such forms or other appropriate certification of such forms on or before the date that such form expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form delivered to Lessee and Agent; and (3) obtain such extensions of time for filing and renew such forms and certifications thereof as may reasonably be requested in writing by Lessee, unless any Change in Law has occurred prior to the date on which any such delivery otherwise would be required which renders any such form inapplicable or which would prevent Lessor or such Assignee from duly completing and delivering any such forms and Lessor or such Assignee so advises the Lessee and the Agent.

(b) If and to the extent (A) Agent has in good faith attempted to comply with its obligation to withhold Taxes in accordance with clause (a) and (B) Lessor and each Assignee to which Section 11.3(a)(y) applies has complied therewith, and a claim regarding withholding Taxes is made against Agent, as between Lessee and Agent, Lessee shall be responsible for, and Lessee shall indemnify and hold harmless Agent (without duplication of any indemnification required by Section 11.2(a)) on a Grossed-Up Basis against, such claim to the extent, but only to the extent, Agent has actually paid funds to a taxing authority with respect to such withholding taxes or receives a demand for such payment from any taxing authority.

(c) Except with respect to withholding Taxes payable by Lessee pursuant to Section 11.4, Lessor and each Assignee agrees to reimburse Agent for any withholding Taxes for which Agent becomes liable and to reimburse Lessee for any Taxes or other amounts paid by Lessee pursuant to clause (b) hereof.

(d) For purposes of determining whether withholding Taxes apply to payments under this Lease, it shall be assumed that this Lease constitutes a loan for United States Federal income tax purposes (as is the intention of the parties).

Section 11.4. Increased Costs. (a) If on or after the Delivery Date, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof (each such event being a “*Change in Law*”) by any Governmental Agency, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lessor or any Assignee with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) shall subject Lessor or such Assignee to any tax, duty or other charge with respect to its investment made hereunder or under the Lessor Assignment Agreement, as applicable, or shall change the basis of taxation of payments to Lessor or such Assignee of Rent or any other amounts due under the Operative Documents in respect of its investment hereunder (or under the Lessor Assignment Agreement, as applicable (except for (A) franchise taxes, taxes or other charges related to the general authority of Lessor or such Assignee to do business or taxes on the overall income of Lessor or such Assignee imposed by the jurisdiction where Lessor or such Assignee is incorporated (or any political subdivision thereof) or where it is managed or controlled, or (B) withholding taxes imposed under the laws of any jurisdiction); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding, with respect to any funding by Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, which is determined on a LIBO Rate basis, any such requirement with respect to which Lessor or such Assignee is entitled to compensation pursuant to clause (d) below), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, Lessor or such Assignee or shall impose on Lessor or on the London interbank market any other condition affecting the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable;

and the result of any of the foregoing is to increase the cost to Lessor or such Assignee of making or maintaining its investment made hereunder or under the Lessor Assignment Agreement, as applicable, or to reduce the amount of any sum received or receivable by Lessor or such Assignee under this Lease or under the Lessor Assignment Agreement, as applicable, by an amount deemed by Lessor or such Assignee to be material, then, within 15 days after reasonably detailed written demand by Lessor or such Assignee (with a copy to Agent), Lessee shall pay to Lessor or such Assignee, as applicable, as Supplemental Rent, such additional amount or amounts as will compensate Lessor or such Assignee for such increased cost or reduction; *provided, however*, that Lessee shall have no obligation to make any payment to any demanding party under this Section on account of any such increased costs unless Lessee receives notice of such increased costs from the demanding party within twelve (12) months after they are incurred or realized.

(b) IF LESSOR OR ANY ASSIGNEE SHALL HAVE DETERMINED THAT ANY APPLICABLE LAW, RULE, GUIDELINE OR REGULATION REGARDING CAPITAL ADEQUACY, OR ANY CHANGE THEREIN, OR

ANY CHANGE IN THE INTERPRETATION OR ADMINISTRATION THEREOF BY ANY GOVERNMENTAL AGENCY, CENTRAL BANK OR COMPARABLE AGENCY CHARGED WITH THE INTERPRETATION OR ADMINISTRATION THEREOF, OR ANY REQUEST OR DIRECTIVE REGARDING CAPITAL ADEQUACY (WHETHER OR NOT HAVING THE FORCE OF LAW) OF ANY SUCH AUTHORITY, CENTRAL BANK OR COMPARABLE AGENCY (A "REGULATORY REQUIREMENT"), HAS OR WOULD HAVE THE EFFECT OF REDUCING THE RATE OF RETURN ON CAPITAL OF LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE AS A CONSEQUENCE OF LESSOR'S OR SUCH ASSIGNEE'S OBLIGATIONS UNDER THE OPERATIVE DOCUMENTS TO A LEVEL BELOW THAT WHICH LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE COULD HAVE ACHIEVED BUT FOR SUCH REGULATORY REQUIREMENT (TAKING INTO CONSIDERATION ITS POLICIES WITH RESPECT TO CAPITAL ADEQUACY) BY AN AMOUNT DEEMED BY LESSOR OR SUCH ASSIGNEE TO BE MATERIAL, THEN FROM TIME TO TIME, WITHIN 15 DAYS AFTER REASONABLY DETAILED WRITTEN DEMAND BY LESSOR OR SUCH ASSIGNEE (WITH A COPY TO AGENT), LESSEE SHALL PAY TO LESSOR OR SUCH ASSIGNEE, AS SUPPLEMENTAL RENT, SUCH ADDITIONAL AMOUNT OR AMOUNTS AS WILL COMPENSATE LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE FOR THE PORTION OF ANY SUCH REDUCTION; PROVIDED, HOWEVER, THAT LESSEE SHALL HAVE NO OBLIGATION TO MAKE ANY PAYMENT TO LESSOR OR ANY ASSIGNEE UNDER THIS SECTION ON ACCOUNT OF ANY SUCH INCREASED COSTS UNLESS LESSEE RECEIVES NOTICE OF SUCH INCREASED COSTS FROM LESSOR OR SUCH ASSIGNEE WITHIN TWELVE (12) MONTHS AFTER THEY ARE INCURRED OR REALIZED.

(c) Lessor and each Assignee will promptly notify Lessee and Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle Lessor or such Assignee to compensation pursuant to this Section 11.4 and will use reasonable commercial efforts to avoid the need for, or reduce the amount of, such compensation if, in the reasonable judgment of Lessor or such Assignee, such efforts would not result in any economic or regulatory disadvantage to Lessor or such Assignee or be contrary to Lessor's or such Assignee's normal banking procedures. A certificate of Lessor or any Assignee claiming compensation under this Section 11.4 and setting forth the additional amount or amounts to be paid to it hereunder, accompanied by a computation in reasonable detail of such amount or amounts, shall be conclusive if prepared in good faith and on a reasonable basis. In determining such amount, Lessor and such Assignee may use any reasonable averaging and attribution methods.

(d) For so long as Lessor or any Assignee shall be required pursuant to the requirements of the Board of Governors of the Federal Reserve System to maintain reserves with respect to liabilities or assets consisting of or including "Eurocurrency liabilities" (or any other category of liabilities which includes deposits by reference to which the rate on the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, on which is determined on a LIBO Rate basis, is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of Lessor or such Assignee to United States residents), then Lessor or such Assignee may require Lessee to pay, contemporaneously with each payment of Basic Rent, additional yield on the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, at a rate per annum determined by Lessor or such Assignee up to but not exceeding the excess of (a)(i) the applicable LIBO Rate divided by (ii) one minus the LIBOR Reserve Percentage over (b) the applicable LIBO Rate. If Lessor or any Assignee wishes to require payment of such additional yield, Lessor or such Assignee (x) shall so notify Lessee and Agent

in a reasonably detailed, written notice, in which case such additional yield on the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, shall be payable to Lessor or such Assignee at the place indicated in such notice with respect to each Rent Period commencing at least four Business Days after the giving of such notice and (y) shall notify Lessee at least four Business Days prior to each date on which yield is payable on such investment of the amount then due it under this clause.

Section 11.5. Funding Losses. Lessee shall pay to Lessor and each Assignee, as applicable, as Supplemental Rent, such amounts as may be necessary to reimburse Lessor or such Assignee for any loss or expense incurred (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by Lessor or such Assignee to make, continue or maintain any portion of its investment hereunder or under the Lessor Assignment Agreement, as applicable, on a LIBO Rate basis) as a result of any (i) payment of all or any portion of the Lease Balance for any reason on a date other than a Payment Date, including, without limitation, by reason of acceleration, or (ii) the failure of the transaction contemplated by Article II to occur on the Delivery Date if Lessee has delivered the Delivery Date Notice and such failure is the result of any action or inaction by Lessee (the amount of such loss or expense, the "*Break Funding Amount*"). Lessor and each Assignee shall promptly notify Lessee and Agent in writing of the amount of any claim under this Section 11.5, the reason or reasons therefor and the additional amount required fully to compensate Lessor or such Assignee for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on Lessee.

Section 11.6. Gross Up. With respect to any payment to be received under any other provision of this Article XI, the amount of such payment shall be increased to an amount such that after deduction of the amount of all Taxes and impositions required to be paid by the recipient of such payment (including any Taxes otherwise excluded from the definition of Impositions hereunder) is equal to the payment otherwise required to be made hereunder (net of any Tax savings then actually realized by such Indemnatee with respect to any payment that is the subject of indemnification) ("*Grossed-Up Basis*").

Section 11.7. Nonconformance Indemnity. Notwithstanding any provision to the contrary in this Article XI, in the event that (a) Lessee elects the Sale Option, and (b) after paying to Lessor, any amounts due under Article XV hereof, the Lease Balance shall not have been reduced to zero, then the Lessee shall deliver to Lessor a report from an appraiser selected by it (at the direction of the Agent) and approved by the Lessee (such approval not to be unreasonably withheld), in form and substance reasonably satisfactory to the Agent and using methods reasonably satisfactory to the Agent. In the event that the above-described appraisal establishes that (x) the actual Fair Market Value of the Items of Equipment as of the Lease Expiration Date is less than the Fair Market Value of the items of Equipment anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g), and (y) the reason for the actual Fair Market Value of the Items of Equipment as of the Lease Expiration Date being less than the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) was due, in whole or in part, to any of the following events, circumstances or conditions, whether or not permitted hereunder:

(i) the

failure to maintain the Items of Equipment as required by the Lease and the other Operative Documents (including the failure to comply with all Environmental Laws), and in at least as good a condition as it was in on the Delivery Date, ordinary wear and tear excepted; (ii) the carrying out of any modifications, improvements or alterations or the failure to undertake, in accordance with Section 15.4(b), any modifications, improvements or alterations; (iii) excessive use of any Item of Equipment; or (iv) any defect, exception, restriction or other encumbrance on or title to the Items of Equipment arising after the Delivery Date, then Lessee shall promptly pay over to Lessor on the Lease Expiration Date the lesser of (1) the outstanding Lease Balance and (2) the amount of the shortfall between the Fair Market Value of the Items of Equipment as of the Lease Expiration Date and the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) demonstrated in the report of the appraiser described above to be attributable to any of the events or circumstances described in clauses (i) through (iv) of this Section 11.7.

Section 11.8. Payment of Indemnities. Unless the Operative Documents provide otherwise, any payment of Supplemental Rent constituting indemnity payments shall be due and payable within ten days of demand and compliance by the Lessor and Agent with any notice or other requirements, if any, they are to satisfy in accordance with the provision that gives rise to the indemnity obligation.

ARTICLE XII

LEASE EVENTS OF DEFAULT; REMEDIES

Section 12.1. Lease Events of Default. The following shall constitute events of default (each a “*Lease Event of Default*”) hereunder; *provided* that for purposes of Article IV and subsection (b), (c)(v), (c)(vi), (d), (h)(ii), (i), (j) or (k) of this Section 12.1, to the extent Lessor shall exercise any discretion in making a determination that a Lease Event of Default has occurred thereunder, Lessor shall exercise such discretion in a commercially reasonable manner:

(a) *Payments.* Lessee shall fail to pay (i) when due any amount payable on the Lease Expiration Date, or (ii) within five (5) Business Days after the same becomes due, any installment of Basic Rent (other than Basic Rent payable on the Lease Expiration Date) or any other amount payable by Lessee under any of the Operative Documents.

(b) *Representations and Warranties.* Any representation or warranty by Lessee made herein or which is contained in any certificate, document or financial or other statement by Lessee or any Responsible Officer of Lessee, furnished at any time under or in connection with this Lease or any other Operative Document, is false, incorrect or inaccurate in any material respect, on or as of the date made; *provided, however,* that, other than willful misrepresentations or willful breaches of warranties, such misrepresentation or breach of warranty shall not constitute a Lease Event of Default if it is capable of being remedied and Lessee remedies such misrepresentation or breach of warranty within thirty (30) days after the earlier of (i) Lessee’s written acknowledgment of such misrepresentation or

breach of warranty or (ii) any written notice by Lessor or Agent to Lessee of such misrepresentation or breach of warranty.

(c) *Failure by Lessee to Perform Certain Covenants.* Lessee shall fail to perform or observe any term, covenant or agreement contained in (i) Section 8.1(c), (ii) Section 8.6, (iii) Section 9.2, (iv) Section 9.3, (v) Article XV, (vi) Section 18.2(c) or 18.2(e), (vii) any other provision of Section 18.2 or (viii) Section 18.3.

(d) *Failure by Lessee to Perform Other Covenants.* Lessee shall fail to perform or observe any other term, covenant or agreement contained in this Lease or any other Operative Document on its part to be performed or observed and any such failure shall remain unremedied for a period of thirty (30) days after the earlier of (i) Lessee's written acknowledgment of such failure or (ii) any written notice by Lessor or Agent to Lessee of such failure; *provided, however,* that, except with respect to any failure to perform or observe the covenants or agreements contained in Sections 8.1, 8.2, 8.3, 8.4, 8.5, 8.7 or 9.1 hereof, such failure shall not constitute a Lease Event of Default if it is capable of being remedied and Lessee diligently proceeds to remedy such failure and completes such remediation within 180 days after such written acknowledgment or notice.

(e) *Insolvency; Voluntary Proceedings.* Lessee or any of its Significant Subsidiaries shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated in full or in part, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it or (vii) take any action for the purpose of effecting any of the foregoing.

(f) *Involuntary Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Lessee or any of its Significant Subsidiaries or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Lessee or any of its Significant Subsidiaries or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement.

(g) *Cross-Default.* (i) Lessee or any of its Significant Subsidiaries shall fail to make any payment on account of any Indebtedness of such Person (other than the Lessee Obligations) when due (whether at scheduled maturity, by required prepayment, upon

acceleration or otherwise) and such failure shall continue beyond any period of grace provided with respect thereto, if the aggregate amount of such Indebtedness outstanding exceeds \$10,000,000, (ii) a "Lease Event of Default" shall exist under Lease B or (iii) Lessee or any of its Significant Subsidiaries shall otherwise fail to observe or perform any agreement, term or condition contained in any agreement or instrument of such Person pursuant to which \$10,000,000 or more of Indebtedness is outstanding (other than the Lessee Obligations), or any other event shall occur or condition shall exist, and such failure, event or condition shall continue beyond any period of grace provided with respect thereto, if the effect of such failure, event or condition is to cause Indebtedness of Lessee or any of its Significant Subsidiaries (other than the Lessee Obligations) to become due; *provided, however*, that no Lease Event of Default shall have occurred under this clause (iii) if the Agent, Lessor, Assignees or their Affiliates have the ability to control (by vote or otherwise), either collectively or individually, whether such Indebtedness shall become due.

(h) *Judgments.* (i) A final nonappealable judgment or order for the payment of money against Lessee or any of its Significant Subsidiaries in an aggregate amount of \$25,000,000 or more in excess of amounts covered by third-party insurance shall remain unpaid for ninety (90) days following the due date for such payment; or (ii) any non-monetary judgment or order shall be rendered against Lessee or any of its Significant Subsidiaries which has or would reasonably be expected to have a Material Adverse Effect.

(i) *Process Issued.* A warrant of attachment, execution, distraint, or similar process against any substantial part of the assets of Lessee or any of its Significant Subsidiaries is issued which remains undismissed or undischarged for a period of thirty (30) days, if as a result thereof there is reasonably expected to occur a Material Adverse Effect.

(j) *Seizure.* All or a material part of the undertaking, assets, rights or revenues of Lessee or any of its Significant Subsidiaries are seized, nationalized, expropriated or compulsorily acquired by or under the authority of any Governmental Authority.

(k) *ERISA* (i) An ERISA Event shall occur with respect to a Pension Plan which has resulted or could reasonably be expected to result in liability of Lessee under Title IV of ERISA to the Pension Plan or PBGC in an aggregate amount in excess of \$10,000,000; or (ii) the commencement or increase of contributions to, or the adoption of or the amendment of a Pension Plan by Lessee which has resulted or could reasonably be expected to result in an increase in Unfunded Pension Liability among all Pension Plans in an aggregate amount in excess of \$10,000,000.

(l) *Operative Documents.* Any Operative Document to which Lessee is a party or any material term thereof shall cease to be, or be asserted by Lessee or any of its Significant Subsidiaries not to be, a legal, valid and binding obligation of Lessee or such Significant Subsidiary enforceable in accordance with its terms.

(m) *Dissolution, Etc.* Lessee or any of its Significant Subsidiaries shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), except to the extent expressly permitted by Section 18.2(c)(i) hereof, (ii) suspend its operations other than in the ordinary course of business, or (iii) take any corporate action to authorize any of the actions or events set forth above in this subparagraph (m).

(n) *[Reserved]*.

(o) *Material Adverse Effect.* A Material Adverse Effect shall occur or exist.

Section 12.2. Remedies. (a) Upon the occurrence of a Lease Event of Default, Lessor shall have the right, at its sole option, to appoint Agent as its attorney in fact to exercise Lessor's remedies set forth herein and in the other Operative Documents and as otherwise permitted by Applicable Laws and Regulations. Lessor shall provide written notice of such appointment to Lessee. If any Lease Event of Default exists, Agent or Lessor shall have the rights, options and remedies set forth below and Agent or Lessor may exercise in any order one or more or all of the following remedies, to the extent permitted under Applicable Laws and Regulations (it being understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute): (i) declare the entire outstanding Lease Balance to be due and payable, together with accrued and unpaid Rent and any other amounts payable under the Operative Documents (without double counting); (ii) proceed by appropriate court action or actions either at law or in equity, to enforce the declaration of the amounts described in clause (i) above, the performance by Lessee of the applicable covenants of this Lease and the other Operative Documents (including but not limited to Section 14.2 hereof) or to recover damages for the breach thereof; (iii) terminate this Lease by notice in writing to Lessee, but Lessee shall remain liable as hereinafter provided; (iv) enforce the Lien given hereunder pursuant to the UCC or any other law; (v) enter upon the premises where any of the Lessee Collateral may be and take possession of all or any of such Lessee Collateral and exercise any of its rights with respect thereto; (vi) require Lessee to assemble and return each Item of Equipment as provided below; and (vii) avail itself of the rights, options and remedies of a secured party under the UCC (regardless of whether the UCC or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) or any other law.

(b) (i) If Agent or Lessor exercises the option set forth in clause (a)(vi) above, Lessee shall, at its own expense, (i) forthwith deliver (to the extent permitted under Applicable Laws and Regulations) exclusive possession of such Items of Equipment to Agent or Lessor, as applicable, at a location or locations designated by Lessor in the 48 contiguous United States, together with a copy of an inventory list of such Items of Equipment then subject to this Lease, all then current plans, specifications and operating, maintenance and repair manuals in the possession of Lessee and its Affiliates and relating to such Items of Equipment that have been received or prepared by Lessee, appropriately protected and in the condition required by Article VIII hereof (and in any event in condition to be placed in immediate revenue service) and free and clear of all Liens other than Lessor Liens and (ii) otherwise comply with the provisions of clauses (i) through (iv) of Section 15.4(b). In addition, Lessee shall, for 180 days after

redelivery of such Items of Equipment, at Lessee's expense, (i) maintain (or cause to be maintained) such Items of Equipment in the condition required by Article VIII and free and clear of all Liens other than Lessor Liens, (ii) store such Items of Equipment in accordance with all manufacturer's recommendations, and (iii) keep all of such Items of Equipment insured in accordance with Section 9.2. This paragraph shall survive termination of this Lease.

(ii) Upon acceleration of the Lease Balance, the Lessor and each Series A Assignee, as applicable, shall have the rights and remedies with respect to the Series A Cash Collateral, Series C Cash Collateral and Lessor's Interest Related Cash Collateral, as applicable, as set forth in the Lessor Assignment Agreement, Cash Collateral Agreement and the Control Agreements.

(c) Following the foreclosure of Lessee's interest in the Equipment and the other Lessee Collateral, Lessee shall take such action as Lessor or Agent shall reasonably request in order to notify each sublessee of any Item of Equipment of such foreclosure and the succession of Agent, Lessor or its designee to ownership and operation thereof.

(d) Notwithstanding the foregoing, if any Lease Event of Default described in Section 12.1(e) or (f) shall have occurred and be continuing, then the entire outstanding Lease Balance and all accrued and unpaid Rent and other amounts payable under the Operative Documents (without double counting) shall automatically and immediately become due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

Section 12.3. Sale of Equipment. In addition to the remedies set forth in Section 12.2, if any Lease Event of Default shall occur Agent or Lessor may, but are not required to, sell the Equipment or any portion thereof in one or more sales. Lessor or Agent may purchase all or any part of the Equipment at such sale. Lessee acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Equipment, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Lessor or Agent shall be deemed reasonably and properly given if given at least 10 days before such disposition.

Section 12.4. Application of Proceeds. All payments received and amounts held or realized by Agent at any time when a Lease Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Agent and the proceeds of sale pursuant to Section 12.3 shall be distributed upon receipt by Lessor for distribution in accordance with Article XXI hereof.

Section 12.5. Power of Attorney. Lessee unconditionally and irrevocably appoints Lessor and Agent as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Applicable Laws and Regulations, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this Article XII, if a Lease Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during a Lease Event of Default, to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Lease on the records of any

Governmental Authority) and other proper instruments as Lessor may reasonably consider necessary or appropriate. Lessee ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Lessor, Agent or any purchaser, Lessee shall ratify and confirm any lawful sale, assignment, transfer or delivery by executing and delivering to Lessor, Agent or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

Section 12.6. Remedies Cumulative; Consents. To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws and Regulations, each and every right, power and remedy herein specifically given to Lessor and Agent or otherwise in this Lease shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor or Agent, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Lessor's or Agent's consent to any request made by Lessee shall not be deemed to constitute or preclude the necessity for obtaining Lessor's or Agent's consent in the future to all similar requests. To the extent permitted by Applicable Laws and Regulations, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise that may require Lessor or Agent to sell, lease or otherwise use the Equipment, any Item of Equipment or any Part thereof in mitigation of Lessor's or Agent's damages upon the occurrence of a Lease Event of Default or that may otherwise limit or modify any of Lessor's or Agent's rights or remedies under this Article XII.

ARTICLE XIII

RIGHT TO CURE

If any Lease Event of Default shall be continuing and in Agent's reasonably exercised judgment Lessee is not acting diligently and appropriately to cure such Lease Event of Default, Lessor may, but shall not be obligated to, on five (5) Business Days' prior notice to Lessee (except in the event of an emergency, in which case only one Business Day's prior notice shall be required), pay or perform the obligation giving rise to such Lease Event of Default, and neither Agent nor Lessor shall thereby be deemed to have waived any default caused by such failure to cure, and the amount of such payment and the amount of the expenses of Lessor and Agent (including reasonable attorneys' fees and expenses) incurred in connection with such payment or performance (to the extent notice has been given with respect thereto), together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by Lessee to Agent within five (5) Business Days after demand and delivery to Lessee of such notice.

ARTICLE XIV

EARLY TERMINATION OPTION AND OBLIGATION TO PURCHASE

Section 14.1. Early Termination Option. (a) Subject to the first sentence of Section 15.2 and the limitations contained in Section 14.1(b), on any day (the “*Early Termination Payment Date*”) after the Delivery Date and so long as Lessee has not delivered written notice that it intends to exercise the Sale Option, Lessee may, at its option, upon at least 30 days advance written notice to Agent and Lessor, purchase one or more Items of Equipment for a purchase price equal to the Early Termination Purchase Amount plus any Break Funding Amounts, if any (the “*Early Termination Option*”). Upon the payment of the Early Termination Purchase Amount by Lessee in accordance with the provisions of the preceding sentence, Lessor shall execute and deliver to Lessee such documents as may be reasonably requested to release or evidence the release of the Item or Items of Equipment subject to the Early Termination Option from the terms and scope of this Lease and the other Operative Documents (without representations or warranties, except that the Items of Equipment are free and clear of Lessor Liens attributable to Lessor), in such form as may be reasonably requested by Lessee, all at Lessee’s sole cost and expense.

If Lessee has elected the Early Termination Option with respect to one or more Items of Equipment, Lessee shall continue to make all payments of Rent due under this Lease until and including the Early Termination Payment Date. Upon payment of the Early Termination Purchase Amount in respect of such Items of Equipment together with all Basic Rent and Supplemental Rent then due and owing, the remaining scheduled Basic Rent payments under this Lease shall be reduced by an amount equal to the product of the scheduled amount of each such remaining Basic Rent payment (determined in each case prior to the receipt of such Early Termination Purchase Amount), multiplied by the Item Value Fraction of the Item or Items of Equipment subject to such early termination. In the event Lessee shall elect the Early Termination Option with respect to all of the Items of Equipment, the obligation of Lessee to pay Rent hereunder shall cease and the term of this Lease shall end on the date of such payment.

(b) Lessee shall not be entitled to elect the Early Termination Option with respect to less than all of the Items of Equipment then subject to this Lease unless:

(i) after giving effect to such Early Termination Option and all Early Termination Options previously exercised by Lessee, the aggregate Early Termination Purchase Amount paid with respect to Items of Equipment during the Lease term shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment as of the Delivery Date; and

(ii) the Lessee shall have delivered an appraisal at Lessee’s sole expense to the Agent which is reasonably satisfactory in scope and form to the Agent (which has been prepared by an appraiser selected by the Agent and approved by Lessee (such approval not to be unreasonably withheld)) that confirms that, after giving effect to such Early Termination Option, the End of Term Value Ratio of the Items of Equipment remaining subject to this Lease is not less than the End of Term Value Ratio of all Items of Equipment originally subject to this Lease (as set forth in the Appraisal).

Section 14.2. Required Purchase. So long as Agent or Lessor has not exercised any other remedy inconsistent therewith, Lessee shall be obligated to purchase all of the Items of Equipment for the Purchase Amount automatically and without notice upon the occurrence of any Lease Event of Default described in clause (e)(vi) or (f) of Section 12.1 and, within five (5) Business Days after notice from Agent or Lessor, upon the occurrence of any other Lease Event of Default, and upon receipt of the Purchase Amount, the Items of Equipment shall be transferred to Lessee as set forth in the last sentence of the first paragraph of Section 14.1(a).

ARTICLE XV

LEASE TERMINATION

Section 15.1. Lessee's Options. Not later than 360 days nor earlier than 390 days in the case of the Sale Option or not later than 120 days nor earlier than 150 days in the case of the Purchase Option prior to the last day of the Lease Term, Lessee shall, by delivery of written notice to Agent and the Lessor, exercise one of the following options:

(a) Subject to Section 15.2, including, without limitation, the first sentence thereof, purchase for cash for the Purchase Amount all, but not less than all, of the Items of Equipment then subject to this Lease on the last day of the Lease Term (the "*Purchase Option*"); and if Lessee shall have elected to purchase the Items of Equipment, Lessor shall, upon the payment to Agent of the Purchase Amount then due and payable by Lessee under the Operative Documents, transfer all of Lessor's right, title and interest in and to the Items of Equipment "as-is" without recourse or warranty (except as to the absence of Lessor Liens); or

(b) Subject to Section 15.2, including, without limitation, the first sentence thereof, sell as non-exclusive agent, on behalf of Lessor, for cash to a purchaser or purchasers all, but not less than all, of the Items of Equipment then subject to this Lease on the last day of the Lease Term (the "*Sale Option*"). Lessee's right to sell the Items of Equipment pursuant to the Sale Option shall be conditioned upon and subject to the fulfillment by Lessee of each of the terms and conditions set forth in this Article XV. Simultaneously with a sale on or prior to the last day of the Lease Term pursuant to the Sale Option, Lessee shall pay or cause to be paid to Agent, (i) the Sale Recourse Amount, (ii) the gross proceeds of the sale of the Equipment, without deductions or expense reimbursements (the "*Sale Proceeds*"), and (iii) all accrued and unpaid Rent and all other amounts due under the Operative Documents and, if such sale occurs prior to the last day of the Lease Term, all Capital Rent not previously paid by Lessee and which would have become due under the Operative Documents on or before the last day of the Lease Term. If the amounts received by the Agent pursuant to the immediately preceding sentence exceed the aggregate outstanding Lease Balance and all other amounts due and owing by Lessee under the Operative Documents, Agent will pay to Lessee such excess amount. The amount payable pursuant to this Section 15.1(b) shall in no event be construed to limit any other obligation of Lessee under the Operative Documents,

including, without limitation, pursuant to Article XI. All amounts paid to Agent pursuant to this Section 15.1(b) shall be distributed in accordance with Article XXI hereof.

Section 15.2. Election of Options. The Early Termination Option and end of term option elected by Lessee under (i) Section 14.1(a), but solely with respect to the purchase of all, but not less than all, of the Equipment and (ii) Section 15.1 of this Lease, respectively, must be the same as the option elected (or deemed to be elected) by Lessee under the corresponding section of the Lease B. Lessee's election (or deemed election) of the Purchase Option shall be irrevocable at the time when made by Lessee. In the event Lessee fails to make a timely election under Section 15.1 hereof, Lessee shall be deemed to have elected the Purchase Option. Lessee may not elect the Sale Option if there exists on the date the election is made a Lease Default or a Lease Event of Default. In addition, the Sale Option shall automatically be revoked if there exists a Lease Default or Lease Event of Default at any time after the Sale Option is properly elected (whether or not such Lease Default or Lease Event of Default is cured) or Lessee fails to comply with each of the other terms and conditions set forth in this Article XV, in which case Lessee shall be required to purchase on the last day of the Lease Term all of the Items of Equipment pursuant to the Purchase Option and Lessor shall be entitled to exercise all rights and remedies provided in Article XII.

Section 15.3. [Reserved].

Section 15.4. Sale Option Procedures. (a) If Lessee elects the Sale Option, Lessee shall use its reasonable commercial efforts to obtain the highest all cash purchase price for the Items of Equipment. All costs related to such sale and delivery (including during the Extended Remarketing Period), including, without limitation, the cost of sales agents, removal of the Items of Equipment, delivery of documents and the Items of Equipment to any location designated by a buyer or prospective buyer, legal costs, costs of notices, commissions, escrow fees, filing fees, appraisal fees, license fees, transfer taxes, any advertisement or other similar costs, or other information and of any parts, configurations, repairs or modifications desired by a buyer or prospective buyer, re-installation of the Items of Equipment in the manner and at the location or locations required by a buyer, the cost of storage and insurance during the Extended Remarketing Period as provided in Section 15.6(b) and the costs associated with the satisfaction of the conditions set forth in Section 15.4(b) below shall, except as provided in the following provisos, be borne entirely by Lessee, without regard to whether such costs were incurred by Lessor, Lessee or any potentially qualified buyer, and shall in no event be paid from the Sale Proceeds for the benefit of Lessee; *provided*, that Lessee shall in no event be liable for costs (other than de-installation costs, which shall in all cases be borne by Lessee) described in this clause (a) which, in aggregate, exceed \$5,366,000; *provided, further* that in the event that Lessor pays any of the costs described in this clause (a) (other than de-installation costs, which shall in all cases be borne by Lessee) as a result of such costs (other than de-installation costs, which shall in all cases be borne by Lessee) aggregating in excess of \$5,366,000, Lessor shall be entitled to reimbursement of such payments from the Sale Proceeds prior to the Agent returning any excess Sale Proceeds to the Lessee pursuant to Section 15.1(b), but in no event shall Lessor be entitled to make any claim against Lessee under Article XI for reimbursement or indemnification of such payments made by Lessor. Neither Agent nor Lessor shall have any responsibility for procuring any purchaser. If,

nevertheless, Agent or Lessor undertakes any sales efforts, Lessee shall, subject to the preceding sentence, promptly reimburse Agent and/or Lessor for any charges, costs and expenses incurred in such effort, including any allocated time charges, costs and expenses of internal counsel or other attorneys' fees. Upon a sale pursuant to the Sale Option, the Items of Equipment shall be in at least the condition required by Section 12.2(b). Any purchaser or purchasers of the Items of Equipment shall not be an Affiliate of Lessee or have any understanding or arrangement with Lessee regarding the future use of the Items of Equipment. On the last day of the Lease Term, so long as no Lease Event of Default or Lease Default exists: (i) Lessee shall transfer all of Lessee's right, title and interest in the Items of Equipment, or cause the Items of Equipment to be so transferred, to such purchaser or purchasers, if any, in accordance with all of the terms of this Lease; (ii) subject to the simultaneous payment by Lessee of all amounts due under clause (iii) of this sentence, Lessor shall, without recourse or warranty, except as to the absence of Lessor Liens attributable to it, transfer by quitclaim Lessor's right, title and interest in and to the Items of Equipment to such purchaser or purchasers; and (iii) Lessee shall simultaneously pay to Lessor all of the amounts contemplated in Section 15.1(b).

(b) The Lessee's effective exercise and consummation of the Sale Option with respect to the Items of Equipment shall be subject to the due and timely fulfillment of each of the following provisions as to the Items of Equipment as of the dates set forth below:

(i) Lessee shall furnish to Lessor and Agent, on the last day of the Lease Term, a certification from the manufacturer that the Items of Equipment have been calibrated as necessary to be eligible for manufacturer's maintenance program and have been maintained at or modified to meet the latest available version and/or revision levels (assuming the Equipment has been modified as each such prior modification was introduced) of all hardware and software requirements applicable to the specific model of Equipment as deemed necessary by the manufacturer;

(ii) Lessee shall have the Items of Equipment de-installed, packaged and crated by the manufacturer's technicians or service providers certified by the manufacturer, and Lessee shall furnish to Lessor and Agent, a certification from the manufacturer's technicians or service providers certified by the manufacturer that the Items of Equipment are in good condition prior to shipment;

(iii) Lessee shall furnish to Lessor and Agent all applicable and corresponding instruction and service manuals, service and repair records, and descriptive brochures;

(iv) Lessee shall cause the Items of Equipment to be delivered to any location as selected by the purchaser, in a suitable manner which is specifically designed for the transportation of electronic components and equipment and in a manner consistent with the manufacturer's recommendations for transporting and packaging the Items of Equipment;

(v) Lessee shall not enter into any additional Subleases or renew any Subleases with respect to the Items of Equipment following Lessee's election of the Sale Option, and following Lessee's election of the Sale Option, Lessee shall not remove any

Permitted Modifications or commence any voluntary Permitted Modifications under Section 8.4 without the prior written consent of the Agent;

(vi) The Lessee shall submit all bids to the Agent, and the Agent will have the right to review the same and to submit any one or more bids. Agent shall have no obligation to accept a bid that is not on an all-cash basis. Provided that there are all-cash bids at such time, Lessee shall deliver to the Agent not less than ninety (90) days prior to the Lease Expiration Date a binding written unconditional (except as set forth below), irrevocable offer (the "*High Bid*") by such purchaser or purchasers offering the highest all-cash bid to purchase all, but not less than all, of the Items of Equipment (unless otherwise agreed to by the Agent). Subject to Agent's rights in the immediately succeeding sentence, Agent shall accept the High Bid in writing within 20 Business Days of receipt thereof by Agent. If Agent in the exercise of its reasonable judgment believes that the Sale Proceeds to be paid to the Agent from a High Bid which the Lessee desires to accept is less than the lesser of (A) the Fair Market Value of the Items of Equipment or (B) the Purchase Amount, then Agent may condition its obligation to accept the High Bid upon Agent's receipt of an appraisal demonstrating that the High Bid is for an amount at least equal to the lesser of (1) the Fair Market Value of the Items of Equipment or (2) the Purchase Amount, as established by such appraisal. In such case then Agent shall promptly following the receipt of such High Bid, engage an independent appraiser, reasonably satisfactory to the Agent and Lessee, at Lessee's expense, to determine (by appraisal methods reasonably satisfactory to the Agent) the Fair Market Value of the Items of Equipment as of the Lease Expiration Date. The selection of the independent appraiser shall be completed within ten (10) Business Days of the receipt by Agent of such High Bid. A copy of such appraisal shall be delivered to Agent not later than 20 Business Days after the selection of the independent appraiser. The appraiser will be instructed to assume that the Items of Equipment are in the condition required by and have been maintained in accordance with this Lease. Any such appraisal shall be at the sole cost and expense of Lessee.

(vii) In connection with any such sale of the Items of Equipment, the Lessee will provide to the purchaser all customary "seller's" indemnities, representations and warranties regarding title, absence of Liens (except Lessor Liens and Liens relating to the interest or rights of Lessee) and the condition of such Items of Equipment. The Lessee shall have obtained, at its cost and expense, all required governmental and regulatory consents and approvals and shall have made all filings as required by Applicable Laws and Regulations in order to carry out and complete the transfer of the Items of Equipment. Any agreement as to such sale shall be in form and substance reasonably satisfactory to the Agent. If the Lessee properly exercises the Sale Option, then the Lessee shall, upon a sale thereunder, and at its own cost, transfer or cause to be transferred possession of the Items of Equipment to the independent purchaser(s) thereof, in each case by surrendering the same into the possession of such purchaser(s), free and clear of all Liens, other than Lessor Liens, and in the condition required by this Lease, and the Lessee shall execute and deliver to such purchaser(s) at the Lessee's cost and expense a bill of sale with respect to the Items of Equipment, warranting that such Items of Equipment are free and clear of all Liens, other than Lessor Liens, together with an

assignment, without warranty of any kind, of Lessee's rights, if any, under any purchase contracts. The Lessee shall, on and within a reasonable time before and up to two years after the Lease Expiration Date, cooperate reasonably with the Agent, Lessor and the purchaser(s) of the Items of Equipment in order to facilitate the purchase and use by such purchaser(s) of the Items of Equipment, which cooperation shall include the following, all of which the Lessee shall do on or before the Lease Expiration Date or as soon thereafter as is reasonably practicable: providing reasonable access to all books and records regarding the maintenance, use and ownership of the Items of Equipment and all know-how, data and technical information regarding the use and maintenance of the Equipment thereto, granting or assigning all licenses necessary for the operation and maintenance of the Items of Equipment, and cooperating reasonably in seeking and obtaining all necessary Governmental Action. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease.

(ix) The Lessee shall, to the extent permitted by Applicable Laws and Regulations, assign, and shall cooperate with all reasonable requests of the Lessor, Agent or the purchaser for obtaining any and all licenses, permits, approvals and consents of any Governmental Authorities or other Persons that are or will be required to be obtained by the Lessor, Agent or such purchaser in connection with its use, operation, control or maintenance of the Items of Equipment in compliance with Applicable Laws and Regulations.

Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind the Lessor or Agent in connection with any proposed sale of the Items of Equipment.

Section 15.5. Certain Obligations Continue. During the period following Lessee's exercise of the Sale Option and until and including the Lease Expiration Date, the obligation of the Lessee under the Lease, including, without limitation, the obligation of Lessee to pay Rent with respect to the Items of Equipment (including the installment of Rent due on the Lease Expiration Date), shall continue undiminished. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XV.

Section 15.6. Failure to Sell Items of Equipment. If Lessee shall exercise the Sale Option and shall fail to sell the Items of Equipment on the Lease Expiration Date in accordance with Section 15.1(b) and subject to the provisions of Section 15.4 (other than as a result of Lessee's failure to comply with the provisions of Section 15.1(b) or 15.4, in which case, the last sentence of Section 15.2 shall be operative), then Lessee and Lessor hereby agree as follows:

(a) Lessee shall continue to use reasonable commercial efforts as non-exclusive agent for Lessor to sell the Items of Equipment on behalf of Lessor in accordance with this Section 15.6 for the period (the "*Extended Remarketing Period*") commencing on the Lease Expiration Date and ending on the earlier of (i) the sale of the Items of Equipment in accordance with the provisions of this Section 15.6 or such earlier

date as Lessor has received payment in full of the Lease Balance and all accrued and unpaid Rent and (ii) the delivery of a written notice from Lessor to Lessee at any time terminating the Extended Remarketing Period, which notice shall indicate that such termination is being made pursuant to this Section 15.6(a)(ii) and the date such termination shall be effective, which date shall be the Lease Expiration Date if such notice is given prior to the Lease Expiration Date. Without limiting the foregoing, each of the conditions contained in this Article XV shall be applicable to the Extended Remarketing Period and any sale during such period. Lessor's appointment of Lessee as Lessor's nonexclusive agent to use its reasonable commercial efforts to obtain the highest all-cash price for the purchase of the Items of Equipment shall not restrict Lessor's or Agent's right to market or lease the Items of Equipment, to retain one or more sales agents or brokers at Lessee's sole cost and expense.

(b) On the Lease Expiration Date, Lessee shall (i) pay to Lessor the Sale Recourse Amount and all other Rent due and owing hereunder and (ii) at Lessor's request either (A) return possession of the Items of Equipment to Lessor in accordance with Section 15.4(b) and in the condition required by this Lease or (B) de-install, package and crate the Equipment in accordance with Section 15.4(b) of the Lease and insure and store the Equipment in accordance with all manufacturer's recommendations and this Lease for the Extended Remarketing Period; *provided* that such insurance and storage shall be at Lessee's expense for only the first 180 days of the Extended Remarketing Period. Thereafter, this Lease shall terminate except as provided herein and Lessee shall have no further obligation to pay Rent. Following the Lease Expiration Date, Lessor shall be free to sell or lease the Items of Equipment to any party at such reasonable times and for such amounts as Lessor deems commercially reasonable and appropriate in order to maximize Lessor's opportunity to recover the Lease Balance. Following the Lease Expiration Date, Lessor shall have the right to enter into leases for the Items of Equipment at fair market rentals and otherwise on commercially reasonable terms, and the net operating cash flow therefrom shall be payable to Agent in reduction of the Lease Balance and Supplemental Rent due and owing under the Operative Documents.

(c) Lessor reserves all rights under this Lease and the other Operative Documents arising out of Lessee's breach of any provisions of this Lease (including this Article XV), occurring prior to or on the Lease Expiration Date, including the right to sue Lessee for damages.

(d) To the greatest extent permitted by law and subject to Section 15.6(e) below, Lessee hereby unconditionally and irrevocably waives, and releases Lessor and Agent from, any right to require Lessor or Agent during or following the Extended Remarketing Period to sell the Items of Equipment in a timely manner or for any minimum purchase price or on any particular terms and conditions, Lessee hereby agreeing that if Lessee shall elect the Sale Option, its ability to sell the Items of Equipment on or prior to the Lease Expiration Date and to cause any Person to submit a bid to Lessor pursuant to Section 15.4 shall constitute full and complete protection of Lessee's interest hereunder.

(e) In addition, if Lessor has not sold the Items of Equipment within two (2) years after its termination of the Extended Remarketing Period, Agent shall appoint a qualified independent sales agent to sell the Items of Equipment pursuant to the first *bona fide* offer received by a creditworthy offeror for an all-cash purchase price at the then Fair Market Value of the Items of Equipment to the extent the conditions therefor are satisfied. Any proceeds resulting from the operation of this Section 15.6 shall be applied net of sale costs, commissions and property maintenance costs. To determine whether an offer is for the Fair Market Value of the Items of Equipment, Lessor may condition its obligation to sell on its receipt of an appraisal in accordance with Section 15.4(b)(vi). Any determination as to the *bona fide* nature of an offer or creditworthiness of the offeror shall be made in the reasonable judgment of Agent.

(f) If a sale of Items of Equipment occurs during the Extended Remarketing Period (i) the Lessor shall be entitled to the Sale Proceeds for such Items of Equipment in an amount not to exceed the outstanding Lease Balance and all other amounts due and owing under the Operative Documents and any such excess shall be for the benefit of Lessee and (ii) Lessee shall comply with the provisions of this Article XV including, but not limited to, Section 15.4.

ARTICLE XVI

OWNERSHIP AND GRANT OF LIEN AND SECURITY INTEREST

Section 16.1. Grant of Lien and Security Interest. Title to the Items of Equipment shall remain in Lessor as security for the obligations of Lessee hereunder and under the other Operative Documents to which it is a party until Lessee has fulfilled all of its obligations hereunder and thereunder. Lessee hereby grants, assigns, hypothecates, transfers and pledges to Lessor, a lien and security interest on all of Lessee's right, title and interest in and to, whether now or hereafter existing, each Item of Equipment and in each Sublease covering any Item of Equipment that may be entered into from time to time in accordance with the provisions of this Lease, and Lessee hereby grants to Lessor a continuing lien on, and security interest in, and assigns to Lessor all of Lessee's rights, title and interest in all of the other Lessee Collateral, to secure the payment of all sums due hereunder and under the other Operative Documents to which it is a party and the performance of all other obligations hereunder and under the other Operative Documents to which it is a party; *provided, however*, that the lien on, and security interest in, the portion of the Lessee Collateral which constitutes Cash Collateral will not secure any obligations of the Lessee under the Operative Documents with respect to the Series B Lease Balance or any amounts due and owing with respect to such Series B Lease Balance or to the Series B Assignees, if any. Lessee also hereby authorizes Lessor and Agent to file UCC financing statements on and after the Delivery Date to the extent necessary to perfect such security interests granted pursuant to the Operative Documents that may be perfected under the UCC through such filings. Further, Lessee hereby assigns to Lessor all of its rights under any and all purchase contracts relating to each Item of Equipment.

Section 16.2. Retention of Sale Proceeds. If Lessee would be entitled to any amount (including any Casualty Recoveries) held by Agent or title to any Item of Equipment hereunder but for the existence of any Material Lease Default or Lease Event of Default, Agent shall hold such amount or Item of Equipment as part of the Lessee Collateral and during a Lease Event of Default shall be entitled to apply such amounts against any amounts due hereunder; *provided*, that Agent shall distribute such amount or transfer such Item of Equipment, to the extent not theretofore applied, in accordance with the other terms of this Lease if and when no Material Lease Default or Lease Event of Default exists.

Section 16.3. State of Incorporation. Lessee shall not change its state of incorporation unless Lessee has given Agent not less than thirty (30) days' prior written notice and Lessee has executed and filed such UCC financing statements as Agent may reasonably request during such thirty day period to protect the security interests of Lessor granted by the Operative Documents.

ARTICLE XVII

REPRESENTATIONS AND WARRANTIES

Section 17.1. Representations and Warranties of Lessee. As of the date hereof, Lessee makes the representations and warranties set forth in this Section 17.1 to Agent and Lessor.

(a) *Organization and Powers.* Each of Lessee and its Significant Subsidiaries is a corporation or partnership duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, is qualified to do business and is in good standing in each jurisdiction in which the failure so to qualify or be in good standing would result in a Material Adverse Effect and has all requisite power and authority to own its assets and carry on its business and, with respect to Lessee, to execute, deliver and perform its obligations under the Operative Documents to which it is a party.

(b) *Authorization: No Conflict.* The execution, delivery and performance by Lessee of the Operative Documents to which it is a party have been duly authorized by all necessary corporate action of Lessee and do not and will not (i) contravene the terms of the certificate of incorporation and the bylaws of Lessee or result in a breach of or constitute a material default under any material Contractual Obligation to which Lessee is a party or by which it or its properties may be bound or affected; or (ii) violate in any material respect any provision of any Governmental Rule binding on or affecting Lessee.

(c) *Binding Obligation.* The Operative Documents to which Lessee is a party constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent the enforceability thereof would be subject to bankruptcy, insolvency, receivership or similar laws providing relief from creditors, or principles of equity generally.

(d) *Governmental Consents.* No authorization, consent, approval, license, exemption of, or filing or registration with, any Governmental Authority, or approval or consent of any other Person, is required for the due execution, delivery or performance by Lessee of any of the Operative Documents, except those set forth on Schedule 17.1(d) which have been obtained or made and are in full force and effect.

(e) *No Defaults.* Neither Lessee nor any of its Significant Subsidiaries is in default under any Governmental Rule to which it is a party or by which it or its properties may be bound which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

(f) *Title to Properties.* (i) Lessee has good record and marketable title in fee simple to the real property on which the Equipment is to be located and, as of the date hereof, there are no existing mortgages, deeds of trust or other similar liens encumbering the real property and (ii) Lessee and each Significant Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all other real property necessary or used in the ordinary conduct of their respective businesses, except, in each case, for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. The property of Lessee and its Significant Subsidiaries is subject to no Encumbrances, other than Encumbrances permitted under Section 18.2(a).

(g) *Litigation.* There are no actions, suits or proceedings pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Significant Subsidiaries or the properties of Lessee or any of its Significant Subsidiaries before any Governmental Authority or arbitrator which is likely to be determined adversely to Lessee or any such Significant Subsidiary and would be reasonably likely to result in a Material Adverse Effect.

(h) *Compliance with Consents and Licenses.* Every consent required by Lessee or any Significant Subsidiary (including those required under or pursuant to any Environmental Law) in connection with the conduct of its business and the ownership, use, exploitation or occupation of its property and assets has been obtained and is in full force and effect and there has not been any default in the observance of the conditions and restrictions (if any) imposed in, or in connection with, any of the same, except where the failure to obtain any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(i) *Compliance with Environmental Law.* To the best of Lessee's knowledge after due investigation, (i) the properties of Lessee and its Subsidiaries do not contain and have not previously contained (at, under, or about any such property) any Hazardous Materials or other contamination (A) in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, any Environmental Laws, in either case where such violation or liability could reasonably be expected to result in a Material Adverse Effect, (B) which could interfere with the continued operation of such property or (C) which could materially impair the fair market value thereof; and (ii) there has been no transportation or disposal of Hazardous Materials from, nor any release or threatened release of Hazardous Materials at or from, any property of Lessee or any of its Subsidiaries in violation of or in any manner could give rise to

liability under any Environmental Laws, where such violation or liability, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(j) *Governmental Regulation.* Neither Lessee nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Investment Company Act of 1940, the Interstate Commerce Act, any state public utilities code or any other Governmental Rule limiting its ability to incur Indebtedness.

(k) *ERISA.* (i) Except as specifically disclosed to the Lessor and Agent in writing prior to the date of this Lease: (A) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Governmental Rules; (B) there are no pending, or to the best knowledge of Lessee, threatened, claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; (C) there has been no prohibited transaction or other violation of the fiduciary responsibility rule with respect to any Plan which could reasonably result in a Material Adverse Effect; (D) no ERISA Event has occurred or is reasonably expected to occur with respect to any Pension Plan; (E) no Pension Plan has any Unfunded Pension Liability; (F) Lessee has not incurred, nor does it reasonably expect to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (G) no trade or business (whether or not incorporated under common control with Lessee within the meaning of Section 414(b), (c), (m) or (a) of the Code) maintains or contributes to any Pension Plan or other Plan subject to Section 412 of the Code; and (H) neither Lessee nor any entity under common control with Lessee in the preceding sentence has ever contributed to any Multiemployer Plan.

(ii) All employer and employee contributions required by any applicable Governmental Rule in connection with all Foreign Plans have been made, or, if applicable, accrued, in accordance with the country-specific accounting practices. The fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Plan, which actuarial assumptions are commercially reasonable. Each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable Governmental Authorities. Each Foreign Plan reasonably complies in all material respects with all applicable Governmental Rules.

(l) *Significant Subsidiaries.* The name and ownership of each Significant Subsidiary of Lessee on the date of this Agreement is as set forth in Schedule 17.1(l). All of the outstanding capital stock of, or any other interest in, each such Significant Subsidiary has been validly issued, and is fully paid and nonassessable.

(m) *Taxes.* Lessee and its Significant Subsidiaries have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other Governmental Charges levied or imposed upon them or their

properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Lessee or any Significant Subsidiary except those for which adequate reserves have been provided in accordance with GAAP.

