FORM 10-Q

Quarterly report pursuant to sections 13 or 15(d)

Filing Date: **2004-08-12** | Period of Report: **2004-06-30**
SEC Accession No. 0001193125-04-139229

(HTML Version on secdatabase.com)

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KULICKE & SOFFA INDUSTRIES INC

CIK:**56978**| IRS No.: **231498399** | State of Incorp.:**PA** | Fiscal Year End: **0930**
Type: **10-Q** | Act: **34** | File No.: **000-00121** | Film No.: **04970960**
SIC: **3559** Special industry machinery, nec

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

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

For the quarterly period ended June 30, 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 No. 0-121

KULICKE AND SOFFA INDUSTRIES, INC.

(Exact name of registrant as specified in its charter)

PENNSYLVANIA	**23-1498399**
(State or other jurisdiction of incorporation)	**(IRS Employer Identification No.)**
2101 BLAIR MILL ROAD, WILLOW GROVE, PENNSYLVANIA	**19090**
(Address of principal executive offices)	**(Zip Code)**

(215) 784-6000

(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 July 30, 2004, there were 51,056,437 shares of the Registrant' s Common Stock, without par value, outstanding.

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FORM 10 - Q

JUNE 30, 2004

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PART I - FINANCIAL INFORMATION

Item 1 - Financial Statements

KULICKE AND SOFFA INDUSTRIES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	September 30, 2003	*(Unaudited)* June 30, 2004
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	$ 65,725	$ 120,296
Restricted cash	2,836	3,266
Short-term investments	4,490	17,881
Accounts and notes receivable (less allowance for doubtful accounts: 9/30/03 - $5,929; 6/30/04 - $3,464)	94,144	139,881
Inventories, net	37,906	53,501
Prepaid expenses and other current assets	11,187	12,722
Deferred income taxes	10,700	9,459
TOTAL CURRENT ASSETS	226,988	357,006
Property, plant and equipment, net	61,238	56,892
Intangible assets (net of accumulated amortization: 9/30/03- $26,187; 6/30/04 - $33,013)	66,249	56,241
Goodwill	81,440	81,440

Other assets	6,946	8,675
TOTAL ASSETS	$ 442,861	$ 560,254
LIABILITIES AND SHAREHOLDERS' EQUITY		
CURRENT LIABILITIES:		
Notes payable and current portion of long-term debt	$ 36	$ 219
Accounts payable	45,844	71,188
Accrued expenses	41,885	44,146
Income taxes payable	13,394	14,911
TOTAL CURRENT LIABILITIES	101,159	130,464
Long term debt	300,338	329,635
Other liabilities	9,865	7,152
Deferred taxes	31,402	30,161
TOTAL LIABILITIES	442,764	497,412
Commitments and contingencies	–	–
SHAREHOLDERS' EQUITY:		
Common stock, without par value	203,607	213,010

Retained deficit	(195,792)	(143,243)
Accumulated other comprehensive loss	(7,718)	(6,925)
TOTAL SHAREHOLDERS' EQUITY	97	62,842
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 442,861	$ 560,254

The accompanying notes are an integral part of these consolidated financial statements.

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KULICKE AND SOFFA INDUSTRIES, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)
(unaudited)

	Three months ended June 30,		Nine months ended June 30,	
	2003	2004	2003	2004
Net revenue	$123,782	$194,628	$353,321	$570,268
Cost of sales	91,679	129,556	258,350	381,300
Gross profit	32,103	65,072	94,971	188,968
Selling, general and administrative	22,947	24,688	77,902	78,055
Research and development, net	9,735	8,887	29,412	25,791
Resizing(recovery) costs	–	–	(205)	(68)
Loss (gain) on disposal of assets	4	–	(117)	(794)
Asset impairment	1,207	–	2,915	3,293
Amortization of intangible assets	2,315	2,198	6,944	6,828
Operating expense	36,208	35,773	116,851	113,105
Income (loss) from operations	(4,105)	29,299	(21,880)	75,863
Interest income	135	275	796	781

Interest expense	(4,309)	(2,191)	(13,214)	(9,052)
Charge on early extinguishment of debt	–	(1,825)	–	(8,594)
Income (loss) from continuing operations before income tax	(8,279)	25,558	(34,298)	58,998
Provision for income taxes	1,350	2,877	5,694	5,637
Net income (loss) from continuing operations	(9,629)	22,681	(39,992)	53,361
Loss from discontinued FCT operations	(1,723)	–	(8,306)	(432)
Loss on sale of FCT operations	–	–	–	(380)
Net income (loss)	$(11,352)	$22,681	$(48,298)	$52,549
Net income (loss) per share from continuing operations:				
Basic	$(0.19)	$0.45	$(0.81)	$1.05
Diluted	$(0.19)	$0.35	$(0.81)	$0.84
Net loss per share from discontinued operations:				
Basic	$(0.04)	$–	$(0.16)	$(0.01)
Diluted	$(0.04)	$–	$(0.16)	$(0.01)
Net income (loss) per share:				
Basic	$(0.23)	$0.45	$(0.97)	$1.04

Diluted	$(0.23)	$0.35	$(0.97)	$0.83
Weighted average shares outstanding				
Basic	49,766	50,873	49,639	50,652
Diluted	49,766	67,943	49,639	69,187

The accompanying notes are an integral part of these consolidated financial statements.

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KULICKE AND SOFFA INDUSTRIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(unaudited)

	Nine months ended June 30,	
	2003	**2004**
CASH FLOWS FROM OPERATING ACTIVITIES:		
Net income (loss)	$(48,298)	$52,549
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	28,939	23,281
Charge on early extinguishment of debt	–	8,594
Resizing cost recovery	(205)	(68)
Asset impairment	2,915	3,293
Changes in components of working capital, net	(30,075)	(34,123)
Other, net	1,966	4,185
Net cash provided by (used in) operating activities	(44,758)	57,711
CASH FLOWS FROM INVESTING ACTIVITIES:		
Proceeds from sales of investments classified as available for sale	20,619	17,072
Purchase of investments classified as available for sale	(7,903)	(30,526)

Purchases of property, plant and equipment	(7,917)	(8,076)
Proceeds from sale of FCT Division	–	2,000
Proceeds from sale of property and equipment	393	933
Net cash provided by (used in) investing activities	5,192	(18,597)
CASH FLOWS FROM FINANCING ACTIVITIES:		
Proceeds from issuance of common stock	98	3,914
Restricted cash	449	(430)
Proceeds from issuance of 0.5% convertible subordinated notes	–	199,736
Proceeds from issuance of 1.0% convertible subordinated notes	–	63,257
Purchase of 4.75% convertible subordinated notes	–	(178,563)
Purchase of 5.25% convertible subordinated notes	–	(72,291)
Payments on borrowings, other	(64)	(166)
Net cash provided by financing activities	483	15,457
Changes in cash and cash equivalents	(39,083)	54,571
Cash and cash equivalents at beginning of period	85,986	65,725
Cash and cash equivalents at end of period	$46,903	$120,296

CASH PAID DURING THE PERIOD FOR:		
Interest	$12,366	$9,516
Income Taxes	$3,873	$3,985

The accompanying notes are an integral part of these consolidated financial statement.

KULICKE AND SOFFA INDUSTRIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

NOTE 1 - BASIS OF PRESENTATION

The condensed consolidated financial statement information included herein is unaudited, but in the opinion of management, contains all adjustments, consisting only of normal recurring adjustments, necessary to present fairly the Company' s financial position at June 30, 2004, and the results of its operations for the three and nine month periods ended June 30, 2003 and 2004 and its cash flows for the nine month periods ended June 30, 2003 and 2004. In February 2004 we sold the remaining assets of our advanced packaging technology segment, which consisted solely of our flip chip business unit which licensed flip chip technology and provided flip chip bumping and wafer level packaging services. As a result, we have reflected the flip chip business unit as a discontinued operation and do not include the results of its operations in our revenues and expenses from continuing operations as reported in our financial statements and this discussion of our results of operations. We have reclassified our prior period financial statements to coincide with the current year presentation. These financial statements should be read in conjunction with the audited financial statements included as exhibits 99.1, 99.2 and 99.3 to the Company' s Form 10-Q for the period ended March 31, 2004.

NOTE 2 - NEW AND RECENTLY ADOPTED ACCOUNTING PRONOUNCEMENTS

In January 2003, the FASB issued 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. The Company has a 36% ownership interest in a limited liability company that owns a building in Gilbert, Arizona and leases it to the Company. The ownership and lease of this one location comprises the sole activity of this entity. The Company consolidated the following assets and liabilities, associated with this entity, into its financial statements as of June 30, 2004: cash of $287 thousand; fixed assets comprised of land and buildings of $5.8 million; current liabilities comprised primarily of property tax and interest of $122 thousand; and a liability for a mortgage of $5.5 million, which is secured by the property. The other parties, which have 64% interest in this entity, have an interest in the above net assets and liabilities of $289 thousand which has been included in other noncurrent liabilities on the Company' s balance sheet at June 30, 2004.

In December 2002, the FASB issued SFAS 148, *Accounting for Stock-Based Compensation-Transition and Disclosure.* This Statement amends FASB Statement No. 123, *Accounting for Stock-Based Compensation,* to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The Company has adopted the disclosure provisions of this standard.

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At June 30, 2004, the Company had five stock-based employee compensation plans and two director compensation plans. The Company accounts for those plans under the recognition and measurement principles of APB Opinion No. 25, *Accounting for Stock Issued to Employees*, and related Interpretations. No stock-based employee or director compensation cost is reflected in net income (loss), as all options granted under those plans had an exercise price equal to the market value of the underlying common stock on the date of grant. The following table illustrates the effect on net income (loss) and earnings (loss) per share if the Company had applied the fair value recognition provisions of FASB Statement No. 123, *Accounting for Stock-Based Compensation*, to stock-based employee and director compensation:

	(in thousands)			
	Three months ended June 30,		**Nine months ended June 30,**	
	2003	**2004**	**2003**	**2004**
Net income (loss), as reported	$(11,352)	$22,681	$(48,298)	$52,549
Deduct: Total stock-based compensation expense determined under fair value based method for all awards, net of related tax effects	(2,511)	(2,027)	(8,589)	(7,061)
Pro forma net income (loss)	$(13,863)	$20,654	$(56,887)	$45,488
Net income (loss) per share:				
Basic-as reported	$(0.23)	$0.45	$(0.97)	$1.04
Basic-pro forma	$(0.28)	$0.41	$(1.15)	$0.90
Dilued - as reported	$(0.23)	$0.35	$(0.97)	$0.83
Diluted - pro forma	$(0.28)	$0.32	$(1.15)	$0.69

In April 2003, the FASB issued Statement of Financial Accounting Standards No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities* (SFAS No. 149). SFAS No. 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*. The Company has adopted this standard and the adoption did not have an impact on its financial position and results of operations.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150*, Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity* (SFAS No. 150). SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or as an asset in some circumstances). The Company has adopted this standard and the adoption did not have an impact on its financial position and results of operations.

In December 2003, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin No. 104, *Revenue Recognition (SAB 104).* SAB 104 updates portions of the interpretive guidance included in Topic 13 of the codification of the Staff Accounting Bulletins in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. The Company is following the guidance of SAB 104, and the issuance of SAB 104 did not have an impact on the Company' s financial position or results of operations.

Reclassifications - Certain amounts in the Company' s prior fiscal year financial statements have been reclassified to conform to their presentation in the current fiscal year.

NOTE 3 - GOODWILL AND OTHER INTANGIBLES

At June 30, 2004, the Company had goodwill in two reporting units that it reviews for impairment in accordance with SFAS No. 142*, Goodwill and Other Intangible Assets*. The reporting units are: the bonding wire and test businesses. The bonding wire business is included in the Company' s packaging materials segment, while the test business comprises the Company' s test segment.

The Company has determined that its annual test for impairment of intangible assets will take place at the end of the fourth quarter of each fiscal year, which coincides with the completion of its annual forecasting process. However, the Company also tests for impairment whenever a "triggering" event occurs. The Company performed interim goodwill impairment tests during the quarters ended December 31, 2003 and March 31, 2004 due to the existence of impairment triggers, which were the losses experienced in the Company' s test business. The results of the first step of the goodwill impairment tests, indicated that the fair value of the test reporting unit exceeded its carrying value by

approximately $24 million at December 31, 2003 and by $29 million at March 31, 2004. Based on these tests no impairment charge was recorded. Due to the improved profitability of our test business in the June 2004 quarter, no triggering event occurred. The fair value of the test reporting unit was based on discounted cash flows of its projected future cash flows, consistent with the methods used in fiscal 2002 and 2003. When conducting its goodwill impairment analysis, the Company calculates its potential impairment charges based on the two-step test identified in SFAS 142 and using the implied fair value of the respective reporting units. The Company uses the present value of future cash flows from the respective reporting units to determine the implied fair value. In the March 2004 quarter, the Company also tested its intangible assets for impairment based on the sale of certain assets of its test operations and recorded an impairment charge of $3.2 million associated with the reporting unit' s purchased technology intangible asset.

The following table outlines the components of goodwill by business segment at June 30, 2004; there was no change in the components from September 30, 2003.

	(in thousands)		
	Packaging Materials Segment	**Test Segment**	**Total**
Goodwill	$ 29,684	$51,756	$81,440

The changes in the carrying value of intangible assets from September 30, 2003 appear below:

	(in thousands)		
	Customer Accounts	**Purchased Technology**	**Total Intangible Assets**
Net intangible balance at September 30, 2003	$ 29,451	$ 36,798	$ 66,249
Amortization	(3,084)	(3,742)	(6,826)
Impairment charge		(3,182)	(3,182)
Net intangible balance at June 30, 2004	$ 26,367	$ 29,874	$ 56,241

The aggregate amortization expense related to these intangible assets for the three and nine months ended June 30, 2003 was $2.2 million and $6.8 million, respectively and for the three and nine months ended June 30, 2004, respectively, was $2.3 million and $6.9 million. The annual amortization expense related to these intangible assets for each of the next five fiscal years is expected to be approximately $8.8 million.

NOTE 4 - INVENTORIES

Inventories consist of the following:

	(in thousands)	
	September 30, 2003	**June 30, 2004**
Raw materials and supplies	$ 29,654	$44,382 (1)
Work in process	11,788	11,836
Finished goods	12,279	11,768
	53,721	67,986
Inventory reserves	(15,815)	(14,485)
	$ 37,906	$53,501

(1) To reduce its cost to procure gold, the Company changed its gold supply financing arrangement in June 2004. As a result, gold is no longer treated as consignment goods and is now reflected and included in the Company' s inventory and accounts payable. Accordingly, raw materials inventory at June 30, 2004 includes $11.8 million of gold inventory and accounts payable includes a corresponding liability of $11.8 million. Prior to the June 2004 change in the Company' s gold supply financing arrangement the Company did not reflect gold in its inventory. This accounted for the majority of the increase in raw materials and supplies inventory from September 2003 to June 2004. The Company' s obligation for payment and the price it pays for gold continues to be at the time and price it ships gold wire to its customers.

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NOTE 5 - EARNINGS PER SHARE

Basic net income (loss) per share ("EPS") is calculated using the weighted average number of shares of common stock outstanding during the period. The calculation of diluted net income (loss) per share assumes the exercise of stock options and the conversion of convertible securities to common shares unless the inclusion of these will have an anti-dilutive impact on net income (loss) per share. In addition, in computing diluted net income (loss) per share, if convertible securities are assumed to be converted to common shares, the after-tax amount of interest expense recognized in the period associated with the convertible securities is added back to net income. In the June 2004 quarter, $1.1 million of after-tax interest expense, related to the convertible subordinated notes, was added to the Company' s net income to determine diluted earnings per share. For the nine months ended June 30, 2004, $4.7 million of after-tax interest expense, related to the convertible subordinated notes was added to the Company' s net income to determine diluted earnings per share. For the three and nine months ended June 30, 2003, the exercise of stock options and the conversion of the convertible subordinated notes were not assumed since their conversion to common shares would have an anti-dilutive effect due to the Company' s net loss position.

A reconciliation of weighted average shares outstanding – basic to the weighted average shares outstanding-diluted appears below:

	(in thousands)			
	Three months ended June 30,		**Nine months ended June 30,**	
	2003	**2004**	**2003**	**2004**
Weighted average shares outstanding - Basic	49,766	50,873	49,639	50,652
Potentially dilutive securities:				
Stock options	*	1,692	*	2,179
1 % Convertible subordinated notes	NA	55	NA	18
1/2% Convertible subordinated notes	NA	10,084	NA	7,980
5 1/4% Convertible subordinated notes	*	5,239	*	5,931
4 3/4 % Convertible subordinated notes	*	NA	*	2,427
Weighted average shares outstanding - Diluted	49,766	67,943	49,639	69,187

* Due to the Company' s net loss for the three and nine months ended June 30, 2003, potentially dilutive securities were deemed to be anti-dilutive for the periods. The weighted average number of shares for potentially dilutive securities (convertible notes and employee and director stock options) for the three and nine months ended June 30, 2003 was 14,836,645 and 14,734,346, respectively.

NOTE 6 - RESIZING

The semiconductor industry has been volatile, with sharp periodic downturns and slowdowns. The industry experienced excess capacity and a severe contraction in demand for semiconductor manufacturing equipment during our fiscal 2001, 2002 and most of 2003. The Company developed formal resizing plans in response to these changes in its business environment with the intent to align its cost structure with anticipated revenue levels. Accounting for resizing activities requires an evaluation of formally agreed upon and approved plans. The Company documented and committed to these plans to reduce spending that included facility closings/rationalizations and reductions in workforce. The Company recorded the expense associated with these plans in the period that it committed to carry-out the plans. Although the Company makes every attempt to consolidate all known resizing activities into one plan, the extreme cycles and rapidly changing forecasting environment places limitations on achieving this objective. The recognition of a resizing event does not necessarily preclude similar but unrelated actions in future periods.

In fiscal 2003, the Company reversed $475 thousand ($205 thousand in the first half of 2003) of these resizing charges due to the actual severance cost associated with the terminated positions being less than the cost originally estimated.

In addition to the formal resizing costs identified below, the Company continued (and is continuing) to downsize its operations in fiscal 2002, 2003 and 2004. These downsizing efforts resulted in workforce reduction charges of $5.2 million and $3.9 million in the nine months ended June 30, 2003 and 2004, respectively. In contrast to the resizing plans discussed above, these workforce reductions were not related to formal or distinct restructurings, but rather, the normal and recurring management of employment levels in response to business conditions and the Company' s ongoing effort to reduce its cost structure. In addition, during fiscal 2003, if the business conditions were to have improved, the Company was prepared to rehire some of these terminated individuals. These recurring workforce reduction charges were recorded as Selling, General and Administrative expenses.

A summary of the charges, reversals and payments of the formal resizing plans initiated in fiscal 2002 appears below:

	(in thousands)		
	Severance and Benefits	**Commitments**	**Total**
Fiscal 2002 Resizing Plans			
Provision for resizing plans in fiscal 2002			
Continuing operations	9,486	9,282	18,768
Discontinued operations	893		893
Payment of obligations in fiscal 2002	(5,914)	(300)	(6,214)
Balance, September 30, 2002	4,465	8,982	13,447
Change in estimate	(455)	–	(455)
Payment of obligations in fiscal 2003	(3,135)	(3,192)	(6,327)
Balance, September 30, 2003	875	5,790	6,665
Change in estimate	(68)	–	(68)

Payment of obligations	(362)	(2,058)	(2,420)
Balance, June 30, 2004	$ 445	$ 3,732	$4,177

The individual resizing plans and acquisition restructuring plans initiated in fiscal 2002 are identified below:

Fourth Quarter 2002

In January 1999, the Company acquired the advanced substrate technology of MicroModule Systems, a Cupertino, California company, to enable production of high density substrates. While showing some progress in developing the substrate technology, the business was not profitable and would have required additional capital and operating cash to complete development of the technology. In light of the business downturn that was affecting the semiconductor industry at the time, in the fourth quarter of fiscal 2002, the Company announced that it could not afford to further develop of the substrate technology and would close its substrate operations. As a result, the Company recorded a resizing charge of $8.5 million. The resizing charge included a severance charge of $1.2 million for the elimination of 48 positions and lease obligations of $7.3 million. The Company expected, and achieved, annual payroll related savings of approximately $4.2 million and annual facility/operating savings of approximately $3.9 million as a result of this resizing plan. By June 30, 2003, all the positions had been eliminated. The plans have been completed but cash payments for the lease obligations are expected to continue into 2006, or such time as the obligations can be satisfied. In addition to these resizing charges, in the fourth quarter of fiscal 2002, the Company wrote-off $7.3 million of fixed assets and $1.1 million of intangible assets associated with the closure of the substrate operation. This substrate business was included in the Company' s then existing Advanced Packaging business segment.

Third Quarter 2002

As a result of the continuing downturn in the semiconductor industry and the Company' s desire to improve the performance of its test business segment, the Company decided to move towards a 24 hour per-day manufacturing model in its major U.S. wafer test facility, which would provide its customers with faster turn-around time and

delivery of orders and economies of scale in manufacturing. As a result, in the third quarter of fiscal 2002, the Company announced a resizing plan to reduce headcount and consolidate manufacturing in its test business segment. As part of this plan, the Company moved manufacturing of wafer test products from its facilities in Gilbert, Arizona and Austin, Texas to its facilities in San Jose, California and Dallas, Texas and from its Kaohsuing, Taiwan facility to its Hsin Chu, Taiwan facility. The resizing plan included a severance charge of $1.6 million for the elimination of 149 positions as a result of the manufacturing consolidation. The resizing plan also included a charge of $0.5 million associated with the closure of the Kaohsuing, Taiwan facility and an Austin, Texas facility representing costs of non-cancelable lease obligations beyond the facility closure and costs required to restore the production facilities to their original state. The Company expected, and achieved, annual payroll related savings of approximately $6.9 million and annual facility/operating savings of approximately $84 thousand as a result of this resizing plan. All of the positions have been eliminated and both facilities have been closed. The plans have been completed but cash payments for the severance are expected to continue through 2005 and cash payments for facility and contractual obligations are expected to continue through 2004, or such earlier time as the obligations can be satisfied.

Second Quarter 2002

As a result of the continuing downturn in the semiconductor industry and the Company' s desire to more efficiently manage its business, in the second quarter of fiscal 2002, the Company announced a resizing plan comprised of a functional realignment of business management and the consolidation and closure of certain facilities. In connection with the resizing plan, the Company recorded a charge of $11.3 million ($10.4 million in continuing operations and $0.9 million in discontinued operations), consisting of severance and benefits of $9.7 million for 372 positions that were to be eliminated as a result of the functional realignment, facility consolidation, the shift of certain manufacturing to China (including the Company' s hub blade business) and the move of the Company' s microelectronics products to Singapore and a charge of $1.6 million for the cost of lease commitments beyond the closure date of facilities to be exited as part of the facility consolidation plan.

In the second quarter of fiscal 2002, the Company closed five test facilities: two in the United States, one in France, one in Malaysia, and one in Singapore. These operations were absorbed into other company facilities. The resizing charge for the facility consolidation reflects the cost of lease commitments beyond the exit dates that are associated with these closed test facilities.

To reduce the Company' s short term cash requirements, the Company decided, in the fourth quarter of fiscal 2002, not to relocate either its hub blade manufacturing facility from the United States to China or its microelectronics product manufacturing from the United States to Singapore, as previously announced. This change in the Company' s facility relocation plan resulted in a reversal of $1.6 million of the resizing costs recorded in the second quarter of fiscal 2002. As a result the Company reduced its expected annual savings from this resizing plan for payroll related expenses by approximately $4.7 million.

Also in the fourth quarter of fiscal 2002, the Company reversed $600 thousand ($590 thousand in continuing operations and $10 thousand in discontinued operations) of the severance resizing expenses and in the fourth quarter of fiscal 2003 the Company reversed $353 thousand of resizing expenses, previously recorded in the second quarter of fiscal 2002, due to actual severance costs associated with the terminated positions being less than those estimated as a result of employees leaving the Company before they were severed.

As a result of the functional realignment, the Company terminated employees at all levels of the organization from factory workers to vice presidents. The organizational change shifted management of the Company businesses to functional (i.e. sales, manufacturing, research and development, etc.) areas across product lines rather than by product line. For example, research and development activities for the entire company are now controlled and coordinated by one corporate vice president under the functional organizational structure, rather than separately by each business unit. This structure provides for a more efficient allocation of human and capital resources to achieve corporate R&D initiatives.

The Company expected annual payroll related savings of approximately $17.3 million and annual facility/operating savings of approximately $660 thousand as a result of this resizing plan. As a result of the decision not to relocate either its hub blade manufacturing facility or its microelectronics product manufacturing the Company ultimately achieved annual payroll related savings of approximately $12.7 million. The

plans have been completed but cash payments for the severance charges and the facility and contractual obligations are expected to continue into 2005, or such time as the obligations can be satisfied.

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NOTE 7 - DEBT

Long term debt at September 30, 2003 and June 30, 2004 consisted of the following:

Long term debt consists of the following:

				(in thousands) Outstanding Balance at,	
Type	**Fiscal Year of Maturity**	**Conversion Price[1]**	**Rate**	**September 30, 2003**	**June 30, 2004**
Convertible Subordinated Notes	2006	$ 19.75	5.25%	$ 125,000	$54,000
Convertible Subordinated Notes	2007	$ 22.90	4.75%	175,000	–
Convertible Subordinated Notes	2009	$ 20.33	0.50%	–	205,000
Convertible Subordinated Notes	2010	$ 12.84	1.00%	–	65,000
Other[2]				338	5,635
				$ 300,338	$329,635

(1) Subject to adjustment.

(2) Includes a mortgage of $5.5 million held by a limited liability company which the Company began consolidating into its financial statements at December 31, 2003 in accordance with FIN 46.

In the quarter ended December 31, 2003, the Company issued $205 million of 0.5% Convertible Subordinated Notes in a private placement to qualified institutional investors. The notes mature on November 30, 2008, bear interest at 0.5% per annum and are convertible into common stock of the Company at $20.33 per share, subject to adjustment for certain events. The notes are general obligations of the Company and are subordinated to all senior debt. The notes rank equally with the Company' s 1.0% and 5.25% Convertible Subordinated Notes. There are no financial covenants associated with the notes and there are no restrictions on incurring additional debt or issuing or repurchasing our securities. Interest on the notes is payable on May 30 and November 30 each year.

The Company used the majority of the net proceeds from the issuance of the 0.5% Convertible Subordinated Notes to redeem all of its $175 million of 4.75% Convertible Subordinated Notes at a redemption price equal to 102.036% of the principal amount of the 4.75% notes. The Company recorded a charge of $6.2 million associated with the redemption of these notes, $2.6 million of which was due to the write-off of unamortized note issuance costs and $3.6 million due to the redemption premium.

In the quarter ended March 31, 2004, the Company used the remainder of the net proceeds from the issuance of the 0.5% Convertible Subordinated Notes to redeem $21 million of its 5.25% Convertible Subordinated Notes due 2006. The Company paid a premium of $241 thousand to purchase the $21 million of 5.25% notes.

In the quarter ended June 30, 2004, the Company issued $65 million of 1.0% Convertible Subordinated Notes in a private placement to qualified institutional investors. The Notes mature on June 30, 2010, bear interest at 1.0% per annum and are convertible into common stock of the Company at $12.84 per share, subject to adjustment for certain events. The conversion rights of these Notes may be terminated on or after June 30, 2006 if the closing price of the Company' s common stock has exceeded 140% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days. The notes are general obligations of the Company and are subordinated to all senior debt. The notes rank equally with the Company' s 5.25% and 0.5% Convertible Subordinated Notes. There are no financial covenants associated with the 1.0% notes and there are no restrictions on incurring additional debt or issuing or repurchasing our securities. Interest on the notes is payable on June 30 and December 30 each year.

The Company used the majority of the net proceeds from the issuance of the 1.0% Convertible Subordinated Notes to purchase $50 million of its 5.25% Convertible Subordinated Notes at a purchase price equal to 102.1% of the principal amount of the 5.25% notes. The Company recorded a charge of $1.8 million associated with the purchase of these notes, $0.8 million of which was due to the write-off of unamortized note issuance costs and $1.0 million due to the redemption premium.

The Company has called for redemption, on August 19, 2004, the remaining $54 million principal amount of its 5.25% Convertible Subordinated Notes.

NOTE 8 - COMPREHENSIVE LOSS

For the three and nine month periods ended June 30, 2003 and 2004, the components of total comprehensive income (loss) were as follows:

	(in thousands)			
	Three months ended June 30,		**Nine months ended June 30,**	
	2003	**2004**	**2003**	**2004**
Net income (loss)	$(11,352)	$22,681	$(48,298)	$52,549
Foreign currency translation adjustment	571	25	1,609	855
Unrealized gain (loss) on investments, net of taxes	(11)	(92)	(25)	(62)
Other comprehensive income (loss)	560	(67)	1,584	793
Comprehensive income (loss)	$(10,792)	$22,614	$(46,714)	$53,342

NOTE 9 - OPERATING RESULTS BY BUSINESS SEGMENT

In February 2004 we sold the remaining assets of our advanced packaging technologies segment, which consisted solely of our flip chip business unit which licensed flip chip technology and provided flip chip bumping and wafer level packaging services. As a result, we have reflected the flip chip business unit as a discontinued operation and have eliminated the advanced packaging technologies segment. We have reclassified prior period financial statements to coincide with the current year presentation. The reclassified financial statements for prior fiscal years are included as Exhibit 99.1, 99.2 and 99.3 to the Company' s Form 10-Q for the period ended March 31, 2004.

Operating results by business segment for the three and nine-month periods ended June 30, 2003 and 2004 were as follows:

Fiscal 2004 *(in thousands)*:

	Equipment Segment	**Packaging Materials Segment**	**Test Segment**	**Corporate and Other[1]**	**Consolidated**
Quarter ended June 30, 2004:					

Net revenue	$95,732	$61,740	$37,156	$ –	$ 194,628
Cost of sales	55,940	47,796	25,820	–	129,556
Gross profit	39,792	13,944	11,336	–	65,072
Operating costs	14,889	5,776	10,437	4,671	35,773
Resizing costs	–	–	–	–	–
Asset impairment	–	–	–	–	–
Income (loss) from operations	$24,903	$8,168	$899	$ (4,671)	$ 29,299
Nine months ended June 30, 2004:					
Net revenue	$312,172	$167,418	$90,678	$ –	$ 570,268
Cost of sales	181,522	129,968	69,810	–	381,300
Gross profit	130,650	37,450	20,868	–	188,968
Operating costs	45,418	16,209	34,559	14,488	110,674
Resizing costs	–	–	–	(68)	(68)
Loss (gain) on disposal of assets	–	–	(85)	(709)	(794)
Asset impairment	–	–	3,293	–	3,293
Income (loss) from operations	$85,232	$21,241	$(16,899)	$ (13,711)	$ 75,863

Segment Assets at June 30, 2004	$ 119,073	$ 115,186	$ 167,920	$ 158,075	$ 560,254

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Fiscal 2003 *(in thousands)*:

	Equipment Segment	Packaging Materials Segment	Test Segment	Corporate and Other[(1)]	Consolidated
Quarter ended June 30, 2003:					
Net revenue	$ 48,416	$45,828	$29,538	$ –	$ 123,782
Cost of sales	32,240	35,070	24,369	–	91,679
Gross profit	16,176	10,758	5,169	–	32,103
Operating costs	15,402	5,968	9,933	3,694	34,997
Loss (gain) on disposal of assets	–	–	–	4	4
Asset impairment	–	–	1,207	–	1,207
Income (loss) from operations	$ 774	$4,790	$(5,971)	$ (3,698)	$ (4,105)
Nine months ended June 30, 2003:					
Net revenue	$ 145,880	$128,987	$78,319	$ 135	$ 353,321
Cost of sales	96,194	97,958	64,198		258,350
Gross profit	49,686	31,029	14,121	135	94,971
Operating costs	51,511	19,777	31,124	11,846	114,258

Resizing costs	–	–	(103)	(102)	(205)
Loss (gain) on disposal of assets	–	–	–	(117)	(117)
Asset impairment	17	–	2,898	–	2,915
Income (loss) from operations	$ (1,842)	$ 11,252	$ (19,798)	$ (11,492)	$ (21,880)
Segment Assets at June 30, 2003	$ 115,550	$ 92,079	$ 161,348	$ 98,365	$ 467,342

(1) Corporate and Other includes the residual activity from our former substrate business unit that was closed in the September quarter of 2002.

NOTE 10 - GUARANTOR OBLIGATIONS AND CONTINGENCIES

Guarantor Obligations

The Company has issued standby letters of credit for employee benefit programs and a facility lease and its wire subsidiary has issued a guarantee for payment under its gold supply financing arrangement. The guarantee for the gold supply financing arrangement is secured by the assets of the Company' s wire manufacturing subsidiary and contains restrictions on that subsidiary' s net worth, ratio of total liabilities to net worth, ratio of EBITDA to interest expense and ratio of current assets to current liabilities.

The table below identifies the guarantees and standby letters of credit at June 30, 2004:

Nature of guarantee	Term of guarantee	*(in thousands)* Maximum obligation under guarantee
Security for the Company' s gold financing arrangement	Expires June 2006	$ 17,000
Security deposit for payment of employee health benefits	Expires June 2005	1,710
Security deposit for payment of employee worker compensation benefits	Expires July and October 2004	1,084
Security deposit for a facility lease	Expires July 2004	300
		$ 20,094

The Company’ s products are generally shipped with a one-year warranty against manufacturing defects and the Company does not offer extended warranties in the normal course of its business. The Company establishes reserves for estimated warranty expense when revenue for the related product is recognized. The reserve for estimated warranty expense is based upon historical experience and management estimates of future expenses.

The table below details the activity related to the Company' s reserve for product warranty expense for the nine months ended June 30, 2004:

	(in thousands) Reserve for Product Warranty Expense
Reserve for product warranty expense at September 30, 2003	$ 1,008
Provision for product warranty expense	2,901
Product warranty expense	(2,547)
Reserve for product warranty expense at June 30, 2004	$ 1,362

Commitments and Contingencies

The Company orders inventory components in the normal course of its business. A portion of these orders are non-cancelable and a portion have varying penalties and charges in the event of cancellation. The total amount of the Company' s inventory purchase commitments, which do not appear on its balance sheet, as of June 30, 2004 was $57.0 million. If business conditions were to change and the Company was unable to cancel purchase commitments without penalty or payment its financial condition and operating results could be adversely affected.

From time to time, third parties assert that the Company is, or may be, infringing or misappropriating their intellectual property rights. In such cases, the Company will defend against claims or negotiate licenses where considered appropriate. In addition, some of the Company' s customers are parties to litigation brought by the Lemelson Medical, Education and Research Foundation Limited Partnership (the "Lemelson Foundation"), in which the Lemelson Foundation claims that certain manufacturing processes used by those customers infringe patents held by the Lemelson Foundation. The Company has never been named a party to any such litigation. Some customers have requested that the Company indemnify them to the extent their liability for these claims arises from use of the Company' s equipment. The Company does not believe that products sold by it infringe valid Lemelson patents. If a claim for contribution was brought against the Company, the Company believes it would have valid defenses to assert and also would have rights to contribution and claims against the Company' s suppliers. The Company has not incurred any material liability with respect to the Lemelson claims or any other pending intellectual property claim and the Company does not believe that these claims will materially and adversely affect the Company' s business, financial condition or operating results. The ultimate outcome of any infringement or misappropriation claim that might be made, however, is uncertain and the Company cannot assure you that the resolution of any such claim will not materially and adversely affect the Company' s business, financial condition and operating results.

Concentrations

Sales to a relatively small number of customers account for a significant percentage of the Company' s net sales. In the nine months ended June 30, 2003 and 2004, sales to Advanced Semiconductor Engineering accounted for 14.3% and 17.2%, respectively, of the Company' s net sales. No other customer accounted for more than 10% of total net sales during the nine months ended June 30, 2003 and 2004. The Company expects that sales of its products to a limited number of customers will continue to account for a high percentage of net sales for the

foreseeable future. At September 30, 2003 and June 30, 2004, Advanced Semiconductor Engineering accounted for 10% and 13% of total accounts receivable, respectively. No other customer accounted for more than 10% of total accounts receivable at September 30, 2003 and June 30, 2004. The reduction or loss of orders from a significant customer could adversely affect the Company' s business, financial condition, operating results and cash flows.

The Company relies on subcontractors to manufacture to the Company' s specifications many of the components or subassemblies used in its products. Certain of the Company' s products require components or parts of an exceptionally high degree of reliability, accuracy and performance for which there are only a limited number of suppliers or for which a single supplier has been accepted by the Company as a qualified supplier. If supplies of such components or

subassemblies were not available from any such source and a relationship with an alternative supplier could not be promptly developed, shipments of the Company' s products could be interrupted and re-engineering of the affected product could be required. Such disruptions could have a material adverse effect on the Company' s results of operations.

NOTE 11 - PENSION DISCLOSURES

The Company has a non-contributory defined benefit pension plan covering substantially all U.S. employees who were employed on September 30, 1995. The benefits for this plan were based on the employees' years of service and the employees' compensation during the earlier of the three years before retirement or the three years before December 31, 1995. Effective December 31, 1995, the benefits under the Company' s pension plan were frozen. As a consequence, accrued benefits no longer change as a result of an employee' s length of service or compensation. The Company' s funding policy is consistent with the funding requirements of Federal law and regulations.

Net period pension costs for the nine months ended June 30, 2004 for this plan was approximately $903 thousand and included interest costs of $1,253 thousand and amortization of net loss of $829 thousand, offset by expected return on plan assets of $1,179 thousand. The Company contributed approximately $2.8 million (based on the market price at the time of contribution) in Company stock to the Plan in the nine months ended June 30, 2004. Net period pension cost for the nine months ended June 30, 2003 for this plan was approximately $853 thousand and included interest costs of $775 thousand and amortization of net loss of $597 thousand, offset by expected return on plan assets of $519 thousand. Approximately $1.7 million ($1.3 million of which was in Company stock) was funded during the nine months ended June 30, 2003 and the Company funded an additional $78 thousand in cash, in the fourth quarter of fiscal 2003.

NOTE 12 - DISCONTINUED OPERATIONS

In February 1996, the Company entered into a joint venture agreement with Delco Electronics Corporation ("Delco") providing for the formation and management of Flip Chip Technologies, LLC ("FCT"). FCT was formed to license related technologies and to provide wafer bumping services on a contract basis. In March 2001, the Company purchased the remaining interest in the joint venture owned by Delco for $5.0 million and included FCT in its then existing advanced packaging business segment. In fiscal 2003, the Company' s then existing advanced packaging business segment consisted solely of FCT, which was not profitable.

In February 2004, the Company sold the assets of FCT for approximately $3.4 million in cash and notes, the agreement by the buyer to satisfy approximately $5.2 million of the Company' s lease liabilities and the assumption of certain other liabilities. The sale included fixed assets, inventories, and intellectual property of the Company' s flip chip business. The major classes of FCT assets and liabilities sold included: $3.6 million in accounts receivable, $119 thousand in inventory, $2.5 million in property, plant and equipment, $119 thousand in other long term assets, $1.5 million in accounts payable and $1.0 million in accrued liabilities. The Company recorded a net loss on the sale of FCT of $380 thousand. Net sales from FCT for the three and nine months ended June 30, 2004 were $2.8 million and $9.4 million, respectively, and for the three and nine months ended June 30, 2003 were $3.9 million and $11.7 million, respectively. As a result of the sale, the Company has reflected the flip chip business unit as a discontinued operation and has reclassified its financial statements to exclude the results of the Flip Chip business unit operations from the Company' s revenues and expenses from continuing operations as reported in these financial statements. The Company has reclassified its prior period financial statements to coincide with the current year presentation. The reclassified financial statements for the prior years are included as Exhibit 99.1, 99.2 and 99.3 to the Company' s Form 10-Q for the period ending March 31, 2004.

Item 2. MANAGEMENT' S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

In addition to historical information, this report contains statements relating to future events or our future results. These statements are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act") and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and are subject to the safe harbor provisions created by

statute. Such forward-looking statements include, but are not limited to, statements that relate to our future revenue, product development, demand forecasts, competitiveness, gross margins, operating expenses and benefits expected as a result of:

- the projected growth rates in the overall semiconductor industry, the semiconductor assembly equipment market, the market for semiconductor packaging materials and the market for test interconnect solutions;

the successful operation of our test interconnect business and its expected growth rate; and

the projected continuing demand for wire bonders.

Generally words such as “may,” “will,” “should,” “could,” “anticipate,” “expect,” “intend,” “estimate,” “plan,” “continue,” and “believe,” or the negative of or other variation on these and other similar expressions identify forward-looking statements. These forward-looking statements are made only as of the date of this report. We do not undertake to update or revise the forward-looking statements, whether as a result of new information, future events or otherwise.

Forward-looking statements are based on current expectations and involve risks and uncertainties and our future results could differ significantly from those expressed or implied by our forward-looking statements. These risks and uncertainties include, without limitation, those described below under the heading “Risk Factors” within this section and in our reports and registration statements filed from time to time with the Securities and Exchange Commission. In light of these and other uncertainties, you should not conclude that we will necessarily achieve any plans or objectives or projected financial results referred to in any forward-looking statements. This discussion should be read in conjunction with the Condensed Consolidated Financial Statements and Notes of this Form 10-Q and the Audited Financial Statements and Notes and the “Management’ s Discussion and Analysis of Financial Condition and Results of Operations” that appear in exhibits 99.2 and 99.3 of our Form 10-Q for the period ended March 31, 2004 for a full understanding of our financial position and results of operations.

INTRODUCTION

We design, manufacture and market capital equipment, packaging materials and test interconnect products as well as service, maintain, repair and upgrade equipment, all used to assemble or test semiconductor devices. Today, we are the world’ s leading supplier of semiconductor wire bonding assembly equipment, according to VLSI Research, Inc. Our business is divided into three product segments:

equipment;

packaging materials; and

wafer and package test interconnect products.

In the March 2004 quarter, we sold the remaining assets of our advanced packaging technologies segment, which consisted solely of our flip chip business unit which licensed flip chip technology and provided flip chip bumping and wafer level packaging services. As a result, we have reflected the flip chip business unit as a discontinued operation and have not included the results of its operations in our revenues and expenses from continuing operations as reported in our financial statements and this discussion of our results of operations. We have reclassified our prior period financial statements to coincide with the current year presentation. The reclassified financial statements for prior fiscal years are included as Exhibit 99.1, 99.2 and 99.3 to our Form 10-Q for the period ended March 31, 2004.