(n) *Patents and Other Rights.* Each of Lessee and its Significant Subsidiaries possesses all permits, franchises, licenses, patents, trademarks, trade names, service marks, copyrights and all rights with respect thereto, free from maintenance and operation of its business, except where the failure to obtain any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(o) *Insurance.* The properties of Lessee and its Significant Subsidiaries are insured against losses and damages of the kinds and in amounts which are deemed prudent by Lessee in its reasonable business judgment and within the general parameters customary among similarly situated businesses in the industry, and such insurance is maintained with financially sound and reputable insurance companies or pursuant to a plan or plans or self-insurance to such extent as is usual for companies of similar size engaged in the same or similar businesses and owning similar properties.

(p) *Financial Statements.* The audited Financial Statements of Lessee and its Subsidiaries for the fiscal year ended in December 31, 2003, are complete and correct and fairly present the financial condition of Lessee and its Subsidiaries as at such date and the results of operations of Lessee and its Subsidiaries for the period covered by such statements, in each case in accordance with GAAP consistently applied. Since the last day of the fiscal year ended December 31, 2003, there has been no Material Adverse Effect.

(q) *Liabilities.* Neither Lessee nor any of its Significant Subsidiaries has any liabilities in excess of \$10,000,000, fixed or contingent, that are not disclosed in either (i) the audited annual Financial Statements of the Lessee and its Subsidiaries for the fiscal year ended December 31, 2003 or (ii) the unaudited quarterly Financial Statements of the Lessee and its Subsidiaries for the fiscal quarter ended March 31, 2004, in the notes thereto or otherwise disclosed in writing to the Lessor and Agent, other than liabilities arising in the ordinary course of business since March 31, 2004.

(r) *Labor Disputes. Etc.* There are no strikes, lockouts or other labor disputes against Lessee or any of its Significant Subsidiaries, or, to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Significant Subsidiaries, which may result in a Material Adverse Effect.

(s) *Solvency.* Lessee and its Subsidiaries on a consolidated basis are Solvent.

(t) *The Equipment.* (i) On the Delivery Date, Lessor will acquire good and valid title to the Equipment, free and clear of all Liens and all other interests of other Persons (except for Permitted Liens).

(ii) All of the Items of Equipment constitute personal property and not fixtures for purposes of perfection under the Uniform Commercial Code.

(iii) All of the Items of Equipment comply in all material respects with all applicable Governmental Rules and Insurance Requirements.

(u) *State of Incorporation.* The state of incorporation of the Lessee is Delaware.

(v) *Disclosure.* None of the representations or warranties made by Lessee in the Operative Documents as of the date of such representations and warranties, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of Lessee or any of its Significant Subsidiaries to Agent or Lessor in connection with the Operative Documents, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading in any material respect as of the time when made or delivered.

(w) *No Default; Casualty.* No event has occurred and is continuing that is a Lease Default and no Lease Event of Default exists and, to the knowledge of Lessee, no Casualty has occurred.

(x) *Security Interest.* (i) Upon filing of the UCC financing statements listed on Schedule V hereto and payment of the Purchase Price, Lessor has a valid and enforceable first priority, perfected Lien in the Items of Equipment and the other Lessee Collateral (other than the Cash Collateral, a security interest in which shall be perfected as set forth in clause (ii) below) as against all Persons, including Lessee and its creditors, free and clear of all Liens other than Permitted Liens.

(ii) Upon the deposit of Cash Collateral by Lessee pursuant to Section 2.6 and the execution and delivery of the Cash Collateral Agreement, the Control Agreements and the Lessor Assignment Agreement, (A) the Lessor will have a first-priority, perfected Lien in the Cash Collateral (other than the Cash Collateral described in clause (B) hereof) so deposited and (B) each Series A Assignee will have a first-priority, perfected lien in the Series A Cash Collateral purchased and assumed by such Series A Assignee pursuant to the Lessor Assignment Agreement and, in each case, no filing, recording, restoration, notice with or payment of any fees to, any Governmental Authority is necessary to establish or perfect the Lien in such Cash Collateral in favor of the Lessor or such Series A Assignee, as applicable.

(y) *No Transfer Taxes.* No sales, use, excise, transfer or other Tax, fee or imposition shall result from the sale, transfer or purchase of the Items of Equipment, except such Taxes, fees or impositions that have been paid in full or for which adequate arrangements for payment shall have been made by Lessee.

(z) *Appraisal Data.* The written information provided by Lessee and its Affiliates to the Appraiser and forming the basis for the conclusions set forth in the Appraisal, taken as a whole, was true and correct in all material respects at such times and did not omit any

information known and available to Lessee necessary to make the information provided not misleading at such times.

(aa) *No Prohibited Transaction.* The execution and delivery of this Lease and the other Operative Documents, including the consummation of the transactions contemplated hereby and thereby, will not involve any Prohibited Transactions. The representation by Lessee in the preceding sentence is made in reliance upon and subject to the correctness of the representation by the Lessor in Section 17.2(a)(i).

(bb) *Subject to Government Regulation.* Neither Agent nor Lessor will become, solely by reason of entering into the Operative Documents or consummation of the transaction contemplated thereby (other than the exercise of remedies under this Lease), subject to ongoing regulation of its operations by a Governmental Agency (except with respect to bank regulations) will be required to qualify to do business in any jurisdiction.

(cc) *Private Offering.* Excluding the effect of any failure of the representations and warranties set forth in Section 17.2(b) to be true and correct, the issuance, sale and delivery of the interests in the Items of Equipment, Lease and the other Operative Documents under the circumstances contemplated hereby do not require the registration or qualification of such interests under the Securities Act, any state securities laws. Excluding the effect of any failure of the representations and warranties set forth in Section 17.2(b) to be true and correct, neither Lessee nor anyone authorized to act on its behalf has, directly or indirectly, solicited any offers to acquire, offered or sold: (i) any interest in the Items of Equipment, the Lease or the Operative Documents in violation of Section 5 of the Securities Act or any state securities laws, or (ii) any interest in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned interests. Neither Lessee nor anyone authorized to act on its behalf was involved in (y) offering or soliciting offers for interests in the Items of Equipment, Lease or the other Operative Documents (or any similar securities) or (z) selling interests in the Items of Equipment, the Lease or the other Operative Documents (or any similar securities) to any Person other than the Lessor and Assignees not more than 18 other institutional investors.

(dd) *Margin Regulations.* Lessee is not engaged in the business of extending credit for the purpose of purchasing or carrying "margin stock" (within the meaning of Regulation U of the F.R.S. Board). No part of the proceeds of the Funding will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(ee) *Tangible Net Worth.* As of December 31, 2003, the Tangible Net Worth of Lessee was at least \$900,000,000.

(ff) The Lessee and its Significant Subsidiaries are in compliance, in all material respects, with the USA Patriot Act.

Section 17.2. Representations and Warranties of Lessor. Lessor represents and warrants to each of the other parties hereto as follows:

(a) *ERISA.* Lessor is not and will not be purchasing any of its interest in the Items of Equipment with the assets of an “employee benefit plan” (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or a “plan” (as defined in Section 4975(e)(1) of the Code.

(b) *Investment in the Items of Equipment.* It is acquiring its interest in the Items of Equipment for its own account for investment in such a manner as will not require the registration of such interest under the Securities Act or any state securities laws, and if in the future it should decide to dispose of its interest in the Items of Equipment, it understands that it may do so only in compliance with the Securities Act and the rules and regulations of the SEC thereunder and any applicable state securities laws. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject any interest in the Items of Equipment or this Lease to the registration requirements of Section 5 of the Securities Act. No representation or warranty contained in this Section 17.2(b) shall include or cover any action or inaction of Lessee or any Affiliate thereof whether or not purportedly on behalf of Lessor or any of its Affiliates. Subject to the foregoing, and subject to the provisions of Article XIX hereof, it is understood among the parties that the disposition of Lessor’s property shall be at all times within its control.

(c) *Enforceability, Etc.* Each Operative Document to which Lessor is a party constitutes the legal, valid and binding obligation of Lessor enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles.

Section 17.3. Representations and Warranties of Agent. Wells Fargo Bank Northwest, National Association, in its individual capacity, hereby represents and warrants to the other parties as set forth in this Section 17.3.

(a) *Due Organization, Etc.* Agent is a national banking association duly organized, validly existing and in good standing under the laws of the United States; Agent has full power and authority to enter into and perform its obligations under the Operative Documents to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Delivery Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party; and the Operative Documents to which Agent is a party, and to which Lessee is to be a party, have been or will be duly executed and delivered by Agent.

(b) *Authorization; No Conflict.* The execution and delivery by Agent of the Operative Documents to which it is or is to be a party, and the performance by Agent of its obligations

under such Operative Documents, have been duly authorized by all necessary action on its part, and do not and will not: (i) contravene any applicable laws, rules, regulations, orders, injunctions or decrees of any federal banking Authority or Authority in or with jurisdiction over banks in the State of Utah where such contravention would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, as Agent, or both, to perform its obligations under any Operative Documents to which it is or will be a party; (ii) violate any provision of its charter or by-laws; (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement or instrument to which Agent, either in its individual capacity, as Agent, or both, is a party or by which it or its properties may be bound or affected, which breaches or default would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, as Agent, or both, to perform its obligations under any Operative Documents to which it is or will be a party; or (iv) require any authorizations, consents, approvals, licenses or formal exemptions from, nor any filings, declarations or registrations with, any federal banking or Utah Authority or any consent or approval of any non-governmental Person.

(c) *Enforceability, Etc.* Each Operative Document to which Agent, either in its individual capacity, as Agent, or both, is a party constitutes the legal, valid and binding obligation of Agent, either in its individual capacity, as Agent, or both, enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(d) *Litigation.* There is no action, proceeding or investigation pending or threatened which questions the validity of the Operative Documents to which Agent, in its individual capacity, as Agent, or both, is a party or any action taken or to be taken pursuant to the Operative Documents to which Agent, in its individual capacity, as Agent, or both, is a party.

ARTICLE XVIII

COVENANTS OF LESSEE

Section 18.1. Affirmative Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance with, the following affirmative covenants:

(a) *Financial Statements and Other Reports.* Lessee shall deliver to the Agent (with sufficient copies for the Agent to distribute such copies to the Assignees) and Lessor, at Lessee's sole expense:

(i) As soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year (and, with respect to each fiscal quarter occurring after January 1, 2005, within 40 days after the end of such fiscal quarter), the consolidated Financial Statements of Lessee and its Subsidiaries for such fiscal quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail;

(ii) As soon as available and in any event within seventy (70) days after the end of each fiscal year, the consolidated Financial Statements of Lessee and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail, and accompanied by a report thereon of PricewaterhouseCoopers LLP or another firm of independent certified public accountants of recognized national standing, which report shall be unqualified as to scope of audit;

(iii) Together with the Financial Statements required pursuant to clauses (i) and (ii) of this Section 18.1(a), a compliance certificate of a Responsible Officer of Lessee (a "*Compliance Certificate*") which (A) states that such Financial Statements fairly present the financial condition of Lessee and its Subsidiaries as at the last day of the fiscal quarter or fiscal year covered by such Financial Statements and the results of operations of Lessee and its Subsidiaries for such quarter or year and have been prepared in accordance with GAAP consistently applied, subject to normal, year-end audit adjustments in the case of the Financial Statements for any fiscal quarter; and (B) states that no Lease Default or Lease Event of Default has occurred and is continuing, or, if any such Lease Default or Lease Event of Default has occurred and is continuing, a statement as to the nature thereof and what action Lessee proposes to take with respect thereto;

(iv) (A) Promptly after the giving, sending or filing thereof, copies of all reports, if any, which Lessee or any of its Subsidiaries sends generally to any class of holders of its respective capital stock or other securities and (B) promptly, but in no event later than five (5) Business Days, after the sending or filing thereof, copies of all reports or filings, if any, by Lessee or any of its Subsidiaries with the SEC or any national securities exchange;

(v) Promptly after Lessee has knowledge or becomes aware thereof, notice of the occurrence or existence of any Lease Default or Lease Event of Default;

(vi) Prompt written notice of any action, event or occurrence that could reasonably be expected to result in a Material Adverse Effect due to environmental liability under Environmental Laws;

(vii) Prompt written notice of all actions, suits and proceedings before any Governmental Authority or arbitrator pending, or to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Subsidiaries which (A) if adversely determined would involve an aggregate liability of \$25,000,000 or more in excess of amounts covered by third-party insurance or (B) otherwise may have a Material Adverse Effect;

(viii) Promptly after Lessee has knowledge or becomes aware thereof, (A) notice of the occurrence of any ERISA Event, together with a copy of any

notice of such ERISA Event to the PBGC and (B) the details concerning any action taken or proposed to be taken by the IRS, PBGC, Department of Labor or other Person with respect thereto;

(ix) Promptly upon the commencement or increase of contributions to, the adoption of, or an amendment to, a Plan by Lessee or an ERISA Affiliate, if such commencement or increase of contributions, adoption, or amendment could reasonably be expected to result in a net increase in unfunded liability to Lessee or an ERISA Affiliate in excess of \$10,000,000, a calculation of the net increase in unfunded liability;

(x) Promptly after filing or receipt thereof by Lessee or any ERISA Affiliate, copies of the following:

(A) Any notice received from the PBGC of intent to terminate or have a trustee appointed to administer any Pension Plan;

(B) Any notice received from the sponsor of a Multiemployer Plan concerning the imposition, delinquent payment, or amount of withdrawal liability;

(C) Any demand by the PBGC under Subtitle D of Title IV of ERISA; and

(D) Any notice received from the IRS regarding the disqualification of a Plan intended to qualify under Section 401(a) of the Code;

(xi) Within forty-five (45) days of the date thereof, or, if earlier, on the date of delivery of any Financial Statements pursuant to clause (i) or (ii) of this Section 18.1(a), notice of any change in accounting policies or financial reporting practices by Lessee or any of the Significant Subsidiaries that is expected to affect (or has affected) materially under GAAP the consolidated financial condition of Lessee and its Subsidiaries;

(xii) Promptly after the occurrence thereof, notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving Lessee or any of its Subsidiaries which could result in a Material Adverse Effect;

(xiii) Upon request from time to time of Agent or Lessor, the Swap Termination Values, together with a description of the method by which such values were determined, relating to any then-outstanding Rate Contracts to which Lessee or any of its Subsidiaries is a party;

(xiv) Prompt written notice of any change in Lessee's fiscal year;

(xv) Prompt written notice of any Person or Subsidiary not identified on Schedule 17.1(l) that becomes a Significant Subsidiary after the Delivery Date;

(xvi) Prompt written notice of a Material Adverse Effect; and

(xvii) Such other information respecting the operations, properties, business or condition (financial or otherwise) of Lessee or the Significant Subsidiaries as Agent or Lessor may from time to time reasonably request.

Each notice pursuant to clauses (vi)-(xvii) of this Section 18.1(a) shall be accompanied by a written statement by a Responsible Officer of Lessee setting forth details of the occurrence referred to therein, and stating what action Lessee proposes to take with respect thereto.

(b) *Preservation of Corporate Existence, Etc.* Lessee shall and shall cause each of its Significant Subsidiaries to:

(i) Preserve and maintain in full force and effect its corporate existence and good standing under the laws of its state or jurisdiction of incorporation or formation, except (A) in connection with transactions permitted by Section 18.2 and (B) in the case of any Significant Subsidiary, to the extent that failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect;

(ii) Preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect;

(iii) Use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill, except in the case of any Significant Subsidiary to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect; and

(iv) Preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

(c) *Payment of Taxes, Etc.* Lessee will, and will cause each of its Significant Subsidiaries to, pay and discharge all material taxes, fees, assessments, levies and other Governmental Charges imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful and material claims for labor, materials and supplies which, if unpaid, might become an Encumbrance (other than a Permitted Encumbrance) upon any properties or assets of Lessee or any of its Significant

Subsidiaries, except to the extent such taxes, fees, assessments, levies or other Governmental Charges, or such claims, are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP.

(d) *Licenses.* Lessee will, and will cause each of its Significant Subsidiaries to, obtain and maintain all licenses, authorizations, consents, filings, exemptions, registrations and other governmental approvals necessary in connection with the execution, delivery and performance of the Operative Documents, the consummation of the transactions therein contemplated or the operation and conduct of its business and ownership of its properties, except to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect.

(e) *Maintenance of Property.* Except as otherwise permitted under Section 18.2(c) or 18.2(d), Lessee shall, and shall cause each of its Subsidiaries to, maintain and preserve all its property which is used in its business in good working order and condition in all material respects, ordinary wear and tear excepted.

(f) *Insurance.* In addition to the insurance requirements set forth in this Lease with respect to the Equipment, Lessee shall maintain, and shall cause each of its Significant Subsidiaries to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against losses and damages of the kinds and in amounts which are deemed prudent by Lessee in its reasonable business judgment and within the general parameters customary among similarly situated businesses in the industry.

(g) *Compliance with Laws.* Lessee shall comply, and shall cause each of its Significant Subsidiaries to comply, in all material respects with the requirements of all Environmental Laws and all other Governmental Rules applicable to it or its business.

(h) *Compliance with ERISA.* (i) Lessee shall, and shall cause each of its ERISA Affiliates to: (A) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (B) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; and (C) make all required contributions to any Plan subject to Section 412 of the Code.

(ii) Neither Lessee nor any of its Significant Subsidiaries shall (A) engage in any transaction prohibited by any Governmental Rule applicable to any Foreign Plan, (B) fail to make full payment when due of all amounts due as contributions to any Foreign Plan or (C) otherwise fail to comply with the requirements of any Governmental Rule applicable to any Foreign Plan, where singly or cumulatively, the above would be reasonably likely to have a Material Adverse Effect.

(i) *Inspection of Property and Books and Records.* Lessee shall maintain and shall cause each of its Significant Subsidiaries to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently

applied shall be made of all financial transactions and matters involving the assets and business of Lessee or such Significant Subsidiary. Lessee shall permit, and shall cause each of its Significant Subsidiaries to permit, representatives and independent contractors of Agent or Lessor to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants all at the expense of Lessee and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Lessee; *provided, however*, that (i) unless a Lease Event of Default shall have occurred and be continuing or following exercise of the Sale Option, (A) Lessee shall be responsible under this Section 18.1(i) for the costs and expenses of Agent and Lessor only, and (B) all inspections, visits, examinations and other actions permitted or authorized hereunder shall be coordinated only through Lessee, and (ii) when a Lease Event of Default exists or following exercise of the Sale Option, Agent and Lessor may make any visit, inspection or examination or take any other action authorized hereunder at the expense of Lessee at any time during normal business hours, without advance notice and without being subject to any of the other restrictions described in clause (i) above.

(j) *Cash Collateral*. Lessee shall maintain at all times Cash Collateral in each of the Cash Collateral Accounts with a value equal to or greater than the Required Cash Collateral Amount for each such Cash Collateral Account.

(k) *Further Assurances and Additional Acts*. Lessee will execute, acknowledge, deliver, file, notarize and register at its own expense all such further agreements, instruments, certificates, documents and assurances and perform such acts as Agent or Lessor reasonably shall deem necessary or appropriate (i) in order to establish, preserve, protect and perfect the Lien of Lessor and each Series A Assignee, as applicable, in the Items of Equipment, the Cash Collateral and the other Lessee Collateral (including, without limitation, the preparation and filing of any and all Uniform Commercial Code financing statements (including precautionary financing statements) and all other filings or registrations which the Agent or Lessor may from time to time reasonably request to be filed or effected) and (ii) effectuate the purposes of the Operative Documents, and promptly provide Agent or Lessor with evidence of the foregoing satisfactory in form and substance to Agent or Lessor, as applicable.

Section 18.2. Negative Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance, with the following negative covenants:

(a) *Encumbrances*. Lessee will not, and will not permit any of its Significant Subsidiaries to, create, incur, assume or suffer to exist any Encumbrances upon or with respect to any of their properties, revenues or assets (other than the Equipment which the Lessee is obligated to keep free of Liens in accordance with Section 8.6 of this Lease), whether now owned or hereafter acquired, other than (i) Permitted Encumbrances and (ii) other Encumbrances that, in the aggregate at any time, secure obligations in an

amount not in excess of ten percent (10%) of Consolidated Total Assets determined as of the last day of the immediately preceding fiscal quarter (or fiscal year, as the case may be).

(b) *Change in Nature of Business.* Lessee will not, and will not permit any of its Significant Subsidiaries to, engage in any material line of business other than the electronics business and other businesses incidental or reasonably related thereto.

(c) *Restrictions on Fundamental Changes.* Lessee will not, and will not permit any of its Significant Subsidiaries to, merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that:

(i) Any of Lessee's Significant Subsidiaries may merge with, consolidate into or transfer all or substantially all of its assets to another of Lessee's Significant Subsidiaries or to Lessee and in connection therewith such Significant Subsidiary (other than Lessee) may be liquidated or dissolved; *provided* that (A) if the transaction involves Lessee, Lessee shall be the surviving Person, and (B) if any transaction shall be between a non-wholly owned Significant Subsidiary and a wholly owned Significant Subsidiary, the wholly owned Significant Subsidiary shall be the continuing or surviving Person; and, *provided further*, that no Material Adverse Effect or Lease Default or Lease Event of Default exists or shall result therefrom;

(ii) Lessee or any of its Significant Subsidiaries may sell or dispose of assets in accordance with the provisions of Section 18.2(d);

(iii) Lessee or any of its Significant Subsidiaries may make any Acquisition so long as (A) no Lease Default or Lease Event of Default has occurred and is continuing and (B) no Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof;

(iv) Lessee may merge with or consolidate into any other Person, provided that (A) Lessee is the surviving Person, and (B) no such merger or consolidation shall be made while there exists a Lease Default or Lease Event of Default or if a Lease Default or Lease Event of Default or Material Adverse Effect would occur as a result thereof.

(v) Lessee may merge with or consolidate into any other Person in connection with a hostile takeover of Lessee by such Person that occurs without the consent of Lessee.

(d) *Sales of Assets.* Lessee will not, and will not permit any of its Significant Subsidiaries to, convey, sell, lease, transfer, or otherwise dispose of, or part with control

of (whether in one transaction or a series of transactions) any assets (including any shares of stock in any Subsidiary or other Person), except:

(i) Sales or other dispositions of inventory in the ordinary course of business;

(ii) Sales or other dispositions of assets in the ordinary course of business which have become worn out or obsolete or which are promptly being replaced;

(iii) Sales of accounts receivable to financial institutions not affiliated with Lessee; *provided* that (A) the discount rate shall not at any time exceed ten percent (10%), (B) the amount of all accounts receivable permitted to be sold in any fiscal quarter shall not exceed twenty percent (20%) of the consolidated accounts receivable of Lessee and its Subsidiaries, determined as of the last day of the immediately preceding fiscal quarter (or fiscal year, as the case may be) and (C) the sole consideration received for such sales shall be cash;

(iv) Except as provided in clause (vi) below, sales or other dispositions of assets outside the ordinary course of business which do not constitute Substantial Assets (as defined below);

(v) Sales or other dispositions of Lessee Permitted Investments; and

(vi) Sale of all or less than all of the stock or assets of Engenio Information Technologies, Inc.

provided, however, that the foregoing exceptions shall not be construed to permit any sales, leases, transfers or other disposals of any of the Equipment, except as expressly permitted by this Lease. For purposes of clause (iv) above, a sale, lease, transfer or other disposition of assets shall be deemed to be of "*Substantial Assets*" if such assets, when added to all other assets conveyed, sold, leased, transferred or otherwise disposed of by Lessee and its Subsidiaries in any period of four consecutive fiscal quarters (other than assets sold in the ordinary course of business or pursuant to clause (iii) above), shall exceed ten percent (10%) of Consolidated Total Assets as determined as of the last day of the fiscal quarter of Lessee immediately preceding the date of determination.

(e) *Loans and Investments*. Lessee will not, and will not permit any of its Significant Subsidiaries to, extend any credit to, guarantee the obligations of or make any additional investments in or acquire any interest in, any Person, other than in connection with:

(i) Extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;

(ii) Lessee Permitted Investments;

(iii) Additional purchases of or investments in the stock of, or guarantees of the obligations of, Subsidiaries;

(iv) Employee loans and guarantees in accordance with Lessee's usual and customary practices with respect thereto;

(v) Any Acquisition; or

(vi) Additional investments not exceeding, in the aggregate with all such investments, \$300,000,000 during the period from the Delivery Date through the Lease Expiration Date;

provided that in the case of an Acquisition referred to in clause (v) above or an investment referred to in clause (vi) above, no such Acquisition or investment shall be made while there exists a Lease Default or Lease Event of Default or if a Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof.

(f) *Distributions*. Lessee will not declare or pay any dividends in respect of its capital stock, or purchase, redeem, retire or otherwise acquire for value any of its capital stock now or hereafter outstanding, return any capital to its shareholders as such, or make any distribution of assets to its shareholders as such, or permit any of its Subsidiaries to purchase, redeem, retire, or otherwise acquire for value any stock of Lessee, except that Lessee may:

(i) Declare and deliver dividends and distributions payable only in common stock of either (A) Lessee or (B) Engenio Information Technologies, Inc. so long as (x) no Lease Default or Lease Event of Default has occurred and is continuing and (y) no Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof;

(ii) Purchase shares of its capital stock from time to time in connection with the issuance of shares under Lessee's employee stock option plans;

(iii) Purchase, redeem, retire, or otherwise acquire shares of its capital stock with the proceeds received from a substantially concurrent issue of new shares of its capital stock; and

(iv) In addition to the dividends, purchases, redemptions, retirements and other acquisitions permitted by the foregoing clauses (i) through (iii) above, declare and deliver dividends and distributions, and purchase, redeem, retire, or otherwise acquire shares of its capital stock, in an aggregate amount not exceeding \$100,000,000 in any period of four consecutive fiscal quarters.

(g) *Transactions with Related Parties.* Lessee will not, and will not permit any of its Significant Subsidiaries to, enter into any transaction, including the purchase, sale or exchange of property or the rendering of any services, with any Affiliate, any officer or director thereof or any Person which beneficially owns or holds twenty percent (20%) or more of the equity securities, or twenty percent (20%) or more of the equity interest, thereof (a “*Related Party*”), or enter into, assume or suffer to exist, or permit any Significant Subsidiary to enter into, assume or suffer to exist, any employment or consulting contract with any Related Party, except (i) a transaction or contract which is in the ordinary course of Lessee’s or such Significant Subsidiary’s business, including a transaction in the ordinary course of business between or among Lessee and one or more of its Subsidiaries and (ii) any other transaction which is upon fair and reasonable terms not less favorable to Lessee or such Significant Subsidiary than it would obtain in a comparable arm’s length transaction with a Person not a Related Party. For purposes of this Section 18.2(g), the sale, transfer or disposition of more than thirty percent (30%) of its assets (in any transaction or a series of related transactions) by Lessee or any of its Significant Subsidiaries shall be deemed to be outside the ordinary course of business.

(h) *Accounting Changes.* Lessee will not, and will not permit any of its Significant Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP (or, in the case of any such Significant Subsidiary domiciled in a jurisdiction other than the United States, in accordance with generally accepted accounting principles and practices in such jurisdiction).

Section 18.3. Financial and Other Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance, with the following financial covenants:

(a) *Liquidity Covenant.* Lessee shall not, nor shall it permit any of its Subsidiaries to, permit Unrestricted Cash Reserves at any time to be less than the higher of (A) the sum of \$100,000,000, plus the principal amount outstanding under the 4.00% Convertible Subordinated Notes due November 1, 2006 issued by Lessee pursuant to the Subordinated Indenture, dated as of October 30, 2001 between Lessee and State Street Bank and Trust Company of California, N.A., as Trustee, as in effect on the Delivery Date and (B) \$350,000,000.

(b) *Cash Collateral.* (i) With respect to each Cash Collateral Account, on each Payment Date, Lessee shall furnish or cause to be furnished to Agent and the applicable Securities Intermediary a certificate for such Cash Collateral Account, in form reasonably satisfactory to Agent, certifying as to (A) the value of the Cash Collateral held in such Cash Collateral Account (with a reasonably detailed calculation thereof) and (B) the Required Cash Collateral Amount for such Cash Collateral Account. Each Securities Intermediary and Agent shall provide Lessee with the information necessary for Lessee to prepare such certificate and shall assist Lessee in the calculations required thereby.

(ii) If on any date that a certificate is furnished in accordance with Section 18.3(b)(i), the value of the Cash Collateral in any Cash Collateral Account shall be less than the Required Cash Collateral Amount for such Cash Collateral Account, then Lessee shall pledge to the Lessor by depositing into such Cash Collateral Account, additional Cash Collateral, which Cash Collateral shall be acceptable to the Lessor or the applicable Series A Assignee benefiting from such Cash Collateral, in each case in its sole and absolute discretion and in an amount such that the Cash Collateral in such Cash Collateral Account is equal to or greater than the Required Cash Collateral Amount for such Cash Collateral Account. If, on such date, pursuant to the certificate, Lessee has certified that the value of the Cash Collateral in any Cash Collateral Account is greater than the Required Cash Collateral Amount for such Cash Collateral Account and provided that (i) no Lease Default or Lease Event of Default shall have occurred and be continuing and (ii) Lessor or the applicable Assignee, as applicable, shall have received prior notice of the amount of Surplus Collateral (as defined below) to be withdrawn at least (2) Business Days prior to such withdrawal, then, as applicable, Lessor shall be deemed to have directed, or the applicable Assignee shall be deemed to have directed, the applicable Securities Intermediary to promptly release such excess amount to Lessee in an amount such that, after giving effect to such release and the payment by Lessee of any applicable breakage costs or other early termination costs and penalties arising as a result thereof, the value of the Cash Collateral remaining in such Cash Collateral Account held by the applicable Securities Intermediary for the ultimate benefit of Lessor or the applicable Assignee, as applicable, shall equal or exceed the Required Cash Collateral Amount for such Cash Collateral Account (for the purposes of this subparagraph (ii), such Cash Collateral to be released, "*Surplus Collateral*"). In such event, Lessee's certificate shall be deemed to be a representation by Lessee to the applicable Securities Intermediary, Agent and Lessor or the applicable Assignee, as applicable, or its assignee, as the case may be, with respect to Cash Collateral held for the ultimate benefit of such Assignee or its assignee, as the case may be, (or Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor) that no Lease Default or Lease Event of Default exists or would result from such release. By 5:00 P.M., San Francisco, California time, on the third Business Day after the date on which Lessee provided the certificate to Agent and the applicable Securities Intermediary, unless Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor or the applicable Assignee, or its assignee, as the case may be, with respect to Cash Collateral held for the ultimate benefit of such Assignee or its assignee, as the case may be, reasonably objects in writing provided to Agent and Lessee to the assertion that the applicable Cash Collateral Account contains Surplus Collateral, or to the amount of such Surplus Collateral, the applicable Securities Intermediary shall release such Surplus Collateral to the Lessee; *provided*, that no release of Surplus Collateral shall in any way affect the obligations of the Lessee pursuant to Section 18.3(b)(i); *provided further*, that if the applicable Assignee or its assignee, as the case may be, or Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor, has reasonably objected to the assertion that the applicable Cash Collateral Account contains Surplus Collateral, or to the amount of such Surplus Collateral, then the Securities Intermediary shall not release any Cash Collateral until the Lessee and the applicable Assignee or its assignee or the Lessor, with respect to Cash Collateral held for

the ultimate benefit of Lessor, have resolved such discrepancy to the reasonable satisfaction of Lessee and such Assignee or its assignee, or Lessor, as the case may be.

Section 18.4. General Covenants. Lessee covenants and agrees with Lessor and Agent that, during the Lease Term, Lessee shall comply with the following provisions of this Section 18.4:

(a) *Further Assurances.* Lessee will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as Agent or Lessor reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Operative Documents and the Overall Transaction. Lessee, at its own expense, will cause all financing statements (including precautionary financing statements), security agreements and other documents, to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or as may be reasonably requested by Agent or Lessor in order to establish, preserve, protect and perfect the title of Lessor in the Items of Equipment, the Lien of Lessor in the Lessee Collateral and Lessor's and Agent's rights under this Lease and the other Operative Documents.

(b) *[Reserved]*.

(c) *Securities.* Lessee shall not, nor shall it permit anyone authorized to act on its behalf to, take any action which would subject any interest in any Item of Equipment or the Lease, or in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned items, to the registration requirements of Section 5 of the Securities Act or any state securities laws.

(d) *Rates.* With respect to each determination of Accrual Rent under the Lease, Lessee agrees to be bound by Section 2.9 hereof and the applicable definition in Article I hereof.

Section 18.5. Covenants of Agent. Agent, in its individual capacity, covenants with each of the other parties hereto as follows, it being understood that the sole remedies for the breach of these covenants shall be to sue for damages or for specific performance and that any such breach shall not modify or terminate Lessee's obligations under Article VII:

(a) so long as this Lease remains in effect or so long as the obligations of Lessee arising hereunder have not been fully and finally discharged, Agent, in its individual capacity, (i) will keep this Lease and the Items of Equipment free and clear of all Lessor Liens attributable to Agent and shall indemnify, reimburse and hold Lessor and Lessee harmless from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, or causes of action and all legal proceedings, and any costs or expenses in connection therewith, including reasonable legal fees and expenses, of

whatever kind and nature, imposed on, incurred by or asserted against Lessor or Lessee in any way relating to, or arising in any manner out of, Agent's failure to comply with this Section 18.5(a) and (ii) will not, provided that no Lease Default or Lease Event of Default exists, through its own actions, interfere with Lessee's (or any permitted sublessee's or assignee's) rights hereunder with respect to the Items of Equipment during the term of this Lease, except as permitted or required by the terms of this Lease; and

(b) Agent shall apply funds held by it in its capacity as agent hereunder as required by this Lease.

Section 18.6. Covenants of Lessor. Lessor covenants with each of the other parties hereto as follows, it being understood that the sole remedies for the breach of these covenants shall be to sue for damages or for specific performance and that any such breach shall not modify or terminate Lessee's obligations under Article VIII:

(a) provided that no Lease Default or Lease Event of Default exists, it will not, through its own actions, interfere with Lessee's (or any permitted sublessee's or assignee's) rights hereunder with respect to the Items of Equipment during the Lease Term;

(b) it will keep the Items of Equipment and other Lessee Collateral free and clear from all Lessor Liens attributable to it; *provided* that it may contest any such Lessor Lien pursuant to a Permitted Contest.

ARTICLE XIX

ASSIGNMENTS

Section 19.1. Lessor Assignments.

(a) (i) Except as otherwise provided in this Section 19.1(a)(i), Lessor may at any time, without the consent of Lessee, assign or transfer all, but not less than all, of its rights, title, interests and obligations and interest as "*Lessor*" and "*Seller*," in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral to an Eligible Lessor Assignee; *provided*, that (A) such assignment shall comply with this Section 19.1(a)(i), (B) such assignment shall be evidenced by an Assignment Agreement, a copy of which shall be furnished to the Agent, Lessee and each Assignee, (C) each assignment or transfer shall comply with all applicable securities laws and (D) the Lessor shall give notice of such assignment and the name of the assignee to Lessee, Agent and each Assignee; *provided, further*, that no such assignment shall be made if (1) in the reasonable opinion of Lessee, such assignment would (A) cause Lessee to be required to cease reporting this Lease as an operating lease in Lessee's financial statements or (B) cause Lessee to be required to consolidate the assets of Lessor onto its balance sheet under FIN 46R or FASB 94, as applicable and (2) Lessee provides Lessor written notice of such determination within ten (10) Business Days of (A) Lessee's receipt of the notice described in clause (D) above and (B) Lessee's receipt of

information regarding the proposed assignee as may be reasonably requested by Lessee's independent public accountants, which request shall be made within 10 days after Lessee's receipt of the notice described in clause (D) above. If Lessee has objected to a proposed assignee for the reason set forth in clause (1) above, Lessor may re-submit notice of such proposed assignee to Lessee at a later date and the reasonableness of Lessee's opinion in clause (1) shall be determined as of such later date. So long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may object in writing to the proposed assignee for any reason other than as set forth in clause (1) above within ten (10) Business Days of receipt of the notice described in clause (D) above, whereupon Lessee shall have sixty (60) days from the date of receipt by Lessee of such notice to find a replacement assignee which shall be an Eligible Lessor Assignee and if no such replacement assignee is found within such sixty (60) day period, the Lessor may assign all or any part of its rights, obligations and interest in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral as contemplated above to such assignee identified in such notice delivered to Lessee.

(ii) Lessor may at any time, without the consent of Lessee, assign or transfer all or any part of its right, title, interest and obligations with respect to the Series A Lease Balance and/or the Series B Lease Balance, including, but not limited to, the right to receive Series A Accrual Rent, Series A Capital Rent, Series B Accrual Rent, Series B Capital Rent, and the Supplemental Rent, proceeds from the sale of the Equipment in connection with the enforcement of remedies, Purchase Amount, Early Termination Amount, Casualty Amount and Sale Recourse Amount relating to each of the Series A Lease Balance and the Series B Lease Balance and the Cash Collateral relating to the Series A Lease Balance, to an Eligible Assignee (each such Eligible Assignee, together with any "Assignee" under the Lessor Assignment Agreement and their respective permitted successors and assigns being herein called an "Assignee"); *provided*, that (A) except in the case of an assignment to an Affiliate of Lessor or of all of the Lessor's rights, obligations and interest in the Series A Lease Balance and the Series B Lease Balance, the amount of the assignment permitted hereunder shall not be less than \$5,000,000, (B) such assignment shall be evidenced by a Lessor Assignment Agreement or a supplement or amendment thereto or other agreement evidencing such assignment, a copy of which shall be furnished to the Agent, Lessee, and each Assignee, (C) each assignment or transfer shall comply with all applicable securities laws and (D) the Lessor shall give notice of such assignment and the name of the assignee to Lessee, Agent and each Assignee; *provided, further*, that with respect to any assignment which occurs after the Delivery Date, no such assignment shall be made if (1) in the reasonable opinion of Lessee, such assignment would (A) cause Lessee to be required to cease reporting this Lease as an operating lease in Lessee's financial statements or (B) cause Lessee to be required to consolidate the assets of Lessor or such assignee onto its balance sheet under FIN 46R or FASB 94, as applicable and (2) Lessee provides Lessor written notice of such determination within ten (10) Business Days of (A) Lessee's receipt of the notice described in clause (D) above and (B) Lessee's receipt of information regarding the proposed assignee as may be reasonably requested by Lessee's independent public accountants, which request shall be made within 10 days after Lessee's receipt of the notice described in clause (D) above. If, with respect to any assignment which occurs after the Delivery Date, Lessee has objected to a proposed assignee for the reason set forth in clause (1) above, Lessor may re-submit notice of such proposed assignee to Lessee at a later date and the reasonableness of Lessee's opinion in clause (1) shall be determined as of such later date. With respect to any assignment which

occurs after the Delivery Date, so long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may object in writing to the proposed assignee for any reason other than as set forth in clause (1) above within ten (10) Business Days of receipt of the notice described in clause (D) above, whereupon Lessee shall have sixty (60) days from the date of receipt by Lessee of such notice to find a replacement assignee which shall be an Eligible Assignee and if no such replacement assignee is found within such sixty (60) day period, the Lessor may assign all or any part of its rights, obligations and interest in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral as contemplated above to such assignee identified in such notice delivered to Lessee.

(iii) Lessee hereby agrees that notwithstanding anything contained in the Operative Documents to the contrary, Lessor may, without the consent of Lessee, borrow on a non-recourse basis from any financial institution and assign to such financial institution as security for such borrowing, all of Lessor's right, title and interest with respect to the Series C Accrual Rent and Series C Lease Balance retained by Lessor and the Operative Documents relating thereto and the Series C Cash Collateral held by Lessor as Securities Intermediary and such financial institution shall be entitled to (A) receive such Series C Accrual Rent and Series C Lease Balance, (B) act as Securities Intermediary with respect to the Series C Cash Collateral and (C) exercise such rights and powers under the Operative Documents with respect to such Series C Accrual Rent and Series C Lease Balance assigned to such financial institution to the same extent as if such financial institution was an "Assignee" under the Lessor Assignment Agreement with respect to such Series C Lease Balance and such financial institution shall be deemed to be holding a portion of the outstanding Lease Balance equal to the outstanding principal amount of such non recourse borrowing. Lessee hereby agrees to execute all such documents, instruments and amendments as Lessor or such financial institution may reasonably request in connection with such non-recourse borrowing and assignment. Lessee also agrees that Lessor may assign any or all of its right, title, interest and obligations under such non-recourse borrowing to any person without the consent of Lessee.

(b) *Required Deliveries.* Lessee and Agent may continue to deal solely and directly with the assignor Lessor in connection with any interest so assigned until (i) notice of such assignment shall have been given to Lessee and Agent by Lessor or its assignee; and (ii) the assignor and assignee shall have executed and delivered to Agent and Lessee an instrument of assignment in the form attached hereto as Exhibit G. When Agent and Lessee have received the items listed in clauses (i) and (ii) of the preceding sentence, subject to subparagraph (a) above, the assignee shall be a party hereto and the other Operative Documents to which the assignor was (or in the case of a partial assignment, is) a party and, to the extent of the rights and obligations so assigned to it, shall have the rights and obligations of a Lessor hereunder and under such other Operative Documents, and the assignor shall relinquish its rights and be released from its obligations hereunder and under such other Operative Documents. The Agent shall maintain a copy of each instrument of assignment delivered to it.

Section 19.2. Lessor Participations. Lessor may at any time sell to one or more Persons participating interests in all or a portion of its rights and obligations under this Lease, the other Operative Documents, the Items of Equipment and other Lessee Collateral (including all or any portion of the Rent owing to it); *provided,*

however, that Lessor shall in no event sell a participating interest under this Section 19.2 if the result of such sale of a participating interest would result in the Lessor holding non-participated interests in an amount equal to or less than 5% of the then outstanding Lease Balance; *provided, further*, that:

(a) no participation contemplated in this Section 19.2 shall relieve Lessor from its obligations hereunder or under any other Operative Document;

(b) Lessor shall remain solely responsible for the performance of its obligations;

(c) Lessee shall continue to deal solely and directly with Lessor in connection with Lessor's rights and obligations under this Lease and the other Operative Documents and, subject to the rights of the participants under any agreement evidencing such participation, Lessor shall have the sole right to enforce its rights under the Operative Documents; and

(d) no participant (other than the participants party to any agreement evidencing such participation) shall be entitled to any reimbursement or indemnification for any Taxes, funding losses, additional costs, capital costs or reserve requirements pursuant to Section 11.4 or 11.5 in excess of a proportionate amount which would have been payable to Lessor or to an original participant from whom such Person directly or indirectly acquired its participation.

ARTICLE XX

AGENT

Section 20.1. Appointment of Agent; Powers and Authorization to Take Certain Actions. (a) Lessor irrevocably appoints and authorizes Wells Fargo Bank Northwest, National Association to act as its agent hereunder, with such powers as are specifically delegated to Agent by the terms hereof, together with such other powers as are reasonably incidental thereto. Lessor authorizes and directs Agent to, and Agent agrees for the benefit of Lessor, that, on the Delivery Date it will accept the documents described in Section 3.1 of this Lease. Agent accepts the agency hereby created applicable to it and agrees to receive all payments and proceeds pursuant to the Operative Documents and to disburse such payments or proceeds in accordance with the Operative Documents. Agent shall have no duties or responsibilities except those expressly set forth in this Lease and the other Operative Documents. Agent shall not be responsible to Lessor (or to any other Person) (i) for any recitals, statements, representations or warranties of any party contained in this Lease or any other Operative Documents, or in any certificate or other document referred to or provided for in, or received by any of them under, this Lease or the other Operative Documents, other than the representations and warranties made by Agent in Section 17.3, or (ii) for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the title to the Items of Equipment (subject to Agent's obligations under Section 18.5) or any other document referred to or provided for herein or (iii) for any failure by

Lessee, Lessor or any other party (other than Agent) to perform any of its obligations under the Operative Documents. Agent may employ agents, trustees or attorneys-in-fact, may vest any of them with any property, title, right or power deemed necessary for the purposes of such appointment and shall not be responsible for the negligence or misconduct of any of them selected by Agent with reasonable care. Neither Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder, or in connection herewith, except for its or their own gross negligence or willful misconduct.

(b) Agent shall not have any duty or obligation to manage, control, use, operate, store, lease, sell, dispose of or otherwise deal with the Items of Equipment or the other Lessee Collateral, or to otherwise take or refrain from taking any action under, or in connection with, this Lease or any related document to which Agent is a party, except as expressly provided by the terms of the Operative Documents, and no implied duties of any kind shall be read into the Operative Documents against Agent. The permissive right of Agent to take actions enumerated in this Lease or any other Operative Document shall never be construed as a duty, unless Agent is instructed or directed to exercise, perform or enforce one or more rights by Lessor (provided that Agent has received indemnification reasonably satisfactory to it). Subject to Section 20.1(c) below, no provision of the Operative Documents shall require Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its obligations under the Operative Documents, or in the exercise of any of its rights or powers thereunder. It is understood and agreed that the duties of Agent are ministerial in nature.

(c) Except as specifically provided herein, Agent is acting hereunder solely as agent and, except as specifically provided herein, is not responsible to any party hereto in its individual capacity, except with respect to any claim arising from Agent's gross negligence or willful misconduct, any breach of a representation or covenant made in its individual capacity or, in the case of Agent's handling of funds, failure to act with the same care as Agent uses in handling its own funds.

(d) Agent may accept deposits from, lend money to and otherwise deal with Lessee or any of its Affiliates with the same rights as it would have if it were not the named Agent hereunder.

Section 20.2. Reliance. Agent may rely upon, and shall not be bound or obligated to make any investigation into the facts or matters stated in, any certificate, notice or other communication (including any communication by telephone, telecopy, telex, telegram or cable) reasonably believed by it to be genuine and correct and to have been made, signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent with due care (including any expert selected by Agent to aid Agent in any calculations required in connection with its duties under the Operative Documents).

Section 20.3. Action upon Instructions Generally. Subject to Sections 20.4 and 20.6, upon written instructions of Lessor, Agent shall, on behalf of Lessor, give such notice or direction, exercise such right,

remedy or power hereunder or in respect of the Items of Equipment and the other Lessee Collateral, and give such consent or enter into such amendment to any document to which it is a party as Agent as may be specified in such instructions. Agent shall deliver to Lessor a copy of each notice, report and certificate received by Agent pursuant to the Operative Documents. Agent shall have no obligation to investigate or determine whether there has been a Lease Event of Default or a Lease Default. Agent shall not be deemed to have notice or knowledge of a Lease Event of Default or Lease Default unless a Responsible Officer of Agent is notified in writing of such Lease Event of Default or Lease Default; *provided* that a Responsible Officer of Agent shall be deemed to have been notified in writing of any failure of Lessee to pay Basic Rent in the amounts and at the times set forth in Section 6.1 (a “*Payment Default*”) immediately upon the occurrence of such Payment Default. If Agent receives notice of a Lease Default or Lease Event of Default, Agent shall give prompt notice thereof, at Lessee’s expense, to Lessor. Subject to Sections 20.4, 20.6 and 22.5, Agent shall take action or refrain from taking action with respect to such Lease Default or Lease Event of Default as directed by Lessor; *provided* that, unless and until Agent receives such directions, Agent may refrain from taking any action, or may act in its discretion, with respect to such Lease Default or Lease Event of Default. Prior to the date the Lease Balance shall have become due and payable by acceleration pursuant to Section 12.2, the Lessor may deliver written instructions to Agent to waive, and Agent shall waive pursuant thereto, any Lease Event of Default and its consequences. As to any matters not expressly provided for by this Lease, Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by Lessor and such instructions of Lessor and any action taken or failure to act pursuant thereto shall be binding on Lessor.

Section 20.4. Indemnification. Lessor shall reimburse and hold Agent harmless (but only to the extent that any such indemnified amounts have not in fact been paid to Agent by, or on behalf of, Lessee in accordance with Section 11.1) from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, judgments, or causes of action, and all legal proceedings, and any reasonable costs or expenses in connection therewith, including allocated charges, costs and expenses of internal counsel of Agent and all other reasonable attorneys’ fees and expenses incurred by Agent, in any way relating to or arising in any manner out of (i) any Operative Document, the enforcement hereof or thereof or the consummation of the Overall Transaction, or (ii) instructions from Lessor (including, without limitation, the costs and expenses that Lessee is obligated to and does not pay hereunder, but excluding normal administrative costs and expenses incident to the performance by Agent of its agency duties hereunder other than materially increased administrative costs and expenses incurred as a result of a Lease Event of Default); *provided* that Lessor shall not be liable for any of the foregoing to the extent they arise from (a) the gross negligence or willful misconduct of Agent, (b) the inaccuracy of any representation or warranty or breach of any covenant given by Agent in Section 17.3 or Section 18.5, (c) in the case of Agent’s handling of funds, the failure to act with the same care as Agent uses in handling its own funds or (d) any taxes, fees or other charges payable by Agent based on or measured by any fees, commissions or compensation received by it for acting as Agent in connection with the Overall Transaction.

Section 20.5. Independent Credit Investigation. Lessor, by entering into this Lease and the other Operative Documents,

agrees that it has, independently and without reliance on Agent and based on such documents and information as it has deemed appropriate, made its own credit analysis of Lessee and its own decision to enter into this Lease and each of the other Operative Documents to which it is a party and that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking action under this Lease and any other Operative Documents to which it is a party. Agent shall not be required to keep itself informed as to the performance or observance by Lessee of any other document referred to (directly or indirectly) or provided for herein or to inspect the properties or books of Lessee.

Section 20.6. Refusal to Act. Except for notices and actions expressly required of Agent hereunder and except for the performance of its covenants in Section 18.5, Agent shall in all cases be fully justified in failing or refusing to act unless (a) it is indemnified to its reasonable satisfaction by Lessor against any and all liability and reasonable expense which may be incurred by it by reason of taking or continuing to take any such action; *provided* that such indemnity shall not be required to extend to liability or expense arising from any matter described in clauses (a) through (d) of Section 20.4, it being understood that no action taken by Agent in accordance with the instructions of Lessor shall be deemed to constitute any such matter and (b) it is reasonably satisfied that such action is not contrary to any Operative Document or to any Applicable Law and Regulations.

Section 20.7. Resignation or Removal of Agent; Appointment of Successor. Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at any time by giving notice thereof to Lessor and Lessee or may be removed at any time, by written notice from Lessor. Upon any such resignation or removal, Lessor, at the time of the resignation or removal shall have the right to appoint, with the prior written consent of Lessee (so long as no Lease Event of Default is continuing), a successor Agent which shall be a financial institution having a combined capital and surplus of not less than \$100,000,000. If, within 30 calendar days after the retiring Agent's giving of notice of resignation or receipt of a written notice of removal, a successor Agent is not so appointed and does not accept such appointment, then the retiring or removed Agent may appoint a successor Agent and transfer to such successor Agent all rights and obligations of the retiring Agent. Such successor Agent shall be a financial institution having combined capital and surplus of not less than \$100,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent and the retiring or removed Agent shall be discharged from duties and obligations as Agent thereafter arising hereunder and under any related document. If the retiring Agent does not appoint a successor, Lessor shall be entitled to apply to a court of competent jurisdiction for such appointment, and such court may thereupon appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided.

Section 20.8. Separate Agent. The Lessor may, and if it fails to do so at any time when it is so required, Agent may, for the purpose of meeting any legal requirements of any jurisdiction to which the Items of Equipment or other

Lessee Collateral may be subject, appoint one or more individuals or corporations either to act as co-agent jointly with Agent or to act as separate agent of all or any part of the Items of Equipment or other Lessee Collateral, and vest in such individuals or corporations, in such capacity such rights or duties as Agent may consider necessary or desirable. Agent shall not be required to qualify to do business in any jurisdiction where it is not now so qualified. Agent shall execute, acknowledge and deliver all such instruments as may be required by any such co-agent or separate agent more fully confirming such title, rights or duties to such co-agent or separate agent; *provided* that, so long as no Lease Event of Default or Material Lease Default has occurred and continuing, Lessee's consent is required for the appointment of a co-agent or separate agent pursuant to this Section 20.8. Upon the acceptance in writing of such appointment by any such co-agent or separate agent, it, she or he shall be vested with such interest in the Items of Equipment or the other Lessee Collateral or any part thereof, and with such rights and duties, not inconsistent with the provisions of the Operative Documents, as shall be specified in the instrument of appointment, jointly with Agent (except insofar as local law makes it necessary for any such co-agent or separate agent to act alone), subject to all terms of the Operative Documents. Any co-agent or separate agent, to the fullest extent permitted by legal requirements of the relevant jurisdiction, at any time, by an instrument in writing, shall constitute Agent its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name. If any co-agent or separate agent shall die, become incapable of acting, resign or be removed, the interest in the Items of Equipment and the other Lessee Collateral and all rights and duties of such co-agent or separate agent shall, so far as permitted by law, vest in and be exercised by Agent, without the appointment of a successor to such co-agent or separate agent.