The semiconductor industry historically has been volatile, with periods of rapid growth followed by industry wide retrenchment. One such downturn started in fiscal 2001 and persisted into fiscal 2003. The industry recovered from this downturn in late fiscal 2003. The impact of the recovery from this downturn was net sales for the nine months ended June 30, 2004 of $570.3 million, a 61.4% increase from the same period in the prior year. Net sales for the quarter ended June 30, 2004 were $194.6 million, a 57.2% increase from the same period in the prior year, but a 12.2% decrease from the quarter ended March 31, 2004. On August 10, 2004, we announced that our customers had indicated a general slowing in the rate of semiconductor growth, and as a result, our wire bonder shipments for the September 2004 quarter will be lower than the June 2004 quarter and lower than we previously estimated. We currently expect net sales in the September 2004 quarter in the $135 million to $165 million range. There can be no assurances regarding levels of demand for our products, and in any case, we believe the historical volatility – both upward and downward – will persist.

During the industry downturn in fiscal 2001 and 2002, we incurred significant resizing charges to scale down the size of our business and consolidated operations. Even after implementing these formal resizing plans (see Note 6 to our Condensed Consolidated Financial Statements), we have continued to lower our cost structure by further

consolidating operations, moving certain of our manufacturing capacity to China, moving a portion of our supply chain to lower cost suppliers and designing better but lower cost equipment. These cost reduction efforts are ongoing and we believe they will drive down our cost structure below current levels, while not diminishing our product quality. However, we expect to incur additional quarterly charges such as severance and facility closing costs as a result of these long-term cost reduction programs. Our goal is to be both the technology leader, and the lowest cost supplier, in each of our major lines of business.

We reported income from operations at our test business segment in the June 2004 quarter of $899 thousand. This performance is positive and reflects our continuing efforts to improve the performance of this segment but included a non-recurring spike in June 2004 quarter sales from one of our biggest test customers. For the nine months ended June 2004, this segment reported a loss of $17.0 million. We are continuing with our plan to improve the performance of this segment which includes: consolidation of test facilities, the transfer of a greater portion of the test production to our Asian facilities, outsourcing a greater portion of the test production and new product introductions. We expect implementation of this plan will continue through 2005 and will result in future period charges and/or restructuring charges.

Products and Services

We offer a range of wire bonding equipment and spare parts, packaging materials and test interconnect products. Set forth below is a table listing the percentage of our total net sales from continuing operations for each business segment for the three and nine months ended June 30, 2003 and 2004:

	Three months ended June 30,		Nine months ended June 30,	
	2003	2004	2003	2004
Equipment	39.1 %	49.2 %	41.3 %	54.7 %
Packaging materials	37.0 %	31.7 %	36.5 %	29.4 %
Test interconnect	23.9 %	19.1 %	22.2 %	15.9 %
	100.0%	100.0%	100.0%	100.0%

Our equipment sales are highly volatile, based on the semiconductor industry' s need for new capability and capacity, whereas sales in our packaging materials and test business segments are somewhat less volatile, tending to follow the trend of total semiconductor unit production.

Equipment

We design, manufacture and market semiconductor assembly equipment. Our principal product line is our family of wire bonders, which are used to connect extremely fine wires, typically made of gold, aluminum or copper, between the bond pads of a semiconductor die and the leads on the integrated circuit (IC) package to which the die has been attached. In fiscal 2003, we began shipping the Nu-Tek™, a new automatic wire bonder designed for low pin count applications, a segment of the market we had not previously targeted, and in the second quarter of fiscal 2004, we began shipping the Maxum Plus, a faster bonder than its predecessor, the Maxum.

Packaging Materials

We manufacture and market a range of semiconductor packaging materials and expendable tools for the semiconductor assembly market, including very fine gold, aluminum and copper wire, capillaries, wedges, die collets and saw blades, all of which are used in the semiconductor packaging and assembly processes. Our packaging materials are designed for use on both our own and our competitors' assembly equipment.

Test Interconnect

Our test interconnect solutions provide a broad range of fixtures used to temporarily connect automatic test equipment to the semiconductor device while it is still in the wafer format (wafer probing) thereby providing electrical connections to automatic test equipment. We also offer test sockets used to test the final semiconductor package (package or final testing). Our principal products include probe cards, automatic test equipment (ATE) interface assemblies, ATE test boards, and test socket/contactors. Most of the test interconnect products we offer are custom designed or customized for a specific semiconductor or application.

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Critical Accounting Policies and Estimates

We believe the following accounting policy is critical to the preparation of our financial statements:

Revenue Recognition. We recognize revenue (based upon guidance provided in the Securities and Exchange Commission (SEC) Staff Accounting Bulletin No. 101 (SAB 101), *Revenue Recognition in Financial Statements*) when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable, the collectibility is reasonably assured, and we have satisfied any equipment installation obligations and received customer acceptance, or are otherwise released from our installation or customer acceptance obligations. In the event terms of the sale provide for a lapsing customer acceptance period, we recognize revenue based upon the expiration of the lapsing acceptance period or customer acceptance, whichever occurs first. Our standard terms are Ex Works (K&S factory), with title transferring to our customer at our loading dock or upon embarkation. We do have a small percentage of sales with other terms, and revenue is recognized in accordance with the terms of the related customer purchase order. Revenue related to services is generally recognized upon performance of the services requested by a customer order. Revenue for extended maintenance service contracts with a term more than one month is recognized on a prorated straight-line basis over the term of the contract. Revenue from royalty arrangements and license agreements is recognized in accordance with the contract terms, generally prorated over the life of the contract or based upon specific deliverables. Our business is subject to contingencies related to customer orders as follows:

Right of Return: A large portion of our revenue comes from the sale of machines that are used in the semiconductor assembly process. These items are generally built to order, and often include customization to a customer' s specifications. Revenue related to the semiconductor equipment is recognized upon customer acceptance. Other product sales relate to consumable products, which are sold in high-volume quantities, and are generally maintained at low stock levels at our customer' s facility. As a result, customer returns represent a very small percentage of customer sales on an annual basis. Our policy is to provide an allowance for customer returns based upon our historical experience and management assumptions.

Warranties: Our products are generally shipped with a one-year warranty against manufacturer' s defects and we do not offer extended warranties in the normal course of our business. We recognize a liability for estimated warranty expense when revenue for the related product is recognized. The estimated liability for warranty is based upon historical experience and management estimates of future expenses.

Conditions of Acceptance: Sales of our consumable products and bonding wire generally do not have customer acceptance terms. In certain cases, sales of our equipment products do have customer acceptance clauses which generally require that the equipment perform in accordance with specifications during an on-site factory inspection by the customer, as well as when installed at the customer' s facility. In such cases, if the terms of acceptance are satisfied at our facility prior to shipment, the revenue for the equipment will be recognized upon shipment. If the customer must first install the equipment in their own factory then, generally, revenue associated with that sale is not recognized until acceptance is received from the customer.

Price Protection: We do not provide price protection to our customers.

Estimates and Assumptions

Generally accepted accounting principles require the use of estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. The more significant areas involving the use of estimates in these financial statements include allowances for uncollectible accounts receivable, reserves for excess and obsolete inventory, carrying value and lives of fixed assets, goodwill and intangible assets, valuation allowances for deferred tax assets and deferred tax liabilities, self insurance reserves, pension benefit liabilities, resizing, warranty, litigation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which are the basis for making judgements about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

We believe the following accounting policies require significant judgements and estimates:

Allowance for Doubtful Accounts. We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. If the financial condition of our customers were to deteriorate, resulting in an impairment of their ability to make payments, additional allowances would be required. We are also subject to concentrations of customers and sales to a few geographic locations, which may also impact the collectability of certain receivables. If economic or political conditions were to change in the countries where we do business, it could have a significant impact on the results of our operations, and our ability to realize the full value of our accounts receivable. Our average write-off of bad debts over the past five fiscal years has been less than 0.2% of net sales per year.

Inventory Reserves. We generally provide reserves for equipment inventory and spare part and consumable inventories considered to be in excess of 18 months of forecasted future demand. The forecasted demand is based upon internal projections, historical sales volumes, customer order activity and a review of consumable inventory levels at our customers' facilities. We communicate forecasts of our future demand to our suppliers and adjust commitments to those suppliers accordingly. If required, we reduce the carrying value of our inventory to the lower of cost or market value, based upon assumptions about future demand, market conditions and the next cyclical market upturn. If actual market conditions are less favorable than our projections, additional inventory write-downs may be required. We review and dispose of excess and obsolete inventory on a regular basis.

Valuation of Long-lived Assets. Our long-lived assets include property, plant and equipment, goodwill and intangible assets. Our property, plant and equipment and intangible assets are depreciated over their estimated useful lives, and are reviewed for impairment whenever changes in circumstances indicate the carrying amount of these assets may not be recoverable. The implied fair value of our goodwill and intangible assets is based upon our estimates of the present value of future cash flows from the respective reporting units and other factors. We manage and value our intangible technology assets in the aggregate, as one asset group, not by individual technology. We perform our annual goodwill and intangible assets impairment test in the fourth quarter of each fiscal year, which coincides with our annual planning process, and whenever a "triggering" event occurs. Our annual impairment testing resulted in an impairment charge of $5.7 million in fiscal 2003 in our former flip chip business unit and a fiscal 2002 impairment charge of $72.0 million in the test business unit and $2.3 million in the hub blade business. The sale of certain assets of our test operation, in the March 2004 quarter, resulted in an impairment charge of $3.2 million in that quarter. If these estimates or their related assumptions change in the future, we may be required to record additional impairment charges in accordance with SFAS 142 and SFAS 144.

Deferred Taxes. We record a valuation allowance to reduce our deferred tax assets to the amount that we expect is more likely than not to be realized. While we have considered future taxable income and ongoing prudent and feasible tax planning strategies in assessing the need for the valuation allowance, if we were to determine that we would be able to realize our deferred tax assets in the future in excess of our net recorded amount, an adjustment to the deferred tax asset would increase income in the period such determination was made. Likewise, should we determine that we would not be able to realize all or part of our net deferred tax assets in the future, an adjustment to the deferred tax asset would decrease income in the period such determination was made. In both fiscal 2002 and fiscal 2003 we established a valuation allowance against our deferred tax assets generated from our U.S. net operating losses.

RESULTS OF OPERATIONS

Bookings and Backlog

During the June 2004 quarter, we recorded bookings of $186.6 million compared to $219.2 million in the March 2004 quarter and $135.5 million in the June 2003 quarter. A booking is recorded when a customer order is reviewed and a determination is made that all specifications can be met, production (or service) can be scheduled, a delivery date can be set, and the customer meets the Company' s credit requirements. At June 30, 2004, we had a backlog of customer orders totaling $104.0 million, compared to $111.8 million at March 31, 2004 and $49.3 million at June 30, 2003. Our backlog as of any date may not be indicative of net sales for any succeeding period, since the timing of deliveries may vary and orders generally are subject to delay or cancellation. For example, on August 10, 2004, we announced that discussions

with customers indicate a general slowing in the rate of semiconductor growth. As a result, some of these customers have requested that we delay the shipment of wire bonders previously ordered and included in our backlog of customer orders at June 30, 2004.

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Sales

Business segment net sales:

	(dollars amounts in thousands)					
	Three months ended June 30,			Nine months ended June 30,		
	2003	2004	% Change	2003	2004	% Change
Equipment	$48,416	$95,732	97.7 %	$145,880	$312,172	114.0 %
Packaging materials	45,828	61,740	34.7 %	128,987	167,418	29.8 %
Test interconnect	29,538	37,156	25.8 %	78,319	90,678	15.8 %
Other	–	–		135	–	
	$123,782	$194,628	57.2 %	$353,321	$570,268	61.4 %

Net sales from continuing operations for the June 2004 quarter increased $70.8 million or 57.2% from the same period in the prior year and for the nine months ended June 2004 increased $216.9 million or 61.4%. Increased demand in the semiconductor industry along with our leading position in the semiconductor wire bonding equipment industry and our ability to ramp production to meet customer demand were the driving forces behind the increase in net sales from the same period in the prior year. While net sales in the June 2004 quarter increased from the prior year they were $27.1 million or 12.2% below net sales in the March 2004 quarter. The lower sequential sales reflected a slowing in demand for wire bonders after record wire bonder unit sales in the March 2004 quarter.

Our equipment segment was the primary beneficiary of the increased demand in the semiconductor industry with automatic wire bonder unit sales up 137.2% from the prior year in the June 2004 quarter and up 179.5% for the nine months ended June 2004. The large increases in automatic wire bonder unit sales compared to the prior year was partially offset by a lower blended average selling price per automatic wire bonder unit (ASP) of 4.1% in the June 2004 quarter and 8.9% in the nine months ended June 2004. The decline in blended ASP, from the prior year, was expected and reflects our historical product life cycle pricing pattern. ASPs generally go down over time for any particular model. To mitigate this we introduce new models with additional features that enable us to demand a higher selling price. The blended ASP varies with the proportion of newer models sold and with customer mix. While the blended ASP was lower than the prior year it was relatively even with the prior quarter.

Our packaging materials business also benefited from the increased demand in the semiconductor industry with strong unit sales growth. Our capillary unit sales were up 18.3% in the June 2004 quarter and 28.2% for the nine months ended June 2004. Blended capillary ASP was relatively flat with the prior year in both the quarter and nine months ended June 2004. Blended capillary ASP is a function of the general decline in unit prices and mix between high and low end capillaries. High end capillaries support advanced packaging applications and have higher ASP' s. As in our equipment business, we introduce new capillaries with additional features that enable us to demand a higher selling price. Our wire unit sales (measured in Kft) increased 46.3% in the June 2004 quarter and 35.8% for the nine months ended June 2004. Wire ASP is heavily dependent upon the price of gold and can fluctuate significantly from period to period. In the June 2004 quarter the increase in the price of gold accounted for $5.3 million of the sale increase over the prior year and accounted for $16.0 million of the increase for the nine months ended June 2004.

Our test interconnect sales were 25.8% above the prior year in the June 2004 quarter and 15.8% above for the nine months ended June 2004. During the June 2004 quarter one of our biggest test customers implemented a sudden change in their product road map, driving a spike of business for us. We helped the customer get through their transition and expect our test business to settle back into a more normal trend line. ASPs are not meaningful in the test business due to lack of a standard unit of measure and the large difference in part types sold. As such, ASP' s are not a metric used by management.

The majority of our sales are to customers that are located outside of the United States or have manufacturing facilities outside of the United States. Shipments of our products with ultimate foreign destinations comprised 87% of our total sales in the first nine months of fiscal 2004 compared to 78% in the first nine months of the prior fiscal year. The majority of these foreign sales were destined for customers locations in the Asia/Pacific region, including Taiwan, Malaysia, Singapore, Korea and Japan. Taiwan accounted for the largest single destination for our product shipments with 26% of our shipments in the first nine months of fiscal 2004 compared to 19% of our shipments in the first nine months of the prior fiscal year.

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Gross Profit

Business segment gross profit:

(dollars amounts in thousands)

	Three months ended June 30,				Nine months ended June 30,			
	2003	% Sales	2004	% Sales	2003	% Sales	2004	% Sales
Equipment	$16,176	33.4%	$39,792	41.6%	$49,686	34.1%	$130,650	41.9%
Packaging materials	10,758	23.5%	13,944	22.6%	31,029	24.1%	37,450	22.4%
Test interconnect	5,169	17.5%	11,336	30.5%	14,121	18.0%	20,868	23.0%
Other	–	–	–	–	135	–	–	–
	$32,103	25.9%	$65,072	33.4%	$94,971	26.9%	$188,968	33.1%

Gross profit increased $33.0 million or 102.7% over the prior year in the June 2004 quarter and increased $94.0 million or 99.0% over the prior year for the nine months ended June 2004. In the June 2004 quarter, our gross margin (gross profit as a percentage of sales) improved from 25.9% in the prior year to 33.4% and for the nine months ended June 2004 it improved from 26.9% to 33.1%. The improved gross profit and gross margin was due primarily to the higher sales volume.

Our equipment gross margin increased 8.2 percentage points from the prior year in the June 2004 quarter and 7.8 percentage points in the nine months ended June 2004. A lower cost per automatic wire bonder unit was the primary reason for the higher gross margin in both the quarter and nine months ended June 2004. Our average cost per unit was 13.6% below the prior year in the June 2004 quarter and 22.2% below for the nine months ended June 2004. Like the decline in ASP, our lower cost per unit reflects the lowering of production costs over a product life cycle along with a change in product mix and our continuing efforts to drive down our cost structure.

Our packaging materials gross margin was adversely affected by the higher price of gold in fiscal 2004 compared to fiscal 2003, which makes up a significant portion of our wire cost of sales, and the sale of our hard materials blade product line in August of 2003. The hard materials blades margins were higher than the average packaging material segment margin.

Our test interconnect gross margin increased 13.0 percentage points in the June 2004 quarter and 5.0 percentage points in the nine months ended June 2004 due primarily to the spike in sales volume mentioned above. Start-up costs associated with the ramping of production of cantilever products in our China facility partially offset the positive impact from the higher sales.

Operating Expenses

(dollars amounts in thousands)

	Three months ended June 30,	Nine months ended June 30,

	2003	% Sales	2004	% Sales	2003	% Sales	2004	% Sales
Selling, general and administrative	$22,947	18.5%	$24,688	12.7%	$77,902	22.0%	$78,055	13.7%
Research and development, net	9,735	7.9 %	8,887	4.6 %	29,412	8.3 %	25,791	4.5 %
Resizing(recovery) costs	–	0.0 %	–	0.0 %	(205)	-0.1 %	(68)	0.0 %
Loss (gain) on disposal of assets	4	0.0 %	–	0.0 %	(117)	0.0 %	(794)	0.0 %
Asset impairment	1,207	1.0 %	–	0.0 %	2,915	0.8 %	3,293	0.6 %
Amortization of intangible assets	2,315	1.9 %	2,198	1.1 %	6,944	2.0 %	6,828	1.2 %
	$36,208	29.3%	$35,773	18.4%	$116,851	33.1%	$113,105	20.0%

Selling, general and administrative

SG&A expenses were relatively flat with the prior year for both the quarter and nine months ended June 2004 but SG&A expense as a percentage of sales was down 5.8 percentage points and 8.3 percentage points, respectively, for the quarter and nine months ending June 2004 compared to the prior year. In the June 2004 quarter, SG&A expense included $0.3 million of China start-up costs and for the nine months ended June 2004 it included charges of $2.7

million associated with the closing of a probe card production facility in France, $1.2 million of severance and $1.5 million of China start-up costs. In the June 2003 quarter, SG&A expense included costs associated with workforce reductions of $1.0 million and a reversal of a $2.0 million reserve, previously established for potential obligations to U.S. Customs and for the nine months ended June 2003 it included costs associated with workforce reductions of $4.5 million, start-up costs for our new China facility of approximately $1.1 million and a $0.7 million charge for the early termination of an information technology services agreement partially offset by the reversal of the $2.0 million U.S. Customs. Reserve. Other than the above mentioned costs, our ongoing SG&A costs were similar to the corresponding periods of the prior year and reflect our efforts to contain operating costs with higher sales volume.

The workforce reduction/severance charges identified in the previous paragraph were included in SG&A expense because they were not related to formal and distinct restructuring programs, but rather, they were normal and recurring management of employment levels in response to business conditions and our ongoing effort to reduce our cost structure. Also, if the business conditions had improved, we were prepared to rehire some of these terminated individuals. These charges are in contrast to the formal and distinct resizing programs we established in prior fiscal years.

Research and Development

R&D expense for the three and nine months ended June 2004 decreased from the corresponding periods of fiscal 2003 by $0.8 million and $3.6 million, respectively. The reduction for the quarter and for the nine months ended June 2004 was primarily due to lower payroll and related expenses resulting from our ongoing cost reduction efforts.

Gain on sale of assets

In the second quarter of fiscal 2004, we realized a gain of $709 thousand on the sale of land and $85 thousand on the sale of a portion of our PC board business.

Asset Impairment

In the nine months ended June 2004, we recorded an asset impairment charge of $3.3 million associated with exiting our PC board fabrication business and the closure of a probe card production facility in France. In the June 2003 quarter, we recorded an asset impairment charge of $1.2 million associated with the closure of certain test operations in Dallas, Texas. In the nine months ended June 2003, we recorded an asset impairment of $2.8 million, $1.6 million of which was related to the discontinuation of a test product and $1.2 million was related to the closure of certain test operations in Dallas, Texas.

We perform our annual test for impairment of intangible assets at the end of the fourth quarter of each fiscal year, which coincides with the completion of our annual forecasting process. However, we also test for impairment whenever a “triggering” event occurs. We performed interim goodwill impairment tests during the quarters ended December 31, 2003 and March 31, 2004 due to the existence of an impairment trigger, which was the losses experienced in our test business. The results of this goodwill impairment test, indicated that the fair value of the test reporting unit exceeded its carrying value by approximately $24 million at December 31, 2003 and by $29 million at March 31, 2004. Based on these tests no impairment charge was recorded. Due to the improved profitability of our test business in the June 2004 quarter no triggering event occurred. The fair value of the test reporting unit was based on discounted cash flows of our projected future cash flows from this reporting unit, consistent with the methods used in fiscal 2002 and 2003. When conducting our goodwill impairment analysis, we calculate our potential impairment charges based on the two-step test identified in SFAS 142 and using the implied fair value of the respective reporting units. We use the present value of future cash flows from the respective reporting units to determine the implied fair value. We also tested our intangible assets for impairment in the March 2004 quarter, as a result of the sale of certain assets of the test operations and recorded an impairment charge of $3.2 million associated with the reporting unit’ s purchased technology intangible asset. The $3.2 million charge is included in the $3.3 million assets charge recorded in the nine months ended June 2004.

Amortization of Intangible Assets

Amortization expense in both fiscal 2003 and 2004 was associated with our intangible assets for customer accounts and completed technology arising from the acquisition of our test division. The aggregate amortization expense for these items for each of the next five fiscal years is expected to approximate $8.8 million.

Income (loss) from Operations

Business segment income (loss) from operations:

	(dollars amounts in thousands)							
	Three months ended June 30,				Nine months ended June 30,			
	2003	% Sales	2004	% Sales	2003	% Sales	2004	% Sales
Equipment	$774	1.6 %	$24,903	26.0%	$(1,842)	-1.3 %	$85,232	27.3 %
Packaging materials	4,790	10.5 %	8,168	13.2%	11,252	8.7 %	21,241	12.7 %
Test interconnect	(5,971)	-20.2%	899	2.4 %	(19,798)	-25.3%	(16,899)	-18.6%
Corporate and other	(3,698)	–	(4,671)	–	(11,492)	–	(13,711)	–
	$(4,105)	-3.3 %	$29,299	15.1%	$(21,880)	-6.2 %	$75,863	13.3 %

Income from operations in the three and nine months ended June 2004 was $29.3 million and $75.9 million, respectively, compared to losses from operations in the three and nine months ended June 2003 of $4.1 million and $21.9 million, respectively. Increased demand in the semiconductor industry, which enabled us to significantly increase sales from the prior year in both the three and nine month periods ended June 2004, and our ongoing efforts to reduce our cost structure were the primary reasons for the improved performance.

As indicated above, our equipment and packaging materials businesses benefited from higher industry wide IC unit volume which resulted in higher unit sales of wire bonders, capillaries and wire and along with our cost reduction initiatives yielded significantly improved profitability in both dollars and margin.

Our test business recorded income from operations in the June 2004 quarter as a result of the spike in sales volume indicated above but was not profitable for the nine months ended June 2004. We are continuing with our plan to improve the performance of this segment which includes reducing its cost structure by: consolidation of facilities, the transfer of a greater portion of its production to our Asian facilities and outsourcing a greater portion of its production and increasing sales through new product introductions. We expect implementation of this plan will continue through 2005 and will result in future period charges and/or restructuring charges.

Our corporate and other expenses increased in the quarter and nine months ended June 2004 from the prior year due to recording employee incentive compensation expense in fiscal 2004 compared to no provision for incentive compensation expense in the prior year.

Interest and Charge on Early Extinguishment of Debt

Interest income in the three and nine months ended June 2004 was $275 thousand and $781 thousand compared to $135 thousand and $796 thousand in the same periods of the prior fiscal year. The higher interest income in the June 2004 quarter was due to higher cash and short-term investments and the lower interest income for the nine months ended June 2004 was due to lower interest rates. Interest expense in the three and nine months ended June 2004 was $2.2 million and $9.1 million compared to $4.3 million and $13.2 million in the same periods of the prior fiscal year. Interest expense in both fiscal 2004 and 2003 primarily reflects interest on our convertible subordinated notes and was

lower in the both the three and nine months ended June 2004 due to the redemption of our 4.75% convertible subordinated notes in December 2003 and the purchase of $21 million of our 5.25% convertible subordinated notes in March 2004. We issued $65 million of 1.0% convertible subordinated notes on June 30, 2004 and simultaneously purchased $50 million of our 5.25% convertible subordinated notes. We also have called for redemption in the September 2004 quarter the remaining $54 million of our 5.25% convertible subordinated notes. We expect our quarterly interest expense, including amortization of note issuance costs, to be approximately $1.0 million, once the 5.25% convertible subordinated notes are redeemed, compared to $4.3 million in the June 2003 quarter.

In the June 2004 quarter, we wrote-off $775 thousand of issuance costs and incurred $1.0 million of call premium costs associated with the purchase of the $50 million of 5.25% convertible subordinated notes. For the nine months ended June 2004 we incurred the costs just mentioned and we wrote-off $2.6 million of issuance costs and incurred $3.6 million of call premium costs associated with the redemption of the 4.75% convertible subordinated notes and

wrote-off $376 thousand of issuance costs and incurred $241 thousand of premium costs associated with the purchase of $21 million of our 5.25% convertible subordinated notes.

Provision for income taxes

Tax expense in the three and nine months ended June 2004 reflects income tax on income in foreign jurisdictions, alternative minimum tax on U.S. income and a provision for California state income tax. The provision for California state income tax resulted from California' s temporary suspension of the benefit of prior year operating losses. Our tax expense in the three and nine months ended June 2003 reflects income tax on income in foreign jurisdictions. In fiscal 2003, we established a valuation allowance against tax benefits from the fiscal 2003 losses in the U.S. In fiscal 2004, we reversed approximately $22.8 million of our valuation allowances. This reversal reflects a decrease in the valuation allowance that primarily results from our ability to utilize federal and state net operating losses based on our projected taxable income through June 30, 2004.

Discontinued Operations

In February 1996, we entered into a joint venture agreement with Delco Electronics Corporation ("Delco") providing for the formation and management of Flip Chip Technologies, LLC ("FCT"). FCT was formed to license related technologies and to provide wafer bumping services on a contract basis. In March 2001, we purchased the remaining interest in the joint venture owned by Delco for $5.0 million and included FCT in our then existing advanced packaging business segment. In fiscal 2003, our then existing advanced packaging business segment consisted solely of FCT, which was not profitable.

In February 2004, we sold the assets of FCT for approximately $3.4 million in cash and notes, the agreement by the buyer to satisfy approximately $5.2 million of the Company' s lease liabilities and the assumption of certain other liabilities. The sale included fixed assets, inventories, and intellectual property of the Company' s flip chip business. The major classes of FCT assets and liabilities sold included: $3.6 million in accounts receivable, $119 thousand in inventory, $2.5 million in property, plant and equipment, $119 thousand in other long term assets, $1.5 million in accounts payable and $1.0 million in accrued liabilities. We recorded a net loss on the sale of FCT of $380 thousand. Net sales from FCT for the nine months ended June 30, 2004 were $9.4 million, and for the three and nine months ended June 30, 2003 were $3.9 million and $11.7 million, respectively.

Net income (loss)

We reported net income of $22.6 million and $52.5 million, respectively, in the three and nine months ended June 30, 2004 compared to net losses of $11.4 million and $48.3 million, respectively, in the three and nine months ended June 30, 2003 for the reasons enumerated above. Over the past several years, we have been reducing our cost structure, through resizing programs, consolidating operations, moving certain manufacturing capacity to China, moving a portion of our supply chain to lower cost suppliers and designing better but lower cost equipment. Through these efforts, we believe we are able to generate net income over a wider range of net sales levels than in prior periods.

RECENTLY ISSUED ACCOUNTING PRONOUNCEMENTS

In January 2003, the FASB issued 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. We have a 36% ownership interest in a limited liability company that owns a building in Gilbert, Arizona and leases it to us. The ownership and lease of this one location comprises the sole activity of this entity. The entity has a mortgage on the building in the amount of $5.6 million which is secured by the property. We consolidated the following assets and liabilities, associated with this entity, into its financial statements as of June 30, 2004: cash of $287 thousand; fixed assets comprised of land and buildings of $5.8 million; current liabilities comprised primarily of property tax and interest of $122 thousand; and a liability for the mortgage of $5.5 million. The other parties, which have 64% interest in this entity, have an interest in the above net assets and liabilities of $289 thousand which has been included in other noncurrent liabilities on our balance sheet at June 30, 2004.

In December 2002, the FASB issued SFAS 148, *Accounting for Stock-Based Compensation-Transition and Disclosure*. This Statement amends FASB Statement No. 123, *Accounting for Stock-Based Compensation*, to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, this Statement amends the disclosure requirements of Statement 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. We adopted the disclosure provisions of this standard.

In April 2003, the FASB issued Statement of Financial Accounting Standards No. 149, *Amendment of Statement 133 on Derivative Instruments and Hedging Activities* (SFAS No. 149). SFAS No. 149 amends and clarifies financial accounting and reporting for derivative instruments, including certain derivative instruments embedded in other contracts and for hedging activities under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging Activities*. We adopted this standard and the adoption did not have an impact on its financial position and results of operations.

In May 2003, the FASB issued Statement of Financial Accounting Standards No. 150, *Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity* (SFAS No. 150). SFAS No. 150 establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It requires that an issuer classify a financial instrument that is within its scope as a liability (or as an asset in some circumstances). We adopted this standard and the adoption did not have an impact on its financial position and results of operations.

In December 2003, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin No. 104, *Revenue Recognition (SAB 104)*. SAB 104 updates portions of the interpretive guidance included in Topic 13 of the codification of the Staff Accounting Bulletins in order to make this interpretive guidance consistent with current authoritative accounting and auditing guidance and SEC rules and regulations. We are following the guidance of SAB 104, and the issuance of SAB 104 did not have an impact on our financial position or results of operations.

LIQUIDITY AND CAPITAL RESOURCES

At June 30, 2004, total cash and investments were $141.4 million compared to $103.6 million at March 31, 2004 and $73.1 million at September 30, 2003. Cash and investments increased $68.3 million from September 30, 2003 due primarily to cash provided by operating activities of $57.8 million. We also generated $12.2 million of net proceeds from the issuance of $65 million of 1% Convertible Subordinated Notes due 2010 and the simultaneous purchase of $50 million of our 5.25% Convertible Subordinated Notes due 2006, $3.9 million from the proceeds of the exercise of employee stock options and $2.9 million from the sale of our Flip Chip business and other assets and spent $8.1 million on capital expenditures.

Our primary need for cash for the remainder of the fiscal year will be to redeem the remaining $54 million of 5.25% Convertible Subordinated Notes due 2006 and to provide the working capital necessary to meet our expected production and sales levels. We financed our working capital needs, in the nine months ended June 2004, through internally generated funds and expect to continue to generate cash from operating activities in the fourth quarter of fiscal 2004 to meet our cash needs. We expect our equipment and packaging materials business to generate cash from operations in the September 2004 quarter in excess of their working capital and capital expenditure needs and to generate cash from our test business to cover its working capital and capital expenditure requirements.

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Our long term debt at September 30, 2003 and June 30, 2004 consists of the following:

Long term debt consists of the following:

Type	Fiscal Year of Maturity	Conversion Price[1]	Rate	*(in thousands)* Outstanding Balance at, September 30, 2003	June 30, 2004
Convertible Subordinated Notes	2006	$ 19.75	5.25%	$ 125,000	$54,000
Convertible Subordinated Notes	2007	$ 22.90	4.75%	175,000	–
Convertible Subordinated Notes	2009	$ 20.33	0.50%	–	205,000
Convertible Subordinated Notes	2010	$ 12.84	1.00%	–	65,000
Other[2]				338	5,635
				$ 300,338	$329,635

(1) Subject to adjustment.

(2) Includes a mortgage of $5.5 million held by a limited liability company which the Company began consolidating into its financial statements at December 31, 2003 in accordance with FIN 46.

In the December 2003 quarter, we issued $205 million of 0.5% Convertible Subordinated Notes due 2008 in a private placement to qualified institutional investors. The notes mature on November 30, 2008, bear interest at 0.5% per annum and are convertible into our common stock at $20.33 per share. The notes are general obligations of the Company and are subordinated to all senior debt. The notes rank equally with our 1.0% and 5.25% convertible subordinated notes. There are no financial covenants associated with the notes and there are no restrictions on incurring additional debt or issuing or repurchasing our securities. Interest on the notes is payable on May 30 and November 30 each year.

We used the majority of the net proceeds from the issuance of the 0.5% Convertible Subordinated Notes due 2008 to redeem all $175 million of our 4.75% Convertible Subordinated Notes due 2006 at a redemption price equal to 102.036% of the principal amount of the notes. We recorded a charge of $6.2 million associated with the redemption of these notes, $2.6 million of which was due to the write-off of unamortized note issuance costs and $3.6 million due to the redemption premium.

In the March 2004 quarter, we used the remainder of the net proceeds from the issuance of the 0.5% Convertible Subordinated Notes to make open market purchases of $21 million of our 5.25% Convertible Subordinated Notes due 2006. We paid a premium of $241 thousand to purchase the $21 million of notes and wrote-off $376 thousand of unamortized note issuance costs.

In the June 2004 quarter, we issued $65 million of 1.0% Convertible Subordinated Notes in a private placement to qualified institutional investors and institutional accredited investors. The Notes mature on June 30, 2010, bear interest at 1.0% and are convertible into common

stock of the Company at $12.84 per share, subject to adjustment for certain events. The conversion rights of these notes may be terminated on or after June 30, 2006 if the closing price of the Company' s common stock has exceeded 140% of the conversion price then in effect for at least 20 trading days within a period of 30 consecutive trading days. The notes are general obligations of the Company and are subordinated to all senior debt. The notes rank equally with our 5.25% and 0.5% Convertible Subordinated Notes. There are no financial covenants associated with the notes and there are no restrictions on incurring additional debt or issuing or repurchasing our securities. Interest on the notes is payable on June 30 and December 30 each year.

We used the majority of the net proceeds from the issuance of the 1.0% Convertible Subordinated Notes to purchase $50 million if its 5.25% Convertible Subordinated Notes at a purchase price equal to 102.1% of the principal amount of the notes. The Company recorded a charge of $1.8 million associated with the purchase of these notes, $0.8 million of which was due to the write-off of unamortized note issuance costs and $1.0 million due to the purchase premium.

On July 19, 2004, we called for redemption the remaining $54 million principal amount of our 5.25% Convertible Subordinated Notes. Associated with this redemption, we will record a charge of approximately $1.9 million in our September 2004 quarter, $1.1 million due to a redemption premium and $0.8 million due to the write-off of unamortized note issuance costs.

Under GAAP, certain obligations and commitments are not required to be included in our consolidated balance sheets and statements of operations. These obligations and commitments, while entered into in the normal course of business, may have a material impact on liquidity. Certain of the following commitments as of June 30, 2004 have not been included in the consolidated balance sheets and statements of operations included in this Form 10-Q; however, they have been disclosed in the following table in order to provide a more complete picture of our Company' s financial position and liquidity. The most significant of these are our inventory purchase obligations.

The following table identifies obligations and contingent payments under various arrangements at June 30, 2004, including those not included in our consolidated balance sheet:

(in thousands)

	Total	Amounts due in less than 1 year	Amounts due in 2-3 years	Amounts due in 4-5 years	Amounts due in more than 5 years
Contractual Obligations:					
Long-term debt	$324,000	$54,000	$–	$205,000	$ 65,000
Capital Lease obligations	339	41	164	134	–
Operating Lease obligations*	36,713	10,381	11,061	5,172	10,099
Inventory Purchase obligations*	56,993	56,993	–	–	–
Commercial Commitments:					
Gold supply financing guarantee	11,793	11,793			
Standby letters of Credit*	3,094	3,094	–	–	–
Total contractual obligations and commercial commitments	**$432,932**	**$136,302**	**$ 11,225**	**$210,306**	**$ 75,099**

* Represents contractual amounts not reflected in the consolidated balance sheet at June 30, 2004.

Long-term debt includes the amounts due under our 5.25% Convertible Subordinated Notes, which were called for redemption in the September 2004 quarter, 0.5% Convertible Subordinated Notes due 2008, and 1.0% Convertible Subordinated Notes due 2010. The capital lease obligations principally relate to equipment leases. The operating lease obligations represent obligations due under various facility and

equipment leases with terms up to fifteen years in duration. Inventory purchase obligations represent outstanding purchase commitments for inventory components ordered in the normal course of business.

To reduce the cost to procure gold, we changed our gold supply financing arrangement in June 2004. As a result, gold is no longer treated as consignment goods and is now reflected and included in our inventory with a corresponding amount in accounts payable. Our obligation for payment and the price we pay for gold continues to be at the time and price we ship gold wire to our customers. The guarantee for our gold supply financing arrangement is secured by the assets of our wire manufacturing subsidiary and contains restrictions on that subsidiary' s net worth, ratio of total liabilities to net worth, ratio of EBITDA to interest expense and ratio of current assets to current liabilities.

The standby letters of credit represent obligations of the Company in lieu of security deposits for a facility lease and employee benefit programs.

At June 30, 2004, the fair value of our $54.0 million 5.25% Convertible Subordinated Notes was $54.9 million, the fair value of our $205.0 million 0.5% Convertible Subordinated Notes was $170.7 million, and fair value of our $65.0 million 1.0% Convertible Subordinated Notes was $63.7 million The fair values were determined using quoted market prices at the balance sheet date. The fair value of our other assets and liabilities approximates the book value of those assets and liabilities. At June 30, 2004, the Standard & Poor' s rating on our 5.25% and 0.5% convertible subordinated notes was CCC+.

We have an effective shelf registration statement on Form S-3, which permits us, from time to time, to offer and sell various types of securities, including common stock, preferred stock, senior debt securities, senior subordinated debt securities, subordinated debt securities, warrants and units, having an aggregate sales price of up to $250.0 million.

However, we cannot assure you that we will be able to issue securities under the shelf registration statement, or otherwise, on terms that are favorable to us, if at all.

We believe that our existing cash reserves and anticipated cash flows from operations will be sufficient to meet our liquidity and capital requirements for at least the next 12 months. However, our liquidity is affected by many factors, some based on normal operations of the business and others related to uncertainties of the industry and global economies. We may seek, as we believe appropriate, additional debt or equity financing to provide capital for corporate purposes. We may also seek additional debt or equity financing for the refinancing or redemption of existing debt and/or to fund strategic business opportunities, including possible acquisitions, joint ventures, alliances or other business arrangements which could require substantial capital outlays. The timing and amount of such potential capital requirements cannot be determined at this time and will depend on a number of factors, including demand for our products, semiconductor and semiconductor capital equipment industry conditions, competitive factors, the condition of financial markets and the nature and size of strategic business opportunities which we may elect to pursue.

RISK FACTORS

Risks Relating to Our Business

The semiconductor industry is volatile with sharp periodic downturns and slowdowns

Our operating results are significantly affected by the capital expenditures of large semiconductor manufacturers and their subcontract assemblers and by those of vertically integrated manufacturers of electronic systems. Expenditures by semiconductor manufacturers and their subcontract assemblers and by vertically integrated manufacturers of electronic systems depend on the current and anticipated market demand for semiconductors and products that use semiconductors, including personal computers, telecommunications equipment, consumer electronics, and automotive goods. Significant downturns in the market for semiconductor devices or in general economic conditions reduce demand for our products and materially and adversely affect our business, financial condition and operating results.

Historically, the semiconductor industry has been volatile, with periods of rapid growth followed by industry-wide retrenchment. These periodic downturns and slowdowns have adversely affected our business, financial condition and operating results. They have been characterized by, among other things, diminished product demand, excess production capacity, and accelerated erosion of selling prices. These downturns historically have severely and negatively affected the industry' s demand for capital equipment, including the assembly equipment, the packaging materials and test interconnect solutions that we sell.

The semiconductor industry experienced recent downturns in fiscal 1998 through the first half of fiscal 1999, in fiscal 2001 through the first three quarters of fiscal 2003 and we are currently seeing a slowing in customer demand for our wire bonders. In the 1998-1999 downturn, our net sales declined from approximately $501.9 million in fiscal 1997 to $411.0 million in fiscal 1998. In the 2001-2003 downturn, our net sales declined from approximately $877.6 million in fiscal 2000 to $441.6 million in fiscal 2002. The business environment was improved in the fourth quarter of fiscal 2003 through the first nine months of fiscal 2004 but, we anticipate a slowing in demand for our wire bonders in our fourth quarter of fiscal 2004. There can be no assurances regarding the level of demand for our products, and in any case, we believe the historical volatility – both upward and downward – will persist. Any downturn may be more severe and prolonged than those experienced in the past. Downturns adversely affect our business, financial condition and operating results.

We may experience increasing price pressure

Our historical business strategy for many of our products has focused on product performance and customer service more than on price. The length and severity of the most recent economic downturn increased cost pressures on our customers and we have observed increasing price sensitivity on their part. In response, we are actively seeking to reduce our cost structure by moving operations to lower cost areas and by reducing other operating costs. If we are unable to reduce our operating costs to compensate for the increased cost pressures, our financial condition and operating results may be materially and adversely affected.

Our quarterly operating results fluctuate significantly and may continue to do so in the future

In the past, our quarterly operating results have fluctuated significantly; we expect that they will continue to fluctuate. Although these fluctuations are partly due to the volatile nature of the semiconductor industry, they also reflect other factors, many of which are outside of our control.