Section 20.9. Termination of Agency. The agency created hereby shall terminate upon the final disposition by Lessor of all of the Items of Equipment and other Lessee Collateral and the final distribution by Agent of all monies or other property or proceeds received pursuant to the Operative Documents in accordance with their terms, provided that at such time Lessee shall have complied fully with all the terms hereof.

Section 20.10. Compensation of Agency. Lessee shall pay Agent its reasonable fees, costs and expenses for the performance of Agent's obligations hereunder (including the reasonable fees and expenses of its counsel) to the extent provided in the Agent Fee Letter.

Section 20.11. Limitations. It is expressly understood and agreed by and among the parties hereto that, except as otherwise provided herein or in the other Operative Documents: (a) this Lease and the other Operative Documents to which Agent is a party are executed by Agent, not in its individual capacity (except with respect to the representations and covenants of Agent in Sections 17.3 and 18.5), but solely as Agent under the Operative Documents in the exercise of the power and authority conferred and vested in it as such Agent; (b) each and all of the undertakings and agreements herein made on the part of Agent are each and every one of them made and intended not as personal undertakings and agreements by Agent, or for the purpose or with the intention of binding Agent personally, but are made and intended for the purpose of binding only the Items of Equipment and the other Lessee Collateral unless expressly provided otherwise; (c) actions to be taken by Agent pursuant

to its obligations under the Operative Documents may, in certain circumstances, be taken by Agent only upon specific authority of Lessor; (d) nothing contained in the Operative Documents shall be construed as creating any liability on Agent, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director, employee, Affiliate or agent of, Agent to perform any covenants either express or implied contained herein, all such liability, if any, being expressly waived by the other parties hereto and by any Person claiming by, through or under them; and (e) so far as Agent, individually or personally, is concerned, the other parties hereto and any Person claiming by, through or under them shall look solely to the Items of Equipment, the other Lessee Collateral and Lessee for the performance of any obligation under any of the instruments referred to herein; *provided, however*, that nothing in this Section 20.11 shall be construed to limit in scope or substance the general corporate liability of Agent in respect of its gross negligence or willful misconduct, negligence in the handling of funds or for those representations, warranties and covenants of Agent in its individual capacity set forth herein or in any of the other Operative Documents.

Section 20.12. Assignments. The terms and provisions of this Section XX are subject to the provisions of the Lessor Assignment Agreement.

ARTICLE XXI

DISTRIBUTIONS TO LESSOR

Section 21.1. Distribution. Subject to the provisions of Sections 2.1 and 2.3 of the Lessor Assignment Agreement, all amounts of money received or realized by Agent pursuant to this Lease and the other Operative Documents which are to be distributed to Lessor (as distinguished from Lessee or any other Person) shall be distributed as follows:

At any time prior to the acceleration of the Lease Balance, all distributions by Agent constituting or representing (a) Rent, (b) Lease Balance, (c) Sale Recourse Amount and (d) interest with respect to the amounts described in clauses (a) and (b) above shall be made to Lessor, and in case moneys are insufficient to pay in full the whole amount due, owing or unpaid to Lessor, then application shall be made *first*, to out of pocket costs of Agent, to the extent not paid pursuant to any other provision in the Lease or any other Operative Document; *second*, to amounts payable pursuant to Section 6.4; *third*, to accrued and unpaid Accrual Rent; *fourth*, to accrued and unpaid Capital Rent; *fifth*, to the remaining Lease Balance, if due, in accordance with Section 2.1 of the Lessor Assignment; *sixth*, to Supplemental Rent owed proportionately to Lessor and each Assignee in accordance with the Seller's Share and the respective Assignee's Shares; *seventh*, to Supplemental Rent owed disproportionately to Lessor, any Assignee or any Indemnitee (if these amounts get paid to the Agent rather than the Person entitled thereto); and *eighth*, to the Person entitled thereto by law.

At any time after the acceleration of the Lease Balance, all distributions by Agent shall be made in accordance with the last paragraph of Section 2.1 of the Lessor Assignment Agreement.

Section 21.2. Timing of Distribution. The amounts payable by Agent to Lessor pursuant to this Lease will be payable upon Agent's receipt of such amounts pursuant to this Lease, in immediately available funds.

ARTICLE XXII

MISCELLANEOUS

Section 22.1. Effect of Waiver. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default of Lessee hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Lessor of any breach or default under this Lease must be specifically set forth in writing and must satisfy the requirements set forth in Section 22.5 with respect to approval by Lessor.

Section 22.2. Survival of Covenants. All representations, warranties and covenants of the parties hereto shall survive the expiration or termination of this Lease to the extent arising prior to any such expiration or termination.

Section 22.3. Governing Law. THIS LEASE HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF, THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES OF SUCH STATE.

Section 22.4. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be by letter or facsimile (if the sender on the same day sends a confirming copy of such facsimile by a recognized overnight delivery service (charges prepaid)) and shall be deemed to have been given (i) in the case of notice by letter, the earlier of when delivered to the addressee by hand or courier if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter or on the third Business Day after depositing the same in the mails, registered or certified mail, postage prepaid, return receipt requested, addressed as provided on Schedule II, and (ii) in the case of notice by facsimile, when transmitted during business hours on a Business Day and, if not transmitted during business hours on a Business Day, the first Business Day thereafter (if the sender on the same day sends a confirming copy of such facsimile by a recognized overnight delivery service (charges prepaid)), addressed as provided on Schedule II, or to such other address as any of the parties hereto may designate by written notice.

Section 22.5. Amendment; Complete Agreements. This Lease and the other Operative Documents exclusively

and completely state the rights of Agent, Lessor and Lessee with respect to the Overall Transaction and supersede all prior agreements, oral or written, with respect thereto. No variation, modification, amendment or waiver of this Lease shall be valid unless in writing and signed by Agent and Lessee.

Section 22.6. Counterparts. This Lease has been executed in several numbered counterparts. Only the counterpart designated as counterpart "No. 1" shall be deemed to be an original or to be chattel paper for purposes of the Uniform Commercial Code, and such copy shall be held by Agent.

Section 22.7. Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Laws and Regulations; but if any provision of this Lease shall be prohibited by or invalid under Applicable Laws and Regulations, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.

Section 22.8. Successors and Assigns. This Lease shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 22.9. Captions; Table of Contents. Section captions and the table of contents used in this Lease (including the Schedules and Exhibits hereto) are for convenience of reference only and shall not affect the construction of this Lease.

Section 22.10. Schedules and Exhibits. The Schedules and Exhibits hereto, along with all attachments referenced in any of such items, are incorporated herein by reference and made a part hereof.

Section 22.11. No Accord and Satisfaction. The acceptance by Lessor of any sums from Lessee (whether as Capital Rent or otherwise) in amounts which are less than the amounts due and payable by Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between Lessor and Lessee regarding sums due and payable by Lessee hereunder, unless the Agent specifically deems it as such in writing.

Section 22.12. Enforcement of Certain Warranties. Unless a Lease Event of Default shall have occurred and be continuing, Lessor authorizes Lessee (directly or through agents), at Lessee's expense, to assert, during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claim that Lessee or Lessor may have under the warranties provided in connection with the Items of Equipment and Lessor agrees to cooperate, at Lessee's expense, with Lessee and its agents in asserting such rights. Any amount recovered by Lessee under any such warranties shall be retained by or paid over to Lessee, subject to Section 22.13.

Section 22.13. Security Interest in Funds. As long as a Material Lease Default or Lease Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to Lessee under the Operative Documents shall be paid to or retained by Lessor (including amounts to be paid to Lessee pursuant to Article IX or Section 22.12) as security for the performance by Lessee in full of its obligations under this Lease and the other Operative Documents, and, in the case of any existing Lease Event of Default, it may be applied to the obligations of Lessee hereunder and under the other Operative Documents and distributed pursuant to Article XXI. At such time as no Material Lease Default or Lease Event of Default shall be continuing, such amounts, net of any amounts previously applied to Lessee's obligations hereunder or under any other Operative Documents, shall be paid to Lessee. Any such amounts which are held pending payment to Lessee or application hereunder shall be invested by Lessor as directed from time to time in writing by Lessee, and at the expense and risk of Lessee, in Permitted Investments. Any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) shall be applied from time to time in the same manner as the principal invested. Lessor shall not be liable for any losses on such investments. Lessee will promptly pay to Lessor on demand, the amount of any loss realized as the result of any such investment (together with any fees, commissions and other expenses, if any, incurred in connection with such investment), such amount to be held, paid and applied in the same manner as other amounts subject to this Section 22.13.

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IN WITNESS WHEREOF, the undersigned have each caused this Lease to be duly executed and delivered by their respective representatives thereunto duly authorized as of the day and year first above written.

LSI LOGIC CORPORATION, as Lessee

By: /s/Anita Prasad

Name: Anita Prasad

Title: Vice President, Treasury and Tax

WELLS FARGO BANK NORTHWEST, NATIONAL
ASSOCIATION, not in its individual capacity,
except as expressly stated herein, but solely
as Agent

By: /s/ Val T. Orton

Name: Val T. Orton
Title: Vice President

BTM CAPITAL CORPORATION, as Lessor

By: /s/ Rory P. Laughna

Name: Rory P. Laughna

Title: Executive Vice President

Omnibus Amendment

in respect of

Lease (Lease A)

Lessor Assignment Agreement (Lease A)

Dated as of September 16, 2004

among

BTM Capital Corporation,
as Lessor,

LSI Logic Corporation,
as Lessee,

RBS Lombard, Inc., as Series A Assignee and Series B Assignee

and

Wells Fargo Bank Northwest, National Association, as Agent

Omnibus Amendment (Lease A)

This Omnibus Amendment (Lease A) (this "*Omnibus Amendment*") is dated as of September 16, 2004 and is among LSI Logic Corporation, a Delaware corporation ("*LSI*" or "*Lessee*"); BTM Capital Corporation ("*Lessor*" or "*Seller*"); RBS Lombard, Inc., as Series A Assignee and Series B Assignee ("*Assignee*"); and Wells Fargo Bank Northwest, National Association, not in its individual capacity, except as expressly stated in the Lease, but solely as Agent ("*Wells Fargo*" or "*Agent*").

Recitals

A. Lessor, Lessee and Agent have heretofore entered into that certain Lease and Security Agreement (Lease A), dated as of August 6, 2004 (the "*Lease*"), under and pursuant to which Lessee agreed to lease from Lessor, and Lessor agreed to lease to Lessee, certain Items of Equipment. Capitalized terms used but not otherwise defined in this Omnibus Amendment shall have the meanings assigned to such terms in the Lease.

B. Lessor, the financial institutions defined therein as Assignees, the Agent and the financial institutions identified therein as Securities Intermediaries have heretofore entered into that certain Lessor Assignment Agreement (Lease A), dated as of August 6, 2004 (the "*Lessor Assignment Agreement*") under and pursuant to which Seller sold and assigned to the Assignees, and the Assignees purchased and assumed from Seller, a percentage interest in Seller's right, title, interest and obligations with respect to the Series A Lease Balance and/or the Series B Lease Balance, as applicable, and, in each case the rights appurtenant thereto.

C. The parties now desire to amend the Lease and the Lessor Assignment Agreement in the manner set forth below.

D. All requirements of law have been fully complied with and all other acts and things necessary to make this Omnibus Amendment a legal, valid and binding instrument according to its terms for the purposes herein expressed have been done or performed.

Now, therefore, upon the full and complete satisfaction of the conditions precedent to the effectiveness of this Omnibus Amendment set forth in Section 3 hereof, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Agreement

Section 1. Amendment to the Lease.

Section 1.1. Section 22.5. Section 22.5 of the Lease shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 22.5. Amendments; Complete Agreements.* This Lease and the other Operative Documents exclusively and completely state the rights of Agent, Lessor and Lessee with respect to the Overall Transaction and supersede all prior agreements, oral or written, with respect thereto. Subject to the following paragraph, no variation, modification, amendment or waiver of this Lease shall be valid unless in writing and signed by Agent and Lessee.

Notwithstanding anything contained herein or in any other Operative Document, so long as no Lease Event of Default exists at the time of execution, no amendment, modification or waiver of this Lease or any other Operative Document (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement) shall be effective even after execution by the applicable parties to such amendment, modification or waiver unless and until Lessee shall have delivered to Agent an identical amendment, modification or waiver to Lease B or the corresponding Operative Documents (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement) (as such terms are defined in Lease B), as applicable, in each case executed by the applicable parties.

Notwithstanding the foregoing, nothing contained herein shall be construed to require the consent of Lessee to any amendment, modification or waiver of any Operative Document unless such consent of Lessee is expressly required by the terms of such Operative Document.”

Section 2. Amendments to the Lessor Assignment Agreement.

Section 2.1. Section 3.1. Section 3.1 of the Lessor Assignment Agreement shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 3.1. Sole Administration by Agent.* (a) The parties hereto agree that the Agent will administer the assignments and transactions contemplated hereby in accordance with the agency provisions of Article XX of the Lease. Each Assignee hereby agrees to and shall have the benefit of such provisions and hereby joins in the appointment of Wells Fargo Bank Northwest, National Association, as Agent.

(b) The parties hereto also agree that the term “Lessor” as used in Article XX of the Lease (except for Section 20.3 of the Lease (other than the second and fifth sentence of such Section 20.3 of the Lease)) shall mean each Assignee and Seller and that the term “Lessor” as used in Section 20.3 of the Lease (other than the second and fifth sentence of such Section 20.3 of the Lease), Article XII of the Lease and certain other relevant sections of the Lease shall have the meaning as further described in Section 3.1(b)2 below. Accordingly:

1. Agent hereby agrees to promptly deliver to each Assignee copies of each notice, report, certificate, document, amendment request, waiver request and other information that (A) Agent is required to deliver to Lessor under the Lease or the other Operative Documents and (B) that Agent receives from Lessor pursuant to the Lease or the other Operative Documents.

2. (i) (A) Any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents in connection with the exercise of remedies and/or the enforcement of the Operative Documents or (B) any amendment, modification or waiver of any provision of the Lease or the other Operative Documents at any time that a Lease Event of Default exists, in either case, which requires the consent of or direction by Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees and Lessor collectively, holding more than 50% of the outstanding Lease Balance and (ii) (A) with respect to any other act, right, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or (B) any amendment, modification or waiver of any provision of the Lease or the other Operative Documents (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement, in each case which shall be governed by clause (VI) of the following proviso) at any time that a Lease Event of Default does not exist, in either case, which requires the consent of or direction by Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees, Lessor, Assignees (as defined in Lease B) and Lessor (as defined in Lease B) collectively holding more than 50% of the sum of (x) the outstanding Lease Balance *plus* (y) the outstanding Lease Balance (as defined in Lease B); *provided* that

(I) any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or waiver thereof purporting to (i) release any Item of Equipment or other Lessee Collateral (other than any Cash Collateral, the release of the lien in which shall be governed by Sections 3 and 7 of the Control Agreements) from the Liens created by the Operative Documents (except as expressly provided in the Lease), (ii) amend, modify or waive (A) clause (i)(A) or clause (i)(B) of this Section 3.1(b)2 or (B) clause (I), (II), (III), (IV), (V) or (VI) of this proviso, (iii) amend, modify or waive Section 18.3(a) of the Lease or any defined term used in Section 18.3(a) of the Lease in a manner that makes Section 18.3(a) of the Lease less restrictive to Lessee, or (iv) amend, modify or waive Section 5.1 of the Lease, which requires the consent of or direction by the Lessor or Agent shall require the consent of or direction by each Assignee and Lessor, (II) any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or waiver thereof relating, in each case, to Section 8.3 or 8.6 of the Lease, or waiving any Lease Event of Default under the Lease after the Sale Option has been exercised, which requires the consent of or direction by the Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees holding more than 50% of the sum of (x) the outstanding Series A Lease Balance *plus* (y) the outstanding Series B Lease Balance and the consent of or direction by Lessor, (III) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or, waiver thereof (i) relating to the Sale Option provisions contained in Article XV of the Lease (other than the right to receive the Sale Recourse Amount or any modification of Lessee's obligation with respect to the Sale Recourse Amount) or Section 11.7 of the Lease or (ii) purporting to amend the Lease or any other Operative Document in connection with an assignment by Lessor of its interests and obligations under the Operative Documents pursuant to Section 19.1(a)(ii) of the Lease, if such amendment modifies or adds representations and warranties, covenants, events of default or other provisions to the Operative Documents that are more restrictive to Lessee or more favorable to the Assignees than the provisions of the Operative Documents as of the Delivery Date, which requires the consent of or direction by Lessor or by Agent, at the direction of Lessor, shall,

in each case, require the consent of or direction by Lessor only, (IV) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, under the Lease or any other Operative Document or any amendment, modification or waiver thereof relating to the provisions regarding the sale or possession of, or enforcement of the lien on, the Equipment in connection with the enforcement of remedies pursuant to Section 12.2 or Section 12.3 of the Lease which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, as applicable, shall require the consent of or direction by the Series B Assignees holding more than 50% of the outstanding Series B Lease Balance, (V) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or, waiver thereof waiving a Payment Default with respect to a Series or modifying the definition (including the definition of any defined term used in any such definition), or the method of calculation of any payment of Basic Rent with respect to a Series, Series A Lease Balance, Series B Lease Balance, Series C Lease Balance or Lessor's Interest Related Lease Balance with respect to a Series (as defined below), Accrual Rent with respect to a Series or any other amount payable hereunder with respect to a Series, which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, shall require the consent of each Assignee of such Series and, with respect to interests in the Series B Lease Balance, the Series C Lease Balance or the Lessor's Interest Related Lease Balance, the consent of Lessor ("Series" shall mean, as the context may require, the rights and obligations with respect to (a) the Series A Lease Balance, (b) the Series B Lease Balance, (c) the Series C Lease Balance or (d) the Lessor's Interest Related Lease Balance), (VI) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, under any Control Agreement or the Cash Collateral Agreement, or any amendment, modification or waiver of the Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement or to the Cash Collateral which is the subject of such Control Agreement, in each case which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, shall require the consent of or direction solely by the Assignee or Lessor for whose ultimate benefit the Securities Intermediary party to such Control Agreement holds the Cash Collateral in the Cash Collateral Account which is the subject of such Control Agreement, and (VII) any amendment or

modification purporting to modify (i) this clause (VII), (ii) clause (ii)(A) or clause (ii)(B) of this Section 3.1(b)2 or (iii) Section 22.5 of the Lease, shall require the consent of or direction by each Assignee, Lessor, each Assignee (as defined in Lease B) and Lessor (as defined in Lease B).

3. Except as set forth in the third paragraph of clause (c) below, Lessor shall have no responsibility, obligation or liability whatsoever with respect to the administration of the assignments or the transactions contemplated hereby (including but not limited to any item listed in this Section 3.1(b)).

(c) Without limiting the rights of any Assignee(s) under Section 3.1(b) to direct the Agent to exercise any act, right, remedy, approval or power under the Operative Documents, in the event the Lessor is permitted by the terms of the Lease to exercise any remedy or take any remedial action under the Operative Documents, Lessor may and, in the event the Lessor and/or Assignees holding the requisite percentage of the Lease Balance necessary to exercise a remedy under Section 3.1(b) above instruct Lessor to appoint the Agent to exercise such remedy, Lessor shall appoint Agent as its agent for purposes of exercising such remedy or taking such remedial action (and Agent hereby agrees to accept such appointment) whereupon Lessor shall have no liability or responsibility whatsoever with respect thereto, except as otherwise expressly set forth in the Operative Documents.

Upon the occurrence of a Lease Event of Default and provided that the requisite percentage of Lessor and/or Assignees required to give any approval or direction to the Agent with respect to the acceleration of the Lease Balance has not been obtained, the Agent shall, at the direction of Lessor or any Assignee, request (the "Acceleration Request") that the Lessor (if applicable) and each Assignee elect whether or not to accelerate the Lease Balance pursuant to Section 12.2(a)(i) of the Lease; *provided* that if (i) the Lease Event of Default (A) is of the type described in Section 12.1(a) or 12.1(c) of the Lease, (B) has existed for at least sixty (60) days and (C) an Acceleration Request has been delivered by Agent on or after such sixty (60) day period and (ii) Lessor or an Assignee fails to notify the Agent in writing of whether or not Lessor or such Assignee has elected to accelerate the Lease Balance within two weeks following Lessor's or such Assignee's receipt of the Acceleration Request, then the Lease Balance held by

Lessor or such Assignee, as applicable, shall be deemed to be not outstanding for the purpose of determining whether the requisite percentage of the Lessor and Assignees have given any approval or directed the taking of any action by Agent with respect to acceleration of the Lease Balance pursuant to Section 12.2(a)(i) of the Lease.

Lessor shall be indemnified and held harmless by Assignees pursuant to the provisions of Section 4.5 hereof and shall not be liable for any such action taken or omitted to be taken by it under or in connection with this Agreement or the other Operative Documents except for (i) its own gross negligence, (ii) its willful misconduct, (iii) its negligence in the handling of funds or (iv) its breach of any of the Operative Documents. Additionally, Lessor shall not be responsible in any manner to the Assignees for any recital, statement, representation or warranty made by the Lessee, or any officer thereof, contained in any Operative Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Lessor under or in connection with any Operative Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of any Operative Document, or for any failure of the Lessee or any other party to any Operative Document to perform its obligations thereunder. Lessor shall not be under any obligation to the Assignees to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, any Operative Document, or to inspect the properties, books or records of the Lessee.

Lessor shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel (including counsels to the Lessee), independent accountants and other experts selected by Lessor or the Lessee.

(d) Agent hereby represents and warrants to Assignees that the representations and warranties of Agent set forth in Section 17.3 of the Lease are true and correct in all material respects.

(e) In the event that LSI and/or any Affiliate of LSI (each, an “*LSI Assignee*”) is or becomes an Assignee hereunder, no LSI Assignee shall have any rights whatsoever as an Assignee with respect to any amendments, modifications, waivers, approvals or consents, or directions with respect to the taking of any action, in each case, hereunder or under any other Operative Document and for the purpose of determining whether the requisite percentage of Assignees approved or consented to any amendment, modification, waiver or consent to be given under any Operative Document, or have given any other approval or directed the taking of any action provided herein or therein to be taken upon the direction of all or a specified percentage of the Assignees, the principal amount of the Lease Balance directly or indirectly held by any LSI Assignee shall be deemed to be not outstanding.

(f) Each Series A Assignee hereby acknowledges and agrees that in the event that such Series A Assignee becomes the subject of any voluntary or involuntary case or proceeding under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, and as a result thereof the Series A Cash Collateral held by or benefiting such Series A Assignee becomes a part of such Series A Assignee’s bankruptcy estate, then (i) such Series A Assignee shall be deemed to have set off and applied such Series A Cash Collateral against any amounts due with respect to the portion of the Series A Lease Balance secured by such Series A Cash Collateral and (ii) the Lessee shall be deemed to have paid in full any and all Rent due with respect to the Series A Lease Balance secured by such Series A Cash Collateral, in each case in an amount not to exceed such Series A Cash Collateral.”

Section 2.2. Section 6.2. Section 6.2 of the Lessor Assignment Agreement shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 6.2. Amendments and Waivers.* No amendment or waiver of any provision of this Agreement, and no consent with respect to any departure by any party from the terms hereof, shall be effective unless the same shall be in writing and signed by Agent, Lessor and each Assignee affected thereby (and, with respect to (i) Section 3.1(b) and (ii) the last sentence of 4.4(b), the Lessee) and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.”

Section 3. Conditions to Effectiveness.

This Omnibus Amendment shall become effective on September 16, 2004 (the "*Effective Date*") upon the satisfaction of the following conditions precedent:

(a) This Omnibus Amendment shall have been duly authorized, executed and delivered by each of the parties hereto;

(b) After giving effect to this Omnibus Amendment, the Operative Documents shall be in full force and effect as to all parties and no Lease Default or Lease Event of Default shall have occurred or be continuing;

(c) Lessee shall have paid the reasonable fees and expenses of Chapman and Cutler LLP and Lessor's special counsel, in each case in connection with the negotiation, preparation, approval, execution and delivery of this Omnibus Amendment; and

(d) The representations and warranties of the Lessee set forth herein shall be true and correct.

Section 4. Representations and Warranties.

Section 4.1. Representations and Warranties. Lessee hereby represents and warrants to Lessor, Agent and the Assignees that, as of the date hereof:

(a) No Lease Default or Lease Event of Default has occurred and is continuing, or will occur as a result of, or after giving effect to, this Omnibus Amendment;

(b) After giving effect to this Omnibus Amendment, the representations and warranties of Lessee contained in Section 17.1 of the Lease are true and correct on and as of the date hereof, except to the extent such representations and warranties relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date. For purposes of the foregoing representation, the term "*Operative Documents*" as used in Section 17.1 of the Lease shall include this Omnibus Amendment and the other Operative Documents as amended hereby;

(c) Each of the Operative Documents is in full force and effect; and

(d) The provisions set forth in Sections 1 and 2 hereof are set forth, *mutatis mutandis*, in the Omnibus Amendment (Lease B), dated as of the date hereof, among LSI, as lessee, Wells Fargo, as agent and the financial institutions party thereto.

Section 4.2. Reaffirmation of Lien and Security Interest of Lessee. Lessee hereby reaffirms its grant to Lessor of a lien on and security interest in the Lessee Collateral as set forth in the Lease and the Cash Collateral Agreement, as applicable, and in the case of the Lease, as amended pursuant hereto.

Section 5. Miscellaneous.

Section 5.1. Construction. This Omnibus Amendment shall be construed in connection with and as part of the Operative Documents, and except as modified and expressly amended by this Omnibus Amendment, all terms, conditions and covenants contained in the Operative Documents are hereby ratified and shall be and remain in full force and effect.

Section 5.2. Headings and Table of Contents. The headings of the Sections of this Omnibus Amendment are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof and any reference to numbered Sections, unless otherwise indicated, are to Sections of this Omnibus Amendment.

Section 5.3. References. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Omnibus Amendment may refer to the Lease, the Lessor Assignment Agreement and the other Operative Documents without making specific reference to this Omnibus Amendment but nevertheless all such references shall be deemed to include this Omnibus Amendment unless the context otherwise requires.

Section 5.4. Counterparts. This Omnibus Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one amendment.

Section 5.5. Governing Law. This Omnibus Amendment shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to the conflict of laws principles of such State, except as to matters relating to the Lessor Assignment Agreement, which shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to conflict of laws principles of such State.

[Signature Pages Follow]

In Witness Whereof, each of the undersigned have caused this Omnibus Amendment to be duly executed and delivered by their properly and duly authorized officers as of the day and year first above written.

LSI Logic Corporation

By: /s/ Anita Prasad

Name: Anita Prasad

Title: Vice President, Treasury and Tax

Wells Fargo Bank Northwest, National Association, not in its
individual capacity, but solely as Agent

By: /s/ Val T. Orton

Name: Val T. Orton

Title: Vice President

BTM Capital Corporation, as Lessor

By: /s/ Joseph W. O'Brien

Name: Joseph W. O'Brien

Title: Senior Vice President

RBS Lombard, Inc., as Series A Assignee

By: /s/ Clifford A. Lehman

Name: Clifford A. Lehman

Title: Senior Vice President

RBS Lombard, Inc., as Series B Assignee

By: /s/ Clifford A. Lehman

Name: Clifford A. Lehman

Title: Senior Vice President

LEASE AND SECURITY AGREEMENT (LEASE B)

dated as of August 6, 2004
among Wells Fargo Bank Northwest, National Association,
not in its individual capacity,
except as expressly stated herein, but solely as Agent,
as AGENT,

LSI LOGIC CORPORATION,
as LESSEE

and

BANK OF THE WEST,
as LESSOR

MONTGOMERY STREET FINANCIAL SERVICES, LLC,
as Arranger

THIS LEASE AND SECURITY AGREEMENT HAS BEEN EXECUTED IN SEVERAL COUNTERPARTS. TO THE EXTENT, IF ANY, THAT THIS LEASE AND SECURITY AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AND SECURITY AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART HEREOF OTHER THAN THE "ORIGINAL EXECUTED COUNTERPART NO. 1." SEE SECTION 2.4 FOR THE NATURE OF THIS TRANSACTION AND INTENTION OF THE PARTIES. THIS COUNTERPART IS [NOT] THE ORIGINAL EXECUTED COUNTERPART NO. 1.

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LEASE AND SECURITY AGREEMENT (LEASE B)

THIS LEASE AND SECURITY AGREEMENT (LEASE B), dated as of August 6, 2004 (as amended, supplemented, restated or otherwise modified from time to time, this "*Lease*"), is among LSI LOGIC CORPORATION, a Delaware corporation, as Lessee ("*Lessee*") with its principal office at 1621 Barber Lane, Milpitas, California, BANK OF THE WEST, as Lessor ("*Lessor*") and WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, not in its individual capacity, except as expressly stated herein, but solely as Agent ("*Agent*").

WITNESSETH:

WHEREAS, on the Delivery Date, Lessor will purchase certain Items of Equipment more particularly described on Schedule I hereto; and

WHEREAS, upon the purchase of the Items of Equipment on the Delivery Date, Lessor will lease such Items of Equipment to Lessee and Lessee will lease such Items of Equipment from Lessor pursuant to the terms of this Lease upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound hereby, hereby agree as follows:

ARTICLE I

DEFINITIONS

In this Lease and each other Operative Document, unless the context otherwise requires:

(a) *Interpretation.* (i) any term defined below by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect;

(ii) words importing the singular include the plural and vice versa;

(iii) a reference to a part, clause, section, article, exhibit or schedule is a reference to a part, clause, section and article of, and exhibit and schedule to, such Operative Document;

(iv) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws amending, supplementing, supplanting, varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations and ordinances issued or otherwise applicable under that statute;

(v) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document;

(vi) a reference to a party to a document includes that party's successors and permitted assigns; and

(vii) references to "*including*" means including without limiting the generality of any description preceding such term and for purposes hereof the rule of *ejusdem generis* shall not be applicable to limit a general statement followed by or referable to an enumeration of specific matters to matters similar to those specifically mentioned.

(b) *Accounting Terms*. In each Operative Document, unless expressly provided otherwise, accounting terms shall be construed and interpreted, and accounting determinations and computations shall be made, in accordance with GAAP.

Further, each of the parties to the Operative Documents and their counsel have reviewed and revised the Operative Documents, or requested revisions thereto, and the usual rule of construction that any ambiguities are to be resolved against the drafting party shall be inapplicable in construing and interpreting the Operative Documents.

"*ABN Cash Collateral Account*" shall have the meaning provided in the Cash Collateral Agreement.

"*ABN Control Agreement*" shall mean that certain Control Agreement, dated as of August 6, 2004, among the ABN Securities Intermediary, the Lessee and Lessor.

"*ABN Securities Intermediary*" shall have the meaning provided in the Cash Collateral Agreement.

"*Accrual Rent*" shall mean, individually or collectively, Series A Accrual Rent, Series B Accrual Rent, Series C Accrual Rent and Lessor's Interest Related Accrual Rent.

"*Acquisition*" shall mean any transaction or series of related transactions for the purpose of or resulting in (a) the acquisition, directly or indirectly, of all or substantially all of the assets of a Person or of any business or division of a Person, (b) the acquisition, directly or indirectly, of all or substantially all of the capital stock, obligations or other securities of or interest in a Person, or (c) a merger or consolidation or any other combination by Lessee or any Subsidiary with another Person.

"*Affiliate*" shall mean any Person which, directly or indirectly, controls, is controlled by or is under common control with another Person. For purposes of the foregoing, "control" with respect to any Person shall mean the possession, directly or indirectly, of the power (a) to vote twenty-five percent (25%) or more of the securities having ordinary voting power for the election of directors of such Person, or (b) to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Agent” shall mean Wells Fargo Bank Northwest, National Association, in its capacity as agent under the Operative Documents.

“Agent Fee Letter” shall mean that certain letter agreement, dated as of June 23, 2004, between Agent and Lessee.

“Applicable Laws and Regulations,” “Applicable Laws” and “Laws” shall mean as of any date all applicable laws, rules, regulations (including Environmental Laws), statutes, treaties, codes, ordinances, permits, certificates, orders and licenses of and interpretations by, any Governmental Agency, and applicable judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment), to which Lessee or any Item of Equipment is subject.

“Appraisal” shall mean the appraisal described in Section 3.1(g).

“Appraised Value” shall mean the Fair Market Value of the Equipment as of the Delivery Date as determined pursuant to the Appraisal delivered pursuant to Section 3.1(g).

“Appraiser” or “Appraisers” shall mean American Appraisal Associates, Inc.

“Arranger” shall mean Montgomery Street Financial Services, LLC.

“Assignee” shall have the meaning provided in Section 19.1(a)(ii).

“Assignee’s Share” shall have the meaning provided in the Lessor Assignment Agreement.

“Bank of the West Cash Collateral Account” shall have the meaning provided in the Cash Collateral Agreement.

“Bank of the West Control Agreement” shall mean that certain Control Agreement, dated as of August 6, 2004, among Lessee and Lessor, in its capacity as Lessor and as Securities Intermediary.

“Bank of the West Securities Intermediary” shall have the meaning provided in the Cash Collateral Agreement.

“Basic Rent” shall have the meaning provided in Section 6.1.

“Bill of Sale” shall mean any bill of sale delivered in connection with the requirements of Section 8.4 or 9.1.

“Break Funding Amount” shall have the meaning provided in Section 11.5.

“*Business Day*” shall mean any Monday, Tuesday, Wednesday, Thursday or Friday, *other than* a day on which commercial banks are authorized or required to be closed in New York, New York, Milpitas, California, Salt Lake City, Utah and solely with respect to determination of the LIBO Rate, London, England.

“*Capital Lease*” shall mean, for any Person, any lease of property (whether real, personal or mixed) which, in accordance with GAAP, would, at the time a determination is made, be required to be recorded as a capital lease in respect of which such Person is liable as lessee.

“*Capital Rent*” shall mean, individually, or collectively, Series A Capital Rent and Series B Capital Rent.

“*Cash Collateral*” shall mean, as the Lessor or applicable Series A Assignee, in each case benefiting from such Cash Collateral may elect, in its sole and absolute discretion, (i)(a) obligations of the United States government and any agency thereof and (b) time deposits and/or certificates of deposit, in each case having the highest rates of return for similar time deposits and/or certificates of deposit with similar terms and similar amounts as the time deposit and/or certificate of deposit offered by the commercial bank holding or issuing such time deposit and/or certificate of deposit and issued by such commercial bank, which commercial bank shall have (x) a combined capital and surplus of not less than \$500,000,000 and (y) a senior unsecured debt credit rating of at least “A3” by Moody’s and “A-” by S&P and which commercial bank shall be incorporated under (A) the laws of the United Kingdom or (B) the laws of the United States of America or any state thereof or the District of Columbia and, in the case of this clause (B), shall be a member of the Federal Reserve System; *provided that* the aggregate amount of the certificates of deposit issued by a financial institution having an unsecured debt credit rating of “A3” by Moody’s and/or “A-” by S&P shall not exceed \$40,000,000 in face amount, (ii) all cash maintained in or credited to the Cash Collateral Account in which such Cash Collateral is held, and (iii) all proceeds of the foregoing, including whatever is receivable or received when Cash Collateral or proceeds are sold, collected, exchanged, returned, substituted or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Cash Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Cash Collateral. All Cash Collateral shall have a final maturity from the date of issuance of not more than 100 days and maturing on or before the next succeeding Payment Date during the Lease Term.

“*Cash Collateral Accounts*” shall mean, collectively, the Cash Collateral Accounts listed in Section 1.1 of the Cash Collateral Agreement.

“*Cash Collateral Agreement*” shall mean the Assignment of Cash Collateral Accounts dated as of August 6, 2004 executed by Lessee in favor of Lessor.

“*Casualty*” or “*Casualties*” shall mean any of the following events in respect of any Item of Equipment: (a) the total loss of such Item of Equipment, the total loss of use thereof due to theft, disappearance, destruction, damage beyond repair or the rendering of such Item of Equipment permanently unfit for normal use for any reason whatsoever (other than

obsolescence); (b) any damage to such Item of Equipment which results in an insurance settlement with respect to such Item of Equipment on the basis of a total loss or a constructive total loss; (c) the permanent condemnation, confiscation or seizure of, or the requisition of title to or use of, such Item of Equipment; (d) as a result of any change in Applicable Laws and Regulations or other similar action by any Governmental Agency, the use of such Item of Equipment in the normal course of Lessee's business shall have been prohibited, directly or indirectly, for a period equal to the lesser of 90 consecutive days and the remaining Lease Term.

"*Casualty Amount*" shall mean, with respect to any Item of Equipment leased hereunder as of any date specified for payment thereof, the sum of (A) a portion of the Lease Balance equal to the product obtained by multiplying the outstanding Lease Balance as of the Casualty Settlement Date by the Item Value Fraction of such Item of Equipment and (B) all other Rent due and owing under the Operative Documents.

"*Casualty Notice*" shall have the meaning provided in Section 9.1.

"*Casualty Recoveries*" shall have the meaning provided in Section 9.1.

"*Casualty Settlement Date*" shall have the meaning provided in Section 9.1(a).

"*Change in Law*" shall have the meaning provided in Section 11.4.

"*Claims*" shall mean liabilities, obligations, damages, actual losses, demands, penalties, fines, claims, actions, suits, judgments, settlements, charges, costs, fees, expenses and disbursements (including, without limitation, out-of-pocket legal fees and expenses and costs of investigation which, in the case of counsel or investigators retained by an Indemnitee, shall be reasonable) of any kind and nature whatsoever, but shall exclude anticipated losses or lost profits of Lessor, any Assignee or Agent.

"*Code*" shall mean the Internal Revenue Code of 1986 and the rules and regulations thereunder, each as amended, supplemented or otherwise modified from time to time.

"*Compliance Certificate*" shall have the meaning provided for in Section 18.1(a)(iii).

"*Consolidated Intangible Assets*" shall mean, as of any date of determination, the total goodwill and other intangible assets of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

"*Consolidated Total Assets*" shall mean, as of any date of determination, the total assets of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

"*Consolidated Total Liabilities*" shall mean, as of any date of determination, the total liabilities of Lessee and its Subsidiaries on a consolidated basis, as determined in accordance with GAAP.

“*Contractual Obligation*” of any Person shall mean, any indenture, note, lease, loan agreement, security, deed of trust, mortgage, security agreement, guaranty, instrument, contract, agreement or other form of contractual obligation or undertaking to which such Person is a party or by which such Person or any of its property is bound.

“*Control Agreements*” shall mean, collectively, (a) the Wells Fargo Control Agreement, (b) the ABN Control Agreement and (c) the Bank of the West Control Agreement.

“*Delivery Date*” shall mean August 6, 2004.

“*Early Termination Option*” shall have the meaning provided in Section 14.1(a).

“*Early Termination Payment Date*” shall have the meaning provided in Section 14.1(a).

“*Early Termination Purchase Amount*” shall mean, with respect to any Item of Equipment, as of the Early Termination Payment Date, the sum of (a) a portion of the Lease Balance equal to the product obtained by multiplying the outstanding Lease Balance as of the Early Termination Payment Date by the Item Value Fraction of such Item of Equipment and (b) all other Rent then due and owing under the Operative Documents.

“*Eligible Assignee*” shall mean (a) any other Lessor or Assignee, (b) any affiliate of a Lessor or Assignee, (c) any commercial bank, leasing company, finance company or other financial institution which has or is an affiliate of an entity (and such entity provides a guaranty of such affiliate’s obligations under the Operative Documents) which has a combined capital and surplus of at least \$100,000,000 or (d) any institution which is a “qualified institutional buyer” as defined in rule 144A of the Securities Act.

“*Eligible Lessor Assignee*” shall mean any commercial bank, leasing company, finance company or other financial institution which has or is an affiliate of an entity (and such entity provides a guaranty of such affiliate’s obligations under the Operative Documents) which has a combined capital and surplus of at least \$75,000,000.

“*Encumbrance*” shall mean any mortgage, deed of trust, pledge, security interest, assignment, deposit arrangement, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including any conditional sale or other title retention agreement, or any financing lease having substantially the same economic effect as any of the foregoing or any agreement to give any security interest, but excluding any operating lease, regardless of whether precautionary filings are made in respect thereto under Section 9408 of the California Uniform Commercial Code).

“*End of Term Value Ratio*” shall mean, with respect to any Item or Items of Equipment as of any date of determination, the ratio of (a) the expected Fair Market Value of such Item or Items of Equipment as of the end of the Lease Term (as set forth in the Appraisal) to (b) the Fair Market Value of such Item or Items of Equipment as of the Delivery Date (as set forth in the Appraisal).

“*Environmental Laws*” shall mean all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directives, requests, licenses, authorizations and permits of, and agreements with (including consent decrees), any Governmental Authorities, in each case relating to or imposing liability or standards of conduct concerning public health, safety and environmental protection matters, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Clean Air Act, the Federal Water Pollution Control Act of 1972, the Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Emergency Planning and Community Right-to-Know Act, the California Hazardous Waste Control Law, the California Solid Waste Management, Resource Recovery and Recycling Act, the California Water Code and the California Health and Safety Code.

“*Equipment*” shall mean, individually, each Item of equipment described on Schedule I hereto and, collectively, each of the foregoing Items of Equipment.

“*ERISA*” shall mean the Employee Retirement Income Security Act of 1974, and any regulations issued pursuant thereto, as amended or replaced and as in effect from time to time.

“*ERISA Affiliate*” shall mean any trade or business (whether or not incorporated) which is under common control with Lessee within the meaning of Section 4001(a)(14) of ERISA and Sections 414(b), (c) and (m) of the Code.

“*ERISA Event*” shall mean (a) a Reportable Event with respect to a Pension Plan; (b) a withdrawal by Lessee or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Pension Plan subject to Title IV of ERISA; (d) a failure by Lessee or any ERISA Affiliate to make required contributions to a Pension Plan or other Plan subject to Section 412 of the Code; (e) an event or condition which might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (f) the imposition of any liability under Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Lessee or any ERISA Affiliate; or (g) an application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code with respect to any Pension Plan.

“*Extended Remarketing Period*” shall have the meaning provided in Section 15.6(a).

“*Fair Market Value*” shall mean, with respect to any Item of Equipment as of any date, the price which a purchaser would pay to purchase such Item of Equipment in an arm’s-length transaction between an informed and willing buyer and an informed and willing seller, neither of them being under any compulsion to buy or sell. Except for any determination of the Fair Market Value in connection with an appraisal delivered pursuant to Section 9.1 or 14.1, in making any determination of Fair Market Value, any appraiser, if applicable, may assume such

Item of Equipment is installed in-place and as-built and (a) has been maintained in accordance with the requirements of this Lease, (b) is in the condition in which it is required to be under this Lease as of the date for which such determination is made and (c) is not subject to a Sublease, and any appraiser, if applicable, shall use such reasonable methods of appraisal as are chosen by Agent and which are acceptable to Lessee.

“FASB 94” shall have the meaning provided in Section 2.4.

“FIN 46R” shall have the meaning provided in Section 2.4.

“Financial Statements” shall mean, with respect to any accounting period for any Person, statements of income, shareholders’ equity and cash flows of such Person for such period, and a balance sheet of such Person as of the end of such period, setting forth in each case in comparative form figures for the corresponding period in the preceding fiscal year if such period is less than a full fiscal year or, if such period is a full fiscal year, corresponding figures from the preceding annual audit, all prepared in reasonable detail and in accordance with GAAP.

“Foreign Plan” shall mean any employee benefit plan maintained by Lessee or any of its Subsidiaries which is mandated or governed by any Governmental Rule of any Governmental Authority other than the United States.

“F.R.S. Board” shall mean the Board of Governors of the Federal Reserve System or any successor thereto, and any Governmental Authority succeeding to any of its principal functions.

“Funding” shall mean an advance of funds by the Lessor to the Agent pursuant to Article II hereof.

“Generally Accepted Accounting Principles” or “GAAP” shall mean, as of any date of determination, accounting principles (a) set forth as generally accepted in then currently effective Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants, (b) set forth as generally accepted in then currently effective Statements of the Financial Accounting Standards Board or (c) that are then approved by such other entity as may be approved by a significant segment of the accounting profession in the United States of America. The term “consistently applied,” as used in connection therewith, means that the accounting principles applied are consistent in all material respects to those applied at prior dates or for prior periods.

“Governmental Action” shall mean all applicable permits, authorizations, registrations, consents, approvals, waivers, exceptions, variances, orders, judgments, decrees, licenses, exemptions, publications, filings, notices to and declarations of or with, or required by, any Governmental Agency, or required by any Applicable Laws and Regulations.

“Governmental Agency” or “Authority” shall mean any domestic or foreign national, state or local government, any political subdivision thereof, any department, agency, authority or bureau of any of the foregoing, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without

limitation, the Federal Deposit Insurance Corporation, the F.R.S. Board, the Comptroller of the Currency, any central bank or any comparable authority.

“*Governmental Charges*” shall mean, with respect to any Person, all levies, assessments, fees, claims or other charges imposed by any Governmental Authority upon such Person or any of its property or otherwise payable by such Person.

“*Governmental Rule*” shall mean any law, rule, regulation, ordinance, order, code, interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

“*Grossed-Up Basis*” shall have the meaning provided in Section 11.6.

“*Guaranty Obligation*” shall mean, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person:

(a) With respect to any Indebtedness, lease (other than an operating lease), dividend, or other obligation (the “*primary obligations*”) of another Person (the “*primary obligor*”), including any obligation of that Person (i) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, or (ii) to advance or provide funds (A) for the payment or discharge of any such primary obligation, or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor, or (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the holder of any such primary obligation against loss in respect thereof;

(b) (i) With respect to letters of credit, acceptances, bank guaranties, surety bonds or similar instruments issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (ii) as a partner or joint venturer in any partnership or joint venture;

(c) With respect to leases that are treated by Lessee as operating leases for accounting purposes and as a loan for all other purposes; or

(d) Net obligations with respect to Rate Contracts, other than Rate Contracts entered into in connection with a bona fide hedging operation that provides offsetting benefits to such Person.

“*Hazardous Material*” shall mean any toxic or hazardous substances, materials, wastes, contaminants or pollutants, including asbestos, PCBs, petroleum products and byproducts, and any substances defined or listed as “hazardous substances,” “hazardous materials,” “hazardous wastes” or “toxic substances” (or similarly identified), regulated under or forming the basis for liability under any applicable Environmental Law.

“*Imposition*” or “*Impositions*” shall mean any and all liabilities, losses, expenses and costs of any kind whatsoever for fees, taxes, levies, imposts, duties, charges, assessments or withholdings of any nature whatsoever (“*Taxes*”) (including (i) personal property taxes; (ii) sales taxes, use taxes and other similar taxes (including rent taxes and intangible taxes); (iii) any excise taxes; (iv) transfer taxes, conveyance taxes, mortgage taxes, intangible taxes, stamp taxes and documentary recording taxes and fees; (v) taxes that are or are in the nature of franchise, income, value added, gross receipts, privilege and doing business taxes, license and registration fees; and (vi) assessments on any Item of Equipment or any part thereof or any other Lessee Collateral), and in each case all interest, additions to tax and penalties thereon, which at any time may be levied, assessed or imposed by any Federal, state or local authority upon or with respect to (a) any Indemnatee, any Item of Equipment or any part thereof or interest therein or any other Lessee Collateral, or Lessee or any sublessee of Lessee or user of any Item of Equipment; (b) the financing, refinancing, demolition, construction, substitution, subleasing, assignment, control, condition, servicing, maintenance, repair, ownership, possession, purchase, rental, lease, activity conducted on, delivery, insuring, use, operation, improvement, transfer, return or other disposition of any Item of Equipment or any part thereof or interest therein; (c) indebtedness with respect to any Item of Equipment or any part thereof or interest therein or transfer thereof; (d) the rentals, receipts or earnings arising from any Item of Equipment, any other Lessee Collateral or any part thereof or interest therein; (e) the Operative Documents or any payment made or accrued pursuant thereto; (f) the income or other proceeds received with respect to any Item of Equipment, any other Lessee Collateral or any part thereof or interest therein upon the sale or disposition thereof; (g) any contract relating to the manufacture, acquisition or delivery of any Item of Equipment or any part thereof or interest therein; or (h) otherwise in connection with the Overall Transaction.

Notwithstanding anything in the first paragraph of this definition (except as provided in the final paragraph of this definition) the term “*Imposition*” shall not mean or include:

(i) any Taxes and impositions (other than Taxes that are, or are in the nature of, sales, use, value added, rental, transfer, property or ad valorem taxes) that are imposed by any Governmental Agency and that are based upon or measured by the gross or net income or gross or net receipts (including any minimum taxes or taxes on, measured by or in the nature of capital, net worth, excess profits, items of tax preference, capital stock, franchise, business privilege or doing business taxes); *provided* that this clause (i) shall not be interpreted to prevent a payment from being made on an Grossed-Up Basis if such payment is otherwise required to be so made; *provided further* this clause (i) shall not apply to Taxes and Impositions imposed on an Indemnatee solely as a result of Lessee’s activities or the location of the Equipment in the jurisdiction imposing such Taxes or Impositions;

(ii) any Tax or imposition to the extent, but only to such extent, it relates to any act, event or omission that first occurs, or relates to a period, after the termination of the Lease, return of the Items of Equipment as required under the Lease and payment in full of all amounts due under the Lease (but not any Tax or imposition that relates to any period prior to such termination, return and payment in full with respect to the Item of Equipment or Items of Equipment to which such Tax or imposition relates);

(iii) any Tax or imposition imposed on an Indemnitee as a result of the failure of such Indemnitee to file any return or report provided to it pursuant to Section 11.2(d) on a timely basis and to pay any Tax or imposition indicated as being due and payable on such return or report other than any withholding or other Tax which may be paid by Lessee directly;

(iv) any Tax or imposition for so long as, but only for so long as, it is being contested in accordance with the provisions of Section 11.2(b); *provided* that the foregoing shall not limit Lessee's obligations under Section 11.2(b) to advance to such Indemnitee amounts with respect to Taxes or impositions that are being contested in accordance with Section 11.2(b) or any expenses incurred by such Indemnitee in connection with such contest;

(v) any Taxes or imposition imposed upon an Indemnitee with respect to any voluntary transfer, sale, financing or other voluntary disposition of any interest in any Item of Equipment or any part thereof, or any interest therein or any interest or obligation under the Operative Documents, or from any sale, assignment, transfer or other disposition of any interest in a Indemnitee or any Affiliate thereof, (other than any transfer in connection with (1) the exercise by Lessee of its Early Termination Option or any termination option or other purchase of any Item or Items of Equipment by Lessee or the exercise by Lessee of the Purchase Option or the Sale Option, (2) the occurrence of an Lease Event of Default, (3) a Casualty affecting any Item or Items of Equipment, or (4) any assignment, sublease, modification or addition of or to any Item or Items of Equipment by Lessee) or any involuntary transfer of any of the foregoing interests resulting or arising from or in connection with the bankruptcy or insolvency of an Indemnitee;

(vi) any Taxes or impositions imposed on a direct or indirect transferee, successor or assign of an Indemnitee to the extent of the excess of such Taxes or impositions over the amount of such Taxes and impositions that would have been imposed had there not been a transfer by the original Indemnitee of an interest arising under the Operative Documents, *provided, however*, that there shall not be excluded under this clause (vi) any such Tax or imposition if such direct or indirect transferee, successor, or assignee of the Lessor acquired its interest as a result of a transfer in connection with a Lease Event of Default; *provided, further*, that there shall not be excluded under this clause (vi) any amount necessary to make any payment on a Grossed-Up Basis;

(vii) any Tax or imposition to the extent that such Tax or imposition is actually reimbursed to the Indemnitee by a Person other than an Affiliate of such Indemnitee;

(viii) any Taxes or impositions imposed on an Indemnitee, to the extent such Indemnitee actually receives a credit (or otherwise has a reduction in a liability for Taxes) in respect thereof against Taxes that are not indemnified hereunder (but only to the extent such credit was not taken into account in calculating the related indemnity payment on an Grossed-Up Basis);

(ix) any gift, inheritance or estate Tax or similar imposition;

(x) any Tax or imposition imposed on or with respect to an Indemnitee as a result of transactions or activities of such Indemnitee unrelated to the transactions or activities referred to in or contemplated by the Operative Documents;

(xi) any Taxes imposed against or payable by an Indemnitee resulting from, or that would not have been imposed but for, the gross negligence or willful misconduct of such Indemnitee;

(xii) Taxes imposed on or payable by an Indemnitee to the extent such Taxes would not have been imposed but for a breach by such Indemnitee or any Affiliate thereof of any representations, warranties or covenants set forth in the Operative Documents (unless such breach is caused by Lessee's breach of its representations, warranties or covenants set forth in the Operative Documents);

(xiii) Taxes of an Indemnitee to the extent resulting from such Indemnitee's failure to comply with the provisions of Section 11.2(b), which failure precludes the ability to conduct a contest pursuant to Section 11.2(b) (unless such failure is caused by Lessee's breach of its obligations);

(xiv) any Taxes imposed on the Lessor that are a result of the Lessor not being considered a "United States person" as defined in Section 7701(a)(30) of the Code; or

(xv) any Taxes imposed against or payable by an Indemnitee as a result of the transfer of the Items of Equipment in connection with the exercise by Lessee of the Sale Option pursuant to Section 15.4 which Lessee is not obligated to pay pursuant to Section 15.4.