Some of the factors that may cause our revenues and/or operating margins to fluctuate significantly from period to period are:

- market downturns;
- the mix of products that we sell because, for example:
  - our test interconnect business has lower margins than assembly equipment and packaging materials;
  - some lines of equipment within our business segments are more profitable than others; and
  - some sales arrangements have higher margins than others;
- the volume and timing of orders for our products and any order postponements;
- virtually all of our orders are subject to cancellation, deferral or rescheduling by the customer without prior notice and with limited or no penalties;
- changes in our pricing, or that of our competitors;
- higher than anticipated costs of development or production of new equipment models;
- the availability and cost of the components for our products;
- unanticipated delays in the introduction of our new products and upgraded versions of our products and market acceptance of these products when introduced;
- customers' delay in purchasing our products due to customer anticipation that we or our competitors may introduce new or upgraded products; and
- our competitors' introduction of new products.

Many of our expenses, such as research and development, selling, general and administrative expenses and interest expense, do not vary directly with our net sales. As a result, a decline in our net sales would adversely affect our operating results. In addition, if we were to incur additional expenses in a quarter in which we did not experience comparable increased net sales, our operating results would decline. In a downturn, we may have excess inventory, which is required to be written off. Some of the other factors that may cause our expenses to fluctuate from period-to-period include:

- the timing and extent of our research and development efforts;
- severance, resizing and the costs of relocating or closing down facilities;
- inventory write-offs due to obsolescence; and
- inflationary increases in the cost of labor or materials.

Because our revenues and operating results are volatile and difficult to predict, we believe that consecutive period-to-period comparisons of our operating results may not be a good indication of our future performance.

We may not be able to rapidly develop, manufacture and gain market acceptance of new and enhanced products required to maintain or expand our business

We believe that our continued success depends on our ability to continuously develop and manufacture new products and product enhancements on a timely and cost-effective basis. We must timely introduce these products and product enhancements into the market in response to customers' demands for higher performance assembly equipment, leading-edge materials and for test interconnect solutions customized to address rapid technological advances in integrated circuits and capital equipment designs. Our competitors may develop new products or enhancements to their products that offer performance, features and lower prices that may render our products less competitive. The development and commercialization of new products requires significant capital expenditures over an extended period of time, and some products that we seek to develop may never become profitable. In addition, we may not be able to develop and introduce products incorporating new technologies in a timely manner that will satisfy our customers' future needs or achieve market acceptance.

Most of our sales and a substantial portion of our manufacturing operations are located outside of the United States, and we rely on independent foreign distribution channels for certain product lines; all of which subject us to risks from changes in trade regulations, currency fluctuations, political instability and war

Approximately 87% of our net sales for the nine months ending June 30, 2004, 80% of our net sales for fiscal 2003, 74% of our net sales for fiscal 2002 and 66% of our net sales for fiscal 2001 were attributable to sales to customers for delivery outside of the United States, in particular to customers in the Asia/Pacific region. We expect this trend to continue. Thus, our future performance will depend, in significant part, on our ability to continue to compete in foreign markets, particularly in Asia/Pacific. These economies have been highly volatile, resulting in significant fluctuation in local currencies, and political and economic instability. These conditions may continue or worsen, which may materially and adversely affect our business, financial condition and operating results.

We also rely on non-United States suppliers for materials and components used in our products, and most of our manufacturing operations are located in countries other than the United States. We manufacture our automatic ball bonders and bonding wire in Singapore, capillaries in Israel and China, bonding wire in Switzerland, test products in Taiwan, China, France, and Scotland and we have sales, service and support personnel in China, Hong Kong, Japan, Korea, Malaysia, the Philippines, Singapore, Taiwan and Europe. We also rely on independent foreign distribution channels for certain of our product lines. As a result, a major portion of our business is subject to the risks associated with international, and particularly Asia/Pacific, commerce, such as:

- war and civil disturbances or other events that may limit or disrupt markets;
- expropriation of our foreign assets;
- longer payment cycles in foreign markets;
- international exchange restrictions;
- restrictions on the repatriation of our assets, including cash;
- the application of transfer pricing regulations by taxing authorities in various jurisdictions worldwide, who may disagree with our determinations as to the income and expenses attributable to specific jurisdictions, which could result in our paying additional taxes, interest and penalties;
- the difficulties of staffing and managing dispersed international operations;
- episodic events outside our control such as, for example, the outbreak of Severe Acute Respiratory Syndrome;
- tariff and currency fluctuations;
- changing political conditions;

labor conditions and costs;

foreign governments' monetary policies and regulatory requirements;

less protective foreign intellectual property laws; and

legal systems which are less developed and which may be less predictable than those in the United States.

Because most of our foreign sales are denominated in United States dollars, an increase in value of the United States dollar against foreign currencies, particularly the Japanese yen, will make our products more expensive than those offered by some of our foreign competitors. Our ability to compete overseas in the future may be materially and adversely affected by a strengthening of the United States dollar against foreign currencies. Because we have significant assets, including cash, outside the United States, those assets are subject to risks of destruction and seizure, and it may be difficult to repatriate them, or repatriation may result in the payment by us of significant United States taxes.

Our international operations also depend upon favorable trade relations between the United States and those foreign countries in which our customers, subcontractors, and materials suppliers have operations. A protectionist trade environment in either the United States or those foreign countries in which we do business, such as a change in the current tariff structures, export compliance or other trade policies, may materially and adversely affect our ability to sell our products in foreign markets. In addition, any change to existing United States laws or the enactment of new laws penalizing United States companies for reducing the number of United Stated based employees and hiring more employees in foreign countries may adversely affect our business, financial condition and operating results.

We may not be able to consolidate manufacturing facilities without incurring unanticipated costs and disruptions to our business

In an effort to further reduce our cost structure, we have initiated a process of closing some of our manufacturing facilities and expanding others. We may incur significant and unexpected costs, delays and disruptions to our business during this consolidation process. Because of unanticipated events, including the actions of governments, employees or customers, we may not realize the synergies, cost reductions and other benefits of any consolidation to the extent or within the timeframe that we currently expect.

Our business depends on attracting and retaining management, marketing and technical employees

As with many other technology companies, our future success depends on our ability to hire and retain qualified management, marketing and technical employees. In particular, we periodically experience shortages of engineers. If we are unable to continue to attract and retain the managerial, marketing and technical personnel we require, our business, financial condition and operating results could be materially and adversely affected.

Difficulties in forecasting demand for our product lines may lead to periodic inventory shortages or excesses

We typically operate our business with a relatively short backlog. As a result, we sometimes experience inventory shortages or excesses. We generally order supplies and otherwise plan our production based on internal forecasts of demand. We have in the past, and may again in the future, fail to forecast accurately demand for our products, in terms of both volume and configuration for either our current or next-generation wire bonders. This has led to and may in the future lead to delays in product shipments or, alternatively, an increased risk of inventory obsolescence. If we fail to forecast accurately demand for our products, including assembly equipment, packaging materials and test interconnect solutions, our business, financial condition and operating results may be materially and adversely affected.

Advanced packaging technologies other than wire bonding may render some of our products obsolete

Advanced packaging technologies have emerged that may improve device performance or reduce the size of an integrated circuit package, as compared to traditional die and wire bonding. These technologies include flip chip and chip scale packaging. Some of these advanced technologies eliminate the need for wires to establish the electrical connection between a die and its package. The semiconductor industry may, in the future, shift a significant part of

its volume into advanced packaging technologies, such as those discussed above, which do not employ our products. We completed the divestiture of our advanced packaging technologies segment in February 2004. If a significant shift to advanced packaging technologies were to occur, demand for our wire bonders and related packaging materials may be materially and adversely affected.

Because a small number of customers account for most of our sales, our revenues could decline if we lose any significant customer

The semiconductor manufacturing industry is highly concentrated, with a relatively small number of large semiconductor manufacturers and their subcontract assemblers and vertically integrated manufacturers of electronic systems purchasing a substantial portion of our semiconductor assembly equipment, packaging materials and test interconnect solutions. Sales to a relatively small number of customers account for a significant percentage of our net sales. In the nine months ending June 30, 2004 and in fiscal 2003 and 2002, sales to Advanced Semiconductor Engineering, our largest customer, accounted for 17%, 13% and 13%, respectively, of our net sales.

We expect that sales of our products to a small number of customers will continue to account for a high percentage of our net sales for the foreseeable future. Thus, our business success depends on our ability to maintain strong relationships with our important customers. Any one of a number of factors could adversely affect these relationships. If, for example, during periods of escalating demand for our equipment, we were unable to add inventory and production capacity quickly enough to meet the needs of our customers, they may turn to other suppliers making it more difficult for us to retain their business. Similarly, if we are unable for any other reason to meet production or delivery schedules, particularly during a period of escalating demand, our relationships with our key customers could be adversely affected. If we lose orders from a significant customer, or if a significant customer reduces its orders substantially, these losses or reductions may materially and adversely affect our business, financial condition and operating results.

We depend on a small number of suppliers for raw materials, components and subassemblies. If our suppliers do not deliver their products to us, we would be unable to deliver our products to our customers

Our products are complex and require raw materials, components and subassemblies having a high degree of reliability, accuracy and performance. We rely on subcontractors to manufacture many of these components and subassemblies and we rely on sole source suppliers for some important components and raw materials, including gold. In addition, we do not have long-term contracts with many of our suppliers. As a result, we are exposed to a number of significant risks, including:

- lack of control over the manufacturing process for components and subassemblies;
- changes in our manufacturing processes in response to changes in the market, which may delay our shipments;
- our inadvertent use of defective or contaminated raw materials;
- the relatively small operations and limited manufacturing resources of some of our suppliers, which may limit their ability to manufacture and sell subassemblies, components or parts in the volumes we require and at acceptable quality levels and prices;
- reliability or quality problems with certain key subassemblies provided by single source suppliers as to which we may not have any short term alternative;
- shortages caused by disruptions at our suppliers and subcontractors for a variety of reasons, including work stoppage or fire, earthquake, flooding or other natural disasters;
- delays in the delivery of raw materials or subassemblies, which, in turn, may delay our shipments; and
- the loss of suppliers as a result of the consolidation of suppliers in the industry.

If we are unable to deliver products to our customers on time for these or any other reasons; if we are unable to meet customer expectations as to cycle time; or if we do not maintain acceptable product quality or reliability, our business, financial condition and operating results may be materially and adversely affected.

Our test interconnect business and our diversification presents significant management and operating challenges

During fiscal 2001, we acquired two companies that design and manufacture test interconnect solutions, Cerprobe Corporation and Probe Technology Corporation, and combined their operations to create our test interconnect business. Since its acquisition in 2001, our test interconnect business has not performed to our expectation. Problems have included difficulties in rationalizing duplicate products and facilities, and in integrating these acquisitions. Our plan to correct these problems centers on the following steps: standardize production processes between the various test manufacturing sites, create and ramp production of our highest volume products in a new lower cost site in China and/or outsource production where appropriate, then rationalize excess capacity by converting existing higher cost, low volume manufacturing sites to service centers. If we are unable to successfully implement this plan, our operating margins and results of operations will continue to be adversely affected by the performance of our test interconnect segment.

More generally, our diversification strategy has increased demands on our management, financial resources and information and internal control systems. Our success will depend, in part, on our ability to manage and integrate our test interconnect and equipment and packaging materials businesses and to continue successfully to implement, improve and expand our systems, procedures and controls. If we fail to integrate our businesses successfully or to develop the necessary internal procedures to manage diversified businesses, our business, financial condition and operating results may be materially and adversely affected.

Although we have no current plans to do so, we may from time to time in the future seek to expand our business through acquisition. In that event, the success of any such acquisition will depend, in part, on our ability to integrate and finance (on acceptable terms) the acquisition.

We may be unable to continue to compete successfully in the highly competitive semiconductor equipment, packaging materials and test interconnect solutions industries

The semiconductor equipment, packaging materials and test interconnect solutions industries are very competitive. In the semiconductor equipment and test interconnect solutions markets, significant competitive factors include performance, quality, customer support and price. In the semiconductor packaging materials industry, competitive factors include price, delivery and quality.

In each of our markets, we face competition and the threat of competition from established competitors and potential new entrants, some of which have or may have significantly greater financial, engineering, manufacturing and marketing resources than we have. Some of these competitors are Asian and European companies that have had and may continue to have an advantage over us in supplying products to local customers who appear to prefer to purchase from local suppliers, without regard to other considerations.

We expect our competitors to improve their current products' performance, and to introduce new products and materials with improved price and performance characteristics. Our competitors may independently develop technology that is similar to or better than ours. New product and materials introductions by our competitors or by new market entrants could hurt our sales. If a particular semiconductor manufacturer or subcontract assembler selects a competitor' s product or materials for a particular assembly operation, we may not be able to sell products or materials to that manufacturer or assembler for a significant period of time because manufacturers and assemblers sometimes develop lasting relations with suppliers, and assembly equipment in our industry often goes years without requiring replacement. In addition, we may have to lower our prices in response to price cuts by our competitors, which may materially and adversely affect our business, financial condition and operating results. We cannot assure you that we will be able to continue to compete in these or other areas in the future. If we cannot compete successfully, we could be forced to reduce prices, and could lose customers and market share and experience reduced margins and profitability.

Our success depends in part on our intellectual property, which we may be unable to protect

Our success depends in part on our proprietary technology. To protect this technology, we rely principally on contractual restrictions (such as nondisclosure and confidentiality provisions) in our agreements with employees, subcontractors, vendors, consultants and customers and on the common law of trade secrets and proprietary "know-how." We also rely, in some cases, on patent and copyright protection. We may not be successful in protecting our technology for a number of reasons, including the following:

- employees, subcontractors, vendors, consultants and customers may violate their contractual agreements, and the cost of enforcing those agreements may be prohibitive, or those agreements may be unenforceable or more limited than we anticipate;
- foreign intellectual property laws may not adequately protect our intellectual property rights;
- our patent and copyright claims may not be sufficiently broad to effectively protect our technology; our patents or copyrights may be challenged, invalidated or circumvented; and we may otherwise be unable to obtain adequate protection for our technology.

In addition, our partners and alliances may also have rights to technology that we develop. We may incur significant expense to protect or enforce our intellectual property rights. If we are unable to protect our intellectual property rights, our competitive position may be weakened.

Third parties may claim we are infringing on their intellectual property, which could cause us to incur significant litigation costs or other expenses, or prevent us from selling some of our products

The semiconductor industry is characterized by rapid technological change, with frequent introductions of new products and technologies. Industry participants often develop products and features similar to those introduced by others, creating a risk that their products and processes may give rise to claims that they infringe on the intellectual property of others. We may unknowingly infringe on the intellectual property rights of others and incur significant liability for that infringement. If we are found to have infringed on the intellectual property rights of others, we could be enjoined from continuing to manufacture, market or use the affected product, or be required to obtain a license to continue manufacturing or using the affected product. A license could be very expensive to obtain or may not be available at all. Similarly, changing or re-engineering our products or processes to avoid infringing the rights of others may be costly, impractical or time consuming.

Occasionally, third parties assert that we are, or may be, infringing on or misappropriating their intellectual property rights. In these cases, we will defend against claims or negotiate licenses where we consider these actions appropriate. Intellectual property cases are uncertain and involve complex legal and factual questions. If we become involved in this type of litigation, it could consume significant resources and divert our attention from our business.

Some of our customers are parties to litigation brought by the Lemelson Medical, Education and Research Foundation Limited Partnership, in which Lemelson claims that certain manufacturing processes used by those customers infringe patents held by Lemelson. We have never been named a party to any such litigation. Some customers have requested that we indemnify them to the extent their liability for these claims arises from use of our equipment. We do not believe that products sold by us infringe valid Lemelson patents. If a claim for contribution were to be brought against us, we believe we would have valid defenses to assert and also would have rights to contribution and claims against our suppliers. We have not incurred any material liability with respect to the Lemelson claims or any other pending intellectual property claim to date and we do not believe that these claims will materially and adversely affect our business, financial condition or operating results. The ultimate outcome of any infringement or misappropriation claim that might be made, however, is uncertain and we cannot assure you that the resolution of any such claim would not materially and adversely affect our business, financial condition and operating results.

We may be materially and adversely affected by environmental and safety laws and regulations

We are subject to various federal, state, local and foreign laws and regulations governing, among other things, the generation, storage, use, emission, discharge, transportation and disposal of hazardous material, investigation and remediation of contaminated sites and the health and

safety of our employees. Increasingly, public attention has focused on the environmental impact of manufacturing operations and the risk to neighbors of chemical releases from such operations.

Proper waste disposal plays an important role in the operation of our manufacturing plants. In many of our facilities we maintain wastewater treatment systems that remove metals and other contaminants from process wastewater. These facilities operate under permits that must be renewed periodically. A violation of those permits may lead to revocation of the permits, fines, penalties or the incurrence of capital or other costs to comply with the permits, including potential shutdown of operations.

In the future, existing or new land use and environmental regulations may: (1) impose upon us the need for additional capital equipment or other process requirements, (2) restrict our ability to expand our operations, (3) subject us to liability for, among other matters, remediation, and/or (4) cause us to curtail our operations. We cannot assure you that any costs or liabilities associated with complying with these environmental laws will not materially and adversely affect our business, financial condition and operating results.

Other Risks

We have significant intangible assets and goodwill, which we are required to evaluate annually

In fiscal 2002 and 2003, we recorded substantial write-downs of goodwill. However, our financial statements continue to reflect significant intangible assets and goodwill. We are required to perform an impairment test at least annually to support the carrying value of goodwill and intangible assets. Should we be required to recognize additional intangible or goodwill impairment charges, our financial condition would be adversely affected.

Anti-takeover provisions in our articles of incorporation and bylaws and under Pennsylvania law may discourage other companies from attempting to acquire us

Some provisions of our articles of incorporation and bylaws and of Pennsylvania law may discourage some transactions where we would otherwise experience a fundamental change. For example, our articles of incorporation and bylaws contain provisions that:

- classify our board of directors into four classes, with one class being elected each year;
- permit our board to issue “blank check” preferred stock without stockholder approval; and
- prohibit us from engaging in some types of business combinations with a holder of 20% or more of our voting securities without super-majority board or stockholder approval.

Further, under the Pennsylvania Business Corporation Law, because our bylaws provide for a classified board of directors, stockholders may remove directors only for cause. These provisions and some other provisions of the Pennsylvania Business Corporation Law could delay, defer or prevent us from experiencing a fundamental change and may adversely affect our common stockholders’ voting and other rights.

Terrorist attacks, such as the attacks that occurred in New York and Washington, D.C. on September 11, 2001, or other acts of violence or war may affect the markets in which we operate and our profitability

Terrorist attacks may negatively affect our operations. There can be no assurance that there will not be further terrorist attacks against the United States or United States businesses. These attacks or armed conflicts may directly impact our physical facilities or those of our suppliers or customers. Our primary facilities include administrative, sales and R&D facilities in the United States and manufacturing facilities in the United States, Israel, Singapore and China. Also, these attacks have disrupted the global insurance and reinsurance industries with the result that we may not be able to obtain insurance at historical terms and levels for all of our facilities. Furthermore, these attacks may make travel and the transportation of our supplies and products more difficult and more expensive and ultimately affect the sales of our products in the United States and overseas. The existing conflicts in Afghanistan and Iraq, and particularly in Israel, where we maintain a manufacturing facility, or any broader conflict, could have a further impact on our domestic and internal sales, our supply chain, our production capability and our ability to deliver product to our customers. Political and economic instability in some regions of the world could negatively impact our business. The consequences of any of these armed conflicts are unpredictable, and we may not be able to foresee events that could have an adverse effect on our business.

We may be unable to generate enough cash to service our debt

Our ability to make payments on our indebtedness and to fund planned capital expenditures and other activities will depend on our ability to generate cash in the future. If our convertible debt, other than the $54 million of 5.25% Convertible Subordinated Notes which have been called for redemption on August 19, 2004, is not converted to our common shares, we will be required to make annual cash interest payments of $1.7 million in fiscal years 2005 through 2008, $821 thousand in fiscal 2009 and $488 thousand in fiscal 2010 on our aggregate $270 million of convertible subordinated debt. Principal payments of $205.0 million and $65.0 million on the convertible subordinated debt are due in fiscal 2009 and 2010, respectively. This is affected by the volatile nature of our business, and general economic, competitive and other factors that are beyond our control. Our indebtedness poses risks to our business, including that:

- we must use a substantial portion of our consolidated cash flow from operations to pay principal and interest on our debt, thereby reducing the funds available for working capital, capital expenditures, acquisitions, product development and other general corporate purposes;
- insufficient cash flow from operations may force us to sell assets, or seek additional capital, which we may be unable to do at all or on terms favorable to us; and
- our level of indebtedness may make us more vulnerable to economic or industry downturns.

Our stock price has been and is likely to continue to be highly volatile, which may make the common stock difficult to resell at desired times and prices

In recent years, the price of our common stock has fluctuated greatly. These price fluctuations have been rapid and severe. The price of our common stock may continue to fluctuate greatly in the future due to a variety of factors, including:

- quarter to quarter variations in our operating results;
- shortfalls in our revenue or earnings from levels expected by securities analysts;
- announcements of technological innovations or new products by us or other companies; and
- slowdowns or downturns in the semiconductor industry.

One or more of these factors could significantly harm our business and cause a decline in the price of our common stock in the public market, which could adversely affect your investment, as well as our business and financial operations.

We have the ability to issue additional equity securities, which would lead to dilution of our issued and outstanding common stock

The issuance of additional equity securities or securities convertible into equity securities will result in dilution of existing stockholders' equity interests in us. Our board of directors has the authority to issue, without vote or action of stockholders, shares of preferred stock in one or more series, and has the ability to fix the rights, preferences, privileges and restrictions of any such series. Any such series of preferred stock could contain dividend rights, conversion rights, voting rights, terms of redemption, redemption prices, liquidation preferences or other rights superior to the rights of holders of our common stock. Our board of directors has no present intention of issuing any such preferred stock, but reserves the right to do so in the future. In addition, we are authorized to issue, without stockholder approval, up to an aggregate of 200 million shares of common stock, of which approximately 51.0 million shares were outstanding as of June 30, 2004. We are also authorized to issue, without stockholder approval, securities convertible into either shares of common stock or preferred stock.

We do not expect to pay dividends on our common stock in the foreseeable future

Although our shareholders may receive dividends if, as and when declared by our board of directors, we do not intend to pay dividends on our common stock in the foreseeable future. Therefore, you should not purchase our common stock if you need immediate or future income by way of dividends from your investment.

Item 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

At June 30, 2004, we had a non-trading investment portfolio, excluding those classified as cash and cash equivalents, of $17.8 million. Due to the short term nature of the investment portfolio, if market interest rates were to increase immediately and uniformly by 10% from the levels as of June 30, 2004, there would be no material or adverse affect on our business, financial condition or operating results.

Item 4. CONTROLS AND PROCEDURES

Evaluation of disclosure controls and procedures

Based on their evaluation of the Company' s disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of June 30, 2004, the Company' s Chief Executive Officer and Chief Financial Officer have concluded that, the Company' s disclosure controls and procedures were designed to ensure that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC' s rules and forms, are operating in an effective manner and the information we are required to disclose in our Exchange Act reports is accumulated and communicated to management as appropriate to allow timely decisions regarding required disclosure.

Changes in internal controls

There were no changes in the Company' s internal controls over financial reporting during the quarter ended June 30, 2004 that materially affected, or are reasonably likely to materially affect, the Company' s internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities

On June 30, 2004, the Company issued $65.0 million of 1.0% Convertible Subordinated Notes in a private placement to qualified institutional investors. The notes mature on June 30, 2010, bear interest at 1.0% per annum and are convertible into common stock of the Company at a conversion rate of 77.8743 shares per $1,000 principal amount of notes. The issuance of the notes was exempt from the registration requirements of the Securities Act of 1933, as amended, pursuant to Section 4(2) thereof. The initial purchaser of the notes purchased the notes from the Company at a purchase price equal to 97.5% of the principal amount of the notes.

The Company used the majority of the net proceeds from the issuance of the 1.0% Convertible Subordinated Notes to make open market purchases of $50 million of its 5.25% Convertible Subordinated Notes at a purchase price equal to 102.1% of the principal amount of the 5.25% notes. The purchased notes were convertible into common stock of the Company at a conversion rate of 50.6401 shares per $1,000 principal amount of notes.

The Company has called for redemption, on August 19, 2004, the remaining $54 million principal amount of its outstanding 5.25% Convertible Subordinated Notes.

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Item 6. Exhibits and Reports on Form 8-K

(a) Exhibits.

Exhibit No.	Description
4.1	Indenture, dated as of June 30, 2004, between the Company, as Issuer, and J.P. Morgan Trust Company, National Association, as Trustee
4.2	Registration Rights Agreement, dated as of June 30, 2004, between the Company, as Issuer, and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Initial Purchaser
10.1	(*)Sale and Buyback of Fine Metal Agreement dated June 21, 2004 between Kulicke & Soffa (SEA) PTE LTD and AGR Matthey
10.2	Guarantee Issuance Facility Agreement dated June 21, 2004 between Kulicke & Soffa (SEA) PTE LTD, Natexis Banques Populaires, Singapore Branch and Arab Bank plc, Singapore Branch.
10.3	Debenture, incorporating Fixed and Floating Charges and Assignment of Insurances dated June 21, 2004 between Kulicke & Soffa (SEA) PTE LTD and Natexis Banques Populaires, Singapore Branch.
31.1	Certification of C. Scott Kulicke, Chief Executive Officer of Kulicke and Soffa Industries, Inc., pursuant to Rule 13a-14(a) or Rule 15d-14(a).
31.2	Certification of Maurice E. Carson, Chief Financial Officer of Kulicke and Soffa Industries, Inc., pursuant to Rule 13a-14(a) or Rule 15d-14(a).
32.1	Certification of C. Scott Kulicke, Chief Executive Officer of Kulicke and Soffa Industries, Inc., 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 Maurice E. Carson, Chief Financial Officer of Kulicke and Soffa Industries, Inc., pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(*) Portions of this exhibit have been omitted based on a request for confidential treatment submitted to the U.S. Securities and Exchange Commission. The omitted portions have been filed separately with the Commission.

(b) Reports on Form 8-K.

The Company furnished a current report on Form 8-K on April 21, 2004 making an Item 12 disclosure announcing its financial results for the second fiscal quarter ended March 31, 2004. A copy of the Company' s earning release was filed as exhibit 99.1.

The Company filed a current report on Form 8-K on June 24, 2004 making an Item 5 disclosure announcing its intention to offer, subject to market and other conditions, $65 million aggregate principal amount of convertible subordinated notes due 2010 through a private placement to certain qualified institutional investors and to grant to the initial purchaser of the notes an option to purchase up to an additional $10 million aggregate principal amount of the notes. A copy of the Company' s press release was filed as exhibit 99.1.

The Company filed a current report on Form 8-K on June 25, 2004 making an Item 5 disclosure announcing the terms of its previously reported private offering of 1.0% Convertible Subordinated Notes due June 2010 to certain qualified institutional investors. A copy of the Company' s press release was filed as exhibit 99.1.

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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.

KULICKE AND SOFFA INDUSTRIES, INC.

Date: August 12, 2004

By: /s/ MAURICE E. CARSON

Maurice E. Carson

Vice President,
Chief Financial Officer

(Principal Financial Officer)

EXHIBIT 4.1

KULICKE AND SOFFA INDUSTRIES, INC.

To

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION,
as Trustee

INDENTURE

Dated as of

June 30, 2004

1% Convertible Subordinated Notes due 2010

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(a)(2)	7.02,7.05
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Section 318 (a)	16.07

* Note: This reconciliation and tie shall not, for any purpose, be deemed to be a part of the Indenture.

** Note: N.A. means Not Applicable.

INDENTURE

INDENTURE, dated as of June 30, 2004, between Kulicke and Soffa Industries, Inc., a Pennsylvania corporation (the "**Company**"), having its principal office at 2101 Blair Mill Road, Willow Grove, Pennsylvania 19090, and J.P. Morgan Trust Company, National Association, a national banking association organized under the laws of the United States, as trustee hereunder (the "**Trustee**"), having a corporate trust office at 1650 Market Street, Suite 5210, Philadelphia, Pennsylvania 19103.

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issue of its 1% Convertible Subordinated Notes due 2010 (the "**Notes**"), in an aggregate principal amount not to exceed $65,000,000, or up to $75,000,000 if the Initial Purchaser' s option to purchase additional Notes is exercised, and, to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Notes, the certificate of authentication to be borne by the Notes, a form of assignment, a form of option to elect repayment upon a Fundamental Change, and a form of conversion notice to be borne by the Notes are to be substantially in the forms hereinafter provided for; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and to constitute this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issue hereunder of the Notes have in all respects been duly authorized,

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1

DEFINITIONS

Section 1.01 *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act or which are by reference therein defined in the Securities Act (except as herein otherwise expressly provided or unless the context otherwise requires) shall have the meanings assigned to such terms in said Trust Indenture Act and in said Securities Act as in force at the date of the execution of this Indenture. The words "**herein**", "**hereof**", "**hereunder**", and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other Subdivision. The terms defined in this Article include the plural as well as the singular.

"**Accepted Purchased Shares**" has the meaning specified in Section 15.06(g) hereof.

"**Adjustment Event**" has the meaning specified in Section 15.06(l) hereof.

"**Affiliate**" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "**control**", when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Bid Solicitation Agent**", means the person authorized by the Company to solicit bids for purposes of determining the Closing Trading Price.

"**Board of Directors**" means the Board of Directors of the Company or a committee of such Board duly authorized to act for it hereunder.

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which the banking institutions in The City of New York or the city in which the Corporate Trust Office is located are authorized or obligated by law or executive order to close or be closed.

"**Cash Buy-Out**" has the meaning specified in Section 3.02.

"**Closing Price**" has the meaning specified in Section 15.06(h)(i) hereof.

"**Closing Trading Price**", for purposes of calculating the Make-Whole Premium, means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for $1,000,000 Principal Amount of Notes at approximately 4:00 p.m., New York City time, for a determination date from three independent nationally recognized securities dealers selected by the Company; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for the notes from a nationally recognized securities dealer, no Make-Whole Premium will be paid.

"**Commission**" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"**Common Stock**" means any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. Subject to the provisions of Section 15.07 hereof, however, shares issuable on conversion of Notes shall include only shares of the class designated as common stock of the Company at the date of this Indenture (namely, the Common Stock, no par value) or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; *provided*, *however*, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"**Company**" means the corporation named as the "**Company**" in the first paragraph of this Indenture, and, subject to the provisions of Article 12, shall include its successors and assigns.

"**Company Notice**" has the meaning specified in Section 3.02(b) hereof.

"**Conversion Price**" as of any day will equal $1,000 divided by the Conversion Rate as of such date.

"**Conversion Rate**" has the meaning specified in Section 15.05 hereof.

"**Conversion Right**" has the meaning specified in Section 15.02.

"**Conversion Termination**" has the meaning specified in Section 15.02.

"**Conversion Termination Date**" has the meaning specified in Section 15.02.

"**Conversion Termination Notice**" has the meaning specified in Section 15.02.

"**Conversion Termination Notice Date**" has the meaning specified in Section 15.02.

"**Conversion Termination Trigger Event**" has the meaning specified in Section 15.02.

"**Corporate Trust Office**" or other similar term, means the designated office of the Trustee at which at any particular time its corporate trust business as it relates to this Indenture shall be administered, which office is, at the date as of which this Indenture is dated, located at 1650 Market Street, Suite 5210, Philadelphia, Pennsylvania 19103, Attention: Institutional Trust Services, except that with respect to maintenance of the Note register and surrender of Notes for payment or for registration of transfer or exchange, such office is, at the date as of which this Indenture is dated, c/o JPMorgan Chase Bank, 2001 Bryan Street, 9th Floor, Dallas, Texas 75201.

"**Current Market Price**" has the meaning specified in Section 15.06(h)(ii) hereof.

"**Custodian**" means J.P. Morgan Trust Company, National Association, as custodian with respect to the Notes in global form, or any successor entity thereto.

"**default**" means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

"**Defaulted Interest**" has the meaning specified in Section 2.03 hereof.

"**Depositary**" means, with respect to the Notes issuable or issued in whole or in part in global form, the Person specified in Section 2.05(d) hereof as the Depositary with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, "**Depositary**" shall mean or include such successor.

"**Designated Senior Indebtedness**" means the Company' s obligations under any particular Senior Indebtedness in which the instrument creating or

evidencing the same or the assumption or guarantee thereof (or related agreements or documents to which the Company is a party) expressly provides that such Senior Indebtedness shall be "**Designated Senior Indebtedness**" for purposes of this Indenture (*provided* that such instrument, agreement or other document may place limitations and conditions on the right of the creditor to exercise the rights of Designated Senior Indebtedness).

"**Determination Date**" has the meaning specified in Section 15.06(l) hereof.

"**Event of Default**" means any event specified in Section 7.01(a), 7.01(b), 7.01(c), 7.01(d) or 7.01(e) hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Fair Market Value**," as such term is used in Section 15.06 hereof, has the meaning specified in Section 15.06(h)(iii) hereof.

"**Fundamental Change**" means the occurrence of any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive consideration which is not all or substantially all common stock that is listed, or upon consummation of or immediately after such transaction or event will be listed, on one or more of (i) a United States national securities exchange, (ii) the London Stock Exchange, (iii) the Tokyo Stock Exchange or (iv) the German Stock Exchange, or is approved, or upon consummation of or immediately following such transaction or event will be approved, for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

"**Fundamental Change Expiration Time**" has the meaning set forth in Section 3.02(b) hereof.

"**Global Note**" has the meaning set forth in Section 2.05(b) hereof.

"**Indebtedness**" means, with respect to any Person, and without duplication, (a) all indebtedness, obligations and other liabilities (contingent or otherwise) of such Person for borrowed money (including obligations of such Person in respect of overdrafts, foreign exchange contracts, currency exchange agreements, interest rate protection agreements, and any loans or advances from banks, whether or not evidenced by notes or similar instruments) or evidenced by

bonds, debentures, notes or similar instruments (whether or not the recourse of the lender is to the whole of the assets of such Person or to only a portion thereof), other than any account payable or other accrued current liability or obligation incurred in the ordinary course of business in connection with the obtaining of materials or services; (b) all reimbursement obligations and other liabilities (contingent or otherwise) of such Person with respect to letters of credit, bank guarantees or bankers' acceptances; (c) all obligations and liabilities (contingent or otherwise) in respect of leases of such Person required, in conformity with generally accepted accounting principles, to be accounted for as capitalized lease obligations on the balance sheet of such Person and all obligations and other liabilities (contingent or otherwise) under any lease or related document (including a purchase agreement) in connection with the lease of real property which provides that such Person is contractually obligated to purchase or cause a third party to purchase the leased property and thereby guarantee a minimum residual value of the leased property to the lessor and the obligations of such Person under such lease or related document to purchase or to cause a third party to purchase such leased property; (d) all obligations of such Person (contingent or otherwise) with respect to an interest rate or other swap, cap or collar agreement or other similar instrument or agreement or foreign currency hedge, exchange, purchase or similar instrument or agreement; (e) all direct or indirect guaranties or similar agreements by such Person in respect of, and obligations or liabilities (contingent or otherwise) of such Person to purchase or otherwise acquire or otherwise assure a creditor against loss in respect of, indebtedness, obligations or liabilities of another Person of the kind described in clauses (a) through (d) above; (f) any indebtedness or other obligations described in clauses (a) through (e) above secured by any mortgage, pledge, lien or other encumbrance existing on property which is owned or held by such Person, regardless of whether the indebtedness or other obligation secured thereby shall have been assumed by such Person; and (g) any and all deferrals, renewals, extensions and refundings of, or amendments, modifications or supplements to, any indebtedness, obligation or liability of the kind described in clauses (a) through (f) above.

"**Indenture**" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"**Initial Purchaser**" means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"**Junior Securities**" has the meaning specified in Section 4.08 hereof.

"**Liquidated Damages**" has the meaning specified for "**Liquidated Damages Amount**" in Section 2(e) of the Registration Rights Agreement.

"**Liquidated Damages Notice**" has the meaning specified in Section 5.11 hereof.

"**Make-Whole Premium**" has the meaning specified in Section 3.02.

"**Nonelecting Share**" has the meaning specified in Section 15.07 hereof.

"**Non-Payment Default**" has the meaning specified in Section 4.02(ii) hereof.

"**Note**" or "**Notes**" means any Note or Notes, as the case may be, authenticated and delivered under this Indenture, including the Global Note.

"**Note register**" has the meaning specified in Section 2.05(a) hereof.

"**Note registrar**" has the meaning specified in Section 2.05(a) hereof.

"**Noteholder**" or "**holder**" as applied to any Note, or other similar terms (but excluding the term "**beneficial holder**"), means any Person in whose name at the time a particular Note is registered on the Note registrar' s books.

"**Offer Expiration Time**" has the meaning specified in Section 15.06(g) hereof.

"**Officers' Certificate**", when used with respect to the Company, means a certificate signed by both (a) the Chief Executive Officer, the Chief Financial Officer, the President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and (b) the Treasurer or any Assistant Treasurer, the Controller or any Assistant Controller, or the Secretary or any Assistant Secretary of the Company.

"**Opinion of Counsel**" means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, or other counsel reasonably acceptable to the Trustee.

"**outstanding**", when used with reference to Notes and subject to the provisions of Section 9.04, hereof means, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(b) Notes, or portions thereof, (i) for the purchase of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any paying agent (other than the Company) or (ii) which shall have been otherwise defeased in accordance with Article 13;

(c) Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 hereof; and

(d) Notes converted into Common Stock pursuant to Article 15 and Notes deemed not outstanding pursuant to Article 3.

"**Payment Blockage Notice**" has the meaning specified in Section 4.02(ii) hereof.

"**Payment Default**" has the meaning specified in Section 4.02(i) hereof.

"**Person**" means a corporation, an association, a partnership, a limited liability company, an individual, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

"**Portal Market**" means The Portal Market operated by the National Association of Securities Dealers, Inc. or any successor thereto.

"**Predecessor Note**" of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note, and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 hereof in lieu of a lost, destroyed or stolen Note shall be deemed to evidence the same debt as the lost, destroyed or stolen Note that it replaces.

"**Pre-Dividend Sale Price**" has the meaning specified in Section 15.06(e).

"**premium**" means any premium payable under the terms of the Notes.

"**Principal Amount**" has the meaning specified in Section 2.05(b) hereof.

"**Public Announcement Date**", for purposes of calculating the Make-Whole Premium, means the date of the public announcement of the closing of the transaction constituting the Fundamental Change.

"**Purchase Date**" has the meaning specified in Section 3.02(a) hereof.

"**Purchased Shares**" has the meaning specified in Section 15.06(f)(i) hereof.

"**QIB**" means a "**qualified institutional buyer**" as defined in Rule 144A.

"**Record Date**," as such term is used in Section 15.06 hereof, has the meaning specified in Section 15.06(h)(iv) hereof.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated as of June 30, 2004, among the Company and the Initial Purchaser, as amended from time to time in accordance with its terms.

"**Representative**" means (a) the indenture trustee or other trustee, agent or representative for holders of Senior Indebtedness or (b) with respect to any Senior Indebtedness that does not have any such trustee, agent or other representative, (i) in the case of such Senior Indebtedness issued pursuant to an agreement providing for voting arrangements as among the holders or owners of such Senior Indebtedness, any holder or owner of such Senior Indebtedness acting with the consent of the required persons necessary to bind such holders or owners of such Senior Indebtedness and (ii) in the case of all other such Senior Indebtedness, the holder or owner of such Senior Indebtedness.

"**Responsible Officer**", when used with respect to the Trustee, means an officer of the Trustee in the Corporate Trust Office assigned and duly authorized by the Trustee to administer this Indenture.

"**Restricted Securities**" has the meaning specified in Section 2.05(d) hereof.

"**Rights Agreement**" has the meaning specified in Section 15.12 hereof.

"**Rule 144A**" means Rule 144A as promulgated under the Securities Act.

"**Securities**" has the meaning specified in Section 15.06(d) hereof.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

"**Senior Indebtedness**" means the principal of, premium, if any, interest (including all interest accruing subsequent to the commencement of any bankruptcy or similar proceeding, whether or not a claim for post-petition interest is allowable as a claim in any such proceeding) and rent payable on or in connection with, and all fees, costs, expenses and other amounts accrued or due on or in connection with, Indebtedness of the Company, whether outstanding on the date of this Indenture or thereafter created, incurred, assumed, guaranteed or in effect guaranteed by the Company (including all deferrals, renewals, extensions or refundings of, or amendments, modifications or supplements to, the foregoing), unless in the case of any particular Indebtedness the instrument creating or evidencing the same or the assumption or guarantee thereof expressly provides that such Indebtedness shall not be senior in right of payment to the Notes or expressly provides that such Indebtedness is "**pari passu**" or "**junior**" to the Notes. Notwithstanding the foregoing, the term Senior Indebtedness shall not include: (i) any Indebtedness of the Company to any subsidiary of the Company, a

majority of the voting stock of which is owned, directly or indirectly, by the Company; (ii) the Company' s 5 1/4% Convertible Subordinated Notes due 2006; (iii) the Company' s 0.5% Convertible Subordinated Notes due 2008; or (iv) the Notes.

"**Significant Subsidiary**" means, as of any date of determination, a Subsidiary of the Company, if as of such date of determination either (a) the assets of such subsidiary equal 10% or more of the Company' s total consolidated assets or (b) the total revenue of which represented 10% or more of the Company' s consolidated total revenue for the most recently completed fiscal year.

"**Subsidiary**" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock or other equity interest entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a subsidiary of such Person or (b) the only general partners of which are such Person or of one or more subsidiaries of such Person (or any combination thereof).

"**Trading Day**" has the meaning specified in Section 15.06(h)(v) hereof.

"**transfer**," as such term is used in Section 2.05(d) and Section 2.05(e), hereof has the meaning specified in Section 2.05(d) hereof.

"**Trigger Event**" has the meaning specified in Section 15.06(d) hereof.

"**Trust Indenture Act**" means the Trust Indenture Act of 1939, as amended, as it was in force at the date of this Indenture, except as provided in Section 11.03 and Section 15.07 hereof; *provided*, *however*, that, in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term "**Trust Indenture Act**" shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939 as so amended.

"**Trustee**" means J.P. Morgan Trust Company, National Association and its successors and any corporation resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at the time serving as successor trustee hereunder.

The definitions of certain other terms are as specified in Section 2.05 and 3.02 hereof and Article 15 hereof.