Notwithstanding the foregoing, the exclusions from the definition of Impositions set forth in clauses (i), (ii), (iv), (v), (vi), (viii), (ix) and (x) above shall not apply (but the other exclusions shall apply) to any Taxes or any increase in Taxes imposed on an Indemnitee (net of any decrease in Taxes realized by such Indemnitee), to the extent that such Tax increase or decrease would not have occurred if on the Delivery Date the Lessor had advanced funds to Lessee in the form of a loan by Lessor to Lessee secured by the Equipment in an amount equal to the amounts funded on the Delivery Date, with debt service for each such loan equal to the Basic Rent payable on each Payment Date and a principal balance at the maturity of such loan in an amount equal to the then outstanding amount of the Lease Balance.

"*Indebtedness*" shall mean, for any Person, without duplication:

(a) All indebtedness or other obligations of such Person for borrowed money;

(b) All obligations of such Person for the deferred purchase price of property or services (including obligations under credit facilities which secure or finance such purchase price and obligations under leases that are treated by Lessee as operating leases

for accounting purposes and as a loan for all other purposes), other than trade payables incurred by such Person in the ordinary course of its business on ordinary terms;

(c) All obligations evidenced by notes, bonds, debentures or similar instruments, including obligations so evidenced incurred in connection with the acquisition of property, assets or businesses;

(d) All indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property);

(e) All obligations under Capital Leases;

(f) All Guaranty Obligations other than Guaranty Obligations described in clauses (a)(iii) and (a)(iv) of the definition of "Guaranty Obligation" where the primary obligor is a Subsidiary; and

(g) All indebtedness of another Person secured by any Encumbrance upon or in property owned by the Person for whom Indebtedness is being determined, whether or not such Person has assumed or become liable for the payment of such indebtedness of such other Person; *provided*, that if such indebtedness is not assumed and recourse is limited solely to such property, the Indebtedness incurred hereunder shall be valued at the lesser of the principal amount of the obligation so secured or the fair market value of the property subject to such Encumbrance.

"*Indemnatee*" shall mean Agent (in its individual capacity), Lessor, Assignees, any additional, separate or co-agent, and the respective Affiliates, successors, permitted assigns, lenders, secured parties, permitted transferees, contractors, servants, employees, officers, directors, shareholders, partners, participants, representatives and agents of each of the foregoing Persons; *provided, however*, that in no event shall Lessee or any of its Affiliates be an Indemnatee.

"*Insurance Requirements*" shall mean all terms and conditions of any insurance policy required by the terms hereof to be maintained by Lessee and all requirements of the issuer of any such policy.

"*IRS*" shall mean the Internal Revenue Service, or any successor thereto.

"*Item*" or "*Item of Equipment*" shall mean a particular item of Equipment (including a Replacement Item but excluding a Replaced Item) and "*Items*" or "*Items of Equipment*" shall mean, collectively, each item of Equipment (including Replacement Items but excluding Replaced Items), unless the context requires otherwise.

"*Item Value Fraction*" shall mean, with respect to any Item of Equipment leased hereunder, a fraction, the numerator of which is the Purchase Price for such Item of Equipment

and the denominator of which is the aggregate Purchase Price of all Items of Equipment then subject to this Lease, including such Item of Equipment.

“*Lease*” shall have the meaning provided in the preamble.

“*Lease A*” shall mean that certain Lease and Security Agreement (Lease A), dated as of August 6, 2004, among LSI Logic Corporation, a Delaware corporation, as lessee, BTM Capital Corporation, as lessor and Wells Fargo Bank Northwest, National Association, not in its individual capacity except as expressly stated therein, but solely as agent.

“*Lease Balance*” shall mean collectively, the Series A Lease Balance, the Series B Lease Balance, the Series C Lease Balance and the Lessor’s Interest Related Lease Balance.

“*Lease Default*” shall mean any event, condition or failure which, with notice or lapse of time or both, would become a Lease Event of Default.

“*Lease Event of Default*” shall mean any event condition or failure designated as a “*Lease Event of Default*” in Section 12.1.

“*Lease Expiration Date*” shall mean the last day of the Lease Term, subject to any other date on which the Lease is terminated.

“*Lease Term*” shall have the meaning provided in Section 5.1.

“*Lessee*” shall mean LSI Logic Corporation, a Delaware corporation.

“*Lessee Collateral*” shall mean all of Lessee’s right, title and interest in and to each of the following, however arising and whether now existing or hereafter acquired or arising:

- (a) the Items of Equipment (including all Parts thereof, accessions thereto and replacements and substitutions therefor);
- (b) the Subleases;
- (c) all contracts necessary to operate and maintain the Items of Equipment;
- (d) any rights to a rebate, offset or other assignment, warranty or service under a purchase order, invoice or purchase agreement with any manufacturer of any Item of Equipment;
- (e) all books, manuals, logs, records, writings, software, information and other property solely relating to any of the foregoing;
- (f) the Cash Collateral and all cash, monies, certificates of deposit and investments held in the Cash Collateral Accounts; and

(g) all products, accessions, rents, issues, profits, returns, income and proceeds of and from any and all of the foregoing collateral (including proceeds which constitute property of the types described in clauses (a), (b), (c), (d), (e) and (f) above and, to the extent not otherwise included, all payments under insurance (whether or not Lessor is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing collateral).

“*Lessee Obligations*” shall mean all obligations of Lessee at any time and from time to time owed to any one or more or all of the Lessor, Agent (both individually and in its capacity as Agent), each other Indemnitee and their respective successors and permitted assigns, under one or more of the Operative Documents, whether due or to become due, matured or unmatured, liquidated or unliquidated, or contingent or noncontingent, *including* obligations of performance as well as obligations of payment (including all Rent, Lease Balance, Casualty Amount, Purchase Amount and Sale Recourse Amount), and *including* interest that accrues after the commencement of any bankruptcy or insolvency proceeding by or against Lessee or any other Person.

“*Lessee Permitted Investments*” shall mean any investments selected by Lessee in accordance with its Cash Investment Policy and Procedures as adopted by Lessee on March 1, 2004 (as the same may be amended from time to time with the approval of Agent); *provided* that any investments not meeting the standards set forth in such Cash Investment Policy and Procedures shall nevertheless be deemed to be “*Lessee Permitted Investments*” if they do not exceed at any time, in the aggregate, ten percent (10%) of all Lessee Permitted Investments at such time.

“*Lessor*” shall have the meaning provided in the preamble.

“*Lessor Assignment Agreement*” shall mean the Lessor Assignment Agreement dated as of August 6, 2004 among Agent, Lessor, the Assignees and each Securities Intermediary.

“*Lessor’s Interest*” shall mean \$10,720,000.

“*Lessor’s Interest Related Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Lessor’s Interest Related Lease Balance outstanding during such Rent Period at the Lessor’s Interest Related Yield Rate.

“*Lessor’s Interest Related Cash Collateral*” shall mean the Required Lessor’s Interest Related Cash Collateral Amount.

“*Lessor’s Interest Related Cash Collateral Account*” shall have the meaning provided in Section 1.1 of the Cash Collateral Agreement.

“*Lessor’s Interest Related Lease Balance*” shall mean, as of any date of determination, the Lessor’s Interest, *less* the sum of all amounts paid and attributable to the Lessor’s Interest Related Lease Balance pursuant to Section 6.1, 9.1 or 12.2, Article XIV or Article XV.

“*Lessor’s Interest Related Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Lessor’s Interest Related Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of Lessor’s Interest Related Accrual Rent for the Rent Period ending on such Payment Date.

“*Lessor’s Interest Related Yield Rate*” shall mean the LIBO Rate plus 3.00%.

“*Lessor Liens*” shall mean Liens on or against any Item of Equipment, the Lease, the Cash Collateral, the Cash Collateral Accounts or any payment of Rent (a) which result from any act of, or any Claim against Lessor or Agent unrelated to the transactions contemplated by the Operative Documents, (b) which result from any Tax owed by Lessor, except any Tax for which Lessee is obligated to indemnify Lessor or (c) which result from any act or omission of Lessor that is in breach of Lessor’s covenants or agreements under the Operative Documents.

“*LIBO Rate*” shall mean with respect to any Rent Period at any time, the applicable London interbank offered rate for deposits in U.S. dollars appearing on Bloomberg LIBO page, British Bankers Association as of 11:00 a.m.(London time) two (2) Business Days prior to the first day of such Rent Period, and having a maturity approximately equal to such Rent Period; or if no London interbank offered rate of such maturity then appears on Bloomberg LIBO page, then the rate equal to the London interbank offered rate for deposits in U.S. dollars maturing immediately before or immediately after such maturity, whichever is higher, as determined by the Agent from Bloomberg LIBO page; or if Bloomberg LIBO page is not available, the applicable LIBO Rate for the relevant Rent Period shall be the rate determined by the Agent to be the arithmetic average of the rates at which Agent offers to place deposits in U.S. dollars with first-class banks in the London interbank market at approximately 11:00 a.m. (London time) two (2) Business Days prior to the first day of such Rent Period, in the approximate amount of the Lease Balance on such date and having a maturity approximately equal to such Rent Period.

“*LIBOR Reserve Percentage*” shall mean, relative to any Rent Period, the reserve percentage (expressed as a decimal) equal to the maximum aggregate reserve requirements (including all basic, emergency, supplemental, marginal and other reserves and taking into account any transitional adjustments or other scheduled changes in reserve requirements) specified under regulations issued from time to time by the F.R.S. Board and then applicable to assets or liabilities consisting of and including “Eurocurrency Liabilities,” as currently defined in Regulation D of the F.R.S. Board, having a term approximately equal or comparable to such Rent Period.

“*Lien*” shall mean any mortgage, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any Item of Equipment or any other Lessee Collateral, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security interest, and/or the filing of or agreement to give any financing statement (other than a precautionary financing statement with respect to a lease or other agreement that is not in the nature of a security interest) under the

Uniform Commercial Code or comparable law of any jurisdiction with respect to any Item of Equipment or any other Lessee Collateral.

“*LSI*” shall mean LSI Logic Corporation, a Delaware corporation.

“*Manufacturer*” shall mean, individually, any manufacturer of an Item of Equipment and “*Manufacturers*” shall mean, collectively, the Manufacturers of all Items of Equipment.

“*Material Adverse Effect*” shall mean (i) for purposes of Sections 12.1(o), 17.1(p), 18.1(a)(xvi) and 18.2(c)(iv), that the Tangible Net Worth of Lessee is \$600,000,000 or less as determined at the end of the most recently ended fiscal quarter of the Lessee, and (ii) for all other purposes, a materially adverse effect on (A) the assets, business, operations, properties, income or condition (financial or otherwise) or prospects of the Lessee and its consolidated Subsidiaries taken as a whole, (B) the ability or authority of the Lessee to perform its obligations under any of the Operative Documents, (C) the validity or enforceability of any of the Operative Documents or any rights or remedies under any thereof, (D) the rights or interests of the Lessor or any Assignee in the Equipment or the other Lessee Collateral or (E) the Fair Market Value, use, utility, useful life or residual value of the Equipment.

“*Material Lease Default*” shall mean a Lease Default of the type described in Section 12.1(a), (f) or (g).

“*Moody’s*” shall mean Moody’s Investor Service, Inc., or any successor thereto.

“*Multiemployer Plan*” shall mean a “multiemployer plan” as defined in Sections 3(37) and 4001(a)(3) of ERISA.

“*Offeree Letter*” shall have the meaning provided in Section 3.1(s).

“*Operative Documents*” shall mean, as the context requires:

- (a) the Lease;
- (b) the Cash Collateral Agreement;
- (c) each Control Agreement; and
- (d) the Lessor Assignment Agreement.

“*Original Part*” shall have the meaning provided in Section 8.4.

“*Overall Transaction*” shall mean all the transactions and activities referred to in or contemplated by the Operative Documents and the Bill of Sale.

“*Overdue Rate*” shall mean the lesser of (a) the highest interest rate permitted by Applicable Laws and Regulations and (b) an interest rate per annum equal to, in the case of Series A Rent, the Series A Yield Rate *plus* 2%, in the case of the Series B Rent, the Series B

Yield Rate *plus* 2%, in the case of the Series C Rent, the Series C Yield Rate *plus* 2% and, in the case of the Lessor's Interest Related Rent, the Lessor's Interest Related Yield Rate *plus* 2%.

"Part" shall have the meaning provided in Section 8.4.

"Payment Date" shall mean (a) the 28th day of each March, June, September and December and (b) the last day of the Lease Term or, in each case, the next succeeding Business Day if such day is not a Business Day, unless the result would be that the Payment Date would be in the next succeeding calendar month, in which case such Payment Date shall be on the next preceding Business Day.

"Payment Default" shall have the meaning provided in Section 20.3.

"PBGC" shall mean the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" shall mean any-employee pension benefit plan covered by Title IV of ERISA (other than a Multiemployer Plan) that is maintained for employees of Lessee or any ERISA Affiliate or with regard to which Lessee or an ERISA Affiliate is a contributing sponsor within the meaning of Sections 4001(a)(13) or 4069 of ERISA.

"Permitted Contest" shall mean actions taken by a Person to contest in good faith, by appropriate proceedings (judicial or otherwise) initiated timely and diligently prosecuted, including to contest the legality, validity or applicability to any Item of Equipment or any other Lessee Collateral or any interest therein of any Person of: (a) any Applicable Laws and Regulations; (b) any term or condition of, or any revocation or amendment of, or other proceeding relating to, any Governmental Action or any contract or arrangement or obligation; or (c) any Lien or Tax; *provided* that the initiation and prosecution of such contest would not: (i) result in, or materially increase the risk of, the imposition of any criminal liability or material civil liability on any Indemnitee; (ii) be reasonably likely to adversely affect the lien and security interests created by the Operative Documents or the right, title or interest of Lessor in or to any of the Items of Equipment or any other Lessee Collateral or the right of Lessor to receive payment of Rent or the Lease Balance or any other amount payable under the Operative Documents or any interest therein; (iii) be reasonably likely to adversely affect in any material respect the fair market value, utility or remaining useful life of any Item of Equipment or any interest therein; (iv) involve any material risk of the sale, forfeiture or loss of any Item of Equipment or any other Lessee Collateral, title thereto or any material interest therein or materially interfere with the use or disposition of any Item of Equipment or the payment of Rent or (v) otherwise be reasonably expected to result in a Material Adverse Effect; and *provided further* that in any event reserves to the extent required by GAAP are maintained against any adverse determination of such contest.

"Permitted Encumbrances" shall mean:

- (a) Encumbrances which may at any time be granted in favor of Lessor to secure the Lessee Obligations;

(b) Encumbrances in existence as of the Delivery Date listed on Schedule IV, and any substitutions or renewals thereof, provided that (i) any substitute or renewal Encumbrance is limited to the property encumbered by the existing Encumbrance, and (ii) the principal amount of the obligations secured thereby is not increased;

(c) Encumbrances for current taxes, assessments or other Governmental Charges which are not delinquent or remain payable without any penalty or which are being contested in good faith via appropriate proceedings, with appropriate reserves established therefor in accordance with GAAP;

(d) Encumbrances in connection with workers' compensation, unemployment insurance or other social security obligations;

(e) Mechanics', workers', materialmen's, landlords', carriers' or other like Encumbrances arising in the ordinary and normal course of business with respect to obligations which are not past due or which are being contested in good faith via appropriate proceedings, with appropriate reserves established therefor in accordance with GAAP;

(f) Purchase money security interests (including by way of installment sales and title retention agreements) in personal or real property hereafter acquired when the security interest is granted contemporaneously with such acquisition (or within nine months thereafter), Encumbrances created to secure the cost of construction or improvement of property and Encumbrances created to secure Indebtedness incurred to finance such purchase price or cost (including Encumbrances of Lessee in favor of the United States or any state, or any department, agency, instrumentality or political subdivision thereof, securing any real property or other assets in connection with the financing of industrial revenue bond facilities or of any equipment or other property designed primarily for the purpose of air or water pollution control); *provided* that (i) any such Encumbrance shall attach only to the property so purchased, constructed or improved, together with attachments and accessions thereto, and rents, proceeds, products, substitutions, replacements and profits thereof and attachments and accessories thereto, and (ii) the amount of Indebtedness secured by any such Encumbrance shall not exceed the purchase or construction price of such property plus transaction costs and financing charges relating to the acquisition or construction thereof;

(g) Encumbrances arising from attachments or similar proceedings, pending litigation, judgments or taxes or assessments in any such event whose validity or amount is being contested in good faith by appropriate proceedings and for which adequate reserves have been established and are maintained in accordance with GAAP;

(h) Encumbrances arising in the ordinary course of business or by operation of law, not securing Indebtedness, but securing such obligations as (i) judgments or awards, which (A) are covered by applicable insurance or (B) have been outstanding less than thirty (30) consecutive days, (ii) interests of landlords or lessors under leases of real or personal property entered into in the ordinary course of business arising by contract or

operation of law, (iii) Encumbrances in favor of customs and revenue authorities which secure payment of customs in connection with the importation of goods, (iv) Encumbrances which constitute rights of set-off of a customary nature or bankers' liens on amounts on deposit, whether arising by contract or by operation of law, in connection with arrangements entered into with depository institutions in the ordinary course of business, (v) such minor defects, irregularities, encumbrances, easements, rights of way, and clouds on title as normally exist with respect to similar properties which do not, individually or in the aggregate, materially impair the property affected thereby or the use thereof and (vi) subleases, licenses, and sublicenses granted to third parties, the granting of which does not result in a Material Adverse Effect;

(i) Encumbrances securing reimbursement obligations of Lessee under documentary letters of credit; *provided* that such Encumbrances shall attach only to documents relating to such letters of credit, goods covered thereby and products and proceeds thereof;

(j) Encumbrances on insurance policies or the proceeds of insurance policies other than policies and the proceeds of policies required pursuant to Section 9.2 hereof incurred solely to secure the financing of premiums owing with respect thereto;

(k) Encumbrances existing on property (including the proceeds and accessions thereto) acquired by Lessee (including Encumbrances on assets of any corporation at the time it becomes a Subsidiary), but excluding any Encumbrances created in contemplation of any such acquisition; and

(l) Encumbrances encumbering customary initial deposits and margin deposits, and other Encumbrances that are within the general parameters customary in the industry and incurred in the ordinary course of business in connection with Rate Contracts or portfolio investments maintained with financial intermediaries.

"Permitted Investments" shall mean (a) full faith and credit obligations of the United States of America, or fully guaranteed as to interest and principal by the full faith and credit of the United States of America, maturing in not more than one year from the date such investment is made, (b) certificates of deposit having a final maturity of not more than one year after the date of issuance thereof of an Assignee or of any other commercial bank incorporated under the laws of the United States of America or any state thereof or the District of Columbia, which bank is a member of the Federal Reserve System and has a combined capital and surplus of not less than \$500,000,000 and with a senior unsecured debt credit rating of at least "A3" by Moody's and "A-" by S & P, (c) commercial paper of Lessor or any Assignee having a remaining term until maturity of not more than 180 days from the date such investment is made, (d) commercial paper of Lessee, banks, trust companies or national banking associations (in each case excluding Lessee and its Affiliates) incorporated or doing business under the laws of the United States or one of the States thereof, in each case having a remaining term until maturity of not more than 180 days from the date such investment is made and rated at least "P-1" by Moody's or at least "A-1" by S&P and (e) repurchase agreements maturing within one year with any financial institution having combined capital and surplus of not less than \$500,000,000 with any of the

obligations described in clauses (a) through (d) as collateral so long as title to the underlying obligations pass to Agent and such underlying obligations shall be segregated in a custodial or trust account for the benefit of Agent.

“*Permitted Liens*” shall mean (a) the respective rights and interests of Lessee, Agent and Lessor, as provided in the Operative Documents, (b) Lessor Liens, (c) Liens for current Taxes either not yet delinquent or being contested by a Permitted Contest, (d) the leasehold interest of any Person under any Sublease permitted under Section 8.2 of the Lease, (e) materialmen’s, mechanic’s, worker’s, artisan’s, repairmen’s, employee’s or other like Liens securing payment of the price of goods or services rendered arising in the ordinary course of business for amounts either not yet due or being contested by a Permitted Contest, (f) statutory Liens, other than those described in clauses (a) or (e) above, arising in the ordinary course of business with respect to obligations which are not delinquent or are being contested by a Permitted Contest; *provided that*, if delinquent, adequate reserves have been set aside with respect thereto and, by reason of nonpayment, no Item of Equipment or any other Lessee Collateral is subject to a material risk of loss or forfeiture, and (g) Liens created by or resulting from any litigation or legal proceeding involving Lessee or any of its Subsidiaries in the ordinary course of its business which is currently being contested by a Permitted Contest.

“*Permitted Modification*” shall have the meaning provided in Section 8.4.

“*Person*” shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, an unincorporated association, a limited liability company, a joint venture, a trust or other entity or a Governmental Authority.

“*Plan*” shall mean an employee benefit plan (as defined in Section 3(3) of ERISA) which Lessee or any ERISA Affiliate sponsors or maintains, or to which Lessee or any ERISA Affiliate makes, is making, or is obligated to make contributions, and includes any Pension Plan.

“*Prohibited Transaction*” shall mean a transaction that is prohibited under Code Section 4975 or ERISA Section 406 and not exempt under Code Section 4975 or ERISA Section 408.

“*Purchase Amount*” shall mean, as of any date of determination, the sum of (a) the Lease Balance as of such date of determination, *plus* (b) all Rent and other sums then due and payable pursuant to the terms of the Operative Documents by Lessee, including, without limitation, all Supplemental Rent.

“*Purchase Option*” shall have the meaning provided in Section 15.1(a).

“*Purchase Price*” (i) for an Item of Equipment shall mean the Appraised Value of such Item of Equipment, *plus* applicable sales, use or similar taxes financed by the Lessor through the Funding and as more specifically described on Schedule I hereto and (ii) the aggregate Purchase Price of all Items of Equipment leased hereunder shall mean, collectively, the Series A Purchase Price, the Series B Purchase Price, the Series C Purchase Price and the Lessor’s Interest, *plus* applicable sales, use or similar taxes financed by the Lessor through the Funding. The Purchase

Price for a Replacement Item shall be deemed to be the Purchase Price of the Item of Equipment replaced by such Replacement Item.

“*Rate Contracts*” shall mean interest rate swaps, caps, floors and collars, currency swaps, or other similar financial products designed to provide protection against fluctuations in interest, currency or exchange rates.

“*Regulatory Requirement*” shall have the meaning provided in Section 11.4(b).

“*Related Party*” shall have the meaning provided in Section 18.2(g).

“*Release*” shall mean the release, deposit, disposal or leak of any Hazardous Material into or upon or under any land or water or air, or otherwise into the environment, including, without limitation, by shall mean of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

“*Removable Part*” shall have the meaning provided in Section 8.4.

“*Rent*” shall mean Basic Rent and Supplemental Rent, collectively.

“*Rent Period*” shall mean (a) for the initial Rent Period, a period commencing on the Delivery Date to but excluding the first Payment Date and (b) for each other Rent Period, each period commencing on a Payment Date to but excluding the next Payment Date; *provided* that any Rent Period that would otherwise extend beyond the Lease Expiration Date shall end on the Lease Expiration Date.

“*Replaced Item*” or “*Replaced Items*” shall have the meaning provided in Section 8.7.

“*Replacement Items*” or “*Replacement Items*” shall have the meaning provided in Section 8.7.

“*Replacement Parts*” shall have the meaning provided in Section 8.4.

“*Reportable Event*” shall mean any of the events set forth in Section 4043(b) of ERISA or the regulations promulgated thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“*Required ABN Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series A Lease Balance held by ABN AMRO Bank N.V., *plus* 100% of the Series A Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date.

“*Required Alteration*” shall have the meaning provided in Section 8.4.

“*Required Cash Collateral Amount*” shall mean, as the context may require, any or all of the Required Wells Fargo Cash Collateral Amount, the Required ABN Cash Collateral Amount, the Required Series C Cash Collateral Amount and the Required Lessor’s Interest Related Cash Collateral Amount.

“*Required Series C Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series C Lease Balance, *plus* 100% of the Series C Accrual Rent due on the next succeeding Payment Date.

“*Required Lessor’s Interest Related Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Lessor’s Interest Related Lease Balance, *plus* 100% of the Lessor’s Interest Related Accrual Rent due on the next succeeding Payment Date.

“*Required Wells Fargo Cash Collateral Amount*” shall mean, as of any date of determination, an amount equal to 100% of the Series A Lease Balance held by Wells Fargo Bank, N.A., *plus* 100% of the Series A Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date.

“*Residual Value*” shall mean the Fair Market Value of the Equipment as of the end of the Lease Term as determined by the Appraisal.

“*Responsible Official*” or “*Responsible Officer*” shall mean, when used with reference to a Person other than an individual, any corporate officer of such Person, general partner of such Person, corporate officer of a corporate general partner of such Person, or corporate officer of a corporate general partner of a partnership that is a general partner of such Person, or any other responsible official thereof duly acting on behalf thereof. Any document or certificate hereunder that is signed or executed by a Responsible Official of another Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such other Person; *provided, however*, that with respect to Lessee or its Affiliates, Responsible Official or Responsible Officer shall mean, with respect to any Person, the chief executive officer, the president, the chief financial officer or the treasurer of such Person, or any other senior officer of such Person having substantially the same authority and responsibility; or, with respect to compliance with financial covenants, the chief financial officer or the treasurer of any such Person, or any other senior officer of such Person involved principally in the financial administration or controllership function of such Person and having substantially the same authority and responsibility.

“*Sale Option*” shall have the meaning provided in Section 15.1(b).

“*Sale Proceeds*” shall have the meaning set forth in Section 15.1(b).

“*Sale Recourse Amount*” shall mean the product obtained by multiplying the aggregate Purchase Price for the Items of Equipment then subject to the Lease by 37.50723972388%.

“*SEC*” shall mean the United States Securities and Exchange Commission and any successor thereto.

“*Securities Act*” shall mean the Securities Act of 1933, as amended.

“*Securities Intermediaries*” shall mean, collectively, each Securities Intermediary under the Control Agreements and “*Securities Intermediary*” shall mean any of them, as the context requires.

“*Seller’s Share*” shall have the meaning set forth in the Lessor Assignment Agreement.

“*Series*” shall have the meaning set forth in Section 3.1(b)(2)(E) of the Lessor Assignment Agreement.

“*Series A Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series A Lease Balance outstanding during such Rent Period at the Series A Yield Rate.

“*Series A Assignee*” shall mean each Assignee that purchases and assumes an Assignee’s Share with respect to the Series A Lease Balance pursuant to the Lessor Assignment Agreement.

“*Securities Intermediary*” shall have the meaning provided in the Cash Collateral Agreement.

“*Series A Capital Rent*” shall mean, for each Payment Date during the Lease Term, that portion of the installment of Rent payable on such Payment Date designated as Series A Capital Rent under the column heading “Series A Capital Rent” on Schedule III.

“*Series A Cash Collateral*” shall mean, collectively, the Required ABN Cash Collateral Amount and the Required Wells Fargo Cash Collateral Amount.

“*Series A Lease Balance*” shall mean, as of any date of determination, the Series A Purchase Price, less (a) the sum of all Series A Capital Rent paid prior to such date of determination, and (b) the sum of all amounts paid and attributable to the Series A Lease Balance pursuant to Section 9.1 or 12.2, Article XIV or Article XV.

“*Series A Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series A Purchase Price*” shall mean \$104,579,701.22.

“*Series A Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of (a) Series A Capital Rent and (b) Series A Accrual Rent for the Rent Period ending on such Payment Date.

“*Series A Yield Rate*” shall mean the LIBO Rate plus 0.50%.

“*Series B Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series B Lease Balance outstanding during such Rent Period at the Series B Yield Rate.

“*Series B Assignee*” shall mean each Assignee that purchases and assumes an Assignee’s Share with respect to the Series B Lease Balance pursuant to the Lessor Assignment Agreement.

“*Series B Capital Rent*” shall mean, for each Payment Date during the Lease Term, that portion of the installment of Rent payable on such Payment Date designated as Series B Capital Rent under the column heading “Series B Capital Rent” on Schedule III.

“*Series B Lease Balance*” shall mean, as of any date of determination, the Series B Purchase Price, less (a) the sum of all Series B Capital Rent paid prior to such date of determination, and (b) the sum of all amounts paid and attributable to the Series B Lease Balance pursuant to Section 9.1 or 12.2, Article XIV or Article XV.

“*Series B Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series B Purchase Price*” shall mean \$9,380,000.

“*Series B Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of (a) Series B Capital Rent and (b) Series B Accrual Rent for the Rent Period ending on such Payment Date.

“*Series B Yield Rate*” shall mean the LIBO Rate plus 1.00%.

“*Series C Accrual Rent*” shall mean, with respect to each Rent Period, an amount equal to yield accrued on the Series C Lease Balance outstanding during such Rent Period at the Series C Yield Rate.

“*Series C Cash Collateral*” shall mean the Required Series C Cash Collateral Amount.

“*Series C Lease Balance*” shall mean, as of any date of determination, the Series C Purchase Price, less the sum of all amounts paid and attributable to the Series C Lease Balance pursuant to Section 6.1, 9.1 or 12.2, Article XIV or Article XV.

“*Series C Purchase Price*” shall mean \$9,320,298.78.

“*Series C Rent*” shall mean for each Payment Date during the Lease Term, a payment of rent consisting of Series C Accrual Rent for the Rent Period ending on such Payment Date.

“*Series C Share*” shall have the meaning provided in the Lessor Assignment Agreement.

“*Series C Yield Rate*” shall mean the LIBO Rate plus 1.50%.

“*Significant Subsidiary*” shall mean, at any time, any Subsidiary of Lessee having total assets (excluding intercompany assets and liabilities) as of the last day of the preceding fiscal quarter representing 10% or more of the Lessee’s consolidated total assets, excluding goodwill and long-term deferred asset charges, based upon Lessee’s most recent quarterly Financial Statements delivered to Agent under Section 18.1(a), determined in accordance with GAAP.

“*Solvent*” shall mean, with respect to any Person, that as of the date of determination, (a) the then fair saleable value of the property of such Person is (i) greater than the total amount of liabilities (including reasonably anticipated liabilities with respect to contingent obligations) of such Person and (ii) greater than the amount that will be required to pay the probable liabilities on such Person’s then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to such Person, and (b) such Person has not incurred and does not intend to incur, nor does it believe that it will incur, debts beyond its ability to pay such debts as they become due.

“*S&P*” shall mean Standard & Poor’s Rating Services, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

“*Sublease*” shall have the meaning provided in Section 8.2.

“*Sublessee*” shall have the meaning provided in Section 8.2.

“*Subsidiary*” shall mean any corporation, association, partnership, joint venture or other business entity of which more than fifty percent (50%) of the voting stock or other equity interest is owned directly or indirectly by any Person or one or more of the other Subsidiaries of such Person or a combination thereof.

“*Supplemental Rent*” shall mean any and all amounts, liabilities and obligations other than Basic Rent which Lessee assumes or agrees or is otherwise obligated to pay under the Lease or any other Operative Document (whether or not designated as Supplemental Rent) to Lessor or any other Person, including, without limitation, Purchase Amount, Break Funding Amounts and indemnities and damages for breach of any covenants, representations, warranties or agreements.

“*Surplus Collateral*” is defined in Section 18.3(b)(ii).

“*Surviving Corporation*” shall have the meaning provided in Section 18.2(c)(iv).

“*Swap Termination Value*” shall mean, in respect of any one or more Rate Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Rate Contracts, (a) for any date on or after the date such Rate Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a) the amount(s) determined as the mark-to-market value(s) for such Rate Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Rate Contracts (which may include any Assignee).

“*Tangible Net Worth*” shall mean, as of any date of determination, Consolidated Total Assets, *minus* Consolidated Total Liabilities, *minus* Consolidated Intangible Assets, adjusted to add back all non-cash charges recorded after the Delivery Date (other than customary depreciation and amortization and non-cash charges related to Consolidated Intangible Assets).

“*Taxes*” and “*Tax*” shall have the meaning provided in the definition herein of “*Imposition*.”

“*Transaction Costs*” shall mean reasonable properly documented out-of-pocket costs, expenses and fees incurred by Agent, Lessor, Lessee and Arranger, in connection with the consummation of the transactions contemplated by the Operative Documents, and the preparation, negotiation, execution and delivery, modification and/or enforcement of the Operative Documents, including (a) the reasonable fees and expenses of Chapman and Cutler LLP, document counsel; (b) the reasonable fees and expenses of Latham & Watkins LLP, special counsel to the Lessee; (c) the initial and ongoing fees and expenses of the Agent and its special counsel payable in accordance with the Agent Fee Letter; (d) all reasonable fees and expenses of the Appraiser with respect to the Appraisal; (e) all taxes and search fees, recording fees and filing fees incurred in connection with lien searches and the recording, registering or filing any Operative Document, any security agreement, notice or financing statement with any public office, registry or governmental agency; (f) all fees and expenses incurred in connection with residual value insurance; (g) the initial and ongoing reasonable fees and expenses of each Securities Intermediary; and (h) all fees and expenses of Arranger in connection with the syndication of the transaction.

“*UCC*” shall mean the Uniform Commercial Code of any applicable jurisdiction.

“*Unfunded Pension Liability*” shall mean the excess of a Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Plan’s assets, determined in accordance with the assumptions used for funding the Plan pursuant to Section 412 of the Code for the applicable year.

“*Unrestricted Cash Reserves*” shall mean, in respect of the Lessee and its wholly-owned Subsidiaries on a consolidated basis at any time, the sum of (a) cash, *plus* (b) cash equivalents (as determined in accordance with GAAP), *plus* (c) readily marketable debt securities that are current assets (in accordance with GAAP) and which are rated A-/A3 or better by S&P and Moody’s, respectively, *minus* (d) the amount of assets specified in clause (a), (b) and (c) of this definition that are subject to the Cash Collateral Agreement, any Control Agreement, the cash collateral agreement or control agreements entered into in connection with the Lease A or any other Encumbrance, other than Encumbrances permitted under clauses (c) and (h)(iv) of the definition of “*Permitted Encumbrances*.”

“*Upfront Fee*” shall have the meaning provided in Section 2.10.

“*USA Patriot Act*” shall mean United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“*Wells Fargo Cash Collateral Account*” shall have the meaning provided in the Cash Collateral Agreement.

“Wells Fargo Control Agreement” shall mean that certain Control Agreement, dated as of August 6, 2004, among the Wells Fargo Securities Intermediary, the Lessee and Lessor.

“Wells Fargo Securities Intermediary” shall have the meaning provided in the Cash Collateral Agreement.

ARTICLE II

ACQUISITION AND LEASE; GENERAL PROVISIONS

Section 2.1. Funding; Payment of Purchase Price. (a) Subject to the terms and conditions of this Lease and the other Operative Documents, and in reliance on the representations and warranties contained herein or made pursuant hereto, on the Delivery Date, Lessor shall transfer to Agent an amount equal to the Purchase Price.

(b) Remittances pursuant to this Section 2.1 shall be made in immediately available funds by wire transfer to the account of Agent set forth below and must be received by Agent by 10:00 a.m., California time, on the Delivery Date:

Bank:	Wells Fargo Bank Northwest, National Association
ABA Routing #:	121-000-248
Account #:	A/C: 0510922115
Payee:	Corporate Trust Department
Notify:	DeAnn Madsen
Reference:	LSI Logic 2004 Lease

Section 2.2. Application of Funds; Purchase and Lease of Equipment. On the Delivery Date, upon (a) receipt by Agent of all amounts to be paid by Lessor pursuant to Section 2.1(a), and (b) satisfaction or waiver consented to by Agent, Lessor and each Assignee of each of the conditions set forth in Article III, (i) Agent, on behalf of Lessor, shall pay, from the funds made available by Lessor pursuant to Section 2.1(a), an amount equal to the Purchase Price of the Items of Equipment in immediately available funds remitted by wire transfer to the account(s) specified by Lessee and (ii) Lessor shall lease to Lessee the Items of Equipment and Lessee shall accept delivery of and lease from Lessor the Items of Equipment pursuant to this Lease.

Section 2.3. Delivery Date Notice and Delivery Date. At least two (2) Business Days prior to the Delivery Date, Lessee shall deliver to Agent and Lessor an irrevocable written notice (the “*Delivery Date Notice*”) substantially in the form of Exhibit A, setting forth, *inter alia*,

(a) a description of the Purchase Price and the amounts thereof; and

(b) wire transfer instructions for the disbursement of funds.

All documents and instruments required to be delivered on the Delivery Date pursuant to this Lease shall be delivered at the offices of Chapman and Cutler LLP, 595 Market Street, Suite 2600, San Francisco, California 94104-2839. On the Delivery Date, subject to the terms and conditions of this Lease, and upon receipt of funds by Agent from Lessor sufficient therefor, Agent shall pay the Purchase Price for the Items of Equipment on behalf of Lessor and Lessor shall thereby purchase and lease the Items of Equipment to Lessee.

Section 2.4. Nature of Transaction. It is the intent of the parties that the transaction contemplated hereby constitutes an operating lease from Lessor to Lessee under Financial Accounting Standard Board Statement No. 13 for Lessee's financial reporting and a non-consolidated transaction under Financial Accounting Standard Board Interpretation No. 46R ("*FIN 46R*") or Financial Accounting Standard Board Statement No. 94 ("*FASB 94*") or related interpretations, as applicable. The parties agree that for Federal and state and local income tax, bankruptcy, insolvency, conservatorship, receivership, commercial law and UCC purposes (including the substantive law upon which such bankruptcy, insolvency, conservatorship and receivership proceedings are based) (a) this Lease will be treated as a financing transaction, (b) the transaction contemplated hereby preserves ownership in the Items of Equipment in Lessee, (c) this Lease grants a Lien in the Items of Equipment and the other Lessee Collateral to Lessor, (d) the obligations of Lessee to pay deemed principal portion and deemed interest portion of Rent shall be treated as payments of principal and interest, respectively, and (e) Lessee will be treated as the owner of the Items of Equipment and Lessor shall be treated as having advanced funds to Lessee in the form of a loan secured by a Lien on the Items of Equipment and the other Lessee Collateral. Except as specifically provided for herein, Lessor shall be deemed to have a first priority, perfected security interest in and Lien on the Items of Equipment and the other Lessee Collateral, free and clear of all Liens other than Permitted Liens, as security for the obligations of Lessee under the Operative Documents. Except as otherwise provided by law or in connection with a settlement, compromise or adjudication made under the provisions of Section 11.2(c), each of the parties to this Lease agrees that it will not, nor will it permit any Affiliate to at any time, take any action or fail to take any action with respect to the filing of any income tax return, including an amended income tax return, inconsistent with the intention of the parties expressed in this Section 2.4.

Section 2.5. [Reserved].

Section 2.6. Cash Collateral. On the Delivery Date, Lessee shall cause (by delivery to the Securities Intermediaries of, or by otherwise depositing into the Cash Collateral Accounts, sufficient Cash Collateral):

- (a) Cash Collateral to be deposited into the ABN Cash Collateral Account in an amount equal to \$29,671,587.28; and
- (b) Cash Collateral to be deposited into the Wells Fargo Cash Collateral Account in an amount equal to \$75,232,979.17; and
- (c) Cash Collateral to be deposited into the Bank of the West Cash Collateral Account in an amount equal to \$20,155,728.84;

in each case, to be held in such Cash Collateral Accounts, which Required Cash Collateral Amounts shall be assigned and pledged by Lessee to the Lessor pursuant to the Cash Collateral Agreement as security for the obligations of Lessee under the Operative Documents with respect to the Series A Lease Balance, the Series C Lease Balance and the Lessor's Interest Related Lease Balance and all other amounts due with respect to the Series A Lease Balance, Series C Lease Balance and Lessor's Interest Related Lease Balance; *provided* that pursuant to the Lessor Assignment Agreement, a portion of the Lessor's right, title and interest in and to the Series A Cash Collateral shall be assigned and sold by Lessor to each Series A Assignee in an amount equal to the Series A Lease Balance held by such Series A Assignee *plus* 100% of the Series A Accrual Rent relating to such portion of the Series A Lease Balance due on the next succeeding Payment Date, in each case to secure such Series A Lease Balance and all other amounts due with respect to such Series A Lease Balance; *provided further*, that, if a Securities Intermediary has an unsecured debt credit rating of "A3" by Moody's and "A-" by S&P, then the aggregate amount of the certificates of deposit constituting Cash Collateral which is issued by such Securities Intermediary shall not exceed \$40,000,000 in face amount.

Section 2.7. [Reserved].

Section 2.8. Legal, Accounting and Tax Representation. Lessee and Lessor acknowledge and agree that none of Agent, Lessor, any Assignee or Arranger has made or will make any representation or warranty concerning the tax, accounting or legal characteristics of this Lease, any of the other Operative Documents or the Overall Transaction, and that each of Lessee and Lessor has obtained and relied on such tax, accounting and legal advice regarding this Lease, the other Operative Documents and the Overall Transaction as it deems appropriate.

Section 2.9. Computations.

(a) *Determination of Accrual Rent.* All computations of Accrual Rent and other accrued amounts (including, without limitation, the Overdue Rate), in each case pursuant to the Operative Documents shall be made on the basis of a 360-day year and the actual days elapsed for Accrual Rent calculated by reference to the LIBO Rate.

(b) *Conclusive Determinations.* Each determination of Accrual Rent pursuant to any provision of this Lease or any of the other Operative Documents shall be conclusive in the absence of manifest error.

Section 2.10. Fees. Lessee agrees to pay the fees set forth in this Section 2.10.

(a) An upfront fee payable on the Delivery Date to Agent, on behalf of Lessor, in an amount mutually agreed to by Lessee and Lessor (the "*Upfront Fee*").

(b) The fee payable on the Delivery Date to the Agent, as provided in the Agent Fee Letter.

ARTICLE III

CONDITIONS PRECEDENT

Section 3.1. Conditions to Delivery Date. The effectiveness of this Lease, and the obligation of Agent, Lessor and each Assignee to perform their respective obligations on the Delivery Date, shall be subject to the fulfillment to the satisfaction of (including, with respect to writings, such writings being in form and substance reasonably satisfactory to the addressee or beneficiary thereof), or the waiver by Agent, Lessor and each Assignee of, the conditions precedent set forth in this Section 3.1 on or before the Delivery Date (except that the obligation of any party hereto shall not be subject to the performance or compliance of such party or of any of such party's Affiliates). In the event the Lessor and the Assignees fund on the Delivery Date, all of the conditions precedent shall be deemed satisfied or waived.

(a) *Authorization, Execution and Delivery of Operative Documents; No Lease Default.* The Operative Documents and the Bill of Sale shall have been duly authorized, executed and delivered by each of the parties thereto, shall be in form and substance satisfactory to Agent, Lessor and each Assignee and an executed counterpart of each thereof shall have been received by Agent, Lessor and each Assignee. Each of the Operative Documents shall be in full force and effect as to all parties and no Lease Default or Lease Event of Default shall have occurred or be continuing or shall occur after giving effect to the Operative Documents.

(b) *Legal Opinions.* Agent, Lessor and each Assignee shall have received favorable opinions, in each case, dated the Delivery Date of (i) Ray, Quinney & Nebeker, special counsel to Agent, substantially in the form attached hereto as Exhibit B, (ii) Senior Corporate Counsel of Lessee, substantially in the form attached hereto as Exhibit C and (iii) Latham & Watkins LLP, special counsel to Lessee, substantially in the form attached hereto as Exhibit D, in each case, in form and substance satisfactory to Agent, Lessor and each Assignee.

(c) *Governmental and Third Party Approvals.* All necessary or advisable Governmental Actions, and all consents, approvals and authorizations of Persons other than Governmental Agencies, in each case in form and substance satisfactory to Agent, Lessor and each Assignee required as of the Delivery Date in connection with the Overall Transaction, shall have been obtained or made and be in full force and effect and not be subject to any pending procedures or appeals, whether administrative, judicial or otherwise, except for any Governmental Action, consent, approval or authorization the failure of which to obtain, or the appeal of or further procedures with respect to which, could not reasonably be expected to have a Material Adverse Effect.

(d) *Corporate Status and Proceedings.* Agent, Lessor and each Assignee shall have received:

(i) a copy of the certificates of good standing with respect to Lessee from the appropriate Governmental Agency of the jurisdiction of its formation, dated no earlier than the 10th day prior to the Delivery Date; and

(ii) certificates of the Secretary or Assistant Secretary of Lessee, substantially in the form of Exhibit E, and attaching and certifying as to (A) the directors' resolutions in respect of the execution, delivery and performance by Lessee of each Operative Document to which it is or will be a party, (B) its articles of incorporation and by-laws and (C) the incumbency and signatures of persons authorized to execute and deliver the Operative Documents on behalf of Lessee.

(e) *Agent Secretary's Certificate*. Lessor and each Assignee shall have received (x) a certificate of the Secretary or Assistant Secretary of Agent attaching and certifying as to: (i) the corporate authority for the execution, delivery and performance by Agent of each Operative Document to which it is or will be a party, (ii) its organizational documents, (iii) its by-laws and (iv) the incumbency and signature of persons authorized to execute and deliver such documents on behalf of Agent, and (y) a good standing certificate from the appropriate Governmental Agency as to Agent's good standing in its jurisdiction of formation.

(f) *Representations and Warranties*. Each representation and warranty of Lessee contained herein or in any other Operative Document and to be made on the Delivery Date shall be true and correct as of the Delivery Date.

(g) *Appraisal*. Agent, Lessor and each Assignee shall have received a copy of an appraisal (the "*Appraisal*") on or before the Delivery Date of the Items of Equipment from the Appraiser in form and substance satisfactory to Agent, Lessor and each Assignee, which shall establish (by the use of appraisal methods satisfactory to Agent) the remaining useful life of such Items of Equipment as of the Delivery Date and the Fair Market Value of such Items of Equipment as of the Delivery Date and the last day of the Lease Term on an in-exchange, in-continued use basis.

(h) *[Reserved]*.

(i) *Fees and Transaction Costs*. Lessee shall have paid all fees and Transaction Costs due and payable on or prior to the Delivery Date.

(j) *Liens*. Upon the payment by Lessor of the Purchase Price pursuant to Section 2.2, the deposit of the Cash Collateral into the Cash Collateral Accounts, the execution and delivery of each of the Lessor Assignment Agreement and the Control Agreements by the parties thereto and the filing of the UCC financing statements listed on Schedule 3.1(j), (A) the Lessor shall have a first-priority, perfected security interest in the Lessee Collateral (other than the Lessee Collateral described in clause (B) below), subject only to Permitted Liens, (B) each Series A Assignee shall have a first-priority, perfected security interest in the Series A Cash Collateral purchased and assumed by such Series A Assignee pursuant to the Lessor Assignment Agreement and (C) the Items of Equipment and the other Lessee Collateral shall be free and clear of all Liens other than Permitted Liens.

(k) *No Casualty*. No Casualty or other event or circumstance that, with the giving of notice or lapse of time or both, would constitute a Casualty with respect to the Items of Equipment, shall have occurred and be continuing.

(l) *[Reserved.]*

(m) *Insurance*. Lessee shall have delivered to Agent, Lessor and each Assignee the insurance Certificates required by Section 9.3.

(n) *Absence of Material Adverse Effect*. Since December 31, 2003, no Material Adverse Effect shall have occurred.

(o) *Filings and Recordings*. Evidence that, upon filing of all UCC financing statements with respect to the Items of Equipment (including applicable UCC-3 termination statements and fixture filings with respect to the Equipment), all filings and recordings shall have been recorded or filed in such places or offices as may be necessary or advisable in the reasonable opinion of Agent, Lessor and each Assignee, to perfect the rights, title and interest of Lessor intended to be created by the Operative Documents. The Agent, Lessor and each Assignee shall have received the reports of lien searches conducted against Lessee and the Items of Equipment in such states and with Governmental Agencies as the Agent, Lessor and each Assignee, may reasonably request.

(p) *Cash Collateral*. Lessee shall have deposited the Required Cash Collateral Amount with the Securities Intermediaries to the satisfaction of Agent, Lessor and each Assignee, in accordance with Section 2.6.

(q) *[Reserved.]*

(r) *Delivery Date Notice*. Lessee shall have delivered to Agent, Lessor and each Assignee the Delivery Date Notice conforming with the requirements of Section 2.3.

(s) *Offeree Letter*. Agent, Lessor, each Assignee and Lessee shall have received a letter, substantially in the form of Exhibit H, from the Arranger, dated the Delivery Date, with respect to the number of offerees of the interests in the Items of Equipment, the Lease and the other Operative Documents (the "*Offeree Letter*").

(t) *Further Documents*. Agent, Lessor and each Assignee shall have received all such further documents as the Agent, Lessor or any Assignee may reasonably require.

ARTICLE IV

ACCEPTANCE AND LEASING OF EQUIPMENT

Section 4.1. Acceptance and Lease. Lessor hereby agrees (subject to satisfaction or waiver of the conditions set forth in Article III) to accept delivery of each Item of Equipment from the sellers thereof and to lease such Item of Equipment

to Lessee hereunder, and Lessee hereby agrees, immediately following such acceptance by Lessor, to lease from Lessor hereunder each such Item of Equipment, such acceptance by Lessor and lease by Lessee to be evidenced by the execution and delivery by Lessee and Lessor of this Lease, all in accordance with Article III. Lessee hereby agrees that its execution and delivery of this Lease shall, without further act, as between Lessor and Lessee irrevocably constitute an agreement by Lessee to lease each Item of Equipment for all purposes of this Lease.