ARTICLE 2

ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation Amount And Issue Of Notes.* The Notes shall be designated as "1% Convertible Subordinated Notes due 2010". Notes not to exceed the aggregate principal amount of $65,000,000, or up to $75,000,000 if the Initial Purchaser' s option, pursuant to Section 2 of the Purchase Agreement dated as of June 24, 2004 between the Company and the Initial Purchaser, to purchase additional Notes is exercised (except pursuant to Sections 2.05, 2.06, 3.02 and 15.03 hereof) upon the execution of this Indenture, or from time to time thereafter, may be executed by the Company and delivered to the Trustee for authentication, and the Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company, signed by (a) its Chief Executive Officer, Chief Financial Officer, President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and (b) its Treasurer or any Assistant Treasurer, its Controller or any Assistant Controller or its Secretary or any Assistant Secretary, without any further action by the Company hereunder.

Section 2.02 *Form of Notes.* The Notes and the Trustee' s certificate of authentication to be borne by such Notes shall be substantially in the form set forth in Exhibit A, which is incorporated in and made a part of this Indenture.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends and endorsements as the officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, or to conform to usage.

Any Global Note shall represent such of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Notes from time to time endorsed thereon and that the aggregate amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect transfers or exchanges permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the holder of such Notes in accordance with this Indenture. Payment of principal of and interest and premium, if any, together with Liquidated Damages, if any, on any Global Note shall be made to the holder of such Note.

The terms and provisions contained in the form of Note attached as Exhibit A hereto shall constitute, and are hereby expressly made, a part of this Indenture and, to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Section 2.03 *Date And Denomination Of Notes, Payments Of Interest.* The Notes shall be issuable in registered form without coupons in denominations of $1,000 principal amount and integral multiples thereof. Every Note shall be dated the date of its authentication and shall bear interest from the applicable date in each case as specified on the face of the form of Note attached as Exhibit A hereto. Interest on the Notes shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Person in whose name any Note (or its Predecessor Note) is registered on the Note register at the close of business on any record date with respect to any interest payment date shall be entitled to receive the interest payable on such interest payment date, except (i) that the interest payable upon purchase following a Fundamental Change (unless the date of purchase is an interest payment date, in which case the interest payable upon purchase will be payable to the Person in whose name the Note submitted for purchase was registered on the Note register at the close of business on the applicable record date) will be payable to the Person to whom principal is payable and (ii) as set forth in Section 15.02. In the case of any Note (or portion thereof) that is converted into Common Stock during the period from (but excluding) a record date to (but excluding) the next succeeding interest payment date, such Note (or portion thereof) that is submitted for conversion during such period shall be accompanied by funds equal to the interest payable on such succeeding interest payment date on the principal amount so converted, as provided in the penultimate paragraph of Section 15.03 hereof; *provided, however*, that no such payment shall be required if there shall exist at the time of conversion a default in the payment of interest on the Notes or if, in the case of the June 30, 2006 interest payment, the Company has elected to terminate the Conversion Right pursuant to Section 15.02 and such Note is surrendered for conversion during the five day period prior to June 30, 2006. If any Note (or portion thereof) is submitted for conversion on an interest payment date or on the final maturity date, the interest payable on such date shall be paid to the holder of record as of the close of business on the immediately preceding record date. Interest shall be payable at the office of the Company maintained by the Company for such purposes in the Borough of Manhattan, City of New York, which shall initially be an office or agency of the Trustee and may, as the Company shall specify to the paying agent in writing by each record date, be paid either (i) by check mailed to the address of the Person entitled thereto as it appears in the Note register (*provided* that the holder of Notes with an aggregate principal amount in excess of $2,000,000 shall, at the written election of such

holder, be paid by wire transfer in immediately available funds) or (ii) by transfer to an account maintained by such Person located in the United States; *provided*, *however*, that payments to the Depositary will be made by wire transfer of immediately available funds to the account of the Depositary or its nominee. The term "**record date**" with respect to any interest payment date shall mean the June 15 or December 15 preceding the relevant June 30 or December 30, respectively.

Any interest on any Note which is payable, but is not punctually paid or duly provided for, on any June 30 or December 30 (the "**Defaulted Interest**") shall forthwith cease to be payable to the Noteholder on the relevant record date by virtue of his having been such Noteholder, and such Defaulted Interest shall be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

(1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest to be paid on each Note and the date of the payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Person entitled to such Defaulted Interest as in this clause (1) provided. Thereupon the Trustee shall fix a special record date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment, the Trustee shall promptly notify the Company of such special record date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the special record date therefor to be mailed, first-class postage prepaid, to each Noteholder at his address as it appears in the Note register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Interest and the special record date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) were registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (2) of this Section 2.03.

(2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause (2), such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, Chief Financial Officer, President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title "Vice President") and attested by the manual or facsimile signature of its Secretary or any of its Assistant Secretaries or its Treasurer or any of its Assistant Treasurers (which may be printed, engraved or otherwise reproduced thereon, by facsimile or otherwise). Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, manually executed by the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 16.11 hereof), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have signed any of the Notes shall cease to be such officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such officer of the Company, and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the proper officers of the Company, although at the date of the execution of this Indenture any such person was not such an officer.

Section 2.05 *Exchange And Registration Of Transfer Of Notes; Restrictions On Transfer, Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office and in any other office or agency of the Company designated pursuant to Section 5.02 hereof being herein referred to as the "**Note register**") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. The Note register shall be in written form or in any form capable of being converted into written form within a reasonably prompt period of time. The Trustee is hereby appointed "**Note**

registrar" for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-registrars in accordance with Section 5.02 hereof.

Upon surrender for registration of transfer of any Note to the Note registrar or any co-registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05 the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 5.02 hereof. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Notes which the Noteholder making the exchange is entitled to receive bearing registration numbers not contemporaneously outstanding.

All Notes issued upon any registration of transfer or exchange of Notes shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Notes surrendered upon such registration of transfer or exchange.

All Notes presented or surrendered for registration of transfer or for exchange, purchase following a Fundamental Change or conversion shall (if so required by the Company or the Note registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company, and the Notes shall be duly executed by the Noteholder thereof or his attorney duly authorized in writing.

No service charge shall be made to any holder for any registration of transfer or exchange of Notes, but the Company may require payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Notes.

Neither the Company nor the Trustee nor any Note registrar shall be required to exchange or register a transfer of (a) any Notes or portions thereof surrendered for conversion pursuant to Article 15 or (b) any Notes or portions thereof tendered for purchase (and not withdrawn) pursuant to Section 3.02 hereof.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, or unless otherwise required by law, all of the Notes will be

represented by one or more Notes in global form registered in the name of the Depositary or the nominee of the Depositary (the "**Global Note**"), except as otherwise specified below. The transfer and exchange of beneficial interests in any such Global Note shall be effected through the Depositary in accordance with this Indenture and the procedures of the Depositary therefor. The Trustee shall make appropriate endorsements to reflect increases or decreases in the principal amounts of any such Global Note as set forth on the face of the Note ("**Principal Amount**") to reflect any such transfers. Except as provided below, beneficial owners of a Global Note shall not be entitled to have certificates registered in their names, will not receive or be entitled to receive physical delivery of certificates in definitive form and will not be considered holders of such Global Note.

(c) Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian, the Depositary or by the National Association of Securities Dealers, Inc. in order for the Notes to be tradeable on The Portal Market or as may be required for the Notes to be tradeable on any other market developed for trading of securities pursuant to Rule 144A or required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

(d) Every Note that bears or is required under this Section 2.05(d) to bear the legend set forth in this Section (together with any Common Stock issued upon conversion of the Notes and required to bear the legend set forth in Section 2.05(e) hereof, collectively, the "**Restricted Securities**") shall be subject to the restrictions on transfer set forth in this Section 2.05(d) (including those set forth in the legend set forth below) unless such restrictions on transfer shall be waived by written consent of the Company, and the holder of each such Restricted Security, by such Noteholder' s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in Sections 2.05(d) and 2.05(e) hereof, the term "**transfer**" encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Restricted Security.

Until the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than Common Stock, if any, issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(e) hereof, if applicable) shall bear a legend in substantially the following form, unless such Note has been sold pursuant to a registration statement that has been declared

effective under the Securities Act (and which continues to be effective at the time of such transfer), or unless otherwise agreed by the Company in writing, with written notice thereof to the Trustee:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(K) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "**AFFILIATE**" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("**RULE 144A**"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A, PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) TO AN INSTITUTION THAT IS AN "**ACCREDITED INVESTOR**" AS DEFINED IN RULE 501(A)(1), (2) OR (7) UNDER THE SECURITIES ACT ("**INSTITUTIONAL ACCREDITED INVESTOR**"), (4) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTION PROVIDED BY RULE 144 (IF APPLICABLE) OF THE SECURITIES ACT OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (5) ABOVE), THE HOLDER OF THIS SECURITY MUST FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND

OTHER INFORMATION AND LEGAL OPINIONS AS THEY MAY REASONABLY REQUIRE. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to which conditions for removal of the foregoing legend set forth therein have been satisfied may, upon surrender of such Note for exchange to the Note registrar in accordance with the provisions of this Section 2.05 be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(d).

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in the second paragraph of Section 2.05(a) hereof and in this Section 2.05(d)), a Global Note may not be transferred as a whole or in part except by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depositary with respect to the Notes in global form. Initially, the Global Note shall be issued to the Depositary, registered in the name of Cede & Co., as the nominee of the Depositary, and deposited with the Custodian for Cede & Co.

If at any time the Depositary for a Global Note notifies the Company that it is unwilling or unable to continue as Depositary for such Note, the Company may appoint a successor Depositary with respect to such Note. If a successor Depositary is not appointed by the Company within 90 days after the Company receives such notice, the Company will execute, and the Trustee, upon receipt of an Officers' Certificate for the authentication and delivery of Notes, will authenticate and deliver, Notes in certificated form, in aggregate principal amount equal to the principal amount of such Global Note, in exchange for such Global Note.

Notes in certificated form issued in exchange for a Global Note pursuant to this Section 2.05 shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Notes in certificated form to the Persons in whose names such Notes in certificated form are so registered.

At such time as all interests in a Global Note have been redeemed, converted, canceled or the Global Note is exchanged for Notes in certificated form, such Global Note shall, upon receipt thereof, be canceled by the Trustee in accordance with standing procedures and instructions existing between the Depositary and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is redeemed, converted, repurchased or canceled, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depositary and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

(e) Until the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), any stock certificate representing Common Stock issued upon conversion of any Note shall bear a legend in substantially the following form, unless such Common Stock has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or such Common Stock has been issued upon conversion of Notes that have been transferred pursuant to a registration statement that has been declared effective under the Securities Act, or unless otherwise agreed by the Company in writing with written notice thereof to the transfer agent:

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(K) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "**AFFILIATE**" (WITHIN THE

MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) TO AN INSTITUTION THAT IS AN "**ACCREDITED INVESTOR**" AS DEFINED IN RULE 501(A)(1), (2) OR (7) UNDER THE SECURITIES ACT ("**INSTITUTIONAL ACCREDITED INVESTOR**") (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER APPLICABLE TO THIS SECURITY, THE FORM OF WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT), (3) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTION PROVIDED BY RULE 144 (IF APPLICABLE) UNDER THE SECURITIES ACT (AS INDICATED BY THE BOX CHECKED BY THE TRANSFEROR ON THE CERTIFICATE OF TRANSFER APPLICABLE TO THIS SECURITY, THE FORM OF WHICH MAY BE OBTAINED FROM THE COMPANY OR THE TRANSFER AGENT) OR (4) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (4) ABOVE), THE HOLDER OF THIS SECURITY MUST FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AND LEGAL OPINIONS AS THEY MAY REASONABLY REQUIRE. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION. IN ANY CASE, THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

Any such Common Stock as to which such restrictions on transfer shall have expired in accordance with their terms or as to which the conditions for removal of the foregoing legend set forth therein have been satisfied may, upon

surrender of the certificates representing such shares of Common Stock for exchange in accordance with the procedures of the transfer agent for the Common Stock, be exchanged for a new certificate or certificates for a like number of shares of Common Stock, which shall not bear the restrictive legend required by this Section 2.05(e).

(f) Any Note or Common Stock issued upon the conversion or exchange of a Note that, prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), is purchased or owned by the Company or any Affiliate thereof may not be resold by the Company or such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from the registration requirements of the Securities Act in a transaction which results in such Notes or Common Stock, as the case may be, no longer being "restricted securities" (as defined under Rule 144).

Section 2.06 *Mutilated, Destroyed, Lost Or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and make available for delivery, a new Note, bearing a number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Following receipt by the Trustee or such authenticating agent, as the case may be, of satisfactory security or indemnity and evidence, as described in this Section 2.06, the Trustee or such authenticating agent may authenticate any such substituted Note and make available for delivery such Note. Upon the issuance of any substituted Note, the Company may require the payment by the holder of a sum sufficient to cover any tax, assessment or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Note which has matured or is about to mature or has been tendered for purchase following a Fundamental Change (and not withdrawn) or is to be converted into Common Stock shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without

surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, the Trustee and, if applicable, any paying agent or conversion agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment or conversion of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment or conversion of negotiable instruments or other securities without their surrender. To the extent permitted by law, a Note that has been mutilated, destroyed, lost or stolen, and for which either a substituted Note has been issued or for which payment or conversion has been made or authorized, shall cease to be a binding obligation of the Company.

Section 2.07 *Temporary Notes.* Pending the preparation of Notes in certificated form, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon the written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Notes in certificated form, but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Notes in certificated form. Without unreasonable delay the Company will execute and deliver to the Trustee or such authenticating agent Notes in certificated form and thereupon any or all temporary Notes may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 5.02 hereof and the Trustee or such authenticating agent shall authenticate and make available for delivery in exchange for such temporary Notes an equal aggregate principal amount of Notes in certificated form. Such exchange shall be

made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Notes in certificated form authenticated and delivered hereunder.

Section 2.08 *Cancellation Of Notes Paid, Etc.* All Notes surrendered for the purpose of payment, purchase following a Fundamental Change, conversion, exchange or registration of transfer shall, if surrendered to the Company or any paying agent or any Note registrar or any conversion agent, be surrendered to the Trustee and promptly canceled by it, or, if surrendered to the Trustee, shall be promptly canceled by it, and no Notes shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of such canceled Notes in accordance with its customary procedures. If the Company shall acquire any of the Notes, such acquisition shall not operate as a redemption or satisfaction of the indebtedness represented by such Notes unless and until the same are delivered to the Trustee for cancellation.

Section 2.09 *Cusip Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of purchase following a Fundamental Change as a convenience to Noteholders; *provided*, *however*, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or as contained in any notice of a purchase following a Fundamental Change and that reliance may be placed only on the other identification numbers printed on the Notes, and any such purchase following a Fundamental Change shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

ARTICLE 3
REDEMPTION OF NOTES

Section 3.01 *Prohibition on Redemption.* The Notes may not be redeemed by the Company, in whole or in part, prior to the final maturity date of the Notes except to the extent that a purchase pursuant to Section 3.02 may be deemed a redemption. Nothing herein shall prevent the Company or any of its Subsidiaries from tendering for or repurchasing any Notes, subject to applicable laws.

Section 3.02 *Fundamental Change.* (a) If there shall occur a Fundamental Change at any time prior to maturity of the Notes, then each Noteholder shall have the right, at such holder' s option, to require the Company to purchase all of such holder' s Notes, or any portion thereof that is an integral

multiple of $1,000 principal amount, for cash, on the date (the "**Purchase Date**") that is 30 days after the date of the Company Notice (as defined in Section 3.02(b) hereof) of such Fundamental Change (or, if such 30th day is not a Business Day, the next succeeding Business Day) at a purchase price equal to 100% of the principal amount thereof, plus accrued but unpaid interest, and Liquidated Damages, if any, to (but excluding) the Purchase Date; *provided*, *however*, that, if such Purchase Date is a June 30 or December 30, then the interest payable on such date shall be paid to the holders of record of the Notes on the next preceding June 15 or December 15, respectively.

If there shall have occurred a Fundamental Change and at least sixty percent (60%) of the consideration for the Common Stock in the transaction or transactions constituting the Fundamental Change consists of cash (a "**Cash Buy-Out**"), the Company will pay a Make-Whole Premium to the holders of Notes in addition to the purchase price. If a holder surrenders its Notes (or any portion thereof) for conversion after receipt of a Company Notice and prior to the Purchase Date, and the Fundamental Change related to the Company Notice constitutes a Cash Buy-Out, the Company will pay a Make-Whole Premium to such holder, in addition to the shares of Common Stock deliverable upon conversion of the Notes.

The "Make-Whole Premium" per Note will equal (a) the average of the Closing Trading Prices of a Note for the five Trading Days immediately prior to the Public Announcement Date of the Cash Buy-Out, less (b) the greater of (i) $1,000 or (ii) the product of (x) the average Closing Prices of the Common Stock for the five Trading Days immediately prior to the Public Announcement Date of the Cash Buy-Out and (y) the applicable Conversion Rate; and will be payable in cash. The Make-Whole Premium, if any, will not be less than zero.

Whenever in this Indenture (including Section 2.02, Section 7.01(b) and Section 4.03 hereof) or in the Notes there is a reference, in any context, to the principal of any Note as of any time, such reference shall be deemed to include reference to the purchase price, payable in respect to such Note to the extent that such purchase price is, was or would be so payable at such time, and express mention of the purchase price in any provision of this Indenture or in the Notes shall not be construed as excluding the purchase price in those provisions of this Indenture when such express mention is not made.

Upon presentation of any Note redeemed in part only, the Company shall execute and, upon the Company' s written direction to the Trustee, the Trustee shall authenticate and deliver to the holder thereof, at the expense of the Company, a new Note or Notes, of authorized denominations, in principal amount equal to the unredeemed portion of the Notes so presented.

(b) On or before the 10th day after the occurrence of a Fundamental Change, the Company or at its written request (which must be received by the Trustee at least five Business Days prior to the date the Trustee is requested to give notice as described below, unless the Trustee shall agree in writing to a shorter period), the Trustee, in the name of and at the expense of the Company, shall mail or cause to be mailed to all holders of record on the date of the Fundamental Change a notice (the "**Company Notice**") of the occurrence of such Fundamental Change and of the purchase right at the option of the holders arising as a result thereof. Such notice shall be mailed by the Company or by the Trustee in the name of and at the expense of the Company to the holders of Notes at their last addresses as the same appear on the Note register. Such mailing shall be by first class mail. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the holder of any Note shall not affect the validity of the proceedings for the purchase of any other Note. If the Company shall give such notice, the Company shall also deliver a copy of the Company Notice to the Trustee at such time as it is mailed to Noteholders. Concurrently with or before the mailing of any Company Notice, the Company shall issue a press release announcing such Fundamental Change referred to in the Company Notice, the form and content of which press release shall be determined by the Company in its sole discretion. The failure to issue any such press release or any defect therein shall not affect the validity of the Company Notice or any proceedings for the purchase of any Note which any Noteholder may elect to have the Company purchase as provided in this Section 3.02.

Each Company Notice shall specify the circumstances constituting the Fundamental Change, the Purchase Date, the price at which the Company shall be obligated to purchase Notes, whether a Make-Whole Premium shall be paid by the Company, that the holder must exercise the purchase right prior to the close of business on the Purchase Date (the "**Fundamental Change Expiration Time**"), that the holder shall have the right to withdraw any Notes surrendered prior to the Fundamental Change Expiration Time, a description of the procedure which a Noteholder must follow to exercise such purchase right and to withdraw any surrendered Notes, the place or places where the holder is to surrender such holder' s Notes, the amount of interest, and Liquidated Damages, if any, accrued on each Note to the Purchase Date and the "CUSIP" number or numbers of the Notes (if then generally in use).

No failure of the Company to give the foregoing notices and no defect therein shall limit the Noteholders' purchase rights or affect the validity of the proceedings for the purchase of the Notes pursuant to this Section 3.02.

(c) For a Note to be so redeemed at the option of the holder, the Company must receive at the office or agency of the Company maintained for that purpose or, at the option of such holder, the Corporate Trust Office, such Note with the form entitled "**Option to Elect Repayment Upon A Fundamental Change**" on the reverse thereof duly completed, together with such Notes duly endorsed for transfer, on or before the Fundamental Change Expiration Time. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Note for repayment shall be determined by the Company, whose determination shall be final and binding absent manifest error.

(d) On or prior to the Purchase Date, the Company will deposit with the Trustee or with one or more paying agents (or, if the Company is acting as its own paying agent, set aside, segregate and hold in trust as provided in Section 5.04 hereof) an amount of money sufficient to purchase on the Purchase Date (including such amount with respect to a Make-Whole Premium, if any) all the Notes that have been surrendered in accordance with Section 3.02(c) hereof at least three Business Days in advance of the Purchase Date at the appropriate purchase price, together with accrued interest and Liquidated Damages, if any, to (but excluding) the Purchase Date; *provided*, *however*, that if such payment is made on the Purchase Date it must be received by the Trustee or paying agent, as the case may be, by 10:00 a.m. New York City time, on such date. An amount of money sufficient to pay the purchase price (including such amount with respect to a Make-Whole Premium, if any) and accrued interest and Liquidated Damages, if any, for the balance of the Notes to be redeemed on the Purchase Date shall subsequently be deposited with the Trustee. Payment for Notes surrendered for purchase (and not withdrawn) prior to the Fundamental Change Expiration Time will be made promptly (but in no event more than five Business Days) following the Purchase Date by mailing checks for the amount payable to the holders of such Notes entitled thereto as they shall appear on the registry books of the Company.