Section 4.2. No Warranty. THE ITEMS OF EQUIPMENT ARE LEASED BY LESSEE "AS IS" IN THEIR PRESENT OR THEN CONDITION, AS THE CASE MAY BE, SUBJECT TO (i) ANY RIGHTS OF ANY PARTIES IN POSSESSION THEREOF, (ii) THE STATE OF TITLE THERETO EXISTING AT THE TIME LESSOR ACQUIRES ITS INTEREST IN THE ITEMS OF EQUIPMENT, (iii) ANY STATE OF FACT WHICH AN ACCURATE PHYSICAL INSPECTION MIGHT SHOW, AND LESSEE CONFIRMS THAT ITS EXECUTION AND DELIVERY OF THIS LEASE SHALL CONSTITUTE ITS CERTIFICATION THAT IT HAS INSPECTED AND ACCEPTS, AS BETWEEN LESSOR AND LESSEE, EACH ITEM OF EQUIPMENT WHICH IS THE SUBJECT MATTER HEREOF, (iv) ALL APPLICABLE LAWS AND REGULATIONS, AND (v) ANY VIOLATIONS OF APPLICABLE LAWS AND REGULATIONS WHICH MAY EXIST ON THE DELIVERY DATE (OTHER THAN BY LESSOR). LESSEE ACKNOWLEDGES AND AGREES THAT (a) EACH ITEM OF EQUIPMENT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY LESSEE, (b) LESSEE IS SATISFIED THAT THE SAME IS SUITABLE FOR ITS PURPOSES, (c) NEITHER LESSOR NOR AGENT IS A MANUFACTURER THEREOF OR A DEALER IN PROPERTY OF SUCH KIND, (d) NEITHER LESSOR NOR AGENT SHALL BE LIABLE FOR ANY LATENT, HIDDEN OR PATENT DEFECT IN ANY ITEM OF EQUIPMENT, OR THE FAILURE OF ANY ITEM OF EQUIPMENT TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS AND (e) NEITHER LESSOR NOR AGENT HAS MADE, OR DOES OR WILL MAKE, (i) ANY REPRESENTATION OR WARRANTY OR COVENANT, WITH RESPECT TO THE TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN, OPERATION, CONDITION, QUALITY, DESCRIPTION, DURABILITY OR SUITABILITY OF ANY SUCH ITEM OF EQUIPMENT IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES AND USES OF LESSEE OR (ii) ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ITEM OF EQUIPMENT, IT BEING AGREED THAT ALL RISKS, AS BETWEEN LESSOR OR AGENT, ON THE ONE HAND, AND LESSEE ON THE OTHER HAND, SHALL BE BORNE BY LESSEE. Lessor assigns to Lessee, to the extent assignable, all of its interest, if any, in any warranties, covenants and representations of any Manufacturer or vendor of any Item of Equipment; *provided*, that if a Lease Event of Default has occurred and is continuing, Lessor may revoke such assignment in whole or in part by providing notice of such revocation to Lessee; and *provided, further*, that any action taken by Lessee by reason thereof shall be at the expense of Lessee and shall be consistent with Lessee's obligations pursuant to this Lease. Lessor and Agent acknowledge and agree that, at Lessee's expense, Lessor and Agent shall cooperate with Lessee with respect to any claim of Lessee against any Manufacturer and Lessor and Agent further agree that, in the event any such warranties, covenants and representations are not assignable by Lessor to Lessee, Lessor and/or Agent shall, at the direction and expense of Lessee, act on behalf of Lessee in pursuing any such claim.

ARTICLE V

LEASE TERM

Section 5.1. Lease Term. Unless earlier terminated pursuant to the terms of the Operative Documents, the term of this Lease shall commence on the Delivery Date and end on June 30, 2007 (the "*Lease Term*").

ARTICLE VI

RENT

Section 6.1. Rent Payments. On each Payment Date during the Lease Term, Lessee shall pay to Agent for the benefit of Lessor, a payment of rent consisting of (i) Capital Rent (other than with respect to the initial Payment Date on which Lessee shall pay only Accrual Rent) and (ii) Accrual Rent (collectively, "*Basic Rent*").

Section 6.2. Supplemental Rent. Lessee shall pay to Agent, for the benefit of Lessor, or to whomever shall be entitled thereto as expressly provided herein or in any other Operative Document (and Lessor hereby directs Lessee, on behalf of Lessor, to so pay any such other Person), any and all Supplemental Rent as the same shall become due and payable (with respect to payments to be made to Agent or Lessor pursuant to the Operative Documents, otherwise, prior to the time such Supplemental Rent is delinquent) and, if a Lease Event of Default is continuing because of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or in equity or otherwise in the case of nonpayment of Basic Rent. The expiration or other termination of Lessee's obligations to pay Basic Rent hereunder shall not limit or modify the obligations of Lessee with respect to Supplemental Rent.

Section 6.3. Method and Amount of Payment. Rent and all other sums due to Lessor hereunder shall be paid to Agent, on behalf of Lessor (or, in the case of Supplemental Rent, to such Person as may be entitled thereto (if such Person is other than Lessor or Agent, payment may be made by wire transfer or such other form of payment as is acceptable to such Person)) in immediately available funds at the office of Agent specified in Schedule II hereto or at such other office of Agent as Agent may from time to time specify to Lessee in a notice pursuant to this Lease. Each payment of Rent shall be accompanied by written designation from Lessee as to the amount of such payment that is being made in respect of Series A Capital Rent, Series A Accrual Rent, Series B Capital Rent, Series B Accrual Rent, Series C Accrual Rent, Lessor's Interest Related Accrual Rent or Supplemental Rent; *provided* that notwithstanding such written designation by Lessee, each payment of Rent or any other amounts received by Agent related to this Lease shall be applied in accordance with Section 21.1 hereof and Section 2.1 of the Lessor Assignment Agreement. Each payment of Rent shall be made by Lessee prior to 10:00 A.M. California time (and payments made after such time shall be deemed to have been made on the next day) at the place of payment in funds consisting of lawful currency of the United States of America which (in the case of any amount payable to Lessor or Agent or any other Indemnitee) shall be immediately available on the scheduled date when such payment shall be due unless the scheduled date shall not be a Business Day, in which case such payment shall be due and made on the next succeeding Business Day. If the result of the extension contemplated by the preceding sentence

would be to carry payment of Rent into another calendar month, such payment of Rent shall be made on the immediately preceding Business Day.

Section 6.4. Late Payment. If any Basic Rent shall not be paid when due, Lessee shall pay to Lessor, or if any Supplemental Rent payable to or on behalf of the account of Lessor or Agent or other Indemnitee is not paid when due, Lessee shall pay to whomever shall be entitled thereto, in each case as Supplemental Rent, interest at the Overdue Rate (to the maximum extent permitted by law) on such overdue amount from and including the due date thereof (without regard to any applicable grace period) to but excluding the Business Day of payment thereof. If any payment of Rent shall be due on a day other than a Business Day, such payment shall be due on the succeeding Business Day unless the result of such extension would be to carry such payment into another calendar month, in which case such payment shall be made on the immediately preceding Business Day.

Section 6.5. Set-Off. Notwithstanding any provision to the contrary contained herein or in any other Operative Document, in the event the Series A Lease Balance or any portion thereof is purchased by LSI as an Assignee in accordance with Section 19.1(a)(ii), LSI, as Lessee, shall set-off against and not pay to Agent Basic Rent or Supplemental Rent owed to LSI as an Assignee.

ARTICLE VII

NET LEASE

(a) This Lease shall constitute a net lease and, notwithstanding any other provision of this Lease, it is intended that Basic Rent, Supplemental Rent and all other amounts due and payable under the Operative Documents, including, as applicable, the Lease Balance, shall be paid, subject to Section 6.5, without counterclaim, setoff, deduction or defense of any kind and without abatement, suspension, deferment, diminution or reduction of any kind, and Lessee's obligation to pay all such amounts throughout the Lease Term is absolute and unconditional. The obligations and liabilities of Lessee hereunder shall, to the fullest extent permitted by Applicable Laws and Regulations, in no way be released, discharged or otherwise affected for any reason (other than the indefeasible payment or performance in full of such liability or obligation) including: (a) any defect in the condition, merchantability, design, construction, quality or fitness for use of any Item of Equipment or any failure of any Item of Equipment to comply with all Applicable Laws and Regulations, including any inability to operate or use any Item of Equipment by reason of such non-compliance; (b) any damage to, abandonment, loss, contamination of or release from or destruction of or any requisition or taking of any Item of Equipment or any part thereof; (c) any restriction, prevention or curtailment of or interference with any use of any Item of Equipment or any part thereof; (d) any defect in title to or rights to any Item of Equipment or any Lien on such title or rights on any Item of Equipment; (e) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Lessor or Agent; (f) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Lessee or Lessor or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Lessee, Lessor, Agent or any other Person, or by any court, in any such proceeding;

(g) any claim that Lessee has or might have against any Person, including, without limitation, Lessor or Agent (but will not constitute a waiver of such claim); (h) any failure on the part of Lessor or Agent to perform or comply with any of the terms of this Lease, any other Operative Document or of any other agreement whether or not related to the Overall Transaction (but will not constitute a waiver of such claim); (i) any invalidity or unenforceability or disaffirmance against or by Lessee, Agent or Lessor of this Lease or any provision hereof or any of the other Operative Documents or any provision of any thereof; (j) the impossibility of performance by Lessee, Lessor, Agent or any of them; (k) any action by any court, administrative agency or other Governmental Authority or any restriction, prevention or curtailment of or any use of any Item of Equipment or any part thereof; (l) the failure of Lessee to achieve any accounting or tax benefits or the characterization of the transaction intended by Section 2.4; or (m) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing. Except as specifically set forth in Section 9.1 or Section 14.1 hereof, this Lease shall be noncancellable by Lessee for any reason whatsoever, and Lessee, to the fullest extent permitted by Applicable Laws and Regulations, waives all rights now or hereafter conferred by statute or otherwise to quit, terminate or surrender this Lease, or to any diminution, abatement or reduction of Rent payable by Lessee hereunder. If for any reason whatsoever this Lease shall be terminated or amended in whole or in part by operation of law or otherwise, except as expressly provided in Section 9.1 or Section 14.1 hereof or, with respect to amendments, as permitted by the Operative Documents, Lessee shall, unless prohibited by Applicable Laws and Regulations, pay to Agent (or, in the case of Supplemental Rent, to whomever shall be entitled thereto) a compensation in an amount equal to each Rent payment (including the Lease Balance or any other amount due and payable under any Operative Documents) at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated or amended in whole or in part. Each payment of Rent and any payment of the Lease Balance made by Lessee hereunder shall be final and, absent error in the computation of the amount thereof, Lessee shall not seek or have any right to recover all or any part of such payment from Lessor, Agent or any party to any agreements related thereto for any reason whatsoever. Lessee assumes the sole responsibility for the condition, use, operation, maintenance, and management of each Item of Equipment and Lessor and Agent shall have no responsibility in respect thereof and shall have no liability for damage to any Item of Equipment or any property relating thereto of Lessee or on any account or for any reason whatsoever other than by reason of such Person's willful misconduct or gross negligence or negligence in the handling of funds or breach of any of the Operative Documents; *provided, however,* any liability of Lessor or Agent with respect to any such willful misconduct or gross negligence or negligence in the handling of funds or breach of any of the Operative Documents shall not limit or affect Lessee's absolute obligations as set forth in this Article VII. Without affecting Lessee's obligation to pay Basic Rent, Supplemental Rent, the Lease Balance and all other amounts due and payable under the Operative Documents or to perform its obligations under the Operative Documents, Lessee may, notwithstanding any other provision of the Operative Documents, seek damages of any kind (which damages may be measured, if appropriate, on the amount of Rent paid by Lessee) or any other remedy at law or equity against Lessor or Agent for such willful misconduct or gross negligence or negligence in the handling of funds or for a breach by such Person of its obligations under this Lease or the other Operative Documents.

(b) Notwithstanding anything to the contrary contained in this Article VII, the parties hereto agree that in the event that the Lessor becomes the subject of any voluntary or involuntary case or proceeding under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, and as a result thereof the Series C Cash Collateral and/or the Lessor's Interest Related Cash Collateral held by Lessor becomes a part of the Lessor's bankruptcy estate, then (i) the Lessor shall be deemed to have set off and applied such Series C Cash Collateral and/or Lessor's Interest Related Cash Collateral against any amounts due with respect to the portion of the Series C Lease Balance and/or the Lessor's Interest Related Lease Balance secured by such Cash Collateral and (ii) the Lessee shall be deemed to have paid in full any and all Rent due with respect to the Series C Lease Balance and/or the Lessor's Interest Related Lease Balance secured by such Cash Collateral, in each case in an amount not to exceed such Series C Cash Collateral and/or Lessor's Interest Related Cash Collateral.

ARTICLE VIII

POSSESSION, ASSIGNMENT, USE AND MAINTENANCE OF EQUIPMENT

Section 8.1. Possession and Use of Equipment; Compliance with Laws. Lessee shall use each Item of Equipment only in the manner for which it was designed and intended by the original manufacturer thereof (subject to any upgrade in any software used in connection with such Item of Equipment) and shall not use any Item of Equipment or any part thereof for any purpose or in any manner that would adversely affect the Fair Market Value, the utility, remaining useful life or, except to the extent in compliance with the Lease, Residual Value of such Item of Equipment, other than as a result of ordinary wear and tear. Lessee agrees that each Item of Equipment will be used and operated in compliance in all material respects with any and all Applicable Laws and Regulations. Lessee shall procure and maintain in effect all material licenses, registrations, certificates, permits, approvals and consents required by Applicable Laws and Regulations or by any Governmental Authority in connection with the ownership, delivery, installation, use and operation of each Item of Equipment. Lessee shall not (a) use, operate, maintain or store any Item of Equipment or any portion thereof in material violation of Section 8.3 or any Insurance Requirement; (b) sublease, assign or otherwise permit the use of any Item of Equipment except as may be permitted by Sections 8.2, 8.3 or 8.4 hereof; (c) except as set forth in Sections 8.2 or 8.4 hereof, sell, assign or transfer any of its rights hereunder or in any Item of Equipment, or directly or indirectly create, incur or suffer to exist any Lien on any of its rights hereunder or in any Item of Equipment, except for Permitted Liens. Lessee shall be entitled to use and operate the Items of Equipment only at the Lessee's semi-conductor manufacturing facility located in Gresham, Oregon or another location or locations reasonably acceptable to the Agent in the continental United States and at Lessee's sole cost and expense, so long as the Lessee holds title in fee simple to the real property on which such Equipment is to be located and, (a) prior to moving any Item of Equipment to such other location, a mortgagee's waiver and consent is executed by the applicable mortgagee and delivered to Agent and Lessor, in form and substance reasonably satisfactory to the Agent and Lessor and (b) all UCC financing statements (including UCC fixture filings) have been filed in all public offices wherein such filings are necessary to perfect the Liens created by the Operative Documents. The Lessee will defend the sale of each

Item of Equipment by the seller thereof to Lessor against the claims or demands of all Persons. Lessee shall keep in its possession at all times the items described in clauses (c) and (e) of the definition of Lessee Collateral.

Section 8.2. Subleases and Assignments. LESSEE SHALL NOT, WITHOUT THE PRIOR WRITTEN CONSENT OF AGENT, SUBLEASE OR OTHERWISE RELINQUISH POSSESSION OF ANY ITEM OF EQUIPMENT, OR ASSIGN, TRANSFER OR ENCUMBER (EXCEPT FOR PERMITTED LIENS) ITS RIGHTS, INTERESTS OR OBLIGATIONS HEREUNDER OR PERMIT ANY OF THE FOREGOING AND ANY ATTEMPTED SUBLEASE OR OTHER RELINQUISHMENT OF POSSESSION, ASSIGNMENT, TRANSFER OR ENCUMBERING BY LESSEE SHALL BE NULL AND VOID, except as provided in this Section 8.2 or pursuant to a transaction permitted under Section 18.2(d) or a Permitted Lien or in the case of relinquishment of possession pursuant to the performance of Lessee's covenants under Section 8.3 or 8.4 of this Lease. Each sublease entered into in accordance with this Section 8.2 shall be referred to as a "Sublease." So long as no Lease Event of Default shall have occurred and be continuing, Lessee may, without the prior written consent of Agent, enter into subleases of one or more of the Items of Equipment to a direct or indirect wholly-owned Subsidiary of Lessee organized under the laws of the United States of America or any State thereof (a "Sublessee"); *provided*, that any Sublease entered into pursuant to this Section 8.2 must satisfy each of the following conditions:

(a) such Sublease shall (i) automatically expire upon the termination of this Lease, (ii) be expressly subordinate and subject to this Lease and the Liens created hereunder and (iii) expressly require the Items of Equipment subject thereto to be returned as directed by Agent upon notice to Sublessee that a Lease Event of Default shall have occurred and be continuing;

(b) such Sublease shall be in writing and shall expressly prohibit any further assignment, sublease or transfer;

(c) such Sublease shall not contain a purchase option in favor of the Sublessee or any other provision pursuant to which the Sublessee may obtain record or beneficial title to any Item of Equipment leased thereunder from Lessee prior to Lessee acquiring title to such Item of Equipment from Lessor;

(d) such Sublease shall prohibit the Sublessee from making any alterations or modifications to any Item of Equipment that would result in a Lease Default;

(e) all of Lessee's rights, title and interest in, to and under such Sublease shall be pledged by Lessee to Lessor, as collateral for Lessee's obligations under the Operative Documents, by delivery of an executed original counterpart upon the execution and delivery thereof, marked as the sole original execution counterpart for UCC purposes, to the Lessor, and Lessee shall, at its own cost and expense, do any further act and execute, acknowledge, deliver, file, register and record any further documents which the Agent or Lessor may reasonably request in order to create, perfect, preserve and protect Lessor's Lien in such Sublease;

(f) Lessee shall not, without Agent's prior written consent, permit or consent to any renewal or extension of such Sublease at any time when a Material Lease Default or Lease Event of Default has occurred and is continuing;

(g) such Sublease shall require the Sublessee to maintain the Item or Items of Equipment in accordance with Section 8.3;

(h) such Sublease shall require the Sublessee to use and operate the Item or Items of Equipment or any Part thereof in accordance with Section 8.1;

(i) such Sublease shall require the Sublessee to insure the Item or Items of Equipment in accordance with Section 9.2;

(j) such Sublease shall provide that, upon reasonable notice to the Sublessee, any designated representative of Agent or Lessor may inspect the Item or Items of Equipment and the books and records relating thereto, upon reasonable notice, in accordance with Agent's and Lessor's inspection rights set forth in the Operative Documents (but not so as to materially interfere with the business of such Sublessee); and

(k) Lessee shall notify Agent and Lessor in writing not less than 10 days prior to entering into any such Sublease (and promptly after execution of any Sublease furnish Agent and Lessor with an executed copy thereof), which notice shall include (i) a description of the Item or Items of Equipment to be subleased thereunder and (ii) the general location parameters of such Item or Items of Equipment during the term of such Sublease.

The liability of Lessee with respect to this Lease and each of the other Operative Documents shall not be altered or affected in any way by the existence of any Sublease.

Section 8.3. Maintenance. At all times during the term of this Lease, Lessee shall, at its own cost and expense:

(a) unless an Item of Equipment has suffered a Casualty and Lessee is restoring such Item of Equipment, repairing such Item of Equipment (which repairs may be done offsite), replacing such Item of Equipment or paying the Casualty Amount for such Item of Equipment, keep, repair, maintain and preserve each of the Items of Equipment in at least as good order and operating condition and appearance as on the Delivery Date, ordinary wear and tear excepted, and in conformance in all material respects with (A) customary industry standards, (B) the terms of all contracts (including, without limitation, service contracts) and obligations at the time applicable thereto, (C) all Applicable Laws and Regulations and Insurance Requirements (in each case, subject to Lessee's right to contest by a Permitted Contest), and in the event that Applicable Laws and Regulations require any alteration, replacement or addition of or to any Part on any Item of Equipment, Lessee will conform therewith in all material respects at its own expense, (D) standards no lower than the highest of those applied by Lessee or any of its Affiliates in the ordinary course of business for similar equipment

owned or leased by it, (E) such mandated or suggested maintenance, repair and deinstallation standards and procedures as are set forth in the manufacturer's manuals pertaining to each Item of Equipment and (F) such standards or procedures as may be required to enforce warranty claims against each vendor and manufacturer of each Item of Equipment;

(b) (i) conduct or cause to be conducted all scheduled maintenance of each Item of Equipment in conformity in all material respects with Lessee's practices and manufacturers and repair guidelines, for similar equipment (including, without limitation, Lessee's maintenance program for such equipment) and (ii) maintain or cause to be maintained each Item of Equipment so as to preserve its Fair Market Value, remaining economic useful life, utility and, except to the extent in compliance with this Lease, Residual Value, other than as a result of ordinary wear and tear;

(c) in addition to the requirements in Section 8.3(a) and (b), (i) cause maintenance on each Item of Equipment to be provided by the manufacturer thereof or factory authorized technicians or by Lessee's in-house technicians (trained and certified by manufacturer or an entity approved by such manufacturer), (ii) establish such maintenance, refurbishment, rebuilding and repair programs so that the Items of Equipment can be kept in the condition required as set forth herein and (iii) allow Lessor and Agent, at reasonable times, after reasonable notice and in a reasonable manner, to review and approve changes to the Lessee's maintenance procedures (which approval shall not be unreasonably withheld);

(d) cause each Item of Equipment to continue to have at all times the capacity and functional ability to perform, on a continuing basis (subject to Casualties and customary interruption in the ordinary course of business for maintenance, inspection, service, repair and testing), the functions for which it was specifically designed; *provided* that Lessee shall have the ability to remove any Item of Equipment from service in accordance with the standards set forth in Section 8.3(a);

(e) cause any hazardous or toxic substances used, or resulting or emitting from, the operation or use of the Items of Equipment to be handled in accordance with all applicable Environmental Laws in all material respects and otherwise cause the Items of Equipment to be maintained and operated in accordance with all Environmental Laws in all material respects; and

(f) at any time while a Lease Default or Lease Event of Default has occurred and is continuing or after the Lessee has exercised the Sale Option, make the Items of Equipment available for inspection and testing by an authorized inspector (which shall be at reasonable times and upon reasonable notice in the event the Sale Option was exercised), including unlimited shipping and testing of parts or equipment as required by any such inspector, and if any discrepancies are found as pertaining to the general condition of the Items of Equipment, Agent shall communicate such discrepancies to Lessee in writing and Lessee shall rectify such discrepancies within 30 days of receiving such written notice.

In no event shall Lessee adversely discriminate as to the use or maintenance of any Item of Equipment (including the periodicity of maintenance or recordkeeping in respect of such Item of Equipment) based upon such Item of Equipment being leased and financed hereunder and under the other Operative Documents as compared to equipment of a similar nature which Lessee owns or leases. Lessee shall prepare and deliver to Agent or Lessor, as applicable, within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of Agent and Lessor) any and all reports required to be filed by Agent or Lessor with any Governmental Authority of any country or subdivision thereof in which any Item of Equipment is located by reason of the ownership by Lessor of the Items of Equipment or the leasing thereof to Lessee (subject, however, to Lessee's right to Permitted Contests). Agent agrees to inform Lessee of any request for such reports received by it or of which it has knowledge. Lessee shall maintain or cause to be maintained, and shall permit Agent and Lessor, their respective agents, representatives, or assignees to inspect at reasonable times during regular business hours and as often as requested (but not so as to materially interfere with the business of Lessee and not more than annually if no Lease Default or Lease Event of Default has occurred and is continuing) upon five (5) Business Days prior notice so long as no Lease Default or Lease Event of Default shall have occurred and be continuing and at any time following the occurrence and continuation of a Lease Default or Lease Event of Default or following the election by the Lessee of the Sale Option, all records, returns, renditions, logs and other materials required by any Governmental Authority having jurisdiction over an Item of Equipment or Lessee, to be maintained in respect of such Item of Equipment (subject, however, to Lessee's right to Permitted Contests). Lessee hereby waives any right now or hereafter conferred by law to make repairs on any Item of Equipment at the expense of Lessor or Agent.

Section 8.4. Alterations and Modifications. In case any Item of Equipment, part or appliance therein (each, a "Part") is required to be altered, added to or modified in order to comply in all material respects with any Applicable Laws and Regulations (a "Required Alteration") pursuant to Section 8.1 or 8.3 hereof, Lessee agrees to make such Required Alteration at its own expense. Lessee shall have the right to make or cause to be made any modification, alteration or improvement to any Item of Equipment (herein referred to as a "Permitted Modification"), or to remove or cause to be removed any Part which has become worn out, broken or obsolete; *provided* in each case that Lessee continues to be in compliance with Sections 8.1 and 8.3 hereof and that such action (a) will not decrease the present or future economic value of the applicable Item of Equipment or impair its originally intended use or function or decrease its economic useful life and (b) will not cause such Item of Equipment to become suitable for use only by Lessee. In the event any Permitted Modification (i) is readily removable without impairing the value or use which the Item of Equipment would have had at such time had such Part not been affixed or placed to or on such Item of Equipment (a "Removable Part"), (ii) is not a Required Alteration and (iii) is not a Part which replaces any Part originally incorporated or installed in or attached to such Item of Equipment on the date on which such Item of Equipment became subject to this Lease, or any Part in replacement of or substitution for any such original Part (each an "Original Part"), any such Permitted Modification, if no Lease Event of Default is continuing, shall be and remain the property of Lessee. To the extent such Permitted Modification is not a Removable Part, or is a Required Alteration or an Original Part, and (if the Removable Part remains the property of Lessee) to the extent a Removable Part is not the property of Lessee because of the continuance

of a Lease Event of Default, the same shall immediately and automatically be and become the property of Lessor and subject to the terms of this Lease. Any Required Alterations, and any Parts installed or replacements made by Lessee upon any Item of Equipment pursuant to its obligation to maintain and keep the Items of Equipment in good order, operating condition and repair under Section 8.3 (collectively, "*Replacement Parts*") and all other Parts which become the property of Lessor shall be considered, in each case, accessions to such Item of Equipment and title thereto or security interest therein shall be immediately and automatically vested in Lessor. All Replacement Parts shall be free and clear of all Liens (other than Permitted Liens) and shall be in as good an operating condition as, and shall have a value and utility at least equal to, the Parts replaced, assuming such replaced Parts and the relevant Items of Equipment were immediately prior to such replacement or the event or events necessitating such replacement in the condition and repair required to be maintained by the terms hereof. Any Part at any time removed from any Item of Equipment shall remain subject to the interests of Lessor under the Operative Documents, no matter where located, until such time as such Part shall be replaced by a Part which has been incorporated or installed in or attached to such Item of Equipment and which meets the requirements for a Replacement Part specified above, whereupon Lessor hereby releases any and all interest in and to such replaced Part. Upon the request of Lessor and no later than 45 days after the end of each fiscal quarter of Lessee, Lessee shall deliver to Lessor, a Bill of Sale evidencing the conveyance by Lessee to Lessor of all Replacement Parts not previously evidenced by a Bill of Sale; *provided* that such Bill of Sale may describe the Replacement Parts generally and need not specifically describe each individual part, and such other documents in respect of such Part or Parts as Lessor may reasonably request in order to confirm that title to such Part or Parts has passed to Lessor, as hereinabove provided. Concurrently with the delivery by Lessee of a Bill of Sale with respect to a Replacement Part, Lessor shall deliver to Lessee a Bill of Sale (without representations or warranties except as to the absence of Lessor Liens) for the Part replaced by such Replacement Part and such other documents as may be required to release the replaced Part from the terms of this Lease, in such form as may reasonably be requested by Lessee. Any such Replacement Part, regardless of whether evidenced by a Bill of Sale, shall be deemed part of such unit, for all purposes hereof to the same extent as the Parts originally incorporated or installed in such unit, and title to such Replacement Part shall thereupon vest in Lessor, subject to the terms of this Lease. All replacements pursuant to this Section 8.4 shall be purchased by Lessee with its own funds. There shall be no obligation on the part of Lessor or Agent to pay for or otherwise finance any such replacement.

Section 8.5. Identifying Numbers and Registration; Legend; Changes; Inspection. (a) Lessee, at its own expense, will cause each Item of Equipment to be kept numbered with the identification number as shall be set forth on Schedule I hereto.

(b) The Lessee will not change the identification number of any Item of Equipment unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Agent and filed, recorded and deposited by the Lessee in all public offices where any financing statement has been filed in respect thereof for purposes of perfecting any security interest created hereby and (ii) Lessee shall have furnished the Agent an opinion of counsel in form and substance reasonably satisfactory to the Agent to the effect that once such statement has been so filed, recorded and/or deposited, no other filing, recording, deposit or

giving of notice with or to any other Federal, state or local government or agency thereof is necessary to perfect the lien and security interest of Lessor in such Items of Equipment. The Equipment may be lettered with the names or initials or other insignia used by the Lessee or any Sublessee. Upon the request of Agent or Lessor, Lessee shall make the Items of Equipment available to Agent or Lessor, as applicable, their respective agents, representatives or assignees for inspection at their then location and shall also make Lessee's books, manuals, logs, records and other information pertaining to the Items of Equipment available for inspection and permit such parties to make copies thereof, in each case at reasonable times during regular business hours and as often as requested (but not so as to materially interfere with the business of Lessee and not more than annually if no Lease Default or Lease Event of Default has occurred and is continuing) upon five (5) Business Days prior notice so long as no Lease Default or Lease Event of Default shall have occurred and is continuing or at any time following the occurrence and continuation of a Lease Default or Lease Event of Default or following the election by the Lessee of the Sale Option; *provided* that all costs and expenses of Lessor or Agent in connection with such inspection shall be borne by the inspecting party unless a Lease Event of Default has occurred and is continuing at the time of such inspection, in which case all such costs and expenses shall be borne by Lessee. Agent and Lessor shall have the right to inspect and show the Items of Equipment to prospective purchasers at any time following the occurrence of a Lease Event of Default or following the election by the Lessee of the Sale Option.

Section 8.6. Liens. Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien (other than Permitted Liens) on or with respect to (i) any Item of Equipment or any Part thereof or any other Lessee Collateral, or Lessor's title thereto or interest therein or (ii) this Lease or Lessor's interests hereunder. Lessee, at its own expense, will promptly pay, satisfy and otherwise take such actions as may be necessary to keep this Lease and the Items of Equipment and the other Lessee Collateral, free and clear of, and to duly discharge or eliminate, or bond in a satisfactory manner to Lessor in its reasonable judgment, any such Lien not excepted above if the same shall arise at any time. Lessee will notify Lessor in writing promptly upon becoming aware of any Tax or other Lien (other than any Lien excepted above) that shall attach to any Item of Equipment or any other Lessee Collateral, and of the full particulars thereof. Without limiting the foregoing, Lessee shall not assign or pledge any of its rights under any Sublease to any Person other than Lessor.

Section 8.7. Replacements and Substitutions. (a) In addition to the rights of Lessee under Section 8.4, Lessee shall have the option at any time to replace any Item or Items of Equipment (a "*Replaced Item*" or "*Replaced Items*") with a substitute Item or Items of Equipment (a "*Replacement Item*" or "*Replacement Items*"), subject to the following conditions:

(i) No Lease Default or Lease Event of Default shall have occurred and be continuing and Lessee shall represent in writing to Agent to such effect;

(ii) The Replacement Item or Replacement Items shall be located in a location permitted by Section 8.1 and Lessee shall represent in writing to Agent to such effect;

(iii) The Replacement Item or Replacement Items shall have a function and utility comparable to or better than the Replaced Item or Replaced Items and Lessee shall represent in writing to Agent to such effect;

(iv) The Replacement Item or Replacement Items shall have a value, useful life, and operating condition equal to or greater than the Replaced Item or Replaced Items and Lessee shall represent in writing to Agent to such effect, which shall be confirmed by an appraisal reasonably satisfactory in scope and form to Lessor and Agent and performed by an appraiser selected by the Lessor and Agent and approved by Lessee (such approval not to be unreasonably withheld) for each Replaced Item being substituted pursuant to this Section 8.7 in which the Purchase Price, or for each series of substitutions pursuant to this Section 8.7 in which the aggregate Purchase Price, is equal to or greater than \$5,000,000;

(v) The aggregate Purchase Price of all Replaced Items leased hereunder and substituted pursuant to this Section 8.7 from and after the Delivery Date to and including the date of substitution and after giving effect thereto, shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date; and

(vi) Prior to the date of any such substitution, Lessee shall replace such Replaced Item or Replaced Items by complying with the applicable terms of Section 9.1 to the same extent as if a Casualty or a series of Casualties had occurred with respect to such Replaced Item or Replaced Items, and the Lessor shall transfer title to the Replaced Item or Replaced Items to Lessee in the same manner as provided in the applicable provisions of Section 9.1.

Items of Equipment replaced pursuant to Section 9.1(b) following a Casualty shall not be included for purposes of the calculations set forth above.

(b) All replacements pursuant to Section 8.7(a) shall be purchased by Lessee with its own funds. There shall be no obligation on the part of Lessor or Agent to pay for or otherwise finance any such replacement. No termination of this Lease with respect to any Item of Equipment as contemplated by this Section 8.7 shall result in any reduction of Rent or Lessee's obligation to pay Basic Rent hereunder.

ARTICLE IX

RISK OF LOSS; INSURANCE

Section 9.1. Casualty. Upon the occurrence of a Casualty or a series of Casualties with respect to an Item or Items of Equipment with a Purchase Price aggregating in excess of \$5,000,000 during the Lease Term, Lessee shall give Lessor and Agent prompt notice thereof (a "*Casualty Notice*"). The Casualty Notice shall specify whether Lessee will:

(a) pay to Lessor the Casualty Amount of the Item or Items of Equipment suffering such Casualty or series of Casualties, together with all other Rent then due and owing and if such amount is paid on a date which is not a Payment Date any and all Break Funding Amounts and an amount equal to the sum of the Basic Rent described in clause (A) of the definition Casualty Amount with respect to such Casualty Amount due on the next succeeding Payment Date divided by 90, multiplied by the number of days from the immediately preceding Payment Date to but excluding the date of payment, which payment shall be made within 30 days after such Casualty or the latest in time of such series of Casualties (the "*Casualty Settlement Date*"); or

(b) replace the Item or Items of Equipment with respect to which the Casualty or series of Casualties has occurred pursuant to the following provisions of this Section 9.1; *provided* that (i) the aggregate Purchase Price of all Items of Equipment replaced pursuant to this Section 9.1(b) with respect to this Lease from and after the Delivery Date to and including the date of replacement and after giving effect thereto, shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date and (ii) upon the occurrence and during the continuance of a Lease Event of Default or a Lease Default, Lessee shall be obligated, at the option of the Agent, to make the payments referred to in clause (a) above and shall not be entitled to exercise any right or election of replacement pursuant to this clause (b).

Notwithstanding the foregoing, if Lessee has elected or is required to pay any Casualty Amount pursuant to clause (a) above and either:

(i) the payment of such Casualty Amount would cause the aggregate amount of all Casualty Amounts paid with respect to the Items of Equipment leased hereunder during the term of the Lease to exceed 25% of the aggregate Purchase Price of all Items of Equipment subject to this Lease as of the Delivery Date; or

(ii) after giving effect to the payment of the Casualty Amount, the End of Term Value Ratio of the Items of Equipment remaining subject to this Lease is less than the End of Term Value Ratio of all Items of Equipment originally subject to this Lease (as set forth in the Appraisal),

then Lessee shall not be entitled to pay such Casualty Amount pursuant to clause (a) above, and instead Lessee shall be deemed to have elected the Early Termination Option with respect to all, but not less than all, of the Items of Equipment then subject to this Lease and Lessee shall be required to purchase all but not less than all of the Items of Equipment in accordance with the terms and provisions of Section 14.1 on the Casualty Settlement Date.

If Lessee has elected, or is required, to pay the Casualty Amount with respect to the Items of Equipment leased hereunder pursuant to clause (a) above, Lessee shall continue to make all payments of Rent due under this Lease until and including the Casualty Settlement Date. Upon payment of the Casualty Amount in respect of such Item of Equipment on such Casualty Settlement Date together with all Rent and Supplemental Rent then due and owing, the remaining scheduled Rent payments hereunder shall be reduced by an amount equal to the

product of the scheduled amount of each such payment (determined in each case prior to the receipt of such Casualty Amount), multiplied by the Item Value Fraction of such Item of Equipment suffering such Casualty or series of Casualties.

If Lessee has given notice that it intends to replace the Item or Items of Equipment suffering such Casualty or series of Casualties, and such replacement is permitted under the foregoing clause (b), Lessee may make subject to this Lease, not later than 90 days after such Casualty or the latest in time of such series of Casualties with respect to such Item or Items of Equipment, a replacement for such Item or Items of Equipment meeting the suitability standards hereinafter set forth. To be suitable as a Replacement Item of Equipment (including for purposes of Section 8.7), an Item of Equipment (or Items of Equipment) must (i) be of the same function and utility, (ii) have the same or better Residual Value, remaining economic useful life and operating condition (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 8.3) as the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties, (iii) have a Fair Market Value of not less than the Fair Market Value (immediately preceding the Casualty or series of Casualties assuming that such Item or Items of Equipment had been maintained in accordance with the terms of Section 8.3) of the Item or Items of Equipment, taken as a whole, suffering the Casualty or series of Casualties and (iv) be free and clear of any Liens other than Permitted Liens. Lessee shall represent in writing to Agent that such Replacement Item or Items of Equipment meet the standards set forth in clauses (i), (ii) and (iii) of the immediately preceding sentence and shall deliver an appraisal at Lessee's sole expense in form and substance reasonably satisfactory to the Agent from an appraiser selected by the Agent and approved by Lessee (such approval not to be unreasonably withheld) confirming that such Replacement Item or Items of Equipment meet the standards set forth in clauses (ii) and (iii) of the immediately preceding sentence. Lessee shall cause a Bill of Sale and a lease supplement to be executed and delivered to Agent and Lessor in order to subject such replacement Item of Equipment or Items of Equipment to this Lease, and upon such execution and delivery and the receipt by Agent and the Lessor of (i) evidence reasonably satisfactory to them of Lessee's compliance with the insurance provisions of Section 9.2 with respect to such replacement Item of Equipment or Items of Equipment, and (ii) an opinion of counsel to Lessee (which may be in-house counsel) opining as to the authorization, execution and delivery of the Bill of Sale and the lease supplement, the enforceability of the lease supplement and the filing and recording of the UCC financing statements with respect thereto and, in each case, consistent with the opinions delivered on the Delivery Date covering such matters, such replacement item or items shall be deemed an "Item of Equipment" or "Items of Equipment" for all purposes hereof.

If (i) Agent or Lessor has received the amount payable with respect to the Casualty or series of Casualties and all other amounts due hereunder (if any), or (ii) the Item or Items of Equipment have been substituted or repaired in accordance herewith, and, in each case, no Material Lease Default or Lease Event of Default exists, Lessee shall be entitled to receive from Agent or Lessor, as applicable, the proceeds of any recovery in respect of the Item or Items of Equipment from insurance or otherwise, to the extent recovered by Agent or Lessor ("*Casualty Recoveries*"), and Agent or Lessor, as applicable, subject to the rights of any insurer insuring the Items of Equipment as provided herein, shall execute and deliver to Lessee, or to its assignee or

nominee, a Bill of Sale (without representations or warranties except that each such Item of Equipment is free and clear of Lessor Liens) for the Item or Items of Equipment (other than repaired items), and such other documents as may be required to release the Item or Items of Equipment from the terms of this Lease, in such form as may reasonably be requested by Lessee. All fees, costs and expenses relating to a substitution or repair as described herein shall be borne by Lessee. Except as otherwise provided in this Section 9.1, Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty to any Item of Equipment prior to or during the term of this Lease and thereafter until all of Lessee's obligations hereunder are fully performed.

Any payments (including, without limitation, insurance proceeds) received at any time by Agent, Lessor or Lessee from any Governmental Authority or other party with respect to any loss or damage to any Item or Items of Equipment not constituting a Casualty (i) up to \$5,000,000, shall be paid to Lessee, so long as no Material Lease Default or Lease Event of Default shall have occurred and be continuing, for application to repair or for replacement of property in accordance with Sections 8.1 and 8.3 or (ii) in excess of \$5,000,000, shall be held by Agent and applied directly in payment of repairs or for replacement of property in accordance with the provisions of Sections 8.1 and 8.3, if not already paid by Lessee, or if already paid by Lessee and no Material Lease Default or Lease Event of Default shall have occurred and be continuing, shall be applied to reimburse Lessee for such payment, and any balance remaining after compliance with said Sections with respect to such loss or damage shall be retained by or disbursed to (as applicable) Lessee.

LESSEE HEREBY ASSUMES ALL RISK OF LOSS, DAMAGE, THEFT, TAKING, DESTRUCTION, CONFISCATION, REQUISITION, COMMANDEERING, TAKING BY EMINENT DOMAIN OR CONDEMNATION, PARTIAL OR COMPLETE, OF OR TO EACH ITEM OF EQUIPMENT, HOWEVER CAUSED OR OCCASIONED, SUCH RISK TO BE BORNE BY LESSEE WITH RESPECT TO EACH ITEM OF EQUIPMENT FROM THE DELIVERY DATE AND CONTINUING UNTIL SUCH ITEM OF EQUIPMENT HAS BEEN PURCHASED BY A THIRD PARTY OR RETURNED TO LESSOR IN ACCORDANCE WITH THE TERMS HEREOF. LESSEE AGREES THAT NO OCCURRENCE SPECIFIED IN THE PRECEDING SENTENCE SHALL IMPAIR, IN WHOLE OR IN PART, ANY OBLIGATION OF LESSEE UNDER THIS LEASE, INCLUDING, WITHOUT LIMITATION, THE OBLIGATION TO PAY RENT.

Section 9.2. Insurance Coverages. Lessee shall at all times, at its expense, cause to be carried and maintained with financially sound and reputable insurers, insurance against loss or damage to the Items of Equipment, of the kinds and in the amounts customarily maintained by similar corporations engaged in similar operations in similar jurisdictions and carry such other insurance as is usually carried by such corporations; *provided*, that in any event Lessee will maintain:

(a) Casualty Insurance—insurance against risks of physical loss or damage with respect to the Items of Equipment with deductibles and in such minimum amounts as are consistent with industry standards; *provided, however*, that at no time shall the amount of coverage, on a replacement cost basis, be less than the outstanding Lease Balance as shall be applicable to the Items of Equipment;

(b) Comprehensive General Liability Insurance—combined single limit comprehensive general liability insurance against claims for bodily injury, death or property damage in amounts at least equal to \$10,000,000 per occurrence, with such deductibles as are carried by similarly situated companies operating similar facilities and equipment; and

(c) Other Insurance—such other insurance, including environmental/pollution and worker’s compensation insurance, in each case, generally carried by owners of equipment similar to the Items of Equipment and properties in each jurisdiction where the Items of Equipment are located, in such amounts and against such risks as are then customary for equipment and property similar in use.

Such insurance shall be written by reputable insurance companies that are financially sound and solvent, rated in Best’s Insurance Guide or any successor thereto (or if there be none, an organization having a similar national reputation) with a general policyholder rating of “A” and a financial size rating of at least “X” from A.M. Best and Company or any successor thereto (or if there is none, an organization having a similar national reputation) or otherwise acceptable to the Agent. All such insurance shall name Agent as loss-payee and each of Agent, Lessor and the Assignees as additional insured, as their respective interests may appear pursuant to the terms and conditions of this Lease. Each policy referred to in this Section 9.2 shall provide that (i) it will not be cancelled or its limits reduced, or allowed to lapse without renewal, except after not less than 30 days written notice to Lessor and Agent, (ii) the interests of Lessor shall not be invalidated by any act or negligence of, or breach of representation or warranty by, Lessee or any Person having an interest in any Item of Equipment (other than Lessee’s failure to pay premiums), (iii) such insurance is primary with respect to any other insurance carried by or available to Lessor; (iv) the insurer shall waive any right of subrogation, setoff, counterclaim, or other deduction, whether by attachment or otherwise, against Lessor; and (v) the insurer shall waive any right to claim any premiums or commission against Lessor. Lessee will notify Agent and Lessor promptly of any policy cancellation, reduction in policy limits, modification or amendment.

Nothing in this Section 9.2 shall prohibit Lessor from obtaining insurance for its own account and at its own expense and any proceeds payable thereunder shall be payable as provided in the insurance policy relating thereto; *provided*, that no such insurance may be obtained which would limit or otherwise adversely affect the coverage or payment of any insurance required to be obtained or maintained by Lessee pursuant to this Section 9.2.

Section 9.3. Insurance Certificates. On the Delivery Date, and thereafter within 15 days after the expiration dates of the expiring policies theretofore delivered pursuant to Section 9.2, Lessee shall deliver to Lessor and Agent certificates issued by the insurer(s) or insurance broker(s) for the insurance maintained pursuant to Section 9.2; *provided, however*, that if the delivery of any certificate is delayed, Lessee shall not be deemed to be in violation of the obligation to deliver such certificate if, within such 15 day period, Lessee delivers an executed binder with respect thereto and thereafter delivers the certificate upon receipt thereof.

ARTICLE X

CERTAIN DUTIES AND RESPONSIBILITIES

Agent and Lessor undertake to perform such duties and only such duties as are specifically set forth herein and in the other Operative Documents, and no implied covenants or obligations shall be read into this Lease against Agent or Lessor, and Agent and Lessor shall not, nor shall they have a duty to, manage, control, use, sell, maintain, insure, register, lease, operate, modify, dispose of or otherwise deal with the Items of Equipment in any manner whatsoever, except as required by the terms of the Operative Documents and as otherwise provided herein.

ARTICLE XI

INDEMNITIES

Section 11.1. General Indemnification. (a) Subject to clause (b) below, Lessee agrees to indemnify, defend and hold each Indemnatee harmless, on a Grossed-Up Basis, from and against any and all Claims that directly or indirectly relate to, result from or arise out of or are alleged to relate to, result from or arise out of any of the following (whether or not any such Indemnatee is indemnified as to such matter by any other Person and whether or not such Claim arises or accrues prior to the Delivery Date or after the Lease Expiration Date):

(i) the Items of Equipment, the other Lessee Collateral or any part thereof;

(ii) any of the Operative Documents or any of the transactions contemplated thereby, or any investigation, litigation, enforcement or proceeding in connection therewith, and any amendment, modification or waiver in respect thereof;

(iii) the regulation of the ownership, construction, leasing, use or operation of the Items of Equipment or any part thereof, but only to the extent that the Indemnatee is subjected to such regulation as a result of its being a party to or beneficiary of the Operative Documents or its involvement in the transactions contemplated in the Operative Documents;

(iv) the offer, financing, refinancing, inspection, mortgaging, granting of a security interest in, design, manufacture, construction, purchase, ownership, acquisition, acceptance, rejection, delivery, nondelivery, redelivery, possession, transportation, lease, sublease, installation, condition, transfer of title, rental, use, operation, storage, maintenance, modification, alteration, repair, assembly, sale, return, abandonment or other application or disposition of all or any part of the Items of Equipment or any interest therein or improvements, additions or modifications thereto or the imposition of any Lien thereon, or the failure to perform or accomplish any of the foregoing in accordance with the requirements of the Operative Documents, other agreements governing such matters or Applicable Laws and Regulations, including, without

limitation: Claims or penalties arising from any violation of law or in tort (strict liability or otherwise), latent or other defects, whether or not discoverable, any Claim based upon a violation or alleged violation of the terms of any restriction, easement, condition or covenant or other matter affecting title to the Items of Equipment, the making of any alterations or modifications in violation of any standards imposed by any insurance policies required to be maintained by the Lessee pursuant to the Lease which policies are in effect at any time with respect to the Items of Equipment or any part thereof, and any Claim for patent, trademark or copyright infringement and any violations of any environmental noise or pollution control laws;

(v) a breach by Lessee of any of its covenants under any Operative Document, or a misrepresentation by the Lessee (including any omission by Lessee that makes any representation made by Lessee materially misleading) in any Operative Document or in any certificate or other document delivered by the Lessee to the Lessor or Agent pursuant to any Operative Document, or the material inaccuracy of any information provided by Lessee to any third party in connection with the preparation by such third party of a report or other document required to be delivered pursuant to any Operative Document;

(vi) the existence of any Lien on or with respect to the Items of Equipment, title thereto, any interest therein or any Basic Rent or Supplemental Rent, including any Liens which arise out of the possession, use, operation, construction, repair or rebuilding of the Items of Equipment or by reason of labor or materials furnished or claimed to have been furnished to Lessee, or any of its contractors or agents or by reason of the financing of any personality or equipment purchased or leased by the Lessee or alterations or modifications made by the Lessee, except Liens in favor of the Lessor; and

(vii) any Claims related to the Release from any Item of Equipment of any substance into the environment, including (without limitation) Claims arising out of the use of any Item of Equipment for the transportation or storage of any Hazardous Material.

(b) *Exclusions.* The provisions of Section 11.1(a) shall not apply to any Claim:

(i) with respect to any Indemnitee, to the extent attributable to the willful misconduct or gross negligence of, or negligence in the handling of funds by, such Indemnitee, its officers, agents, employees and Affiliates or the breach in any material respect of any representation or covenant made by such Indemnitee under the Operative Documents;

(ii) to the extent attributable to acts or events that occur after the payment in full of the entire Lease Balance and all other amounts due from Lessee to the Agent and Lessor pursuant to the Operative Documents or repossession of the Items of Equipment by Lessor or Agent following a Lease Event of Default (except to the extent fairly attributable to circumstances existing or acts, events, liabilities or damages occurring or accruing prior to such payment in full or repossession, or to the extent relating to the acts

or omissions of the Lessee in relation to, or liabilities arising out of, their operation, repair, servicing, maintenance or replacement of the Items of Equipment); or

(iii) in respect of Taxes, which are governed by Section 11.2, other than a payment necessary to make payments under this Section 11.1 on a Grossed-Up Basis.

(c) *Contests.* In respect of the indemnification provided under Section 11.1(a), promptly after receipt by an Indemnitee of notice of any pending or threatened Claim, such Indemnitee shall, if a claim for indemnification in respect thereof is to be made against Lessee give written notice thereof to Lessee; *provided* that the failure to provide such prompt notice shall not limit Lessee's obligations or prejudice any rights of such Indemnitee under Section 11.1(a) with respect to such Claim, except to the extent that such failure to provide prompt notice adversely affects Lessee's indemnification obligations hereunder. So long as no Lease Event of Default is continuing, Lessee at its own expense, may elect to assume the defense of any such Claim through its own counsel, which shall be subject to the reasonable approval of the Indemnitee, on behalf of the Indemnitee (with full right of subrogation to the Indemnitee's rights and defenses). Lessee must indicate its election to assume such defense by written notice to the Indemnitee within 30 days following receipt of Indemnitee's notice of the Claim, or in the case of a third party claim which requires a shorter time for response then within such shorter period as specified in the Indemnitee's notice of Claim; *provided* that such Indemnitee has given Lessee notice thereof. If Lessee denies liability or fails to respond to the notice within the time period set forth above, the Indemnitee may defend or compromise the Claim as it deems appropriate without prejudice to any of Indemnitee's rights hereunder and with no further obligation to inform Lessee of the status of the Claim and no right of Lessee to approve or disapprove any actions taken in connection therewith by the Indemnitee. If Lessee shall have elected to assume the defense of any such Claim, then upon the request of Lessee, the Indemnitee requesting payment of indemnity under Section 11.1(a) shall promptly furnish Lessee with copies of any records or documents pertaining to the matter to be indemnified and, to the extent known by such Indemnitee, a reasonably detailed explanation of the circumstances giving rise to the claim of indemnification and the determination of the amount of the requested indemnity payment. Upon payment in full to Indemnitee of any indemnity pursuant to Section 11.1(a), Lessee shall be subrogated to any right of Indemnitee in respect of the matter against which such indemnity has been paid. If Lessee shall have elected to assume the defense of any such Claim, upon the written request at any time and from time to time of Lessee, Indemnitee shall, at the expense of Lessee, take such reasonable actions and execute such documents as are necessary or reasonably appropriate to assist Lessee in the preservation and enforcement against third parties of Lessee's right of subrogation hereunder. The Indemnitee may employ separate counsel in any such Claim and participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnitee unless the Indemnitee shall have been advised by its counsel that a conflict of interest exists in Lessee's counsel's representations of the Indemnitee and Lessee, in which case the fees and expenses of such Indemnitee's counsel shall be for the account of Lessee. All fees and expenses shall be paid periodically as incurred. So long as no Lease Event of Default shall have occurred and be continuing, Lessee shall not be liable for any settlement of any such Claim effected without its consent unless Lessee shall fail to, or elect in writing not to, assume the defense thereof in which case the Indemnitee, without waiving any rights to indemnification hereunder, may defend such Claim and enter into any good faith

settlement thereof without the prior written consent of Lessee. Lessee shall not, without the prior written consent (not to be unreasonably withheld) of the Indemnitee, effect any settlement of any such Claim unless such settlement includes an unconditional release of the Indemnitee from all liabilities that are the subject of such Claim. The parties agree to cooperate in any defense or settlement of any such Claim and to give each other reasonable access to all information relevant thereto subject to appropriate confidentiality agreements. The parties will similarly cooperate in the prosecution of any claim or lawsuit against any third party.

(d) *Subrogation.* Upon the payment in full of any claim pursuant to this Section 11.1, Lessee, without any further action, shall be subrogated to any claims the Indemnitee may have relating thereto. The Indemnitee agrees, at Lessee's expense, to give such further assurances or agreements and to cooperate with Lessee to permit the Lessee to pursue such claims, if any, to the extent reasonably requested by Lessee. If Lessee shall have paid an amount to or for an Indemnitee pursuant to this Section 11.1, and such Indemnitee subsequently shall be reimbursed in respect of such indemnified amount from any other Person, such Indemnitee shall promptly pay Lessee, but not before Lessee shall have made all payments then due to such Indemnitee pursuant to this Section 11.1 and any other payments then due hereunder and under any other Operative Document, the amount of such reimbursement, including interest actually received attributable thereto, net of Taxes required to be paid by such Indemnitee as a result of any refund received, after giving effect to such payment to Lessee.

(e) *Not Residual Guaranty.* Nothing in this Section 11.1 shall be construed as a guaranty of residual value of the Items of Equipment.

Section 11.2. General Tax Indemnity.

(a) *Indemnification.* Lessee shall pay and assume liability for, and does hereby agree to indemnify, protect and defend the Equipment and the other Lessee Collateral and all Indemnitees, and hold the Equipment and the other Lessee Collateral and all Indemnitees harmless against, all Impositions on an Grossed-Up Basis. Each Indemnitee further agrees to make good faith efforts to implement the reasonable recommendations made by Lessee regarding techniques to minimize Taxes indemnifiable hereunder, *provided* that Lessee agrees to indemnify such Indemnitee on a Grossed-Up Basis and to hold each Indemnitee harmless against any cost or expense arising from instituting Lessee's recommendations. Notwithstanding anything to the contrary herein, any indemnification obligation of Lessee with respect to any withholding Taxes incurred by an Indemnitee shall be governed exclusively by Section 11.3.

(b) *Contests.* If any claim shall be made against any Indemnitee or if any proceeding shall be commenced against any Indemnitee (including a written notice of such proceeding) for any Imposition as to which Lessee reasonably may have an indemnity obligation pursuant to this Section 11.2, or if any Indemnitee reasonably shall determine that any Imposition for which Lessee may have an indemnity obligation pursuant to this Section 11.2 may be payable, such Indemnitee shall promptly (and in any event, within 30 days) notify Lessee in writing (*provided* that failure to so notify Lessee within 30 days shall not alter such Indemnitee's rights under this Section 11.2, except to the extent such failure precludes or materially adversely affects the ability

to conduct a contest of any indemnified Imposition, in which case Lessee shall have no indemnification obligation hereunder to the extent such failure precludes or materially affects their ability to conduct a contest) and shall not take any action with respect to such claim, proceeding or Imposition without the written consent of Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 30 days after the receipt of such notice by Lessee; *provided, however*, that in the case of any such claim or proceeding, if such Indemnatee shall be required by law or regulation to take action prior to the end of such 30-day period, such Indemnatee shall in such notice to Lessee, so inform Lessee, and such Indemnatee shall not take any action with respect to such claim, proceeding or Imposition without the consent of Lessee (such consent not to be unreasonably withheld or unreasonably delayed) for 10 days after the receipt of such notice by Lessee, unless the Indemnatee shall be required by law or regulation to take action prior to the end of such 10-day period.

Lessee shall be entitled for a period of 30 days from receipt of such notice from the Indemnatee (or such shorter period as the Indemnatee has notified Lessee is required by law or regulation for the Indemnatee to commence such contest), to request in writing that such Indemnatee contest in good faith of such Imposition, at Lessee's expense. If (x) such contest can be pursued in the name of Lessee and independently from any other proceeding involving an Imposition for which Lessee has not agreed to indemnify such Indemnatee, (y) such contest must be pursued in the name of the Indemnatee, but can be pursued independently from any other proceeding involving an Imposition for which Lessee has not agreed to indemnify such Indemnatee or (z) the Indemnatee so requests, then Lessee shall be permitted to control the contest of such claim, *provided* that in the case of a contest described in any of clause (x), (y) or (z) if the Indemnatee determines in good faith that such contest by Lessee reasonably could have a material adverse impact on the business or operations of the Indemnatee and provides a written explanation to Lessee of such determination, the Indemnatee may elect to control or reassert control of the contest, and *provided*, that by taking control of the contest, Lessee acknowledges that it is responsible for the Imposition ultimately determined to be due by reason of such claim, and; *provided, further*, that in determining the application of clauses (x) and (y), each Indemnatee shall take any and all reasonable steps to segregate claims for any Impositions for which Lessee indemnifies hereunder from Impositions for which Lessee is not obligated to indemnify hereunder, so that Lessee can control the contest of the former. In all other claims requested to be contested by Lessee, the Indemnatee shall control the contest of such claim, acting through counsel reasonably acceptable to Lessee. In any contest controlled by an Indemnatee, the Indemnatee shall conduct such contest in good faith. In no event shall Lessee be permitted to contest (or the Indemnatee required to contest) any claim (A) if such Indemnatee provides Lessee with a legal opinion of independent counsel that such action, suit or proceeding involves a material risk of imposition of criminal liability or will involve a material risk of the sale, forfeiture or loss of, or the creation of any Lien (other than a Permitted Lien) on any Item or Items of Equipment or any part thereof or any other Lessee Collateral unless Lessee shall have posted and maintained a bond or other security reasonably satisfactory to the relevant Indemnatee in respect to such risk, (B) if a Lease Event of Default has occurred and is continuing, unless Lessee shall have posted and maintained a bond or other security reasonably satisfactory to the relevant Indemnatee in respect of the Impositions subject to such claim and any and all expenses for which Lessee is responsible hereunder reasonably foreseeable in connection with the contest of such claim, (C) unless Lessee shall have agreed to pay and shall pay to such Indemnatee on

demand all reasonable out-of-pocket costs, losses and expenses that such Indemnitee may incur in connection with contesting such Imposition, including all reasonable legal, accounting and investigatory fees and disbursements, or (D) if such contest shall involve the payment of the Impositions prior to the contest, unless Lessee shall provide to the Indemnitee an interest-free advance in an amount equal to the Imposition that the Indemnitee is required to pay (with no additional net after-tax costs (including Taxes) to such Indemnitee). In addition, for Indemnitee-controlled contests and claims contested in the name of the Indemnitee in a public forum, no contest shall be required: (A) unless the amount of the potential indemnity (taking into account all similar or logically related claims that have been or could be raised in any audit involving such Indemnitee for which Lessee may be liable to pay an indemnity under this Section 11.2) exceeds \$75,000 and (B) unless, if requested by the Indemnitee, the Lessee shall have provided to the Indemnitee an opinion of counsel selected by Lessee that a reasonable basis exists to contest such claim. In no event shall an Indemnitee be required to appeal an adverse judicial determination to the United States Supreme Court.

The party conducting the contest shall consult in good faith with the other party and its counsel with respect to the contest of such claim for Impositions (or claim for refund) but the decisions regarding what actions to be taken shall be made by the controlling party in its sole judgment; *provided, however*, that if the Indemnitee is the controlling party, no settlement offer with respect to such claims shall be made or accepted by the Indemnitee without the prior consent of the Lessee (which consent shall not unreasonably be withheld); *provided further*, that if the Indemnitee is the controlling party and Lessee recommends the acceptance of a settlement offer made by the relevant Governmental Agency and such Indemnitee rejects such settlement offer then the amount for which Lessee will be required to indemnify such Indemnitee with respect to the Taxes subject to such offer shall not exceed the amount which it would have owed if such settlement offer had been accepted. In addition, the controlling party shall keep the noncontrolling party reasonably informed as to the progress of the contest, and shall provide the noncontrolling party with a copy of (or appropriate excerpts from) any reports or claims issued by the relevant auditing agent or taxing authority to the controlling party thereof, in connection with such claim or the contest thereof.

Each Indemnitee shall supply Lessee with such information and documents reasonably requested by Lessee as is necessary or advisable for Lessee to participate in any action, suit or proceeding to the extent permitted by this Section 11.2(b), and Lessee shall promptly reimburse such Indemnitee for the reasonable out-of-pocket expenses of supplying such information and documents. No Indemnitee shall enter into any settlement or other compromise or fail to appeal an adverse ruling with respect to any claim which is entitled to be indemnified under this Section 11.2 (and with respect to which contest is required under this Section 11.2(b)) without the prior written consent of Lessee (such consent not to be unreasonably withheld), unless such Indemnitee waives its right to be indemnified under this Section 11.2 with respect to such claim.

Notwithstanding anything contained herein to the contrary, an Indemnitee will not be required to contest (and Lessee shall not be permitted to contest) a claim with respect to any Imposition if (i) such Indemnitee shall waive its right to indemnification under this Section 11.2 with respect to such claim (and any claim with respect to such year or any other taxable year, the contest of which is materially adversely affected as a result of such waiver) or (ii) such

Imposition is the sole result of a claim of a continuing and consistent nature, which claim has previously been resolved against the relevant Indemnitee (unless a change in law or facts has occurred since such prior adverse resolution and Lessee provides an opinion of independent tax counsel to the effect that it is more likely than not that such change in law or facts will result in a favorable resolution of the claim at issue).

(c) *Payments.*

(i) *To or for the Account of an Indemnitee.* (x) Any Imposition indemnifiable under this Section 11.2 shall be paid directly when due to the applicable taxing authority if direct payment is practicable and permitted. If direct payment to the applicable taxing authority is not permitted or is otherwise not made, any amount payable to an Indemnitee pursuant to this Section 11.2 shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnitee (accompanied by a written statement describing in reasonable detail the amount so payable), but not before two Business Days prior to the date that the relevant Taxes are due. Any payments made to an Indemnitee pursuant to this Section 11.2 shall be made directly to the Indemnitee entitled thereto in immediately available funds at such bank or to such account as specified by the Indemnitee in written directions to Lessee, or, if no such direction shall have been given, by check of Lessee payable to the order of the Indemnitee by certified mail, postage prepaid at its address as set forth in this Lease. Upon the request of any Indemnitee with respect to an Imposition that Lessee is required to pay, Lessee shall furnish to such Indemnitee the original or a copy of a receipt for Lessee's payment of such Imposition or such other evidence of payment as is reasonably acceptable to such Indemnitee.

(y) At the Lessee's request, the amount of any indemnification payment by Lessee pursuant to subsection (a) shall be verified and certified by an independent public accounting firm mutually acceptable to the Lessee and the Indemnitee. The fees and expenses of such independent public accounting firm shall be paid by the Lessee unless such verification shall result in an adjustment in the Lessee's favor of 5% or more of the payment as computed by the Indemnitee, in which case such fees and expenses shall be paid by the Indemnitee.

(ii) *To Lessee.* (x) If any Indemnitee actually shall realize a Tax benefit (whether by way of deduction, credit, allocation or apportionment or otherwise) with respect to an Imposition not indemnifiable hereunder which would not have been realized but for any Imposition with respect to which Lessee has reimbursed or indemnified such Indemnitee pursuant to the Operative Documents, which benefit was not previously taken into account in determining the amount of Lessee's payment to such Indemnitee, such Indemnitee shall pay to Lessee an amount equal to the amount of such Tax benefit on a Grossed-Up Basis; *provided, however,* that no payment shall be made as long as Lease Event of Default is continuing; *provided further, however,* that no Indemnitee shall be required to pay to Lessee any Tax benefit to the extent such payment would be greater than the amount of the Impositions in respect of which the reimbursement or indemnification was paid by Lessee, reduced by all prior payments by such Indemnitee under this Section 11.2(c)(ii)(x) in respect of such amount; any payment to Lessee which is so limited shall, to the extent of such unpaid excess, be carried over and shall be available to offset any future obligations of Lessee under this Section 11.2. If such repaid Tax benefit is thereafter lost, the additional Tax payable in respect of such lost Tax benefit shall be

treated as an Imposition indemnifiable hereunder without regard to the exclusions set forth in clauses (i), (ii), (iv), (v), (vi), (vii), (viii), (ix), (x) of the definition of Impositions.

(y) Upon receipt by an Indemnitee of a refund or credit of all or part of any Impositions paid or indemnified against by Lessee, which refund or credit was not previously taken into account in determining the amount of Lessee's payment to such Indemnitee, such Indemnitee shall pay to Lessee, on a Grossed-Up Basis, an amount equal to the amount of such refund or credit, plus any interest received by or credited to such Indemnitee with respect to such refund; *provided, however*, that no such payment shall be made as long as a Lease Event of Default is continuing; *provided, further, however*, that no Indemnitee shall be required to pay to Lessee any refund or credit to the extent such refund or credit is greater than the amount of Impositions in respect of which payment or indemnification was made by Lessee, reduced by all prior payments by such Indemnitee under this Section 11.2(c)(ii)(y) in respect of such amount. If such repaid refund or credit is thereafter lost, the additional Tax payable shall be treated as Imposition indemnifiable hereunder without regard to the exclusions set forth in clauses (i), (ii), (iv), (v), (vi) (vii), (viii), (ix), (x) of the definition of Impositions.

(z) The Indemnitee will, at Lessee's expense, pursue refunds and tax benefits that would result in any such payments to Lessee, but only if the Indemnitee has been notified in writing by Lessee that such refunds or tax benefits are available.

(d) *Reports.* In the case of any report, return or statement required to be filed with respect to any Impositions that are subject to indemnification under this Section 11.2 and of which Lessee or the Indemnitee has knowledge, the party having such knowledge shall promptly notify the other of such requirement and, at Lessee's expense (i) if Lessee is permitted (unless otherwise requested by the Indemnitee) by Applicable Laws and Regulations, timely file such report, return or statement in its own name or (ii) if such report, return or statement is required to be in the name of or filed by such Indemnitee or the Indemnitee otherwise requests that such report, return or statement be filed in the name of or by such Indemnitee, Lessee shall prepare such report, return or statement for filing by such Indemnitee in such manner as shall be reasonably satisfactory to such Indemnitee and send the same to the Indemnitee for filing no later than 15 days prior to the due date therefor. In any case in which the Indemnitee will file any such report, return or statement, Lessee shall, upon written request of such Indemnitee, provide such Indemnitee with such information as is reasonably necessary to allow the Indemnitee to file such report, return or statement. Notwithstanding the foregoing, Lessee shall not be required to prepare or file any income tax return or franchise tax return of any Indemnitee.

Section 11.3. Withholding Taxes. (a) (x) Agent shall withhold any Taxes required by Applicable Laws and Regulations to be withheld on any payment to Lessor or any Assignee, except to the extent that Lessor or such Assignee has furnished to Agent the information set forth in Section 11.3(a)(y) entitling such Person to an exemption from withholding Taxes. Except to the extent set forth in Section 11.6, the amount payable to Lessor or any Assignee shall be reduced by the amount of any withholding Taxes required to be withheld by Agent pursuant to the preceding sentence and Lessee and Agent shall have no liability or obligation to Lessor or such Assignee with respect to any such withholding Taxes, except to the extent that the Agent is required to withhold such

withholding Taxes as the result of a change in Applicable Laws and Regulations (only if such change in Applicable Laws and Regulations occurs after Lessor or the relevant Assignee has become a party to this Lease or the Lessor Assignment Agreement, as applicable), in which case Lessee shall be responsible for, and shall indemnify and hold harmless Agent (without duplication of any indemnification required in Section 11.2(a)) on a Grossed-Up Basis against, any claims regarding such withholding taxes made against the Agent, to the extent, but only to the extent, Agent has actually paid funds to a taxing authority with respect to such withholding Taxes or receives a demand for such payments from any taxing authority. In accepting and carrying out its duties with respect to withholding Taxes pursuant to this Section 11.3, Agent shall act as the duly authorized agent of Lessee to act on behalf of Lessee under the withholding provisions of Chapter 3 of the Code. Lessee shall file notice of such appointment with the Director of Foreign Operations District of Internal Revenue Service in accordance with Treas. Reg. §1.1441-7(b). Such agency shall terminate in the event that Applicable Laws and Regulations are amended so as to release Lessee of the obligation to withhold Taxes with respect to payments made by Lessee to Agent under this Lease and in any event upon termination or expiration of this Lease.

(y) Lessor and each Assignee (whether now or hereafter a party to this Lease or the Lessor Assignment Agreement, as applicable) that is not incorporated under the laws of the United States of America or a state thereof shall: (1) deliver to Lessee and Agent (A) two (2) duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI or successor applicable form, as the case may be, and (B) an Internal Revenue Service Form W-8 or W-9 or successor applicable form; (2) deliver to Lessee and Agent after written request therefor two (2) further copies of such forms or other appropriate certification of such forms on or before the date that such form expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form delivered to Lessee and Agent; and (3) obtain such extensions of time for filing and renew such forms and certifications thereof as may reasonably be requested in writing by Lessee, unless any Change in Law has occurred prior to the date on which any such delivery otherwise would be required which renders any such form inapplicable or which would prevent Lessor or such Assignee from duly completing and delivering any such forms and Lessor or such Assignee so advises the Lessee and the Agent.

(b) If and to the extent (A) Agent has in good faith attempted to comply with its obligation to withhold Taxes in accordance with clause (a) and (B) Lessor and each Assignee to which Section 11.3(a)(y) applies has complied therewith, and a claim regarding withholding Taxes is made against Agent, as between Lessee and Agent, Lessee shall be responsible for, and Lessee shall indemnify and hold harmless Agent (without duplication of any indemnification required by Section 11.2(a)) on a Grossed-Up Basis against, such claim to the extent, but only to the extent, Agent has actually paid funds to a taxing authority with respect to such withholding taxes or receives a demand for such payment from any taxing authority.

(c) Except with respect to withholding Taxes payable by Lessee pursuant to Section 11.4, Lessor and each Assignee agrees to reimburse Agent for any withholding Taxes for which Agent becomes liable and to reimburse Lessee for any Taxes or other amounts paid by Lessee pursuant to clause (b) hereof.

(d) For purposes of determining whether withholding Taxes apply to payments under this Lease, it shall be assumed that this Lease constitutes a loan for United States Federal income tax purposes (as is the intention of the parties).

Section 11.4. Increased Costs. (a) If on or after the Delivery Date, the adoption of any applicable law, rule or regulation, or any change in any applicable law, rule or regulation, or any change in the interpretation or administration thereof (each such event being a “*Change in Law*”) by any Governmental Agency, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by Lessor or any Assignee with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency:

(i) shall subject Lessor or such Assignee to any tax, duty or other charge with respect to its investment made hereunder or under the Lessor Assignment Agreement, as applicable, or shall change the basis of taxation of payments to Lessor or such Assignee of Rent or any other amounts due under the Operative Documents in respect of its investment hereunder (or under the Lessor Assignment Agreement, as applicable (except for (A) franchise taxes, taxes or other charges related to the general authority of Lessor or such Assignee to do business or taxes on the overall income of Lessor or such Assignee imposed by the jurisdiction where Lessor or such Assignee is incorporated (or any political subdivision thereof) or where it is managed or controlled, or (B) withholding taxes imposed under the laws of any jurisdiction); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System, but excluding, with respect to any funding by Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, which is determined on a LIBO Rate basis, any such requirement with respect to which Lessor or such Assignee is entitled to compensation pursuant to clause (d) below), special deposit, insurance assessment or similar requirement against assets of, deposits with or for the account of, or credit extended by, Lessor or such Assignee or shall impose on Lessor or on the London interbank market any other condition affecting the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable;

and the result of any of the foregoing is to increase the cost to Lessor or such Assignee of making or maintaining its investment made hereunder or under the Lessor Assignment Agreement, as applicable, or to reduce the amount of any sum received or receivable by Lessor or such Assignee under this Lease or under the Lessor Assignment Agreement, as applicable, by an amount deemed by Lessor or such Assignee to be material, then, within 15 days after reasonably detailed written demand by Lessor or such Assignee (with a copy to Agent), Lessee shall pay to Lessor or such Assignee, as applicable, as Supplemental Rent, such additional amount or amounts as will compensate Lessor or such Assignee for such increased cost or reduction; *provided, however*, that Lessee shall have no obligation to make any payment to any demanding party under this Section on account of any such increased costs unless Lessee

receives notice of such increased costs from the demanding party within twelve (12) months after they are incurred or realized.

(b) IF LESSOR OR ANY ASSIGNEE SHALL HAVE DETERMINED THAT ANY APPLICABLE LAW, RULE, GUIDELINE OR REGULATION REGARDING CAPITAL ADEQUACY, OR ANY CHANGE THEREIN, OR ANY CHANGE IN THE INTERPRETATION OR ADMINISTRATION THEREOF BY ANY GOVERNMENTAL AGENCY, CENTRAL BANK OR COMPARABLE AGENCY CHARGED WITH THE INTERPRETATION OR ADMINISTRATION THEREOF, OR ANY REQUEST OR DIRECTIVE REGARDING CAPITAL ADEQUACY (WHETHER OR NOT HAVING THE FORCE OF LAW) OF ANY SUCH AUTHORITY, CENTRAL BANK OR COMPARABLE AGENCY (A "REGULATORY REQUIREMENT"), HAS OR WOULD HAVE THE EFFECT OF REDUCING THE RATE OF RETURN ON CAPITAL OF LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE AS A CONSEQUENCE OF LESSOR'S OR SUCH ASSIGNEE'S OBLIGATIONS UNDER THE OPERATIVE DOCUMENTS TO A LEVEL BELOW THAT WHICH LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE COULD HAVE ACHIEVED BUT FOR SUCH REGULATORY REQUIREMENT (TAKING INTO CONSIDERATION ITS POLICIES WITH RESPECT TO CAPITAL ADEQUACY) BY AN AMOUNT DEEMED BY LESSOR OR SUCH ASSIGNEE TO BE MATERIAL, THEN FROM TIME TO TIME, WITHIN 15 DAYS AFTER REASONABLY DETAILED WRITTEN DEMAND BY LESSOR OR SUCH ASSIGNEE (WITH A COPY TO AGENT), LESSEE SHALL PAY TO LESSOR OR SUCH ASSIGNEE, AS SUPPLEMENTAL RENT, SUCH ADDITIONAL AMOUNT OR AMOUNTS AS WILL COMPENSATE LESSOR (OR ITS PARENT) OR SUCH ASSIGNEE FOR THE PORTION OF ANY SUCH REDUCTION; *PROVIDED, HOWEVER*, THAT LESSEE SHALL HAVE NO OBLIGATION TO MAKE ANY PAYMENT TO LESSOR OR ANY ASSIGNEE UNDER THIS SECTION ON ACCOUNT OF ANY SUCH INCREASED COSTS UNLESS LESSEE RECEIVES NOTICE OF SUCH INCREASED COSTS FROM LESSOR OR SUCH ASSIGNEE WITHIN TWELVE (12) MONTHS AFTER THEY ARE INCURRED OR REALIZED.

(c) Lessor and each Assignee will promptly notify Lessee and Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle Lessor or such Assignee to compensation pursuant to this Section 11.4 and will use reasonable commercial efforts to avoid the need for, or reduce the amount of, such compensation if, in the reasonable judgment of Lessor or such Assignee, such efforts would not result in any economic or regulatory disadvantage to Lessor or such Assignee or be contrary to Lessor's or such Assignee's normal banking procedures. A certificate of Lessor or any Assignee claiming compensation under this Section 11.4 and setting forth the additional amount or amounts to be paid to it hereunder, accompanied by a computation in reasonable detail of such amount or amounts, shall be conclusive if prepared in good faith and on a reasonable basis. In determining such amount, Lessor and such Assignee may use any reasonable averaging and attribution methods.

(d) For so long as Lessor or any Assignee shall be required pursuant to the requirements of the Board of Governors of the Federal Reserve System to maintain reserves with respect to liabilities or assets consisting of or including "Eurocurrency liabilities" (or any other category of liabilities which includes deposits by reference to which the rate on the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, on which is determined on a LIBO Rate basis, is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of Lessor or such Assignee to United States residents), then Lessor or such Assignee may require Lessee to pay, contemporaneously with each payment of Basic Rent, additional yield on the investment of

Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, at a rate per annum determined by Lessor or such Assignee up to but not exceeding the excess of (a)(i) the applicable LIBO Rate divided by (ii) one minus the LIBOR Reserve Percentage over (b) the applicable LIBO Rate. If Lessor or any Assignee wishes to require payment of such additional yield, Lessor or such Assignee (x) shall so notify Lessee and Agent in a reasonably detailed, written notice, in which case such additional yield on the investment of Lessor or such Assignee made hereunder or under the Lessor Assignment Agreement, as applicable, shall be payable to Lessor or such Assignee at the place indicated in such notice with respect to each Rent Period commencing at least four Business Days after the giving of such notice and (y) shall notify Lessee at least four Business Days prior to each date on which yield is payable on such investment of the amount then due it under this clause.

Section 11.5. Funding Losses. Lessee shall pay to Lessor and each Assignee, as applicable, as Supplemental Rent, such amounts as may be necessary to reimburse Lessor or such Assignee for any loss or expense incurred (including any loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by Lessor or such Assignee to make, continue or maintain any portion of its investment hereunder or under the Lessor Assignment Agreement, as applicable, on a LIBO Rate basis) as a result of any (i) payment of all or any portion of the Lease Balance for any reason on a date other than a Payment Date, including, without limitation, by reason of acceleration, or (ii) the failure of the transaction contemplated by Article II to occur on the Delivery Date if Lessee has delivered the Delivery Date Notice and such failure is the result of any action or inaction by Lessee (the amount of such loss or expense, the "*Break Funding Amount*"). Lessor and each Assignee shall promptly notify Lessee and Agent in writing of the amount of any claim under this Section 11.5, the reason or reasons therefor and the additional amount required fully to compensate Lessor or such Assignee for such loss or expense. Such written notice (which shall include calculations in reasonable detail) shall, in the absence of manifest error, be conclusive and binding on Lessee.

Section 11.6. Gross Up. With respect to any payment to be received under any other provision of this Article XI, the amount of such payment shall be increased to an amount such that after deduction of the amount of all Taxes and impositions required to be paid by the recipient of such payment (including any Taxes otherwise excluded from the definition of Impositions hereunder) is equal to the payment otherwise required to be made hereunder (net of any Tax savings then actually realized by such Indemnitee with respect to any payment that is the subject of indemnification) ("*Grossed-Up Basis*").

Section 11.7. Nonconformance Indemnity. Notwithstanding any provision to the contrary in this Article XI, in the event that (a) Lessee elects the Sale Option, and (b) after paying to Lessor, any amounts due under Article XV hereof, the Lease Balance shall not have been reduced to zero, then the Lessee shall deliver to Lessor a report from an appraiser selected by it (at the direction of the Agent) and approved by the Lessee (such approval not to be unreasonably withheld), in form and substance reasonably satisfactory to the Agent and using methods reasonably satisfactory to the Agent. In the event that the above-described appraisal establishes that (x) the actual Fair Market Value of the

Items of Equipment as of the Lease Expiration Date is less than the Fair Market Value of the items of Equipment anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g), and (y) the reason for the actual Fair Market Value of the Items of Equipment as of the Lease Expiration Date being less than the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) was due, in whole or in part, to any of the following events, circumstances or conditions, whether or not permitted hereunder: (i) the failure to maintain the Items of Equipment as required by the Lease and the other Operative Documents (including the failure to comply with all Environmental Laws), and in at least as good a condition as it was in on the Delivery Date, ordinary wear and tear excepted; (ii) the carrying out of any modifications, improvements or alterations or the failure to undertake, in accordance with Section 15.4(b), any modifications, improvements or alterations; (iii) excessive use of any Item of Equipment; or (iv) any defect, exception, restriction or other encumbrance on or title to the Items of Equipment arising after the Delivery Date, then Lessee shall promptly pay over to Lessor on the Lease Expiration Date the lesser of (1) the outstanding Lease Balance and (2) the amount of the shortfall between the Fair Market Value of the Items of Equipment as of the Lease Expiration Date and the Fair Market Value anticipated for such date in the Appraisal delivered pursuant to Section 3.1(g) demonstrated in the report of the appraiser described above to be attributable to any of the events or circumstances described in clauses (i) through (iv) of this Section 11.7.

Section 11.8. Payment of Indemnities. Unless the Operative Documents provide otherwise, any payment of Supplemental Rent constituting indemnity payments shall be due and payable within ten days of demand and compliance by the Lessor and Agent with any notice or other requirements, if any, they are to satisfy in accordance with the provision that gives rise to the indemnity obligation.

ARTICLE XII

LEASE EVENTS OF DEFAULT; REMEDIES

Section 12.1. Lease Events of Default. The following shall constitute events of default (each a “*Lease Event of Default*”) hereunder; *provided* that for purposes of Article IV and subsection (b), (c)(v), (c)(vi), (d), (h)(ii), (i), (j) or (k) of this Section 12.1, to the extent Lessor shall exercise any discretion in making a determination that a Lease Event of Default has occurred thereunder, Lessor shall exercise such discretion in a commercially reasonable manner:

(a) *Payments.* Lessee shall fail to pay (i) when due any amount payable on the Lease Expiration Date, or (ii) within five (5) Business Days after the same becomes due, any installment of Basic Rent (other than Basic Rent payable on the Lease Expiration Date) or any other amount payable by Lessee under any of the Operative Documents.

(b) *Representations and Warranties.* Any representation or warranty by Lessee made herein or which is contained in any certificate, document or financial or other statement by Lessee or any Responsible Officer of Lessee, furnished at any time

under or in connection with this Lease or any other Operative Document, is false, incorrect or inaccurate in any material respect, on or as of the date made; *provided, however*, that, other than willful misrepresentations or willful breaches of warranties, such misrepresentation or breach of warranty shall not constitute a Lease Event of Default if it is capable of being remedied and Lessee remedies such misrepresentation or breach of warranty within thirty (30) days after the earlier of (i) Lessee's written acknowledgment of such misrepresentation or breach of warranty or (ii) any written notice by Lessor or Agent to Lessee of such misrepresentation or breach of warranty.

(c) *Failure by Lessee to Perform Certain Covenants.* Lessee shall fail to perform or observe any term, covenant or agreement contained in (i) Section 8.1(c), (ii) Section 8.6, (iii) Section 9.2, (iv) Section 9.3, (v) Article XV, (vi) Section 18.2(c) or 18.2(e), (vii) any other provision of Section 18.2 or (viii) Section 18.3.

(d) *Failure by Lessee to Perform Other Covenants.* Lessee shall fail to perform or observe any other term, covenant or agreement contained in this Lease or any other Operative Document on its part to be performed or observed and any such failure shall remain unremedied for a period of thirty (30) days after the earlier of (i) Lessee's written acknowledgment of such failure or (ii) any written notice by Lessor or Agent to Lessee of such failure; *provided, however*, that, except with respect to any failure to perform or observe the covenants or agreements contained in Sections 8.1, 8.2, 8.3, 8.4, 8.5, 8.7 or 9.1 hereof, such failure shall not constitute a Lease Event of Default if it is capable of being remedied and Lessee diligently proceeds to remedy such failure and completes such remediation within 180 days after such written acknowledgment or notice.

(e) *Insolvency; Voluntary Proceedings.* Lessee or any of its Significant Subsidiaries shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated in full or in part, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it or (vii) take any action for the purpose of effecting any of the foregoing.

(f) *Involuntary Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Lessee or any of its Significant Subsidiaries or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Lessee or any of its Significant Subsidiaries or the debts thereof under any bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered

or such proceeding shall not be dismissed or discharged within sixty (60) days of commencement.

(g) *Cross-Default.* (i) Lessee or any of its Significant Subsidiaries shall fail to make any payment on account of any Indebtedness of such Person (other than the Lessee Obligations) when due (whether at scheduled maturity, by required prepayment, upon acceleration or otherwise) and such failure shall continue beyond any period of grace provided with respect thereto, if the aggregate amount of such Indebtedness outstanding exceeds \$10,000,000, (ii) a "Lease Event of Default" shall exist under Lease A or (iii) Lessee or any of its Significant Subsidiaries shall otherwise fail to observe or perform any agreement, term or condition contained in any agreement or instrument of such Person pursuant to which \$10,000,000 or more of Indebtedness is outstanding (other than the Lessee Obligations), or any other event shall occur or condition shall exist, and such failure, event or condition shall continue beyond any period of grace provided with respect thereto, if the effect of such failure, event or condition is to cause Indebtedness of Lessee or any of its Significant Subsidiaries (other than the Lessee Obligations) to become due; *provided, however*, that no Lease Event of Default shall have occurred under this clause (iii) if the Agent, Lessor, Assignees or their Affiliates have the ability to control (by vote or otherwise), either collectively or individually, whether such Indebtedness shall become due.

(h) *Judgments.* (i) A final nonappealable judgment or order for the payment of money against Lessee or any of its Significant Subsidiaries in an aggregate amount of \$25,000,000 or more in excess of amounts covered by third-party insurance shall remain unpaid for ninety (90) days following the due date for such payment; or (ii) any non-monetary judgment or order shall be rendered against Lessee or any of its Significant Subsidiaries which has or would reasonably be expected to have a Material Adverse Effect.

(i) *Process Issued.* A warrant of attachment, execution, distraint, or similar process against any substantial part of the assets of Lessee or any of its Significant Subsidiaries is issued which remains undismissed or undischarged for a period of thirty (30) days, if as a result thereof there is reasonably expected to occur a Material Adverse Effect.

(j) *Seizure.* All or a material part of the undertaking, assets, rights or revenues of Lessee or any of its Significant Subsidiaries are seized, nationalized, expropriated or compulsorily acquired by or under the authority of any Governmental Authority.

(k) *ERISA* (i) An ERISA Event shall occur with respect to a Pension Plan which has resulted or could reasonably be expected to result in liability of Lessee under Title IV of ERISA to the Pension Plan or PBGC in an aggregate amount in excess of \$10,000,000; or (ii) the commencement or increase of contributions to, or the adoption of or the amendment of a Pension Plan by Lessee which has resulted or could reasonably be

expected to result in an increase in Unfunded Pension Liability among all Pension Plans in an aggregate amount in excess of \$10,000,000.

(l) *Operative Documents.* Any Operative Document to which Lessee is a party or any material term thereof shall cease to be, or be asserted by Lessee or any of its Significant Subsidiaries not to be, a legal, valid and binding obligation of Lessee or such Significant Subsidiary enforceable in accordance with its terms.

(m) *Dissolution, Etc.* Lessee or any of its Significant Subsidiaries shall (i) liquidate, wind up or dissolve (or suffer any liquidation, wind-up or dissolution), except to the extent expressly permitted by Section 18.2(c)(i) hereof, (ii) suspend its operations other than in the ordinary course of business, or (iii) take any corporate action to authorize any of the actions or events set forth above in this subparagraph (m).

(n) *[Reserved]*.

(o) *Material Adverse Effect.* A Material Adverse Effect shall occur or exist.

Section 12.2. Remedies. (a) Upon the occurrence of a Lease Event of Default, Lessor shall have the right, at its sole option, to appoint Agent as its attorney in fact to exercise Lessor's remedies set forth herein and in the other Operative Documents and as otherwise permitted by Applicable Laws and Regulations. Lessor shall provide written notice of such appointment to Lessee. If any Lease Event of Default exists, Agent or Lessor shall have the rights, options and remedies set forth below and Agent or Lessor may exercise in any order one or more or all of the following remedies, to the extent permitted under Applicable Laws and Regulations (it being understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute): (i) declare the entire outstanding Lease Balance to be due and payable, together with accrued and unpaid Rent and any other amounts payable under the Operative Documents (without double counting); (ii) proceed by appropriate court action or actions either at law or in equity, to enforce the declaration of the amounts described in clause (i) above, the performance by Lessee of the applicable covenants of this Lease and the other Operative Documents (including but not limited to Section 14.2 hereof) or to recover damages for the breach thereof; (iii) terminate this Lease by notice in writing to Lessee, but Lessee shall remain liable as hereinafter provided; (iv) enforce the Lien given hereunder pursuant to the UCC or any other law; (v) enter upon the premises where any of the Lessee Collateral may be and take possession of all or any of such Lessee Collateral and exercise any of its rights with respect thereto; (vi) require Lessee to assemble and return each Item of Equipment as provided below; and (vii) avail itself of the rights, options and remedies of a secured party under the UCC (regardless of whether the UCC or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) or any other law.

(b) (i) If Agent or Lessor exercises the option set forth in clause (a)(vi) above, Lessee shall, at its own expense, (i) forthwith deliver (to the extent permitted under Applicable Laws and Regulations) exclusive possession of such Items of Equipment to Agent or Lessor, as

applicable, at a location or locations designated by Lessor in the 48 contiguous United States, together with a copy of an inventory list of such Items of Equipment then subject to this Lease, all then current plans, specifications and operating, maintenance and repair manuals in the possession of Lessee and its Affiliates and relating to such Items of Equipment that have been received or prepared by Lessee, appropriately protected and in the condition required by Article VIII hereof (and in any event in condition to be placed in immediate revenue service) and free and clear of all Liens other than Lessor Liens and (ii) otherwise comply with the provisions of clauses (i) through (iv) of Section 15.4(b). In addition, Lessee shall, for 180 days after redelivery of such Items of Equipment, at Lessee's expense, (i) maintain (or cause to be maintained) such Items of Equipment in the condition required by Article VIII and free and clear of all Liens other than Lessor Liens, (ii) store such Items of Equipment in accordance with all manufacturer's recommendations, and (iii) keep all of such Items of Equipment insured in accordance with Section 9.2. This paragraph shall survive termination of this Lease.

(ii) Upon acceleration of the Lease Balance, the Lessor and each Series A Assignee, as applicable, shall have the rights and remedies with respect to the Series A Cash Collateral, Series C Cash Collateral and Lessor's Interest Related Cash Collateral, as applicable, as set forth in the Lessor Assignment Agreement, Cash Collateral Agreement and the Control Agreements.

(c) Following the foreclosure of Lessee's interest in the Equipment and the other Lessee Collateral, Lessee shall take such action as Lessor or Agent shall reasonably request in order to notify each sublessee of any Item of Equipment of such foreclosure and the succession of Agent, Lessor or its designee to ownership and operation thereof.

(d) Notwithstanding the foregoing, if any Lease Event of Default described in Section 12.1(e) or (f) shall have occurred and be continuing, then the entire outstanding Lease Balance and all accrued and unpaid Rent and other amounts payable under the Operative Documents (without double counting) shall automatically and immediately become due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

Section 12.3. Sale of Equipment. In addition to the remedies set forth in Section 12.2, if any Lease Event of Default shall occur Agent or Lessor may, but are not required to, sell the Equipment or any portion thereof in one or more sales. Lessor or Agent may purchase all or any part of the Equipment at such sale. Lessee acknowledges that sales for cash or on credit to a wholesaler, retailer or user of such Equipment, or at public or private auction, are all commercially reasonable. Any notice required by law of intended disposition by Lessor or Agent shall be deemed reasonably and properly given if given at least 10 days before such disposition.

Section 12.4. Application of Proceeds. All payments received and amounts held or realized by Agent at any time when a Lease Event of Default shall be continuing as well as all payments or amounts then held or thereafter received by Agent and the proceeds of sale pursuant to Section 12.3 shall be distributed upon receipt by Lessor for distribution in accordance with Article XXI hereof.

Section 12.5. Power of Attorney. Lessee unconditionally and irrevocably appoints Lessor and Agent as its true and lawful attorney-in-fact, with full power of substitution, to the extent permitted by Applicable Laws and Regulations, in its name and stead and on its behalf, solely for the purpose of effectuating any sale, assignment, transfer or delivery under this Article XII, if a Lease Event of Default occurs and is continuing, whether pursuant to foreclosure or power of sale or otherwise, and in connection therewith and during a Lease Event of Default, to execute and deliver all such deeds, bills of sale, assignments, releases (including releases of this Lease on the records of any Governmental Authority) and other proper instruments as Lessor may reasonably consider necessary or appropriate. Lessee ratifies and confirms all that such attorney or any substitute shall lawfully do by virtue hereof. If requested by Lessor, Agent or any purchaser, Lessee shall ratify and confirm any lawful sale, assignment, transfer or delivery by executing and delivering to Lessor, Agent or such purchaser, all deeds, bills of sale, assignments, releases and other proper instruments to effect such ratification and confirmation as may be designated in any such request.

Section 12.6. Remedies Cumulative; Consents. To the extent permitted by, and subject to the mandatory requirements of, Applicable Laws and Regulations, each and every right, power and remedy herein specifically given to Lessor and Agent or otherwise in this Lease shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by Lessor or Agent, and the exercise or the beginning of the exercise of any power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any right, power or remedy. Lessor's or Agent's consent to any request made by Lessee shall not be deemed to constitute or preclude the necessity for obtaining Lessor's or Agent's consent in the future to all similar requests. To the extent permitted by Applicable Laws and Regulations, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise that may require Lessor or Agent to sell, lease or otherwise use the Equipment, any Item of Equipment or any Part thereof in mitigation of Lessor's or Agent's damages upon the occurrence of a Lease Event of Default or that may otherwise limit or modify any of Lessor's or Agent's rights or remedies under this Article XII.

ARTICLE XIII

RIGHT TO CURE

If any Lease Event of Default shall be continuing and in Agent's reasonably exercised judgment Lessee is not acting diligently and appropriately to cure such Lease Event of Default, Lessor may, but shall not be obligated to, on five (5) Business Days' prior notice to Lessee (except in the event of an emergency, in which case only one Business Day's prior notice shall be required), pay or perform the obligation giving rise to such Lease Event of Default, and neither Agent nor Lessor shall thereby be deemed to have waived any default caused by such failure to cure, and the amount of such payment and the amount of the expenses of Lessor and Agent (including reasonable attorneys' fees and expenses) incurred in connection with such

payment or performance (to the extent notice has been given with respect thereto), together with interest thereon at the Overdue Rate, shall be deemed Supplemental Rent, payable by Lessee to Agent within five (5) Business Days after demand and delivery to Lessee of such notice.

ARTICLE XIV

EARLY TERMINATION OPTION AND OBLIGATION TO PURCHASE

Section 14.1. Early Termination Option. (a) Subject to the first sentence of Section 15.2 and the limitations contained in Section 14.1(b), on any day (the “*Early Termination Payment Date*”) after the Delivery Date and so long as Lessee has not delivered written notice that it intends to exercise the Sale Option, Lessee may, at its option, upon at least 30 days advance written notice to Agent and Lessor, purchase one or more Items of Equipment for a purchase price equal to the Early Termination Purchase Amount plus any Break Funding Amounts, if any (the “*Early Termination Option*”). Upon the payment of the Early Termination Purchase Amount by Lessee in accordance with the provisions of the preceding sentence, Lessor shall execute and deliver to Lessee such documents as may be reasonably requested to release or evidence the release of the Item or Items of Equipment subject to the Early Termination Option from the terms and scope of this Lease and the other Operative Documents (without representations or warranties, except that the Items of Equipment are free and clear of Lessor Liens attributable to Lessor), in such form as may be reasonably requested by Lessee, all at Lessee’s sole cost and expense.

If Lessee has elected the Early Termination Option with respect to one or more Items of Equipment, Lessee shall continue to make all payments of Rent due under this Lease until and including the Early Termination Payment Date. Upon payment of the Early Termination Purchase Amount in respect of such Items of Equipment together with all Basic Rent and Supplemental Rent then due and owing, the remaining scheduled Basic Rent payments under this Lease shall be reduced by an amount equal to the product of the scheduled amount of each such remaining Basic Rent payment (determined in each case prior to the receipt of such Early Termination Purchase Amount), multiplied by the Item Value Fraction of the Item or Items of Equipment subject to such early termination. In the event Lessee shall elect the Early Termination Option with respect to all of the Items of Equipment, the obligation of Lessee to pay Rent hereunder shall cease and the term of this Lease shall end on the date of such payment.

(b) Lessee shall not be entitled to elect the Early Termination Option with respect to less than all of the Items of Equipment then subject to this Lease unless:

(i) after giving effect to such Early Termination Option and all Early Termination Options previously exercised by Lessee, the aggregate Early Termination Purchase Amount paid with respect to Items of Equipment during the Lease term shall not exceed 25% of the aggregate Purchase Price of all Items of Equipment as of the Delivery Date; and

(ii) the Lessee shall have delivered an appraisal at Lessee's sole expense to the Agent which is reasonably satisfactory in scope and form to the Agent (which has been prepared by an appraiser selected by the Agent and approved by Lessee (such approval not to be unreasonably withheld)) that confirms that, after giving effect to such Early Termination Option, the End of Term Value Ratio of the Items of Equipment remaining subject to this Lease is not less than the End of Term Value Ratio of all Items of Equipment originally subject to this Lease (as set forth in the Appraisal).

Section 14.2. Required Purchase. So long as Agent or Lessor has not exercised any other remedy inconsistent therewith, Lessee shall be obligated to purchase all of the Items of Equipment for the Purchase Amount automatically and without notice upon the occurrence of any Lease Event of Default described in clause (e)(vi) or (f) of Section 12.1 and, within five (5) Business Days after notice from Agent or Lessor, upon the occurrence of any other Lease Event of Default, and upon receipt of the Purchase Amount, the Items of Equipment shall be transferred to Lessee as set forth in the last sentence of the first paragraph of Section 14.1(a).

ARTICLE XV

LEASE TERMINATION

Section 15.1. Lessee's Options. Not later than 360 days nor earlier than 390 days in the case of the Sale Option or not later than 120 days nor earlier than 150 days in the case of the Purchase Option prior to the last day of the Lease Term, Lessee shall, by delivery of written notice to Agent and the Lessor, exercise one of the following options:

(a) Subject to Section 15.2, including, without limitation, the first sentence thereof, purchase for cash for the Purchase Amount all, but not less than all, of the Items of Equipment then subject to this Lease on the last day of the Lease Term (the "*Purchase Option*"); and if Lessee shall have elected to purchase the Items of Equipment, Lessor shall, upon the payment to Agent of the Purchase Amount then due and payable by Lessee under the Operative Documents, transfer all of Lessor's right, title and interest in and to the Items of Equipment "as-is" without recourse or warranty (except as to the absence of Lessor Liens); or

(b) Subject to Section 15.2, including, without limitation, the first sentence thereof, sell as non-exclusive agent, on behalf of Lessor, for cash to a purchaser or purchasers all, but not less than all, of the Items of Equipment then subject to this Lease on the last day of the Lease Term (the "*Sale Option*"). Lessee's right to sell the Items of Equipment pursuant to the Sale Option shall be conditioned upon and subject to the fulfillment by Lessee of each of the terms and conditions set forth in this Article XV. Simultaneously with a sale on or prior to the last day of the Lease Term pursuant to the Sale Option, Lessee shall pay or cause to be paid to Agent, (i) the Sale Recourse Amount, (ii) the gross proceeds of the sale of the Equipment, without deductions or expense reimbursements (the "*Sale Proceeds*"), and (iii) all accrued and unpaid Rent and

all other amounts due under the Operative Documents and, if such sale occurs prior to the last day of the Lease Term, all Capital Rent not previously paid by Lessee and which would have become due under the Operative Documents on or before the last day of the Lease Term. If the amounts received by the Agent pursuant to the immediately preceding sentence exceed the aggregate outstanding Lease Balance and all other amounts due and owing by Lessee under the Operative Documents, Agent will pay to Lessee such excess amount. The amount payable pursuant to this Section 15.1(b) shall in no event be construed to limit any other obligation of Lessee under the Operative Documents, including, without limitation, pursuant to Article XI. All amounts paid to Agent pursuant to this Section 15.1(b) shall be distributed in accordance with Article XXI hereof.

Section 15.2. Election of Options. The Early Termination Option and end of term option elected by Lessee under (i) Section 14.1(a), but solely with respect to the purchase of all, but not less than all, of the Equipment and (ii) Section 15.1 of this Lease, respectively, must be the same as the option elected (or deemed to be elected) by Lessee under the corresponding section of the Lease A. Lessee's election (or deemed election) of the Purchase Option shall be irrevocable at the time when made by Lessee. In the event Lessee fails to make a timely election under Section 15.1 hereof, Lessee shall be deemed to have elected the Purchase Option. Lessee may not elect the Sale Option if there exists on the date the election is made a Lease Default or a Lease Event of Default. In addition, the Sale Option shall automatically be revoked if there exists a Lease Default or Lease Event of Default at any time after the Sale Option is properly elected (whether or not such Lease Default or Lease Event of Default is cured) or Lessee fails to comply with each of the other terms and conditions set forth in this Article XV, in which case Lessee shall be required to purchase on the last day of the Lease Term all of the Items of Equipment pursuant to the Purchase Option and Lessor shall be entitled to exercise all rights and remedies provided in Article XII.

Section 15.3. [Reserved].

Section 15.4. Sale Option Procedures. (a) If Lessee elects the Sale Option, Lessee shall use its reasonable commercial efforts to obtain the highest all cash purchase price for the Items of Equipment. All costs related to such sale and delivery (including during the Extended Remarketing Period), including, without limitation, the cost of sales agents, removal of the Items of Equipment, delivery of documents and the Items of Equipment to any location designated by a buyer or prospective buyer, legal costs, costs of notices, commissions, escrow fees, filing fees, appraisal fees, license fees, transfer taxes, any advertisement or other similar costs, or other information and of any parts, configurations, repairs or modifications desired by a buyer or prospective buyer, re-installation of the Items of Equipment in the manner and at the location or locations required by a buyer, the cost of storage and insurance during the Extended Remarketing Period as provided in Section 15.6(b) and the costs associated with the satisfaction of the conditions set forth in Section 15.4(b) below shall, except as provided in the following provisos, be borne entirely by Lessee, without regard to whether such costs were incurred by Lessor, Lessee or any potentially qualified buyer, and shall in no event be paid from the Sale Proceeds for the benefit of Lessee; *provided*, that Lessee shall in no event be liable for costs (other than de-installation costs, which shall in all cases be borne by Lessee) described in this clause (a) which, in aggregate, exceed

\$4,535,000; *provided, further* that in the event that Lessor pays any of the costs described in this clause (a) (other than de-installation costs, which shall in all cases be borne by Lessee) as a result of such costs (other than de-installation costs, which shall in all cases be borne by Lessee) aggregating in excess of \$4,535,000, Lessor shall be entitled to reimbursement of such payments from the Sale Proceeds prior to the Agent returning any excess Sale Proceeds to the Lessee pursuant to Section 15.1(b), but in no event shall Lessor be entitled to make any claim against Lessee under Article XI for reimbursement or indemnification of such payments made by Lessor. Neither Agent nor Lessor shall have any responsibility for procuring any purchaser. If, nevertheless, Agent or Lessor undertakes any sales efforts, Lessee shall, subject to the preceding sentence, promptly reimburse Agent and/or Lessor for any charges, costs and expenses incurred in such effort, including any allocated time charges, costs and expenses of internal counsel or other attorneys' fees. Upon a sale pursuant to the Sale Option, the Items of Equipment shall be in at least the condition required by Section 12.2(b). Any purchaser or purchasers of the Items of Equipment shall not be an Affiliate of Lessee or have any understanding or arrangement with Lessee regarding the future use of the Items of Equipment. On the last day of the Lease Term, so long as no Lease Event of Default or Lease Default exists: (i) Lessee shall transfer all of Lessee's right, title and interest in the Items of Equipment, or cause the Items of Equipment to be so transferred, to such purchaser or purchasers, if any, in accordance with all of the terms of this Lease; (ii) subject to the simultaneous payment by Lessee of all amounts due under clause (iii) of this sentence, Lessor shall, without recourse or warranty, except as to the absence of Lessor Liens attributable to it, transfer by quitclaim Lessor's right, title and interest in and to the Items of Equipment to such purchaser or purchasers; and (iii) Lessee shall simultaneously pay to Lessor all of the amounts contemplated in Section 15.1(b).

(b) The Lessee's effective exercise and consummation of the Sale Option with respect to the Items of Equipment shall be subject to the due and timely fulfillment of each of the following provisions as to the Items of Equipment as of the dates set forth below:

(i) Lessee shall furnish to Lessor and Agent, on the last day of the Lease Term, a certification from the manufacturer that the Items of Equipment have been calibrated as necessary to be eligible for manufacturer's maintenance program and have been maintained at or modified to meet the latest available version and/or revision levels (assuming the Equipment has been modified as each such prior modification was introduced) of all hardware and software requirements applicable to the specific model of Equipment as deemed necessary by the manufacturer;

(ii) Lessee shall have the Items of Equipment de-installed, packaged and crated by the manufacturer's technicians or service providers certified by the manufacturer, and Lessee shall furnish to Lessor and Agent, a certification from the manufacturer's technicians or service providers certified by the manufacturer that the Items of Equipment are in good condition prior to shipment;

(iii) Lessee shall furnish to Lessor and Agent all applicable and corresponding instruction and service manuals, service and repair records, and descriptive brochures;

(iv) Lessee shall cause the Items of Equipment to be delivered to any location as selected by the purchaser, in a suitable manner which is specifically designed for the transportation of electronic components and equipment and in a manner consistent with the manufacturer's recommendations for transporting and packaging the Items of Equipment;

(v) Lessee shall not enter into any additional Subleases or renew any Subleases with respect to the Items of Equipment following Lessee's election of the Sale Option, and following Lessee's election of the Sale Option, Lessee shall not remove any Permitted Modifications or commence any voluntary Permitted Modifications under Section 8.4 without the prior written consent of the Agent;

(vi) The Lessee shall submit all bids to the Agent, and the Agent will have the right to review the same and to submit any one or more bids. Agent shall have no obligation to accept a bid that is not on an all-cash basis. Provided that there are all-cash bids at such time, Lessee shall deliver to the Agent not less than ninety (90) days prior to the Lease Expiration Date a binding written unconditional (except as set forth below), irrevocable offer (the "*High Bid*") by such purchaser or purchasers offering the highest all-cash bid to purchase all, but not less than all, of the Items of Equipment (unless otherwise agreed to by the Agent). Subject to Agent's rights in the immediately succeeding sentence, Agent shall accept the High Bid in writing within 20 Business Days of receipt thereof by Agent. If Agent in the exercise of its reasonable judgment believes that the Sale Proceeds to be paid to the Agent from a High Bid which the Lessee desires to accept is less than the lesser of (A) the Fair Market Value of the Items of Equipment or (B) the Purchase Amount, then Agent may condition its obligation to accept the High Bid upon Agent's receipt of an appraisal demonstrating that the High Bid is for an amount at least equal to the lesser of (1) the Fair Market Value of the Items of Equipment or (2) the Purchase Amount, as established by such appraisal. In such case then Agent shall promptly following the receipt of such High Bid, engage an independent appraiser, reasonably satisfactory to the Agent and Lessee, at Lessee's expense, to determine (by appraisal methods reasonably satisfactory to the Agent) the Fair Market Value of the Items of Equipment as of the Lease Expiration Date. The selection of the independent appraiser shall be completed within ten (10) Business Days of the receipt by Agent of such High Bid. A copy of such appraisal shall be delivered to Agent not later than 20 Business Days after the selection of the independent appraiser. The appraiser will be instructed to assume that the Items of Equipment are in the condition required by and have been maintained in accordance with this Lease. Any such appraisal shall be at the sole cost and expense of Lessee.

(vii) In connection with any such sale of the Items of Equipment, the Lessee will provide to the purchaser all customary "seller's" indemnities, representations and warranties regarding title, absence of Liens (except Lessor Liens and Liens relating to the interest or rights of Lessee) and the condition of such Items of Equipment. The Lessee shall have obtained, at its cost and expense, all required governmental and regulatory consents and approvals and shall have made all filings as required by Applicable Laws and Regulations in order to carry out and complete the transfer of the Items of

Equipment. Any agreement as to such sale shall be in form and substance reasonably satisfactory to the Agent. If the Lessee properly exercises the Sale Option, then the Lessee shall, upon a sale thereunder, and at its own cost, transfer or cause to be transferred possession of the Items of Equipment to the independent purchaser(s) thereof, in each case by surrendering the same into the possession of such purchaser(s), free and clear of all Liens, other than Lessor Liens, and in the condition required by this Lease, and the Lessee shall execute and deliver to such purchaser(s) at the Lessee's cost and expense a bill of sale with respect to the Items of Equipment, warranting that such Items of Equipment are free and clear of all Liens, other than Lessor Liens, together with an assignment, without warranty of any kind, of Lessee's rights, if any, under any purchase contracts. The Lessee shall, on and within a reasonable time before and up to two years after the Lease Expiration Date, cooperate reasonably with the Agent, Lessor and the purchaser(s) of the Items of Equipment in order to facilitate the purchase and use by such purchaser(s) of the Items of Equipment, which cooperation shall include the following, all of which the Lessee shall do on or before the Lease Expiration Date or as soon thereafter as is reasonably practicable: providing reasonable access to all books and records regarding the maintenance, use and ownership of the Items of Equipment and all know-how, data and technical information regarding the use and maintenance of the Equipment thereto, granting or assigning all licenses necessary for the operation and maintenance of the Items of Equipment, and cooperating reasonably in seeking and obtaining all necessary Governmental Action. The obligations of the Lessee under this paragraph shall survive the expiration or termination of this Lease.

(ix) The Lessee shall, to the extent permitted by Applicable Laws and Regulations, assign, and shall cooperate with all reasonable requests of the Lessor, Agent or the purchaser for obtaining any and all licenses, permits, approvals and consents of any Governmental Authorities or other Persons that are or will be required to be obtained by the Lessor, Agent or such purchaser in connection with its use, operation, control or maintenance of the Items of Equipment in compliance with Applicable Laws and Regulations.

Except as expressly set forth herein, the Lessee shall have no right, power or authority to bind the Lessor or Agent in connection with any proposed sale of the Items of Equipment.

Section 15.5. Certain Obligations Continue. During the period following Lessee's exercise of the Sale Option and until and including the Lease Expiration Date, the obligation of the Lessee under the Lease, including, without limitation, the obligation of Lessee to pay Rent with respect to the Items of Equipment (including the installment of Rent due on the Lease Expiration Date), shall continue undiminished. The Lessor shall have the right, but shall be under no duty, to solicit bids, to inquire into the efforts of the Lessee to obtain bids or otherwise to take action in connection with any such sale, other than as expressly provided in this Article XV.

Section 15.6. Failure to Sell Items of Equipment. If Lessee shall exercise the Sale Option and shall fail to sell the Items of Equipment on the Lease Expiration Date in accordance with Section 15.1(b) and subject

to the provisions of Section 15.4 (other than as a result of Lessee's failure to comply with the provisions of Section 15.1(b) or 15.4, in which case, the last sentence of Section 15.2 shall be operative), then Lessee and Lessor hereby agree as follows:

(a) Lessee shall continue to use reasonable commercial efforts as non-exclusive agent for Lessor to sell the Items of Equipment on behalf of Lessor in accordance with this Section 15.6 for the period (the "*Extended Remarketing Period*") commencing on the Lease Expiration Date and ending on the earlier of (i) the sale of the Items of Equipment in accordance with the provisions of this Section 15.6 or such earlier date as Lessor has received payment in full of the Lease Balance and all accrued and unpaid Rent and (ii) the delivery of a written notice from Lessor to Lessee at any time terminating the Extended Remarketing Period, which notice shall indicate that such termination is being made pursuant to this Section 15.6(a)(ii) and the date such termination shall be effective, which date shall be the Lease Expiration Date if such notice is given prior to the Lease Expiration Date. Without limiting the foregoing, each of the conditions contained in this Article XV shall be applicable to the Extended Remarketing Period and any sale during such period. Lessor's appointment of Lessee as Lessor's nonexclusive agent to use its reasonable commercial efforts to obtain the highest all-cash price for the purchase of the Items of Equipment shall not restrict Lessor's or Agent's right to market or lease the Items of Equipment, to retain one or more sales agents or brokers at Lessee's sole cost and expense.

(b) On the Lease Expiration Date, Lessee shall (i) pay to Lessor the Sale Recourse Amount and all other Rent due and owing hereunder and (ii) at Lessor's request either (A) return possession of the Items of Equipment to Lessor in accordance with Section 15.4(b) and in the condition required by this Lease or (B) de-install, package and crate the Equipment in accordance with Section 15.4(b) of the Lease and insure and store the Equipment in accordance with all manufacturer's recommendations and this Lease for the Extended Remarketing Period; *provided* that such insurance and storage shall be at Lessee's expense for only the first 180 days of the Extended Remarketing Period. Thereafter, this Lease shall terminate except as provided herein and Lessee shall have no further obligation to pay Rent. Following the Lease Expiration Date, Lessor shall be free to sell or lease the Items of Equipment to any party at such reasonable times and for such amounts as Lessor deems commercially reasonable and appropriate in order to maximize Lessor's opportunity to recover the Lease Balance. Following the Lease Expiration Date, Lessor shall have the right to enter into leases for the Items of Equipment at fair market rentals and otherwise on commercially reasonable terms, and the net operating cash flow therefrom shall be payable to Agent in reduction of the Lease Balance and Supplemental Rent due and owing under the Operative Documents.

(c) Lessor reserves all rights under this Lease and the other Operative Documents arising out of Lessee's breach of any provisions of this Lease (including this Article XV), occurring prior to or on the Lease Expiration Date, including the right to sue Lessee for damages.

(d) To the greatest extent permitted by law and subject to Section 15.6(e) below, Lessee hereby unconditionally and irrevocably waives, and releases Lessor and Agent from, any right to require Lessor or Agent during or following the Extended Remarketing Period to sell the Items of Equipment in a timely manner or for any minimum purchase price or on any particular terms and conditions, Lessee hereby agreeing that if Lessee shall elect the Sale Option, its ability to sell the Items of Equipment on or prior to the Lease Expiration Date and to cause any Person to submit a bid to Lessor pursuant to Section 15.4 shall constitute full and complete protection of Lessee's interest hereunder.

(e) In addition, if Lessor has not sold the Items of Equipment within two (2) years after its termination of the Extended Remarketing Period, Agent shall appoint a qualified independent sales agent to sell the Items of Equipment pursuant to the first *bona fide* offer received by a creditworthy offeror for an all-cash purchase price at the then Fair Market Value of the Items of Equipment to the extent the conditions therefor are satisfied. Any proceeds resulting from the operation of this Section 15.6 shall be applied net of sale costs, commissions and property maintenance costs. To determine whether an offer is for the Fair Market Value of the Items of Equipment, Lessor may condition its obligation to sell on its receipt of an appraisal in accordance with Section 15.4(b)(vi). Any determination as to the *bona fide* nature of an offer or creditworthiness of the offeror shall be made in the reasonable judgment of Agent.

(f) If a sale of Items of Equipment occurs during the Extended Remarketing Period (i) the Lessor shall be entitled to the Sale Proceeds for such Items of Equipment in an amount not to exceed the outstanding Lease Balance and all other amounts due and owing under the Operative Documents and any such excess shall be for the benefit of Lessee and (ii) Lessee shall comply with the provisions of this Article XV including, but not limited to, Section 15.4.

ARTICLE XVI

OWNERSHIP AND GRANT OF LIEN AND SECURITY INTEREST

Section 16.1. Grant of Lien and Security Interest. Title to the Items of Equipment shall remain in Lessor as security for the obligations of Lessee hereunder and under the other Operative Documents to which it is a party until Lessee has fulfilled all of its obligations hereunder and thereunder. Lessee hereby grants, assigns, hypothecates, transfers and pledges to Lessor, a lien and security interest on all of Lessee's right, title and interest in and to, whether now or hereafter existing, each Item of Equipment and in each Sublease covering any Item of Equipment that may be entered into from time to time in accordance with the provisions of this Lease, and Lessee hereby grants to Lessor a continuing lien on, and security interest in, and assigns to Lessor all of Lessee's rights, title and interest in all of the other Lessee Collateral, to secure the payment of all sums due hereunder and under the other Operative Documents to which it is a party and the performance of all other obligations hereunder and under the other Operative Documents to which it is a party; *provided,*

however, that the lien on, and security interest in, the portion of the Lessee Collateral which constitutes Cash Collateral will not secure any obligations of the Lessee under the Operative Documents with respect to the Series B Lease Balance or any amounts due and owing with respect to such Series B Lease Balance or to the Series B Assignees, if any. Lessee also hereby authorizes Lessor and Agent to file UCC financing statements on and after the Delivery Date to the extent necessary to perfect such security interests granted pursuant to the Operative Documents that may be perfected under the UCC through such filings. Further, Lessee hereby assigns to Lessor all of its rights under any and all purchase contracts relating to each Item of Equipment.

Section 16.2. Retention of Sale Proceeds. If Lessee would be entitled to any amount (including any Casualty Recoveries) held by Agent or title to any Item of Equipment hereunder but for the existence of any Material Lease Default or Lease Event of Default, Agent shall hold such amount or Item of Equipment as part of the Lessee Collateral and during a Lease Event of Default shall be entitled to apply such amounts against any amounts due hereunder; *provided*, that Agent shall distribute such amount or transfer such Item of Equipment, to the extent not theretofore applied, in accordance with the other terms of this Lease if and when no Material Lease Default or Lease Event of Default exists.

Section 16.3. State of Incorporation. Lessee shall not change its state of incorporation unless Lessee has given Agent not less than thirty (30) days' prior written notice and Lessee has executed and filed such UCC financing statements as Agent may reasonably request during such thirty day period to protect the security interests of Lessor granted by the Operative Documents.

ARTICLE XVII

REPRESENTATIONS AND WARRANTIES

Section 17.1. Representations and Warranties of Lessee. As of the date hereof, Lessee makes the representations and warranties set forth in this Section 17.1 to Agent and Lessor.

(a) *Organization and Powers.* Each of Lessee and its Significant Subsidiaries is a corporation or partnership duly organized or formed, as the case may be, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, is qualified to do business and is in good standing in each jurisdiction in which the failure so to qualify or be in good standing would result in a Material Adverse Effect and has all requisite power and authority to own its assets and carry on its business and, with respect to Lessee, to execute, deliver and perform its obligations under the Operative Documents to which it is a party.

(b) *Authorization: No Conflict.* The execution, delivery and performance by Lessee of the Operative Documents to which it is a party have been duly authorized by all necessary corporate action of Lessee and do not and will not (i) contravene the terms of the certificate of incorporation and the bylaws of Lessee or result in a breach of or constitute a material default

under any material Contractual Obligation to which Lessee is a party or by which it or its properties may be bound or affected; or (ii) violate in any material respect any provision of any Governmental Rule binding on or affecting Lessee.

(c) *Binding Obligation.* The Operative Documents to which Lessee is a party constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with their respective terms, except to the extent the enforceability thereof would be subject to bankruptcy, insolvency, receivership or similar laws providing relief from creditors, or principles of equity generally.

(d) *Governmental Consents.* No authorization, consent, approval, license, exemption of, or filing or registration with, any Governmental Authority, or approval or consent of any other Person, is required for the due execution, delivery or performance by Lessee of any of the Operative Documents, except those set forth on Schedule 17.1(d) which have been obtained or made and are in full force and effect.

(e) *No Defaults.* Neither Lessee nor any of its Significant Subsidiaries is in default under any Governmental Rule to which it is a party or by which it or its properties may be bound which, individually or together with all such defaults, could reasonably be expected to have a Material Adverse Effect.

(f) *Title to Properties.* (i) Lessee has good record and marketable title in fee simple to the real property on which the Equipment is to be located and, as of the date hereof, there are no existing mortgages, deeds of trust or other similar liens encumbering the real property and (ii) Lessee and each Significant Subsidiary has good record and marketable title in fee simple to, or valid leasehold interests in, all other real property necessary or used in the ordinary conduct of their respective businesses, except, in each case, for such defects in title as could not, individually or in the aggregate, have a Material Adverse Effect. The property of Lessee and its Significant Subsidiaries is subject to no Encumbrances, other than Encumbrances permitted under Section 18.2(a).

(g) *Litigation.* There are no actions, suits or proceedings pending or, to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Significant Subsidiaries or the properties of Lessee or any of its Significant Subsidiaries before any Governmental Authority or arbitrator which is likely to be determined adversely to Lessee or any such Significant Subsidiary and would be reasonably likely to result in a Material Adverse Effect.

(h) *Compliance with Consents and Licenses.* Every consent required by Lessee or any Significant Subsidiary (including those required under or pursuant to any Environmental Law) in connection with the conduct of its business and the ownership, use, exploitation or occupation of its property and assets has been obtained and is in full force and effect and there has not been any default in the observance of the conditions and restrictions (if any) imposed in, or in connection with, any of the same, except where the failure to obtain any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(i) *Compliance with Environmental Law.* To the best of Lessee's knowledge after due investigation, (i) the properties of Lessee and its Subsidiaries do not contain and have not previously contained (at, under, or about any such property) any Hazardous Materials or other contamination (A) in amounts or concentrations that constitute or constituted a violation of, or could give rise to liability under, any Environmental Laws, in either case where such violation or liability could reasonably be expected to result in a Material Adverse Effect, (B) which could interfere with the continued operation of such property or (C) which could materially impair the fair market value thereof; and (ii) there has been no transportation or disposal of Hazardous Materials from, nor any release or threatened release of Hazardous Materials at or from, any property of Lessee or any of its Subsidiaries in violation of or in any manner could give rise to liability under any Environmental Laws, where such violation or liability, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

(j) *Governmental Regulation.* Neither Lessee nor any of its Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Investment Company Act of 1940, the Interstate Commerce Act, any state public utilities code or any other Governmental Rule limiting its ability to incur Indebtedness.

(k) *ERISA.* (i) Except as specifically disclosed to the Lessor and Agent in writing prior to the date of this Lease: (A) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Governmental Rules; (B) there are no pending, or to the best knowledge of Lessee, threatened, claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan which has resulted or could reasonably be expected to result in a Material Adverse Effect; (C) there has been no prohibited transaction or other violation of the fiduciary responsibility rule with respect to any Plan which could reasonably result in a Material Adverse Effect; (D) no ERISA Event has occurred or is reasonably expected to occur with respect to any Pension Plan; (E) no Pension Plan has any Unfunded Pension Liability; (F) Lessee has not incurred, nor does it reasonably expect to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA); (G) no trade or business (whether or not incorporated under common control with Lessee within the meaning of Section 414(b), (c), (m) or (a) of the Code) maintains or contributes to any Pension Plan or other Plan subject to Section 412 of the Code; and (H) neither Lessee nor any entity under common control with Lessee in the preceding sentence has ever contributed to any Multiemployer Plan.

(ii) All employer and employee contributions required by any applicable Governmental Rule in connection with all Foreign Plans have been made, or, if applicable, accrued, in accordance with the country-specific accounting practices. The fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to determine employer contributions to such Foreign Plan, which actuarial assumptions are commercially reasonable. Each Foreign Plan required to be registered has been registered and has been maintained in good standing with

applicable Governmental Authorities. Each Foreign Plan reasonably complies in all material respects with all applicable Governmental Rules.

(l) *Significant Subsidiaries.* The name and ownership of each Significant Subsidiary of Lessee on the date of this Agreement is as set forth in Schedule 17.1(l). All of the outstanding capital stock of, or any other interest in, each such Significant Subsidiary has been validly issued, and is fully paid and nonassessable.

(m) *Taxes.* Lessee and its Significant Subsidiaries have filed all Federal and other material tax returns and reports required to be filed, and have paid all Federal and other material taxes, assessments, fees and other Governmental Charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against Lessee or any Significant Subsidiary except those for which adequate reserves have been provided in accordance with GAAP.

(n) *Patents and Other Rights.* Each of Lessee and its Significant Subsidiaries possesses all permits, franchises, licenses, patents, trademarks, trade names, service marks, copyrights and all rights with respect thereto, free from maintenance and operation of its business, except where the failure to obtain any of the foregoing would not reasonably be expected to have a Material Adverse Effect.

(o) *Insurance.* The properties of Lessee and its Significant Subsidiaries are insured against losses and damages of the kinds and in amounts which are deemed prudent by Lessee in its reasonable business judgment and within the general parameters customary among similarly situated businesses in the industry, and such insurance is maintained with financially sound and reputable insurance companies or pursuant to a plan or plans or self-insurance to such extent as is usual for companies of similar size engaged in the same or similar businesses and owning similar properties.

(p) *Financial Statements.* The audited Financial Statements of Lessee and its Subsidiaries for the fiscal year ended in December 31, 2003, are complete and correct and fairly present the financial condition of Lessee and its Subsidiaries as at such date and the results of operations of Lessee and its Subsidiaries for the period covered by such statements, in each case in accordance with GAAP consistently applied. Since the last day of the fiscal year ended December 31, 2003, there has been no Material Adverse Effect.

(q) *Liabilities.* Neither Lessee nor any of its Significant Subsidiaries has any liabilities in excess of \$10,000,000, fixed or contingent, that are not disclosed in either (i) the audited annual Financial Statements of the Lessee and its Subsidiaries for the fiscal year ended December 31, 2003 or (ii) the unaudited quarterly Financial Statements of the Lessee and its Subsidiaries for the fiscal quarter ended March 31, 2004, in the notes thereto or otherwise disclosed in writing to the Lessor and Agent, other than liabilities arising in the ordinary course of business since March 31, 2004.

(r) *Labor Disputes. Etc.* There are no strikes, lockouts or other labor disputes against Lessee or any of its Significant Subsidiaries, or, to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Significant Subsidiaries, which may result in a Material Adverse Effect.

(s) *Solvency.* Lessee and its Subsidiaries on a consolidated basis are Solvent.

(t) *The Equipment.* (i) On the Delivery Date, Lessor will acquire good and valid title to the Equipment, free and clear of all Liens and all other interests of other Persons (except for Permitted Liens).

(ii) All of the Items of Equipment constitute personal property and not fixtures for purposes of perfection under the Uniform Commercial Code.

(iii) All of the Items of Equipment comply in all material respects with all applicable Governmental Rules and Insurance Requirements.

(u) *State of Incorporation.* The state of incorporation of the Lessee is Delaware.

(v) *Disclosure.* None of the representations or warranties made by Lessee in the Operative Documents as of the date of such representations and warranties, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of Lessee or any of its Significant Subsidiaries to Agent or Lessor in connection with the Operative Documents, contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading in any material respect as of the time when made or delivered.

(w) *No Default; Casualty.* No event has occurred and is continuing that is a Lease Default and no Lease Event of Default exists and, to the knowledge of Lessee, no Casualty has occurred.

(x) *Security Interest.* (i) Upon filing of the UCC financing statements listed on Schedule V hereto and payment of the Purchase Price, Lessor has a valid and enforceable first priority, perfected Lien in the Items of Equipment and the other Lessee Collateral (other than the Cash Collateral, a security interest in which shall be perfected as set forth in clause (ii) below) as against all Persons, including Lessee and its creditors, free and clear of all Liens other than Permitted Liens.

(ii) Upon the deposit of Cash Collateral by Lessee pursuant to Section 2.6 and the execution and delivery of the Cash Collateral Agreement, the Control Agreements and the Lessor Assignment Agreement, (A) the Lessor will have a first-priority, perfected Lien in the Cash Collateral (other than the Cash Collateral described in clause (B) hereof) so deposited and (B) each Series A Assignee will have a first-priority, perfected lien in the Series A Cash Collateral purchased and assumed by such Series A Assignee pursuant to the Lessor Assignment Agreement and, in each case, no filing, recording, restoration, notice with or payment of any fees

to, any Governmental Authority is necessary to establish or perfect the Lien in such Cash Collateral in favor of the Lessor or such Series A Assignee, as applicable.

(y) *No Transfer Taxes.* No sales, use, excise, transfer or other Tax, fee or imposition shall result from the sale, transfer or purchase of the Items of Equipment, except such Taxes, fees or impositions that have been paid in full or for which adequate arrangements for payment shall have been made by Lessee.

(z) *Appraisal Data.* The written information provided by Lessee and its Affiliates to the Appraiser and forming the basis for the conclusions set forth in the Appraisal, taken as a whole, was true and correct in all material respects at such times and did not omit any information known and available to Lessee necessary to make the information provided not misleading at such times.

(aa) *No Prohibited Transaction.* The execution and delivery of this Lease and the other Operative Documents, including the consummation of the transactions contemplated hereby and thereby, will not involve any Prohibited Transactions. The representation by Lessee in the preceding sentence is made in reliance upon and subject to the correctness of the representation by the Lessor in Section 17.2(a)(i).

(bb) *Subject to Government Regulation.* Neither Agent nor Lessor will become, solely by reason of entering into the Operative Documents or consummation of the transaction contemplated thereby (other than the exercise of remedies under this Lease), subject to ongoing regulation of its operations by a Governmental Agency (except with respect to bank regulations) will be required to qualify to do business in any jurisdiction.

(cc) *Private Offering.* Excluding the effect of any failure of the representations and warranties set forth in Section 17.2(b) to be true and correct, the issuance, sale and delivery of the interests in the Items of Equipment, Lease and the other Operative Documents under the circumstances contemplated hereby do not require the registration or qualification of such interests under the Securities Act, any state securities laws. Excluding the effect of any failure of the representations and warranties set forth in Section 17.2(b) to be true and correct, neither Lessee nor anyone authorized to act on its behalf has, directly or indirectly, solicited any offers to acquire, offered or sold: (i) any interest in the Items of Equipment, the Lease or the Operative Documents in violation of Section 5 of the Securities Act or any state securities laws, or (ii) any interest in any security or lease the offering of which, for purposes of the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned interests. Neither Lessee nor anyone authorized to act on its behalf was involved in (y) offering or soliciting offers for interests in the Items of Equipment, Lease or the other Operative Documents (or any similar securities) or (z) selling interests in the Items of Equipment, the Lease or the other Operative Documents (or any similar securities) to any Person other than the Lessor and Assignees not more than 18 other institutional investors.

(dd) *Margin Regulations.* Lessee is not engaged in the business of extending credit for the purpose of purchasing or carrying "margin stock" (within the meaning of Regulation U of the F.R.S. Board). No part of the proceeds of the Funding will be used to purchase or carry any

margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(ee) *Tangible Net Worth.* As of December 31, 2003, the Tangible Net Worth of Lessee was at least \$900,000,000.

(ff) The Lessee and its Significant Subsidiaries are in compliance, in all material respects, with the USA Patriot Act.

Section 17.2. Representations and Warranties of Lessor. Lessor represents and warrants to each of the other parties hereto as follows:

(a) *ERISA.* Lessor is not and will not be purchasing any of its interest in the Items of Equipment with the assets of an “employee benefit plan” (as defined in Section 3(3) of ERISA) which is subject to Title I of ERISA, or a “plan” (as defined in Section 4975(e)(1) of the Code.

(b) *Investment in the Items of Equipment.* It is acquiring its interest in the Items of Equipment for its own account for investment in such a manner as will not require the registration of such interest under the Securities Act or any state securities laws, and if in the future it should decide to dispose of its interest in the Items of Equipment, it understands that it may do so only in compliance with the Securities Act and the rules and regulations of the SEC thereunder and any applicable state securities laws. Neither it nor anyone authorized to act on its behalf has taken or will take any action which would subject any interest in the Items of Equipment or this Lease to the registration requirements of Section 5 of the Securities Act. No representation or warranty contained in this Section 17.2(b) shall include or cover any action or inaction of Lessee or any Affiliate thereof whether or not purportedly on behalf of Lessor or any of its Affiliates. Subject to the foregoing, and subject to the provisions of Article XIX hereof, it is understood among the parties that the disposition of Lessor’s property shall be at all times within its control.

(c) *Enforceability, Etc.* Each Operative Document to which Lessor is a party constitutes the legal, valid and binding obligation of Lessor enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles.

Section 17.3. Representations and Warranties of Agent. Wells Fargo Bank Northwest, National Association, in its individual capacity, hereby represents and warrants to the other parties as set forth in this Section 17.3.

(a) *Due Organization, Etc.* Agent is a national banking association duly organized, validly existing and in good standing under the laws of the United States; Agent has full power

and authority to enter into and perform its obligations under the Operative Documents to which it is or is to be a party and each other agreement, instrument and document to be executed and delivered by it on or before the Delivery Date in connection with or as contemplated by each such Operative Document to which it is or is to be a party; and the Operative Documents to which Agent is a party, and to which Lessee is to be a party, have been or will be duly executed and delivered by Agent.

(b) *Authorization; No Conflict.* The execution and delivery by Agent of the Operative Documents to which it is or is to be a party, and the performance by Agent of its obligations under such Operative Documents, have been duly authorized by all necessary action on its part, and do not and will not: (i) contravene any applicable laws, rules, regulations, orders, injunctions or decrees of any federal banking Authority or Authority in or with jurisdiction over banks in the State of Utah where such contravention would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, as Agent, or both, to perform its obligations under any Operative Documents to which it is or will be a party; (ii) violate any provision of its charter or by-laws; (iii) result in a breach of or constitute a default under any indenture, loan or credit agreement, or any other agreement or instrument to which Agent, either in its individual capacity, as Agent, or both, is a party or by which it or its properties may be bound or affected, which breaches or default would be reasonably likely to materially and adversely affect the ability of Agent, either in its individual capacity, as Agent, or both, to perform its obligations under any Operative Documents to which it is or will be a party; or (iv) require any authorizations, consents, approvals, licenses or formal exemptions from, nor any filings, declarations or registrations with, any federal banking or Utah Authority or any consent or approval of any non-governmental Person.

(c) *Enforceability, Etc.* Each Operative Document to which Agent, either in its individual capacity, as Agent, or both, is a party constitutes the legal, valid and binding obligation of Agent, either in its individual capacity, as Agent, or both, enforceable against it in accordance with the terms thereof, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(d) *Litigation.* There is no action, proceeding or investigation pending or threatened which questions the validity of the Operative Documents to which Agent, in its individual capacity, as Agent, or both, is a party or any action taken or to be taken pursuant to the Operative Documents to which Agent, in its individual capacity, as Agent, or both, is a party.

ARTICLE XVIII

COVENANTS OF LESSEE

Section 18.1. Affirmative Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance with, the following affirmative covenants:

(a) *Financial Statements and Other Reports.* Lessee shall deliver to the Agent (with sufficient copies for the Agent to distribute such copies to the Assignees) and Lessor, at Lessee's sole expense:

(i) As soon as available and in any event within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year (and, with respect to each fiscal quarter occurring after January 1, 2005, within 40 days after the end of such fiscal quarter), the consolidated Financial Statements of Lessee and its Subsidiaries for such fiscal quarter, prepared in accordance with GAAP consistently applied, all in reasonable detail;

(ii) As soon as available and in any event within seventy (70) days after the end of each fiscal year, the consolidated Financial Statements of Lessee and its Subsidiaries for such fiscal year, prepared in accordance with GAAP consistently applied, all in reasonable detail, and accompanied by a report thereon of PricewaterhouseCoopers LLP or another firm of independent certified public accountants of recognized national standing, which report shall be unqualified as to scope of audit;

(iii) Together with the Financial Statements required pursuant to clauses (i) and (ii) of this Section 18.1(a), a compliance certificate of a Responsible Officer of Lessee (a "*Compliance Certificate*") which (A) states that such Financial Statements fairly present the financial condition of Lessee and its Subsidiaries as at the last day of the fiscal quarter or fiscal year covered by such Financial Statements and the results of operations of Lessee and its Subsidiaries for such quarter or year and have been prepared in accordance with GAAP consistently applied, subject to normal, year-end audit adjustments in the case of the Financial Statements for any fiscal quarter; and (B) states that no Lease Default or Lease Event of Default has occurred and is continuing, or, if any such Lease Default or Lease Event of Default has occurred and is continuing, a statement as to the nature thereof and what action Lessee proposes to take with respect thereto;

(iv) (A) Promptly after the giving, sending or filing thereof, copies of all reports, if any, which Lessee or any of its Subsidiaries sends generally to any class of holders of its respective capital stock or other securities and (B) promptly, but in no event later than five (5) Business Days, after the sending or filing

thereof, copies of all reports or filings, if any, by Lessee or any of its Subsidiaries with the SEC or any national securities exchange;

(v) Promptly after Lessee has knowledge or becomes aware thereof, notice of the occurrence or existence of any Lease Default or Lease Event of Default;

(vi) Prompt written notice of any action, event or occurrence that could reasonably be expected to result in a Material Adverse Effect due to environmental liability under Environmental Laws;

(vii) Prompt written notice of all actions, suits and proceedings before any Governmental Authority or arbitrator pending, or to the best of Lessee's knowledge, threatened against or affecting Lessee or any of its Subsidiaries which (A) if adversely determined would involve an aggregate liability of \$25,000,000 or more in excess of amounts covered by third-party insurance or (B) otherwise may have a Material Adverse Effect;

(viii) Promptly after Lessee has knowledge or becomes aware thereof, (A) notice of the occurrence of any ERISA Event, together with a copy of any notice of such ERISA Event to the PBGC and (B) the details concerning any action taken or proposed to be taken by the IRS, PBGC, Department of Labor or other Person with respect thereto;

(ix) Promptly upon the commencement or increase of contributions to, the adoption of, or an amendment to, a Plan by Lessee or an ERISA Affiliate, if such commencement or increase of contributions, adoption, or amendment could reasonably be expected to result in a net increase in unfunded liability to Lessee or an ERISA Affiliate in excess of \$10,000,000, a calculation of the net increase in unfunded liability;

(x) Promptly after filing or receipt thereof by Lessee or any ERISA Affiliate, copies of the following:

(A) Any notice received from the PBGC of intent to terminate or have a trustee appointed to administer any Pension Plan;

(B) Any notice received from the sponsor of a Multiemployer Plan concerning the imposition, delinquent payment, or amount of withdrawal liability;

(C) Any demand by the PBGC under Subtitle D of Title IV of ERISA; and

(D) Any notice received from the IRS regarding the disqualification of a Plan intended to qualify under Section 401(a) of the Code;

(xi) Within forty-five (45) days of the date thereof, or, if earlier, on the date of delivery of any Financial Statements pursuant to clause (i) or (ii) of this Section 18.1(a), notice of any change in accounting policies or financial reporting practices by Lessee or any of the Significant Subsidiaries that is expected to affect (or has affected) materially under GAAP the consolidated financial condition of Lessee and its Subsidiaries;

(xii) Promptly after the occurrence thereof, notice of any labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving Lessee or any of its Subsidiaries which could result in an Material Adverse Effect;

(xiii) Upon request from time to time of Agent or Lessor, the Swap Termination Values, together with a description of the method by which such values were determined, relating to any then-outstanding Rate Contracts to which Lessee or any of its Subsidiaries is a party;

(xiv) Prompt written notice of any change in Lessee's fiscal year;

(xv) Prompt written notice of any Person or Subsidiary not identified on Schedule 17.1(l) that becomes a Significant Subsidiary after the Delivery Date;

(xvi) Prompt written notice of a Material Adverse Effect; and

(xvii) Such other information respecting the operations, properties, business or condition (financial or otherwise) of Lessee or the Significant Subsidiaries as Agent or Lessor may from time to time reasonably request.

Each notice pursuant to clauses (vi)-(xvii) of this Section 18.1(a) shall be accompanied by a written statement by a Responsible Officer of Lessee setting forth details of the occurrence referred to therein, and stating what action Lessee proposes to take with respect thereto.

(b) *Preservation of Corporate Existence, Etc.* Lessee shall and shall cause each of its Significant Subsidiaries to:

(i) Preserve and maintain in full force and effect its corporate existence and good standing under the laws of its state or jurisdiction of incorporation or formation, except (A) in connection with transactions permitted by Section 18.2 and (B) in the case of any Significant Subsidiary, to the extent that failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect;

(ii) Preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect;

(iii) Use reasonable efforts, in the ordinary course of business, to preserve its business organization and goodwill, except in the case of any Significant Subsidiary to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect; and

(iv) Preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

(c) *Payment of Taxes, Etc.* Lessee will, and will cause each of its Significant Subsidiaries to, pay and discharge all material taxes, fees, assessments, levies and other Governmental Charges imposed upon it or upon its properties or assets prior to the date on which penalties attach thereto, and all lawful and material claims for labor, materials and supplies which, if unpaid, might become an Encumbrance (other than a Permitted Encumbrance) upon any properties or assets of Lessee or any of its Significant Subsidiaries, except to the extent such taxes, fees, assessments, levies or other Governmental Charges, or such claims, are being contested in good faith by appropriate proceedings and are adequately reserved against in accordance with GAAP.

(d) *Licenses.* Lessee will, and will cause each of its Significant Subsidiaries to, obtain and maintain all licenses, authorizations, consents, filings, exemptions, registrations and other governmental approvals necessary in connection with the execution, delivery and performance of the Operative Documents, the consummation of the transactions therein contemplated or the operation and conduct of its business and ownership of its properties, except to the extent that the failure to obtain or maintain the foregoing would not reasonably be expected to have a Material Adverse Effect.

(e) *Maintenance of Property.* Except as otherwise permitted under Section 18.2(c) or 18.2(d), Lessee shall, and shall cause each of its Subsidiaries to, maintain and preserve all its property which is used in its business in good working order and condition in all material respects, ordinary wear and tear excepted.

(f) *Insurance.* In addition to the insurance requirements set forth in this Lease with respect to the Equipment, Lessee shall maintain, and shall cause each of its Significant Subsidiaries to maintain, with financially sound and reputable independent insurers, insurance with respect to its properties and business against losses and damages of the kinds and in amounts which are deemed prudent by Lessee in its reasonable business judgment and within the general parameters customary among similarly situated businesses in the industry.

(g) *Compliance with Laws.* Lessee shall comply, and shall cause each of its Significant Subsidiaries to comply, in all material respects with the requirements of all Environmental Laws and all other Governmental Rules applicable to it or its business.

(h) *Compliance with ERISA.* (i) Lessee shall, and shall cause each of its ERISA Affiliates to: (A) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (B) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; and (C) make all required contributions to any Plan subject to Section 412 of the Code.

(ii) Neither Lessee nor any of its Significant Subsidiaries shall (A) engage in any transaction prohibited by any Governmental Rule applicable to any Foreign Plan, (B) fail to make full payment when due of all amounts due as contributions to any Foreign Plan or (C) otherwise fail to comply with the requirements of any Governmental Rule applicable to any Foreign Plan, where singly or cumulatively, the above would be reasonably likely to have a Material Adverse Effect.

(i) *Inspection of Property and Books and Records.* Lessee shall maintain and shall cause each of its Significant Subsidiaries to maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Lessee or such Significant Subsidiary. Lessee shall permit, and shall cause each of its Significant Subsidiaries to permit, representatives and independent contractors of Agent or Lessor to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants all at the expense of Lessee and at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to Lessee; *provided, however,* that (i) unless a Lease Event of Default shall have occurred and be continuing or following exercise of the Sale Option, (A) Lessee shall be responsible under this Section 18.1(i) for the costs and expenses of Agent and Lessor only, and (B) all inspections, visits, examinations and other actions permitted or authorized hereunder shall be coordinated only through Lessee, and (ii) when a Lease Event of Default exists or following exercise of the Sale Option, Agent and Lessor may make any visit, inspection or examination or take any other action authorized hereunder at the expense of Lessee at any time during normal business hours, without advance notice and without being subject to any of the other restrictions described in clause (i) above.

(j) *Cash Collateral.* Lessee shall maintain at all times Cash Collateral in each of the Cash Collateral Accounts with a value equal to or greater than the Required Cash Collateral Amount for each such Cash Collateral Account.

(k) *Further Assurances and Additional Acts.* Lessee will execute, acknowledge, deliver, file, notarize and register at its own expense all such further

agreements, instruments, certificates, documents and assurances and perform such acts as Agent or Lessor reasonably shall deem necessary or appropriate (i) in order to establish, preserve, protect and perfect the Lien of Lessor and each Series A Assignee, as applicable, in the Items of Equipment, the Cash Collateral and the other Lessee Collateral (including, without limitation, the preparation and filing of any and all Uniform Commercial Code financing statements (including precautionary financing statements) and all other filings or registrations which the Agent or Lessor may from time to time reasonably request to be filed or effected) and (ii) effectuate the purposes of the Operative Documents, and promptly provide Agent or Lessor with evidence of the foregoing satisfactory in form and substance to Agent or Lessor, as applicable.

Section 18.2. Negative Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance, with the following negative covenants:

(a) *Encumbrances.* Lessee will not, and will not permit any of its Significant Subsidiaries to, create, incur, assume or suffer to exist any Encumbrances upon or with respect to any of their properties, revenues or assets (other than the Equipment which the Lessee is obligated to keep free of Liens in accordance with Section 8.6 of this Lease), whether now owned or hereafter acquired, other than (i) Permitted Encumbrances and (ii) other Encumbrances that, in the aggregate at any time, secure obligations in an amount not in excess of ten percent (10%) of Consolidated Total Assets determined as of the last day of the immediately preceding fiscal quarter (or fiscal year, as the case may be).

(b) *Change in Nature of Business.* Lessee will not, and will not permit any of its Significant Subsidiaries to, engage in any material line of business other than the electronics business and other businesses incidental or reasonably related thereto.

(c) *Restrictions on Fundamental Changes.* Lessee will not, and will not permit any of its Significant Subsidiaries to, merge with or consolidate into, or acquire all or substantially all of the assets of, any Person, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets, except that:

(i) Any of Lessee's Significant Subsidiaries may merge with, consolidate into or transfer all or substantially all of its assets to another of Lessee's Significant Subsidiaries or to Lessee and in connection therewith such Significant Subsidiary (other than Lessee) may be liquidated or dissolved; *provided* that (A) if the transaction involves Lessee, Lessee shall be the surviving Person, and (B) if any transaction shall be between a non-wholly owned Significant Subsidiary and a wholly owned Significant Subsidiary, the wholly owned Significant Subsidiary shall be the continuing or surviving Person; and, *provided further*, that no Material Adverse Effect or Lease Default or Lease Event of Default exists or shall result therefrom;

(ii) Lessee or any of its Significant Subsidiaries may sell or dispose of assets in accordance with the provisions of Section 18.2(d);

(iii) Lessee or any of its Significant Subsidiaries may make any Acquisition so long as (A) no Lease Default or Lease Event of Default has occurred and is continuing and (B) no Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof;

(iv) Lessee may merge with or consolidate into any other Person, provided that (A) Lessee is the surviving Person, and (B) no such merger or consolidation shall be made while there exists a Lease Default or Lease Event of Default or if a Lease Default or Lease Event of Default or Material Adverse Effect would occur as a result thereof.

(v) Lessee may merge with or consolidate into any other Person in connection with a hostile takeover of Lessee by such Person that occurs without the consent of Lessee.

(d) *Sales of Assets.* Lessee will not, and will not permit any of its Significant Subsidiaries to, convey, sell, lease, transfer, or otherwise dispose of, or part with control of (whether in one transaction or a series of transactions) any assets (including any shares of stock in any Subsidiary or other Person), except:

(i) Sales or other dispositions of inventory in the ordinary course of business;

(ii) Sales or other dispositions of assets in the ordinary course of business which have become worn out or obsolete or which are promptly being replaced;

(iii) Sales of accounts receivable to financial institutions not affiliated with Lessee; *provided* that (A) the discount rate shall not at any time exceed ten percent (10%), (B) the amount of all accounts receivable permitted to be sold in any fiscal quarter shall not exceed twenty percent (20%) of the consolidated accounts receivable of Lessee and its Subsidiaries, determined as of the last day of the immediately preceding fiscal quarter (or fiscal year, as the case may be) and (C) the sole consideration received for such sales shall be cash;

(iv) Except as provided in clause (vi) below, sales or other dispositions of assets outside the ordinary course of business which do not constitute Substantial Assets (as defined below);

(v) Sales or other dispositions of Lessee Permitted Investments; and

(vi) Sale of all or less than all of the stock or assets of Engenio Information Technologies, Inc.

provided, however, that the foregoing exceptions shall not be construed to permit any sales, leases, transfers or other disposals of any of the Equipment, except as expressly permitted by this Lease. For purposes of clause (iv) above, a sale, lease, transfer or other disposition of assets shall be deemed to be of “*Substantial Assets*” if such assets, when added to all other assets conveyed, sold, leased, transferred or otherwise disposed of by Lessee and its Subsidiaries in any period of four consecutive fiscal quarters (other than assets sold in the ordinary course of business or pursuant to clause (iii) above), shall exceed ten percent (10%) of Consolidated Total Assets as determined as of the last day of the fiscal quarter of Lessee immediately preceding the date of determination.

(e) *Loans and Investments*. Lessee will not, and will not permit any of its Significant Subsidiaries to, extend any credit to, guarantee the obligations of or make any additional investments in or acquire any interest in, any Person, other than in connection with:

(i) Extensions of credit in the nature of accounts receivable or notes receivable arising from the sales of goods or services in the ordinary course of business;

(ii) Lessee Permitted Investments;

(iii) Additional purchases of or investments in the stock of, or guarantees of the obligations of, Subsidiaries;

(iv) Employee loans and guarantees in accordance with Lessee’s usual and customary practices with respect thereto;

(v) Any Acquisition; or

(vi) Additional investments not exceeding, in the aggregate with all such investments, \$300,000,000 during the period from the Delivery Date through the Lease Expiration Date;

provided that in the case of an Acquisition referred to in clause (v) above or an investment referred to in clause (vi) above, no such Acquisition or investment shall be made while there exists a Lease Default or Lease Event of Default or if a Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof.

(f) *Distributions*. Lessee will not declare or pay any dividends in respect of its capital stock, or purchase, redeem, retire or otherwise acquire for value any of its capital stock now or hereafter outstanding, return any capital to its shareholders as such, or make any distribution of assets to its shareholders as such, or permit any of its Subsidiaries to purchase, redeem, retire, or otherwise acquire for value any stock of Lessee, except that Lessee may:

(i) Declare and deliver dividends and distributions payable only in common stock of either (A) Lessee or (B) Engenio Information Technologies, Inc. so long as (x) no Lease Default or Lease Event of Default has occurred and is continuing and (y) no Lease Default, Lease Event of Default or Material Adverse Effect would occur as a result thereof;

(ii) Purchase shares of its capital stock from time to time in connection with the issuance of shares under Lessee's employee stock option plans;

(iii) Purchase, redeem, retire, or otherwise acquire shares of its capital stock with the proceeds received from a substantially concurrent issue of new shares of its capital stock; and

(iv) In addition to the dividends, purchases, redemptions, retirements and other acquisitions permitted by the foregoing clauses (i) through (iii) above, declare and deliver dividends and distributions, and purchase, redeem, retire, or otherwise acquire shares of its capital stock, in an aggregate amount not exceeding \$100,000,000 in any period of four consecutive fiscal quarters.

(g) *Transactions with Related Parties.* Lessee will not, and will not permit any of its Significant Subsidiaries to, enter into any transaction, including the purchase, sale or exchange of property or the rendering of any services, with any Affiliate, any officer or director thereof or any Person which beneficially owns or holds twenty percent (20%) or more of the equity securities, or twenty percent (20%) or more of the equity interest, thereof (a "Related Party"), or enter into, assume or suffer to exist, or permit any Significant Subsidiary to enter into, assume or suffer to exist, any employment or consulting contract with any Related Party, except (i) a transaction or contract which is in the ordinary course of Lessee's or such Significant Subsidiary's business, including a transaction in the ordinary course of business between or among Lessee and one or more of its Subsidiaries and (ii) any other transaction which is upon fair and reasonable terms not less favorable to Lessee or such Significant Subsidiary than it would obtain in a comparable arm's length transaction with a Person not a Related Party. For purposes of this Section 18.2(g), the sale, transfer or disposition of more than thirty percent (30%) of its assets (in any transaction or a series of related transactions) by Lessee or any of its Significant Subsidiaries shall be deemed to be outside the ordinary course of business.

(h) *Accounting Changes.* Lessee will not, and will not permit any of its Significant Subsidiaries to, make any significant change in accounting treatment or reporting practices, except as required or permitted by GAAP (or, in the case of any such Significant Subsidiary domiciled in a jurisdiction other than the United States, in accordance with generally accepted accounting principles and practices in such jurisdiction).

Section 18.3. Financial and Other Covenants. During the Lease Term, Lessee shall comply, and shall cause compliance, with the following financial covenants:

(a) *Liquidity Covenant.* Lessee shall not, nor shall it permit any of its Subsidiaries to, permit Unrestricted Cash Reserves at any time to be less than the higher of (A) the sum of \$100,000,000, plus the principal amount outstanding under the 4.00% Convertible Subordinated Notes due November 1, 2006 issued by Lessee pursuant to the Subordinated Indenture, dated as of October 30, 2001 between Lessee and State Street Bank and Trust Company of California, N.A., as Trustee, as in effect on the Delivery Date and (B) \$350,000,000.

(b) *Cash Collateral.* (i) With respect to each Cash Collateral Account, on each Payment Date, Lessee shall furnish or cause to be furnished to Agent and the applicable Securities Intermediary a certificate for such Cash Collateral Account, in form reasonably satisfactory to Agent, certifying as to (A) the value of the Cash Collateral held in such Cash Collateral Account (with a reasonably detailed calculation thereof) and (B) the Required Cash Collateral Amount for such Cash Collateral Account. Each Securities Intermediary and Agent shall provide Lessee with the information necessary for Lessee to prepare such certificate and shall assist Lessee in the calculations required thereby.

(ii) If on any date that a certificate is furnished in accordance with Section 18.3(b)(i), the value of the Cash Collateral in any Cash Collateral Account shall be less than the Required Cash Collateral Amount for such Cash Collateral Account, then Lessee shall pledge to the Lessor by depositing into such Cash Collateral Account, additional Cash Collateral, which Cash Collateral shall be acceptable to the Lessor or the applicable Series A Assignee benefiting from such Cash Collateral, in each case in its sole and absolute discretion and in an amount such that the Cash Collateral in such Cash Collateral Account is equal to or greater than the Required Cash Collateral Amount for such Cash Collateral Account. If, on such date, pursuant to the certificate, Lessee has certified that the value of the Cash Collateral in any Cash Collateral Account is greater than the Required Cash Collateral Amount for such Cash Collateral Account and provided that (i) no Lease Default or Lease Event of Default shall have occurred and be continuing and (ii) Lessor or the applicable Assignee, as applicable, shall have received prior notice of the amount of Surplus Collateral (as defined below) to be withdrawn at least (2) Business Days prior to such withdrawal, then, as applicable, Lessor shall be deemed to have directed, or the applicable Assignee shall be deemed to have directed, the applicable Securities Intermediary to promptly release such excess amount to Lessee in an amount such that, after giving effect to such release and the payment by Lessee of any applicable breakage costs or other early termination costs and penalties arising as a result thereof, the value of the Cash Collateral remaining in such Cash Collateral Account held by the applicable Securities Intermediary for the ultimate benefit of Lessor or the applicable Assignee, as applicable, shall equal or exceed the Required Cash Collateral Amount for such Cash Collateral Account (for the purposes of this subparagraph (ii), such Cash Collateral to be released, "*Surplus Collateral*"). In such event, Lessee's

certificate shall be deemed to be a representation by Lessee to the applicable Securities Intermediary, Agent and Lessor or the applicable Assignee, as applicable, or its assignee, as the case may be, with respect to Cash Collateral held for the ultimate benefit of such Assignee or its assignee, as the case may be, (or Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor) that no Lease Default or Lease Event of Default exists or would result from such release. By 5:00 P.M., San Francisco, California time, on the third Business Day after the date on which Lessee provided the certificate to Agent and the applicable Securities Intermediary, unless Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor or the applicable Assignee, or its assignee, as the case may be, with respect to Cash Collateral held for the ultimate benefit of such Assignee or its assignee, as the case may be, reasonably objects in writing provided to Agent and Lessee to the assertion that the applicable Cash Collateral Account contains Surplus Collateral, or to the amount of such Surplus Collateral, the applicable Securities Intermediary shall release such Surplus Collateral to the Lessee; *provided*, that no release of Surplus Collateral shall in any way affect the obligations of the Lessee pursuant to Section 18.3(b)(i); *provided further*, that if the applicable Assignee or its assignee, as the case may be, or Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor, has reasonably objected to the assertion that the applicable Cash Collateral Account contains Surplus Collateral, or to the amount of such Surplus Collateral, then the Securities Intermediary shall not release any Cash Collateral until the Lessee and the applicable Assignee or its assignee or the Lessor, with respect to Cash Collateral held for the ultimate benefit of Lessor, have resolved such discrepancy to the reasonable satisfaction of Lessee and such Assignee or its assignee, or Lessor, as the case may be.

Section 18.4. General Covenants. Lessee covenants and agrees with Lessor and Agent that, during the Lease Term, Lessee shall comply with the following provisions of this Section 18.4:

(a) *Further Assurances.* Lessee will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as Agent or Lessor reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Operative Documents and the Overall Transaction. Lessee, at its own expense, will cause all financing statements (including precautionary financing statements), security agreements and other documents, to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary or as may be reasonably requested by Agent or Lessor in order to establish, preserve, protect and perfect the title of Lessor in the Items of Equipment, the Lien of Lessor in the Lessee Collateral and Lessor's and Agent's rights under this Lease and the other Operative Documents.

(b) *[Reserved]*.

(c) *Securities.* Lessee shall not, nor shall it permit anyone authorized to act on its behalf to, take any action which would subject any interest in any Item of Equipment or the Lease, or in any security or lease the offering of which, for purposes of

the Securities Act or any state securities laws, would be deemed to be part of the same offering as the offering of the aforementioned items, to the registration requirements of Section 5 of the Securities Act or any state securities laws.

(d) *Rates.* With respect to each determination of Accrual Rent under the Lease, Lessee agrees to be bound by Section 2.9 hereof and the applicable definition in Article I hereof.

Section 18.5. Covenants of Agent. Agent, in its individual capacity, covenants with each of the other parties hereto as follows, it being understood that the sole remedies for the breach of these covenants shall be to sue for damages or for specific performance and that any such breach shall not modify or terminate Lessee's obligations under Article VII:

(a) so long as this Lease remains in effect or so long as the obligations of Lessee arising hereunder have not been fully and finally discharged, Agent, in its individual capacity, (i) will keep this Lease and the Items of Equipment free and clear of all Lessor Liens attributable to Agent and shall indemnify, reimburse and hold Lessor and Lessee harmless from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, or causes of action and all legal proceedings, and any costs or expenses in connection therewith, including reasonable legal fees and expenses, of whatever kind and nature, imposed on, incurred by or asserted against Lessor or Lessee in any way relating to, or arising in any manner out of, Agent's failure to comply with this Section 18.5(a) and (ii) will not, provided that no Lease Default or Lease Event of Default exists, through its own actions, interfere with Lessee's (or any permitted sublessee's or assignee's) rights hereunder with respect to the Items of Equipment during the term of this Lease, except as permitted or required by the terms of this Lease; and

(b) Agent shall apply funds held by it in its capacity as agent hereunder as required by this Lease.

Section 18.6. Covenants of Lessor. Lessor covenants with each of the other parties hereto as follows, it being understood that the sole remedies for the breach of these covenants shall be to sue for damages or for specific performance and that any such breach shall not modify or terminate Lessee's obligations under Article VIII:

(a) provided that no Lease Default or Lease Event of Default exists, it will not, through its own actions, interfere with Lessee's (or any permitted sublessee's or assignee's) rights hereunder with respect to the Items of Equipment during the Lease Term;

(b) it will keep the Items of Equipment and other Lessee Collateral free and clear from all Lessor Liens attributable to it; *provided* that it may contest any such Lessor Lien pursuant to a Permitted Contest.

ARTICLE XIX
ASSIGNMENTS

Section 19.1. Lessor Assignments.

(a) (i) Except as otherwise provided in this Section 19.1(a)(i), Lessor may at any time, without the consent of Lessee, assign or transfer all, but not less than all, of its rights, title, interests and obligations and interest as “Lessor” and “Seller,” in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral to an Eligible Lessor Assignee; *provided*, that (A) such assignment shall comply with this Section 19.1(a)(i), (B) such assignment shall be evidenced by an Assignment Agreement, a copy of which shall be furnished to the Agent, Lessee and each Assignee, (C) each assignment or transfer shall comply with all applicable securities laws and (D) the Lessor shall give notice of such assignment and the name of the assignee to Lessee, Agent and each Assignee; *provided, further*, that no such assignment shall be made if (1) in the reasonable opinion of Lessee, such assignment would (A) cause Lessee to be required to cease reporting this Lease as an operating lease in Lessee’s financial statements or (B) cause Lessee to be required to consolidate the assets of Lessor onto its balance sheet under FIN 46R or FASB 94, as applicable and (2) Lessee provides Lessor written notice of such determination within ten (10) Business Days of (A) Lessee’s receipt of the notice described in clause (D) above and (B) Lessee’s receipt of information regarding the proposed assignee as may be reasonably requested by Lessee’s independent public accountants, which request shall be made within 10 days after Lessee’s receipt of the notice described in clause (D) above. If Lessee has objected to a proposed assignee for the reason set forth in clause (1) above, Lessor may re-submit notice of such proposed assignee to Lessee at a later date and the reasonableness of Lessee’s opinion in clause (1) shall be determined as of such later date. So long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may object in writing to the proposed assignee for any reason other than as set forth in clause (1) above within ten (10) Business Days of receipt of the notice described in clause (D) above, whereupon Lessee shall have sixty (60) days from the date of receipt by Lessee of such notice to find a replacement assignee which shall be an Eligible Lessor Assignee and if no such replacement assignee is found within such sixty (60) day period, the Lessor may assign all or any part of its rights, obligations and interest in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral as contemplated above to such assignee identified in such notice delivered to Lessee.

(ii) Lessor may at any time, without the consent of Lessee, assign or transfer all or any part of its right, title, interest and obligations with respect to the Series A Lease Balance and/or the Series B Lease Balance, including, but not limited to, the right to receive Series A Accrual Rent, Series A Capital Rent, Series B Accrual Rent, Series B Capital Rent, and the Supplemental Rent, proceeds from the sale of the Equipment in connection with the enforcement of remedies, Purchase Amount, Early Termination Amount, Casualty Amount and Sale Recourse Amount relating to each of the Series A Lease Balance and the Series B Lease Balance and the Cash Collateral relating to the Series A Lease Balance, to an Eligible Assignee (each such Eligible Assignee, together with any “Assignee” under the Lessor Assignment Agreement and their respective permitted successors and assigns being herein called an “Assignee”); *provided*, that

(A) except in the case of an assignment to an Affiliate of Lessor or of all of the Lessor's rights, obligations and interest in the Series A Lease Balance and the Series B Lease Balance, the amount of the assignment permitted hereunder shall not be less than \$5,000,000, (B) such assignment shall be evidenced by a Lessor Assignment Agreement or a supplement or amendment thereto or other agreement evidencing such assignment, a copy of which shall be furnished to the Agent, Lessee, and each Assignee, (C) each assignment or transfer shall comply with all applicable securities laws and (D) the Lessor shall give notice of such assignment and the name of the assignee to Lessee, Agent and each Assignee; *provided, further*, that with respect to any assignment which occurs after the Delivery Date, no such assignment shall be made if (1) in the reasonable opinion of Lessee, such assignment would (A) cause Lessee to be required to cease reporting this Lease as an operating lease in Lessee's financial statements or (B) cause Lessee to be required to consolidate the assets of Lessor or such assignee onto its balance sheet under FIN 46R or FASB 94, as applicable and (2) Lessee provides Lessor written notice of such determination within ten (10) Business Days of (A) Lessee's receipt of the notice described in clause (D) above and (B) Lessee's receipt of information regarding the proposed assignee as may be reasonably requested by Lessee's independent public accountants, which request shall be made within 10 days after Lessee's receipt of the notice described in clause (D) above. If, with respect to any assignment which occurs after the Delivery Date, Lessee has objected to a proposed assignee for the reason set forth in clause (1) above, Lessor may re-submit notice of such proposed assignee to Lessee at a later date and the reasonableness of Lessee's opinion in clause (1) shall be determined as of such later date. With respect to any assignment which occurs after the Delivery Date, so long as no Lease Default or Lease Event of Default has occurred and is continuing, Lessee may object in writing to the proposed assignee for any reason other than as set forth in clause (1) above within ten (10) Business Days of receipt of the notice described in clause (D) above, whereupon Lessee shall have sixty (60) days from the date of receipt by Lessee of such notice to find a replacement assignee which shall be an Eligible Assignee and if no such replacement assignee is found within such sixty (60) day period, the Lessor may assign all or any part of its rights, obligations and interest in, to and under this Lease, the other Operative Documents, the Items of Equipment and any other Lessee Collateral as contemplated above to such assignee identified in such notice delivered to Lessee.

(iii) Lessee hereby agrees that notwithstanding anything contained in the Operative Documents to the contrary, Lessor may, without the consent of Lessee, borrow on a non-recourse basis from any financial institution and assign to such financial institution as security for such borrowing, all of Lessor's right, title and interest with respect to the Series C Accrual Rent and Series C Lease Balance retained by Lessor and the Operative Documents relating thereto and the Series C Cash Collateral held by Lessor as Securities Intermediary and such financial institution shall be entitled to (A) receive such Series C Accrual Rent and Series C Lease Balance, (B) act as Securities Intermediary with respect to the Series C Cash Collateral and (C) exercise such rights and powers under the Operative Documents with respect to such Series C Accrual Rent and Series C Lease Balance assigned to such financial institution to the same extent as if such financial institution was an "Assignee" under the Lessor Assignment Agreement with respect to such Series C Lease Balance and such financial institution shall be deemed to be holding a portion of the outstanding Lease Balance equal to the outstanding principal amount of such non recourse borrowing. Lessee hereby agrees to execute all such documents, instruments and amendments as Lessor or such financial institution may reasonably request in connection with

such non-recourse borrowing and assignment. Lessee also agrees that Lessor may assign any or all of its right, title, interest and obligations under such non-recourse borrowing to any person without the consent of Lessee.

(b) *Required Deliveries.* Lessee and Agent may continue to deal solely and directly with the assignor Lessor in connection with any interest so assigned until (i) notice of such assignment shall have been given to Lessee and Agent by Lessor or its assignee; and (ii) the assignor and assignee shall have executed and delivered to Agent and Lessee an instrument of assignment in the form attached hereto as Exhibit G. When Agent and Lessee have received the items listed in clauses (i) and (ii) of the preceding sentence, subject to subparagraph (a) above, the assignee shall be a party hereto and the other Operative Documents to which the assignor was (or in the case of a partial assignment, is) a party and, to the extent of the rights and obligations so assigned to it, shall have the rights and obligations of a Lessor hereunder and under such other Operative Documents, and the assignor shall relinquish its rights and be released from its obligations hereunder and under such other Operative Documents. The Agent shall maintain a copy of each instrument of assignment delivered to it.

Section 19.2. Lessor Participations. Lessor may at any time sell to one or more Persons participating interests in all or a portion of its rights and obligations under this Lease, the other Operative Documents, the Items of Equipment and other Lessee Collateral (including all or any portion of the Rent owing to it); *provided, however,* that Lessor shall in no event sell a participating interest under this Section 19.2 if the result of such sale of a participating interest would result in the Lessor holding non-participated interests in an amount equal to or less than 5% of the then outstanding Lease Balance; *provided, further,* that:

(a) no participation contemplated in this Section 19.2 shall relieve Lessor from its obligations hereunder or under any other Operative Document;

(b) Lessor shall remain solely responsible for the performance of its obligations;

(c) Lessee shall continue to deal solely and directly with Lessor in connection with Lessor's rights and obligations under this Lease and the other Operative Documents and, subject to the rights of the participants under any agreement evidencing such participation, Lessor shall have the sole right to enforce its rights under the Operative Documents; and

(d) no participant (other than the participants party to any agreement evidencing such participation) shall be entitled to any reimbursement or indemnification for any Taxes, funding losses, additional costs, capital costs or reserve requirements pursuant to Section 11.4 or 11.5 in excess of a proportionate amount which would have been payable to Lessor or to an original participant from whom such Person directly or indirectly acquired its participation.

ARTICLE XX

AGENT

Section 20.1. Appointment of Agent; Powers and Authorization to Take Certain Actions. (a) Lessor irrevocably appoints and authorizes Wells Fargo Bank Northwest, National Association to act as its agent hereunder, with such powers as are specifically delegated to Agent by the terms hereof, together with such other powers as are reasonably incidental thereto. Lessor authorizes and directs Agent to, and Agent agrees for the benefit of Lessor, that, on the Delivery Date it will accept the documents described in Section 3.1 of this Lease. Agent accepts the agency hereby created applicable to it and agrees to receive all payments and proceeds pursuant to the Operative Documents and to disburse such payments or proceeds in accordance with the Operative Documents. Agent shall have no duties or responsibilities except those expressly set forth in this Lease and the other Operative Documents. Agent shall not be responsible to Lessor (or to any other Person) (i) for any recitals, statements, representations or warranties of any party contained in this Lease or any other Operative Documents, or in any certificate or other document referred to or provided for in, or received by any of them under, this Lease or the other Operative Documents, other than the representations and warranties made by Agent in Section 17.3, or (ii) for the value, validity, effectiveness, genuineness, enforceability or sufficiency of the title to the Items of Equipment (subject to Agent's obligations under Section 18.5) or any other document referred to or provided for herein or (iii) for any failure by Lessee, Lessor or any other party (other than Agent) to perform any of its obligations under the Operative Documents. Agent may employ agents, trustees or attorneys-in-fact, may vest any of them with any property, title, right or power deemed necessary for the purposes of such appointment and shall not be responsible for the negligence or misconduct of any of them selected by Agent with reasonable care. Neither Agent nor any of its directors, officers, employees or agents shall be liable or responsible for any action taken or omitted to be taken by it or them hereunder, or in connection herewith, except for its or their own gross negligence or willful misconduct.

(b) Agent shall not have any duty or obligation to manage, control, use, operate, store, lease, sell, dispose of or otherwise deal with the Items of Equipment or the other Lessee Collateral, or to otherwise take or refrain from taking any action under, or in connection with, this Lease or any related document to which Agent is a party, except as expressly provided by the terms of the Operative Documents, and no implied duties of any kind shall be read into the Operative Documents against Agent. The permissive right of Agent to take actions enumerated in this Lease or any other Operative Document shall never be construed as a duty, unless Agent is instructed or directed to exercise, perform or enforce one or more rights by Lessor (provided that Agent has received indemnification reasonably satisfactory to it). Subject to Section 20.1(c) below, no provision of the Operative Documents shall require Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its obligations under the Operative Documents, or in the exercise of any of its rights or powers thereunder. It is understood and agreed that the duties of Agent are ministerial in nature.

(c) Except as specifically provided herein, Agent is acting hereunder solely as agent and, except as specifically provided herein, is not responsible to any party hereto in its individual capacity, except with respect to any claim arising from Agent's gross negligence or willful misconduct, any breach of a representation or covenant made in its individual capacity or, in the case of Agent's handling of funds, failure to act with the same care as Agent uses in handling its own funds.

(d) Agent may accept deposits from, lend money to and otherwise deal with Lessee or any of its Affiliates with the same rights as it would have if it were not the named Agent hereunder.

Section 20.2. Reliance. Agent may rely upon, and shall not be bound or obligated to make any investigation into the facts or matters stated in, any certificate, notice or other communication (including any communication by telephone, telecopy, telex, telegram or cable) reasonably believed by it to be genuine and correct and to have been made, signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Agent with due care (including any expert selected by Agent to aid Agent in any calculations required in connection with its duties under the Operative Documents).

Section 20.3. Action upon Instructions Generally. Subject to Sections 20.4 and 20.6, upon written instructions of Lessor, Agent shall, on behalf of Lessor, give such notice or direction, exercise such right, remedy or power hereunder or in respect of the Items of Equipment and the other Lessee Collateral, and give such consent or enter into such amendment to any document to which it is a party as Agent as may be specified in such instructions. Agent shall deliver to Lessor a copy of each notice, report and certificate received by Agent pursuant to the Operative Documents. Agent shall have no obligation to investigate or determine whether there has been a Lease Event of Default or a Lease Default. Agent shall not be deemed to have notice or knowledge of a Lease Event of Default or Lease Default unless a Responsible Officer of Agent is notified in writing of such Lease Event of Default or Lease Default; *provided* that a Responsible Officer of Agent shall be deemed to have been notified in writing of any failure of Lessee to pay Basic Rent in the amounts and at the times set forth in Section 6.1 (a "*Payment Default*") immediately upon the occurrence of such Payment Default. If Agent receives notice of a Lease Default or Lease Event of Default, Agent shall give prompt notice thereof, at Lessee's expense, to Lessor. Subject to Sections 20.4, 20.6 and 22.5, Agent shall take action or refrain from taking action with respect to such Lease Default or Lease Event of Default as directed by Lessor; *provided* that, unless and until Agent receives such directions, Agent may refrain from taking any action, or may act in its discretion, with respect to such Lease Default or Lease Event of Default. Prior to the date the Lease Balance shall have become due and payable by acceleration pursuant to Section 12.2, the Lessor may deliver written instructions to Agent to waive, and Agent shall waive pursuant thereto, any Lease Event of Default and its consequences. As to any matters not expressly provided for by this Lease, Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder in accordance with instructions signed by Lessor and such instructions of Lessor and any action taken or failure to act pursuant thereto shall be binding on Lessor.

Section 20.4. Indemnification. Lessor shall reimburse and hold Agent harmless (but only to the extent that any such indemnified amounts have not in fact been paid to Agent by, or on behalf of, Lessee in accordance with Section 11.1) from any and all claims, losses, damages, obligations, penalties, liabilities, demands, suits, judgments, or causes of action, and all legal proceedings, and any reasonable costs or expenses in connection therewith, including allocated charges, costs and expenses of internal counsel of Agent and all other reasonable attorneys' fees and expenses incurred by Agent, in any way relating to or arising in any manner out of (i) any Operative Document, the enforcement hereof or thereof or the consummation of the Overall Transaction, or (ii) instructions from Lessor (including, without limitation, the costs and expenses that Lessee is obligated to and does not pay hereunder, but excluding normal administrative costs and expenses incident to the performance by Agent of its agency duties hereunder other than materially increased administrative costs and expenses incurred as a result of a Lease Event of Default); *provided* that Lessor shall not be liable for any of the foregoing to the extent they arise from (a) the gross negligence or willful misconduct of Agent, (b) the inaccuracy of any representation or warranty or breach of any covenant given by Agent in Section 17.3 or Section 18.5, (c) in the case of Agent's handling of funds, the failure to act with the same care as Agent uses in handling its own funds or (d) any taxes, fees or other charges payable by Agent based on or measured by any fees, commissions or compensation received by it for acting as Agent in connection with the Overall Transaction.

Section 20.5. Independent Credit Investigation. Lessor, by entering into this Lease and the other Operative Documents, agrees that it has, independently and without reliance on Agent and based on such documents and information as it has deemed appropriate, made its own credit analysis of Lessee and its own decision to enter into this Lease and each of the other Operative Documents to which it is a party and that it will, independently and without reliance upon Agent and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking action under this Lease and any other Operative Documents to which it is a party. Agent shall not be required to keep itself informed as to the performance or observance by Lessee of any other document referred to (directly or indirectly) or provided for herein or to inspect the properties or books of Lessee.

Section 20.6. Refusal to Act. Except for notices and actions expressly required of Agent hereunder and except for the performance of its covenants in Section 18.5, Agent shall in all cases be fully justified in failing or refusing to act unless (a) it is indemnified to its reasonable satisfaction by Lessor against any and all liability and reasonable expense which may be incurred by it by reason of taking or continuing to take any such action; *provided* that such indemnity shall not be required to extend to liability or expense arising from any matter described in clauses (a) through (d) of Section 20.4, it being understood that no action taken by Agent in accordance with the instructions of Lessor shall be deemed to constitute any such matter and (b) it is reasonably satisfied that such action is not contrary to any Operative Document or to any Applicable Law and Regulations.

Section 20.7. Resignation or Removal of Agent; Appointment of Successor. Subject to the appointment and acceptance of a successor Agent as provided below, Agent may resign at

any time by giving notice thereof to Lessor and Lessee or may be removed at any time, by written notice from Lessor. Upon any such resignation or removal, Lessor, at the time of the resignation or removal shall have the right to appoint, with the prior written consent of Lessee (so long as no Lease Event of Default is continuing), a successor Agent which shall be a financial institution having a combined capital and surplus of not less than \$100,000,000. If, within 30 calendar days after the retiring Agent's giving of notice of resignation or receipt of a written notice of removal, a successor Agent is not so appointed and does not accept such appointment, then the retiring or removed Agent may appoint a successor Agent and transfer to such successor Agent all rights and obligations of the retiring Agent. Such successor Agent shall be a financial institution having combined capital and surplus of not less than \$100,000,000. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring or removed Agent and the retiring or removed Agent shall be discharged from duties and obligations as Agent thereafter arising hereunder and under any related document. If the retiring Agent does not appoint a successor, Lessor shall be entitled to apply to a court of competent jurisdiction for such appointment, and such court may thereupon appoint a successor to act until such time, if any, as a successor shall have been appointed as above provided.

Section 20.8. Separate Agent. The Lessor may, and if it fails to do so at any time when it is so required, Agent may, for the purpose of meeting any legal requirements of any jurisdiction to which the Items of Equipment or other Lessee Collateral may be subject, appoint one or more individuals or corporations either to act as co-agent jointly with Agent or to act as separate agent of all or any part of the Items of Equipment or other Lessee Collateral, and vest in such individuals or corporations, in such capacity such rights or duties as Agent may consider necessary or desirable. Agent shall not be required to qualify to do business in any jurisdiction where it is not now so qualified. Agent shall execute, acknowledge and deliver all such instruments as may be required by any such co-agent or separate agent more fully confirming such title, rights or duties to such co-agent or separate agent; *provided* that, so long as no Lease Event of Default or Material Lease Default has occurred and continuing, Lessee's consent is required for the appointment of a co-agent or separate agent pursuant to this Section 20.8. Upon the acceptance in writing of such appointment by any such co-agent or separate agent, it, she or he shall be vested with such interest in the Items of Equipment or the other Lessee Collateral or any part thereof, and with such rights and duties, not inconsistent with the provisions of the Operative Documents, as shall be specified in the instrument of appointment, jointly with Agent (except insofar as local law makes it necessary for any such co-agent or separate agent to act alone), subject to all terms of the Operative Documents. Any co-agent or separate agent, to the fullest extent permitted by legal requirements of the relevant jurisdiction, at any time, by an instrument in writing, shall constitute Agent its attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its behalf and in its name. If any co-agent or separate agent shall die, become incapable of acting, resign or be removed, the interest in the Items of Equipment and the other Lessee Collateral and all rights and duties of such co-agent or separate agent shall, so far as permitted by law, vest in and be exercised by Agent, without the appointment of a successor to such co-agent or separate agent.

Section 20.9. Termination of Agency. The agency created hereby shall terminate upon the final disposition by Lessor of all of the Items of Equipment and other Lessee Collateral and the final distribution by Agent of all monies or other property or proceeds received pursuant to the Operative Documents in accordance with their terms, provided that at such time Lessee shall have complied fully with all the terms hereof.

Section 20.10. Compensation of Agency. Lessee shall pay Agent its reasonable fees, costs and expenses for the performance of Agent's obligations hereunder (including the reasonable fees and expenses of its counsel) to the extent provided in the Agent Fee Letter.

Section 20.11. Limitations. It is expressly understood and agreed by and among the parties hereto that, except as otherwise provided herein or in the other Operative Documents: (a) this Lease and the other Operative Documents to which Agent is a party are executed by Agent, not in its individual capacity (except with respect to the representations and covenants of Agent in Sections 17.3 and 18.5), but solely as Agent under the Operative Documents in the exercise of the power and authority conferred and vested in it as such Agent; (b) each and all of the undertakings and agreements herein made on the part of Agent are each and every one of them made and intended not as personal undertakings and agreements by Agent, or for the purpose or with the intention of binding Agent personally, but are made and intended for the purpose of binding only the Items of Equipment and the other Lessee Collateral unless expressly provided otherwise; (c) actions to be taken by Agent pursuant to its obligations under the Operative Documents may, in certain circumstances, be taken by Agent only upon specific authority of Lessor; (d) nothing contained in the Operative Documents shall be construed as creating any liability on Agent, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director, employee, Affiliate or agent of, Agent to perform any covenants either express or implied contained herein, all such liability, if any, being expressly waived by the other parties hereto and by any Person claiming by, through or under them; and (e) so far as Agent, individually or personally, is concerned, the other parties hereto and any Person claiming by, through or under them shall look solely to the Items of Equipment, the other Lessee Collateral and Lessee for the performance of any obligation under any of the instruments referred to herein; *provided, however,* that nothing in this Section 20.11 shall be construed to limit in scope or substance the general corporate liability of Agent in respect of its gross negligence or willful misconduct, negligence in the handling of funds or for those representations, warranties and covenants of Agent in its individual capacity set forth herein or in any of the other Operative Documents.

Section 20.12. Assignments. The terms and provisions of this Section XX are subject to the provisions of the Lessor Assignment Agreement.

ARTICLE XXI

DISTRIBUTIONS TO LESSOR

Section 21.1. Distribution. Subject to the provisions of Sections 2.1 and 2.3 of the Lessor Assignment Agreement, all amounts of money received or realized by Agent pursuant to this Lease and the other Operative Documents which are to be distributed to Lessor (as distinguished from Lessee or any other Person) shall be distributed as follows:

At any time prior to the acceleration of the Lease Balance, all distributions by Agent constituting or representing (a) Rent, (b) Lease Balance, (c) Sale Recourse Amount and (d) interest with respect to the amounts described in clauses (a) and (b) above shall be made to Lessor, and in case moneys are insufficient to pay in full the whole amount due, owing or unpaid to Lessor, then application shall be made *first*, to out of pocket costs of Agent, to the extent not paid pursuant to any other provision in the Lease or any other Operative Document; *second*, to amounts payable pursuant to Section 6.4; *third*, to accrued and unpaid Accrual Rent; *fourth*, to accrued and unpaid Capital Rent; *fifth*, to the remaining Lease Balance, if due, in accordance with Section 2.1 of the Lessor Assignment; *sixth*, to Supplemental Rent owed proportionately to Lessor and each Assignee in accordance with the Seller's Share and the respective Assignee's Shares; *seventh*, to Supplemental Rent owed disproportionately to Lessor, any Assignee or any Indemnitee (if these amounts get paid to the Agent rather than the Person entitled thereto); and *eighth*, to the Person entitled thereto by law.

At any time after the acceleration of the Lease Balance, all distributions by Agent shall be made in accordance with the last paragraph of Section 2.1 of the Lessor Assignment Agreement.

Section 21.2. Timing of Distribution. The amounts payable by Agent to Lessor pursuant to this Lease will be payable upon Agent's receipt of such amounts pursuant to this Lease, in immediately available funds.

ARTICLE XXII

MISCELLANEOUS

Section 22.1. Effect of Waiver. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default of Lessee hereunder shall impair any such right, power or remedy nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein or of or in any similar breach or default thereafter occurring, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Lessor of any breach or default under this Lease must be specifically set forth in writing and must satisfy the requirements set forth in Section 22.5 with respect to approval by Lessor.

Section 22.2. Survival of Covenants. All representations, warranties and covenants of the parties hereto shall survive the expiration or termination of this Lease to the extent arising prior to any such expiration or termination.

Section 22.3. Governing Law. THIS LEASE HAS BEEN DELIVERED IN, AND SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF, THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE CONFLICTS OF LAWS PRINCIPLES OF SUCH STATE.

Section 22.4. Notices. Unless otherwise specified herein, all notices, requests, demands or other communications to or upon the respective parties hereto shall be by letter or facsimile (if the sender on the same day sends a confirming copy of such facsimile by a recognized overnight delivery service (charges prepaid)) and shall be deemed to have been given (i) in the case of notice by letter, the earlier of when delivered to the addressee by hand or courier if delivered on a Business Day and, if not delivered on a Business Day, the first Business Day thereafter or on the third Business Day after depositing the same in the mails, registered or certified mail, postage prepaid, return receipt requested, addressed as provided on Schedule II, and (ii) in the case of notice by facsimile, when transmitted during business hours on a Business Day and, if not transmitted during business hours on a Business Day, the first Business Day thereafter (if the sender on the same day sends a confirming copy of such facsimile by a recognized overnight delivery service (charges prepaid)), addressed as provided on Schedule II, or to such other address as any of the parties hereto may designate by written notice.

Section 22.5. Amendment; Complete Agreements. This Lease and the other Operative Documents exclusively and completely state the rights of Agent, Lessor and Lessee with respect to the Overall Transaction and supersede all prior agreements, oral or written, with respect thereto. No variation, modification, amendment or waiver of this Lease shall be valid unless in writing and signed by Agent and Lessee.

Section 22.6. Counterparts. This Lease has been executed in several numbered counterparts. Only the counterpart designated as counterpart "No. 1" shall be deemed to be an original or to be chattel paper for purposes of the Uniform Commercial Code, and such copy shall be held by Agent.

Section 22.7. Severability. Whenever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under Applicable Laws and Regulations; but if any provision of this Lease shall be prohibited by or invalid under Applicable Laws and Regulations, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease.

Section 22.8. Successors and Assigns. This Lease shall be binding upon the parties hereto and their respective permitted successors

and assigns and shall inure to the benefit of the parties hereto and their respective permitted successors and permitted assigns.

Section 22.9. Captions; Table of Contents. Section captions and the table of contents used in this Lease (including the Schedules and Exhibits hereto) are for convenience of reference only and shall not affect the construction of this Lease.

Section 22.10. Schedules and Exhibits. The Schedules and Exhibits hereto, along with all attachments referenced in any of such items, are incorporated herein by reference and made a part hereof.

Section 22.11. No Accord and Satisfaction. The acceptance by Lessor of any sums from Lessee (whether as Capital Rent or otherwise) in amounts which are less than the amounts due and payable by Lessee hereunder is not intended, nor shall be construed, to constitute an accord and satisfaction of any dispute between Lessor and Lessee regarding sums due and payable by Lessee hereunder, unless the Agent specifically deems it as such in writing.

Section 22.12. Enforcement of Certain Warranties. Unless a Lease Event of Default shall have occurred and be continuing, Lessor authorizes Lessee (directly or through agents), at Lessee's expense, to assert, during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claim that Lessee or Lessor may have under the warranties provided in connection with the Items of Equipment and Lessor agrees to cooperate, at Lessee's expense, with Lessee and its agents in asserting such rights. Any amount recovered by Lessee under any such warranties shall be retained by or paid over to Lessee, subject to Section 22.13.

Section 22.13. Security Interest in Funds. As long as a Material Lease Default or Lease Event of Default shall have occurred and be continuing, any amount that would otherwise be payable to Lessee under the Operative Documents shall be paid to or retained by Lessor (including amounts to be paid to Lessee pursuant to Article IX or Section 22.12) as security for the performance by Lessee in full of its obligations under this Lease and the other Operative Documents, and, in the case of any existing Lease Event of Default, it may be applied to the obligations of Lessee hereunder and under the other Operative Documents and distributed pursuant to Article XXI. At such time as no Material Lease Default or Lease Event of Default shall be continuing, such amounts, net of any amounts previously applied to Lessee's obligations hereunder or under any other Operative Documents, shall be paid to Lessee. Any such amounts which are held pending payment to Lessee or application hereunder shall be invested by Lessor as directed from time to time in writing by Lessee, and at the expense and risk of Lessee, in Permitted Investments. Any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) shall be applied from time to time in the same manner as the principal invested. Lessor shall not be liable for any losses on such investments. Lessee will promptly pay to Lessor on demand, the amount of any loss realized as the result of any such investment (together with any fees, commissions and other

expenses, if any, incurred in connection with such investment), such amount to be held, paid and applied in the same manner as other amounts subject to this Section 22.13.

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IN WITNESS WHEREOF, the undersigned have each caused this Lease to be duly executed and delivered by their respective representatives thereunto duly authorized as of the day and year first above written.

LSI LOGIC CORPORATION, as Lessee

By: /s/ Anita Prasad

Name: Anita Prasad

Title: Vice President, Treasury and Tax

WELLS FARGO BANK NORTHWEST, NATIONAL
ASSOCIATION, not in its individual capacity,
except as expressly stated herein, but solely
as Agent

By: /s/ Val T. Orton

Name: Val T. Orton
Title: Vice President

BANK OF THE WEST, as Lessor

By: /s/ David W. Maurer

Name: David W. Maurer

Title: Vice President

Omnibus Amendment

in respect of

Lease (Lease B)
Lessor Assignment Agreement (Lease B)

Dated as of September 16, 2004

among

Bank of the West,
as Lessor,

LSI Logic Corporation,
as Lessee,

Wells Fargo Bank, National Association, as Series A Assignee
ABN Amro Bank, N.V., as Series A Assignee

and

Wells Fargo Bank Northwest, National Association, as Agent

Omnibus Amendment (Lease B)

This Omnibus Amendment (Lease B) (this "*Omnibus Amendment*") is dated as of September 16, 2004 and is among LSI Logic Corporation, a Delaware corporation ("*LSI*" or "*Lessee*"); Bank of the West ("*Lessor*" or "*Seller*"); Wells Fargo Bank, Northwest, as a Series A Assignee; ABN Amro Bank N.V., as a Series A Assignee (each, an "*Assignee*"); and Wells Fargo Bank Northwest, National Association, not in its individual capacity, except as expressly stated in the Lease, but solely as Agent ("*Wells Fargo*" or "*Agent*").

Recitals

A. Lessor, Lessee and Agent have heretofore entered into that certain Lease and Security Agreement (Lease B), dated as of August 6, 2004 (the "*Lease*"), under and pursuant to which Lessee agreed to lease from Lessor, and Lessor agreed to lease to Lessee, certain Items of Equipment. Capitalized terms used but not otherwise defined in this Omnibus Amendment shall have the meanings assigned to such terms in the Lease.

B. Lessor, the financial institutions defined therein as Assignees, the Agent and the financial institutions identified therein as Securities Intermediaries have heretofore entered into that certain Lessor Assignment Agreement (Lease B), dated as of August 6, 2004 (the "*Lessor Assignment Agreement*") under and pursuant to which Seller sold and assigned to the Assignees, and the Assignees purchased and assumed from Seller, a percentage interest in Seller's right, title, interest and obligations with respect to the Series A Lease Balance and/or the Series B Lease Balance, as applicable, and, in each case the rights appurtenant thereto.

C. The parties now desire to amend the Lease and the Lessor Assignment Agreement in the manner set forth below.

D. All requirements of law have been fully complied with and all other acts and things necessary to make this Omnibus Amendment a legal, valid and binding instrument according to its terms for the purposes herein expressed have been done or performed.

Now, therefore, upon the full and complete satisfaction of the conditions precedent to the effectiveness of this Omnibus Amendment set forth in Section 3 hereof, and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Agreement

Section 1. Amendment to the Lease.

Section 1.1. Section 22.5. Section 22.5 of the Lease shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 22.5. Amendments; Complete Agreements.* This Lease and the other Operative Documents exclusively and completely state the rights of Agent, Lessor and Lessee with respect to the Overall Transaction and supersede all prior agreements, oral or written, with respect thereto. Subject to the following paragraph, no variation, modification, amendment or waiver of this Lease shall be valid unless in writing and signed by Agent and Lessee.

Notwithstanding anything contained herein or in any other Operative Document, so long as no Lease Event of Default exists at the time of execution, no amendment, modification or waiver of this Lease or any other Operative Document (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement) shall be effective even after execution by the applicable parties to such amendment, modification or waiver unless and until Lessee shall have delivered to Agent an identical amendment, modification or waiver to Lease A or the corresponding Operative Documents (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement) (as such terms are defined in Lease A), as applicable, in each case executed by the applicable parties.

Notwithstanding the foregoing, nothing contained herein shall be construed to require the consent of Lessee to any amendment, modification or waiver of any Operative Document unless such consent of Lessee is expressly required by the terms of such Operative Document.”

Section 2. Amendments to the Lessor Assignment Agreement.

Section 2.1. Section 3.1. Section 3.1 of the Lessor Assignment Agreement shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 3.1. Sole Administration by Agent.* (a) The parties hereto agree that the Agent will administer the assignments and transactions contemplated hereby in accordance with the agency provisions of Article XX of the Lease. Each Assignee hereby agrees to and shall have the benefit of such provisions and hereby joins in the appointment of Wells Fargo Bank Northwest, National Association, as Agent.

(b) The parties hereto also agree that the term “Lessor” as used in Article XX of the Lease (except for Section 20.3 of the Lease (other than the second and fifth sentence of such Section 20.3 of the Lease)) shall mean each Assignee and Seller and that the term “Lessor” as used in Section 20.3 of the Lease (other than the second and fifth sentence of such Section 20.3 of the Lease), Article XII of the Lease and certain other relevant sections of the Lease shall have the meaning as further described in Section 3.1(b)2 below. Accordingly:

1. Agent hereby agrees to promptly deliver to each Assignee copies of each notice, report, certificate, document, amendment request, waiver request and other information that (A) Agent is required to deliver to Lessor under the Lease or the other Operative Documents and (B) that Agent receives from Lessor pursuant to the Lease or the other Operative Documents.

2. (i) (A) Any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents in connection with the exercise of remedies and/or the enforcement of the Operative Documents or (B) any amendment, modification or waiver of any provision of the Lease or the other Operative Documents at any time that a Lease Event of Default exists, in either case, which requires the consent of or direction by Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees and Lessor collectively, holding more than 50% of the outstanding Lease Balance and (ii) (A) with respect to any other act, right, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or (B) any amendment, modification or waiver of any provision of the Lease or the other Operative Documents (other than any Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement, in each case which shall be governed by clause (VI) of the following proviso) at any time that a Lease Event of Default does not exist, in either case, which requires the consent of or direction by Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees, Lessor, Assignees (as defined in Lease A) and Lessor (as defined in Lease A) collectively holding more than 50% of the sum of (x) the outstanding Lease Balance *plus* (y) the outstanding Lease Balance (as defined in Lease A); *provided* that

(I) any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or waiver thereof purporting to (i) release any Item of Equipment or other Lessee Collateral (other than any Cash Collateral, the release of the lien in which shall be governed by Sections 3 and 7 of the Control Agreements) from the Liens created by the Operative Documents (except as expressly provided in the Lease), (ii) amend, modify or waive (A) clause (i)(A) or clause (i)(B) of this Section 3.1(b)2 or (B) clause (I), (II), (III), (IV), (V) or (VI) of this proviso, (iii) amend, modify or waive Section 18.3(a) of the Lease or any defined term used in Section 18.3(a) of the Lease in a manner that makes Section 18.3(a) of the Lease less restrictive to Lessee, or (iv) amend, modify or waive Section 5.1 of the Lease, which requires the consent of or direction by the Lessor or Agent shall require the consent of or direction by each Assignee and Lessor, (II) any act, right, remedy, approval or power by Lessor or Agent at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or waiver thereof relating, in each case, to Section 8.3 or 8.6 of the Lease, or waiving any Lease Event of Default under the Lease after the Sale Option has been exercised, which requires the consent of or direction by the Lessor or Agent at the direction of Lessor, as applicable, shall require the consent of or direction by Assignees holding more than 50% of the sum of (x) the outstanding Series A Lease Balance *plus* (y) the outstanding Series B Lease Balance and the consent of or direction by Lessor, (III) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or, waiver thereof (i) relating to the Sale Option provisions contained in Article XV of the Lease (other than the right to receive the Sale Recourse Amount or any modification of Lessee's obligation with respect to the Sale Recourse Amount) or Section 11.7 of the Lease or (ii) purporting to amend the Lease or any other Operative Document in connection with an assignment by Lessor of its interests and obligations under the Operative Documents pursuant to Section 19.1(a)(ii) of the Lease, if such amendment modifies or adds representations and warranties, covenants, events of default or other provisions to the Operative Documents that are more restrictive to Lessee or more favorable to the Assignees than the provisions of the Operative Documents as of the Delivery Date, which requires the consent of or direction by Lessor or by Agent, at the direction of Lessor, shall,

in each case, require the consent of or direction by Lessor only, (IV) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, under the Lease or any other Operative Document or any amendment, modification or waiver thereof relating to the provisions regarding the sale or possession of, or enforcement of the lien on, the Equipment in connection with the enforcement of remedies pursuant to Section 12.2 or Section 12.3 of the Lease which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, as applicable, shall require the consent of or direction by the Series B Assignees holding more than 50% of the outstanding Series B Lease Balance, (V) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, as applicable, under the Lease or the other Operative Documents or any amendment, modification or, waiver thereof waiving a Payment Default with respect to a Series or modifying the definition (including the definition of any defined term used in any such definition), or the method of calculation of any payment of Basic Rent with respect to a Series, Series A Lease Balance, Series B Lease Balance, Series C Lease Balance or Lessor's Interest Related Lease Balance with respect to a Series (as defined below), Accrual Rent with respect to a Series or any other amount payable hereunder with respect to a Series, which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, shall require the consent of each Assignee of such Series and, with respect to interests in the Series B Lease Balance, the Series C Lease Balance or the Lessor's Interest Related Lease Balance, the consent of Lessor ("Series" shall mean, as the context may require, the rights and obligations with respect to (a) the Series A Lease Balance, (b) the Series B Lease Balance, (c) the Series C Lease Balance or (d) the Lessor's Interest Related Lease Balance), (VI) any act, right, remedy, approval or power by Lessor or Agent, at the direction of Lessor, under any Control Agreement or the Cash Collateral Agreement, or any amendment, modification or waiver of the Control Agreement or the applicable sections of the Cash Collateral Agreement or the Lease which relate solely to such Control Agreement or to the Cash Collateral which is the subject of such Control Agreement, in each case which requires the consent of or direction by Lessor or Agent, at the direction of Lessor, shall require the consent of or direction solely by the Assignee or Lessor for whose ultimate benefit the Securities Intermediary party to such Control Agreement holds the Cash Collateral in the Cash Collateral Account which is the subject of such Control Agreement, and (VII) any amendment or

modification purporting to modify (i) this clause (VII), (ii) clause (ii)(A) or clause (ii)(B) of this Section 3.1(b)2 or (iii) Section 22.5 of the Lease, shall require the consent of or direction by each Assignee, Lessor, each Assignee (as defined in Lease A) and Lessor (as defined in Lease A).

3. Except as set forth in the third paragraph of clause (c) below, Lessor shall have no responsibility, obligation or liability whatsoever with respect to the administration of the assignments or the transactions contemplated hereby (including but not limited to any item listed in this Section 3.1(b)).

(c) Without limiting the rights of any Assignee(s) under Section 3.1(b) to direct the Agent to exercise any act, right, remedy, approval or power under the Operative Documents, in the event the Lessor is permitted by the terms of the Lease to exercise any remedy or take any remedial action under the Operative Documents, Lessor may and, in the event the Lessor and/or Assignees holding the requisite percentage of the Lease Balance necessary to exercise a remedy under Section 3.1(b) above instruct Lessor to appoint the Agent to exercise such remedy, Lessor shall appoint Agent as its agent for purposes of exercising such remedy or taking such remedial action (and Agent hereby agrees to accept such appointment) whereupon Lessor shall have no liability or responsibility whatsoever with respect thereto, except as otherwise expressly set forth in the Operative Documents.

Upon the occurrence of a Lease Event of Default and provided that the requisite percentage of Lessor and/or Assignees required to give any approval or direction to the Agent with respect to the acceleration of the Lease Balance has not been obtained, the Agent shall, at the direction of Lessor or any Assignee, request (the "*Acceleration Request*") that the Lessor (if applicable) and each Assignee elect whether or not to accelerate the Lease Balance pursuant to Section 12.2(a)(i) of the Lease; *provided* that if (i) the Lease Event of Default (A) is of the type described in Section 12.1(a) or 12.1(c) of the Lease, (B) has existed for at least sixty (60) days and (C) an Acceleration Request has been delivered by Agent on or after such sixty (60) day period and (ii) Lessor or an Assignee fails to notify the Agent in writing of whether or not Lessor or such Assignee has elected to accelerate the Lease Balance within two weeks following Lessor's or such Assignee's receipt of the Acceleration Request, then the Lease Balance held by

Lessor or such Assignee, as applicable, shall be deemed to be not outstanding for the purpose of determining whether the requisite percentage of the Lessor and Assignees have given any approval or directed the taking of any action by Agent with respect to acceleration of the Lease Balance pursuant to Section 12.2(a)(i) of the Lease.

Lessor shall be indemnified and held harmless by Assignees pursuant to the provisions of Section 4.5 hereof and shall not be liable for any such action taken or omitted to be taken by it under or in connection with this Agreement or the other Operative Documents except for (i) its own gross negligence, (ii) its willful misconduct, (iii) its negligence in the handling of funds or (iv) its breach of any of the Operative Documents. Additionally, Lessor shall not be responsible in any manner to the Assignees for any recital, statement, representation or warranty made by the Lessee, or any officer thereof, contained in any Operative Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Lessor under or in connection with any Operative Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of any Operative Document, or for any failure of the Lessee or any other party to any Operative Document to perform its obligations thereunder. Lessor shall not be under any obligation to the Assignees to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, any Operative Document, or to inspect the properties, books or records of the Lessee.

Lessor shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon advice and statements of legal counsel (including counsels to the Lessee), independent accountants and other experts selected by Lessor or the Lessee.

(d) Agent hereby represents and warrants to Assignees that the representations and warranties of Agent set forth in Section 17.3 of the Lease are true and correct in all material respects.

(e) In the event that LSI and/or any Affiliate of LSI (each, an “*LSI Assignee*”) is or becomes an Assignee hereunder, no LSI Assignee shall have any rights whatsoever as an Assignee with respect to any amendments, modifications, waivers, approvals or consents, or directions with respect to the taking of any action, in each case, hereunder or under any other Operative Document and for the purpose of determining whether the requisite percentage of Assignees approved or consented to any amendment, modification, waiver or consent to be given under any Operative Document, or have given any other approval or directed the taking of any action provided herein or therein to be taken upon the direction of all or a specified percentage of the Assignees, the principal amount of the Lease Balance directly or indirectly held by any LSI Assignee shall be deemed to be not outstanding.

(f) Each Series A Assignee hereby acknowledges and agrees that in the event that such Series A Assignee becomes the subject of any voluntary or involuntary case or proceeding under any bankruptcy, insolvency, receivership or similar law now or hereafter in effect, and as a result thereof the Series A Cash Collateral held by or benefiting such Series A Assignee becomes a part of such Series A Assignee’s bankruptcy estate, then (i) such Series A Assignee shall be deemed to have set off and applied such Series A Cash Collateral against any amounts due with respect to the portion of the Series A Lease Balance secured by such Series A Cash Collateral and (ii) the Lessee shall be deemed to have paid in full any and all Rent due with respect to the Series A Lease Balance secured by such Series A Cash Collateral, in each case in an amount not to exceed such Series A Cash Collateral.”

Section 2.2. Section 6.2. Section 6.2 of the Lessor Assignment Agreement shall be and is hereby amended and restated in its entirety to read as follows:

“*Section 6.2. Amendments and Waivers.* No amendment or waiver of any provision of this Agreement, and no consent with respect to any departure by any party from the terms hereof, shall be effective unless the same shall be in writing and signed by Agent, Lessor and each Assignee affected thereby (and, with respect to (i) Section 3.1(b) and (ii) the last sentence of 4.4(b), the Lessee) and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.”

Section 3. Conditions to Effectiveness.

This Omnibus Amendment shall become effective on September 16, 2004 (the "*Effective Date*") upon the satisfaction of the following conditions precedent:

(a) This Omnibus Amendment shall have been duly authorized, executed and delivered by each of the parties hereto;

(b) After giving effect to this Omnibus Amendment, the Operative Documents shall be in full force and effect as to all parties and no Lease Default or Lease Event of Default shall have occurred or be continuing;

(c) Lessee shall have paid the reasonable fees and expenses of Chapman and Cutler LLP and Lessor's special counsel, in each case in connection with the negotiation, preparation, approval, execution and delivery of this Omnibus Amendment; and

(d) The representations and warranties of the Lessee set forth herein shall be true and correct.

Section 4. Representations and Warranties.

Section 4.1. Representations and Warranties. Lessee hereby represents and warrants to Lessor, Agent and the Assignees that, as of the date hereof:

(a) No Lease Default or Lease Event of Default has occurred and is continuing, or will occur as a result of, or after giving effect to, this Omnibus Amendment;

(b) After giving effect to this Omnibus Amendment, the representations and warranties of Lessee contained in Section 17.1 of the Lease are true and correct on and as of the date hereof, except to the extent such representations and warranties relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date. For purposes of the foregoing representation, the term "*Operative Documents*" as used in Section 17.1 of the Lease shall include this Omnibus Amendment and the other Operative Documents as amended hereby;

(c) Each of the Operative Documents is in full force and effect; and

(d) The provisions set forth in Sections 1 and 2 hereof are set forth, *mutatis mutandis*, in the Omnibus Amendment (Lease A), dated as of the date hereof, among LSI, as lessee, Wells Fargo, as agent and the financial institutions party thereto.

Section 4.2. Reaffirmation of Lien and Security Interest of Lessee. Lessee hereby reaffirms its grant to Lessor of a lien on and security interest in the Lessee Collateral as set forth in the Lease and the Cash Collateral Agreement, as applicable, and in the case of the Lease, as amended pursuant hereto.

Section 5. Miscellaneous.

Section 5.1. Construction. This Omnibus Amendment shall be construed in connection with and as part of the Operative Documents, and except as modified and expressly amended by this Omnibus Amendment, all terms, conditions and covenants contained in the Operative Documents are hereby ratified and shall be and remain in full force and effect.

Section 5.2. Headings and Table of Contents. The headings of the Sections of this Omnibus Amendment are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof and any reference to numbered Sections, unless otherwise indicated, are to Sections of this Omnibus Amendment.

Section 5.3. References. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Omnibus Amendment may refer to the Lease, the Lessor Assignment Agreement and the other Operative Documents without making specific reference to this Omnibus Amendment but nevertheless all such references shall be deemed to include this Omnibus Amendment unless the context otherwise requires.

Section 5.4. Counterparts. This Omnibus Amendment may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one amendment.

Section 5.5. Governing Law. This Omnibus Amendment shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to the conflict of laws principles of such State, except as to matters relating to the Lessor Assignment Agreement, which shall be governed by, and construed in accordance with, the internal laws of the State of New York, without regard to conflict of laws principles of such State.

[Signature Pages Follow]

In Witness Whereof, each of the undersigned have caused this Omnibus Amendment to be duly executed and delivered by their properly and duly authorized officers as of the day and year first above written.

LSI Logic Corporation

By: /s/ Anita Prasad

Name: Anita Prasad

Title: Vice President, Treasury and Tax

ABN AMRO Bank N.V., as a Series A Assignee

By: /s/ Panida Wongchantara

Name: Panida Wongchantara

Title: Vice President

By: /s/ Bassam Wehbe

Name: Bassam Wehbe

Title: Director

Wells Fargo Bank Northwest, National Association, not in its individual capacity,
but solely as Agent

By: /s/ Val T. Orton

Name: Val T. Orton

Title: Vice President

Bank of the West, as Lessor

By: /s/ David W. Maurer

Name: David W. Maurer

Title: Vice President

Wells Fargo Bank, National Association, as a Series A Assignee

By: /s/ Matt Jurgens

Name: Matt Jurgens

Title: Vice President

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
AS ADOPTED PURSUANT TO
SECTION 302(a) OF THE SARBANES-OXLEY ACT OF 2002

I, Wilfred J. Corrigan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LSI Logic Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2004

By: /s/ Wilfred J. Corrigan

Name: Wilfred J. Corrigan
Title: Chairman & Chief Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER
AS ADOPTED PURSUANT TO
SECTION 302(a) OF THE SARBANES-OXLEY ACT OF 2002

I, Bryon Look, certify that:

1. I have reviewed this quarterly report on Form 10-Q of LSI Logic Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) [Omitted]
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2004

By: /s/ Bryon Look

Name: Bryon Look
Title: Executive Vice President & Chief Financial Officer

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

I, Wilfred J. Corrigan, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of LSI Logic Corporation on Form 10-Q for the quarterly period ended October 3, 2004, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of LSI Logic Corporation.

By: /s/ Wilfred J. Corrigan

Name: Wilfred J. Corrigan

Title: Chairman & Chief Executive Officer

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

I, Bryon Look, certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of LSI Logic Corporation on Form 10-Q for the quarterly period ended October 3, 2004, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of LSI Logic Corporation.

By: /s/ Bryon Look

Name: Bryon Look
Title: Executive Vice President & Chief
Financial Officer