(e) In the case of a reclassification, change, consolidation, merger, combination, sale or conveyance to which Section 15.07 hereof applies, in which the Common Stock of the Company is changed or exchanged as a result into the right to receive stock, securities or other property or assets (including cash), which includes shares of Common Stock of the Company or shares of common stock of another Person that are, or upon issuance will be, traded on a United States national securities exchange, the London Stock Exchange, the Tokyo Stock Exchange or the German Stock Exchange, or approved for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices, or approved for trading on an established automated over-the-counter trading market in the United States and such shares constitute at the time such change or exchange becomes effective in excess of 50% of the aggregate fair market value of such stock, securities or other

property or assets (including cash) (as determined by the Company, which determination shall be conclusive and binding), then the Person formed by such consolidation or resulting from such merger or which acquires such assets, as the case may be, shall execute and deliver to the Trustee a supplemental indenture (accompanied by an Opinion of Counsel that such supplemental indenture complies with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) modifying the provisions of this Indenture relating to the right of holders of the Notes to cause the Company to repurchase the Notes following a Fundamental Change, including without limitation the applicable provisions of this Section 3.02 and the definitions of Common Stock and Fundamental Change, as appropriate, as determined in good faith by the Company (which determination shall be conclusive and binding), to make such provisions apply to such other Person if different from the Company and the common stock issued by such Person (in lieu of the Company and the Common Stock of the Company).

(f) The Company will comply with the provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act to the extent then applicable in connection with the purchase rights of the holders of Notes in the event of a Fundamental Change.

ARTICLE 4
SUBORDINATION OF NOTES

Section 4.01 *Agreement of Subordination.* The Company covenants and agrees, and each holder of Notes issued hereunder by its acceptance thereof likewise covenants and agrees, that all Notes shall be issued subject to the provisions of this Article 4 and each Person holding any Note, whether upon original issue or upon registration of transfer, assignment or exchange thereof, accepts and agrees to be bound by such provisions.

The payment of the principal of, premium, if any, and interest (including Liquidated Damages, if any) on all Notes (including, but not limited to, the purchase price with respect to the Notes submitted for purchase in accordance with Section 3.02 hereof, as provided in this Indenture) issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness, whether outstanding at the date of this Indenture or thereafter incurred.

No provision of this Article 4 shall prevent the occurrence of any default or Event of Default hereunder.

Section 4.02 *Payments To Noteholders.* No payment shall be made with respect to the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes (including, but not limited to, the purchase price with respect to the Notes submitted for purchase in accordance with Section 3.02 hereof, as provided in this Indenture), except payments and distributions made by the Trustee as permitted by Section 4.05 hereof, if:

(i) a default in the payment of principal, premium, if any, interest, rent or other obligations in respect of Designated Senior Indebtedness occurs and is continuing (or, in the case of Designated Senior Indebtedness for which there is a period of grace, in the event of such a default that continues beyond the period of grace, if any, specified in the instrument or lease evidencing such Designated Senior Indebtedness) (a "**Payment Default**"), unless and until such Payment Default shall have been cured or waived or shall have ceased to exist; or

(ii) a default, other than a Payment Default, on any Designated Senior Indebtedness occurs and is continuing that then permits holders of such Designated Senior Indebtedness to accelerate its maturity (or in the case of any lease, a default occurs and is continuing that permits the lessor to either terminate the lease or require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder) and the Trustee receives a notice of the default (a "**Payment Blockage Notice**") from a holder of Designated Senior Indebtedness, a Representative of Designated Senior Indebtedness or the Company (a "**Non-Payment Default**").

If the Trustee receives any Payment Blockage Notice pursuant to clause (ii) above, no subsequent Payment Blockage Notice shall be effective for purposes of this Section 4.02 unless and until at least 365 days shall have elapsed since the initial effectiveness of the immediately prior Payment Blockage Notice. No Non-Payment Default that existed or was continuing on the date of delivery of any Payment Blockage Notice to the Trustee shall be, or be made, the basis for a subsequent Payment Blockage Notice.

The Company may and shall resume payments on and distributions in respect of the Notes upon the earlier of:

(1) the date upon which any such Payment Default is cured or waived or ceases to exist, or

(2) in the case of a Non-Payment Default, the earlier of (a) the date upon which such default is cured or waived or ceases to exist or (b) 179 days after the applicable Payment Blockage Notice is received by the Trustee if the maturity of such Designated Senior Indebtedness has not

been accelerated (or in the case of any lease, 179 days after such notice is received if the Company has not received notice that the lessor under such lease has exercised its right to terminate the lease or require the Company to make an irrevocable offer to terminate the lease following an event of default thereunder), unless this Article 4 otherwise prohibits the payment or distribution at the time of such payment or distribution.

Upon any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding up or liquidation or reorganization of the Company, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all amounts due or to become due upon all Senior Indebtedness shall first be paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, or payment thereof in accordance with its terms provided for in cash or other payment satisfactory to the holders of such Senior Indebtedness before any payment is made on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes (except payments made pursuant to Article 13 from monies deposited with the Trustee pursuant thereto prior to commencement of proceedings for such dissolution, winding up, liquidation or reorganization), and upon any such dissolution or winding up or liquidation or reorganization of the Company or bankruptcy, insolvency, receivership or other similar proceeding, any payment by the Company, or distribution of assets of the Company of any kind or character, whether in cash, property or securities, to which the holders of the Notes or the Trustee would be entitled, except for the provisions of this Article 4 shall (except as aforesaid) be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the holders of the Notes or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Indebtedness (pro rata to such holders on the basis of the respective amounts of Senior Indebtedness held by such holders, or as otherwise required by law or a court order) or their Representative or Representatives, as their respective interests may appear, to the extent necessary to pay all Senior Indebtedness in full, in cash or other payment satisfactory to the holders of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of Senior Indebtedness, before any payment or distribution is made to the holders of the Notes or to the Trustee.

For purposes of this Article 4 the words, “cash, property or securities” shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article 4 with respect to the Notes to the payment of all Senior Indebtedness which may at the time be outstanding

provided that (i) the Senior Indebtedness is assumed by the new corporation, if any, resulting from any reorganization or readjustment, and (ii) the rights of the holders of Senior Indebtedness (other than leases which are not assumed by the Company or the new corporation, as the case may be) are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company into, another corporation or the liquidation or dissolution of the Company following the conveyance or transfer of its property as an entirety, or substantially as an entirety, to another Person upon the terms and conditions provided for in Article 12 shall not be deemed a dissolution, winding-up, liquidation or reorganization for the purposes of this Section 4.02 if such other Person shall, as a part of such consolidation, merger, conveyance or transfer, comply with the conditions stated in Article 12.

In the event of the acceleration of the Notes because of an Event of Default, no payment or distribution shall be made to the Trustee or any holder of Notes in respect of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes (including, but not limited to, the purchase price with respect to the Notes submitted for purchase in accordance with Section 3.02 hereof, as provided in this Indenture), except payments and distributions made by the Trustee as permitted by Section 4.05 hereof, until all Senior Indebtedness has been paid in full in cash or other payment satisfactory to the holders of Senior Indebtedness or such acceleration is rescinded in accordance with the terms of this Indenture. If payment of the Notes is accelerated because of an Event of Default, the Company or the Trustee shall promptly notify holders of Senior Indebtedness of the acceleration.

In the event that, notwithstanding the foregoing provisions, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities (including, without limitation, by way of setoff or otherwise), prohibited by the foregoing provisions in this Section 4.02, shall be received by the Trustee or the holders of the Notes before all Senior Indebtedness is paid in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, or provision is made for such payment thereof in accordance with its terms in cash or other payment satisfactory to the holders of such Senior Indebtedness, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Indebtedness or their Representative or Representatives, as their respective interests may appear, as calculated by the Company, for application to the payment of any Senior Indebtedness remaining unpaid to the extent necessary to pay all Senior Indebtedness in full in cash or other payment satisfactory to the holders of such Senior Indebtedness, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Indebtedness.

Nothing in this Section 4.02 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 8.06 hereof. This Section 4.02 shall be subject to the further provisions of Section 4.05 hereof.

Section 4.03 *Subrogation of Notes.* Subject to the payment in full of all Senior Indebtedness, the rights of the holders of the Notes shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Indebtedness pursuant to the provisions of this Article 4 (equally and ratably with the holders of all indebtedness of the Company which by its express terms is subordinated to other indebtedness of the Company to substantially the same extent as the Notes are subordinated and is entitled to like rights of subrogation) to the rights of the holders of Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to the Senior Indebtedness until the principal, premium, if any, and interest (including Liquidated Damages, if any) on the Notes shall be paid in full, and, for the purposes of such subrogation, no payments or distributions to the holders of the Senior Indebtedness of any cash, property or securities to which the holders of the Notes or the Trustee would be entitled except for the provisions of this Article 4 and no payment pursuant to the provisions of this Article 4 to or for the benefit of the holders of Senior Indebtedness by holders of the Notes or the Trustee, shall, as among the Company, its creditors other than holders of Senior Indebtedness, and the holders of the Notes, be deemed to be a payment by the Company to or on account of the Senior Indebtedness, and no payments or distributions of cash, property or securities to or for the benefit of the holders of the Notes pursuant to the subrogation provisions of this Article 4 which would otherwise have been paid to the holders of Senior Indebtedness, shall be deemed to be a payment by the Company to or for the account of the Notes. It is understood that the provisions of this Article 4 are intended solely for the purposes of defining the relative rights of the holders of the Notes, on the one hand, and the holders of the Senior Indebtedness, on the other hand.

Nothing contained in this Article 4 or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors other than the holders of Senior Indebtedness, and the holders of the Notes, the obligation of the Company, which is absolute and unconditional, to pay to the holders of the Notes the principal of, premium, if any, and interest (including Liquidated Damages, if any) on the Notes as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the holders of the Notes and creditors of the Company other than the holders of the Senior Indebtedness, nor shall anything herein or therein prevent the Trustee or the holder of any Note from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article 4 of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article 4, the Trustee, subject to the provisions of Section 8.01 hereof, and the holders of the Notes shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such bankruptcy, dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the holders of the Notes, for the purpose of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon and all other facts pertinent thereto or to this Article 4.

Section 4.04 *Authorization To Effect Subordination.* Each holder of a Note by the holder' s acceptance thereof authorizes and directs the Trustee on the holder' s behalf to take such action as may be necessary or appropriate to effectuate the subordination as provided in this Article 4 and appoints the Trustee to act as the holder' s attorney-in-fact for any and all such purposes. If the Trustee does not file a proper proof of claim or proof of debt in the form required in any proceeding referred to in the third paragraph of Section 7.02 hereof at least 30 days before the expiration of the time to file such claim, the holders of any Senior Indebtedness or their Representatives are hereby authorized to file an appropriate claim for and on behalf of the holders of the Notes.

Section 4.05 *Notice to Trustee.* The Company shall give prompt written notice in the form of an Officers' Certificate to a Responsible Officer of the Trustee and to any paying agent of any fact known to the Company that would prohibit the making of any payment of monies to or by the Trustee or any paying agent in respect of the Notes pursuant to the provisions of this Article 4. Notwithstanding the provisions of this Article 4 or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment of monies to or by the Trustee in respect of the Notes pursuant to the provisions of this Article 4 unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office from the Company (in the form of an Officers' Certificate) or a Representative or a holder or holders of Senior Indebtedness, and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 8.01 hereof, shall be entitled in all respects to assume that no such facts exist; *provided*, *however*, that if on a date not less than one Business Day prior to the date upon which by the terms hereof any such monies may become payable for any purpose (including, without limitation, the payment of the principal of, or premium, if any, or interest (including Liquidated

Damages, if any) on any Note) the Trustee shall not have received, with respect to such monies, the notice provided for in this Section 4.05 then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to apply monies received to the purpose for which they were received, and shall not be affected by any notice to the contrary that may be received by it on or after such prior date.

Notwithstanding anything in this Article 4 to the contrary, nothing shall prevent any payment by the Trustee to the Noteholders of monies deposited with it pursuant to Section 13.01 hereof, and any such payment shall not be subject to the provisions of this Article 4.

The Trustee, subject to the provisions of Section 8.01 hereof, shall be entitled to rely on the delivery to it of a written notice by a Representative or a person representing himself to be a holder of Senior Indebtedness (or a trustee on behalf of such holder) to establish that such notice has been given by a Representative or a holder of Senior Indebtedness or a trustee on behalf of any such holder or holders. The Trustee shall not be required to make any payment or distribution to or on behalf of a holder of Senior Indebtedness pursuant to this Article 4 unless it has received satisfactory evidence as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this Article 4.

Section 4.06 *Trustee's Relation To Senior Indebtedness.* The Trustee, in its individual capacity, shall be entitled to all the rights set forth in this Article 4 in respect of any Senior Indebtedness at any time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in Section 8.13 hereof or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Article 4 and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness and, subject to the provisions of Section 8.01 hereof, the Trustee shall not be liable to any holder of Senior Indebtedness (i) for any failure to make any payments or distributions to such holder or (ii) if it shall pay over or deliver to holders of Notes, the Company or any other Person money in compliance with this Article 4.

Section 4.07 *No Impairment of Subordination.* No right of any present or future holder of any Senior Indebtedness to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or

failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with. Senior Indebtedness may be created, renewed or extended and holders of Senior Indebtedness may exercise any rights under any instrument creating or evidencing such Senior Indebtedness, including, without limitation, any waiver of default thereunder, without any notice to or consent from the holders of the Notes or the Trustee. No compromise, alteration, amendment, modification, extension, renewal or other change of, or waiver, consent or other action in respect of, any liability or obligation under or in respect of the Senior Indebtedness or any terms or conditions of any instrument creating or evidencing such Senior Indebtedness shall in any way alter or affect any of the provisions of this Article 4 or the subordination of the Notes provided thereby.

Section 4.08 *Certain Conversions Not Deemed Payment.* For the purposes of this Article 4 only, (1) the issuance and delivery of Junior Securities upon conversion of Notes in accordance with Article 15 shall not be deemed to constitute a payment or distribution on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on Notes or on account of the purchase or other acquisition of Notes, and (2) the payment, issuance or delivery of cash (except in satisfaction of fractional shares pursuant to Section 15.04 hereof), property or securities (other than Junior Securities) upon conversion of a Note shall be deemed to constitute payment on account of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on such Note. For the purposes of this Section 4.08 the term "**Junior Securities**" means (a) shares of any stock of any class of the Company or (b) securities of the Company that are subordinated in right of payment to all Senior Indebtedness that may be outstanding at the time of issuance or delivery of such securities to substantially the same extent as, or to a greater extent than, the Notes are so subordinated as provided in this Article 4. Nothing contained in this Article 4 or elsewhere in this Indenture or in the Notes is intended to or shall impair, as among the Company, its creditors (other than holders of Senior Indebtedness) and the Noteholders, the right, which is absolute and unconditional, of the holder of any Note to convert such Note in accordance with Article 4.

Section 4.09 *Article Applicable to Paying Agents.* If at any time any paying agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "**Trustee**" as used in this Article 4 shall (unless the context otherwise requires) be construed as extending to and including such paying agent within its meaning as fully for all intents and purposes as if such paying agent were named in this Article 4 in addition to or in place of the Trustee; *provided*, *however*, that the first paragraph of Section 4.05 hereof shall not apply to the Company or any Affiliate of the Company if it or such Affiliate acts as paying agent.

The Trustee shall not be responsible for the actions or inactions of any other paying agents (including the Company if acting as its own paying agent) and shall have no control of any funds held by such other paying agents.

Section 4.10 *Senior Indebtedness Entitled to Rely.* The holders of Senior Indebtedness shall have the right to rely upon this Article 4 and no amendment or modification of the provisions contained herein shall diminish the rights of such holders unless such holders shall have agreed in writing thereto.

Section 4.11 *Reliance on Judicial Order or Certificate of Liquidating Agent.* Upon any payment or distribution of assets of the Company referred to in this Article 4 the Trustee and the Noteholders shall be entitled to rely upon any order or decree entered by any court of competent jurisdiction in which such insolvency, bankruptcy, receivership, liquidation, reorganization, dissolution, winding up or similar case or proceeding is pending, or a certificate of the trustee in bankruptcy, liquidating trustee, custodian, receiver, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Noteholders, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article 4.

ARTICLE 5
PARTICULAR COVENANTS OF THE COMPANY

Section 5.01 *Payment of Principal, Premium and Interest.* The Company covenants and agrees that it will duly and punctually pay or cause to be paid the principal of and premium, if any (including the purchase price upon purchase pursuant to Article 3 and interest (including Liquidated Damages, if any), on each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 5.02 *Maintenance Of Office Or Agency.* The Company will maintain an office or agency in the Borough of Manhattan, the City of New York (which may be the office of the Trustee), where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or for conversion or purchase following a Fundamental Change and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the

location, and any change in the location, of such office or agency not designated or appointed by the Trustee. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in The Borough of Manhattan at 4 New York Plaza, 1st Floor, New York, New York 10004-2413.

The Company may also from time to time designate co-registrars and one or more offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

The Company hereby initially designates the Trustee as paying agent, Note registrar, Custodian and conversion agent and each of the Corporate Trust Office and the office or agency of the Trustee in The Borough of Manhattan at 4 New York Plaza, 1st Floor, New York, New York 10004-2413, shall be considered as one such office or agency of the Company for each of the aforesaid purposes.

So long as the Trustee is the Note registrar, the Trustee agrees to mail, or cause to be mailed, the notices set forth in Section 8.10(a) hereof and the third paragraph of Section 8.11 hereof. If co-registrars have been appointed in accordance with this Section, the Trustee shall mail such notices only to the Company and the holders of Notes it can identify from its records.

Section 5.03 *Appointments To Fill Vacancies In Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10 hereof, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 5.04 *Provisions As To Paying Agen*t. *(a)* If the Company shall appoint a paying agent other than the Trustee, or if the Trustee shall appoint such a paying agent, the Company will cause such paying agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 5.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal of and premium, if any, or interest (including Liquidated Damages, if any) on the Notes (whether such sums have been paid to it by the Company or by any other obligor on the Notes) in trust for the benefit of the holders of the Notes;

(ii) that it will give the Trustee notice of any failure by the Company (or by any other obligor on the Notes) to make any payment of the principal of and premium, if any, or interest on the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal of, premium, if any, or interest and Liquidated Damages, if any, on the Notes, deposit with the paying agent a sum (in funds which are immediately available on the due date for such payment) sufficient to pay such principal, premium, if any, or interest and Liquidated Damages, if any, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided*, *however*, that if such deposit is made on the due date, such deposit shall be received by the paying agent by 10:00 a.m. New York City time, on such date.

(b) If the Company shall act as its own paying agent, it will, on or before each due date of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes, set aside, segregate and hold in trust for the benefit of the holders of the Notes a sum sufficient to pay such principal, premium, if any, or interest (including Liquidated Damages, if any) so becoming due and will promptly notify the Trustee of any failure to take such action and of any failure by the Company (or any other obligor under the Notes) to make any payment of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company or any paying agent hereunder as required by this Section 5.04 such sums to be held by the Trustee upon the trusts herein contained and upon such payment by the Company or any paying agent to the Trustee, the Company or such paying agent shall be released from all further liability with respect to such sums.

(d) Anything in this Section 5.04 to the contrary notwithstanding, the agreement to hold sums in trust as provided in this Section 5.04 is subject to Section 13.03 and Section 13.04 hereof.

The Trustee shall not be responsible for the actions of any other paying agents (including the Company if acting as its own paying agent) and shall have no control of any funds held by such other paying agents.

Section 5.05 *Existence.* Subject to Article 12, the Company will do or cause to be done all things necessary to preserve and keep in full force and effect its existence and rights (charter and statutory); *provided*, *however*, that the Company shall not be required to preserve any such right if the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Noteholders.

Section 5.06 *Maintenance of Properties.* The Company will cause all properties used or useful in the conduct of its business or the business of any Significant Subsidiary to be maintained and kept in good condition, repair and working order and supplied with all necessary equipment and will cause to be made all necessary repairs, renewals, replacements, betterments and improvements thereof, all as in the judgment of the Company may be necessary so that the business carried on in connection therewith may be properly and advantageously conducted at all times; *provided*, *however*, that nothing in this Section shall prevent the Company from discontinuing the operation or maintenance of any of such properties if such discontinuance is, in the judgment of the Company, desirable in the conduct of its business or the business of any subsidiary and not disadvantageous in any material respect to the Noteholders.

Section 5.07 *Payment of Taxes and Other Claims.* The Company will pay or discharge, or cause to be paid or discharged, before the same may become delinquent, (i) all taxes, assessments and governmental charges levied or imposed upon the Company or any Significant Subsidiary or upon the income, profits or property of the Company or any Significant Subsidiary, (ii) all claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon the property of the Company or any Significant Subsidiary and (iii) all stamps and other duties, if any, which may be imposed by the United States or any political subdivision thereof or therein in connection with the issuance, transfer, exchange or conversion of any Notes or with respect to this Indenture; *provided*, *however*, that, in the case of clauses (i) and (ii) above, the Company shall not be required to pay or discharge or cause to be paid or discharged any such tax, assessment, charge or claim (A) if the failure to do so will not, in the aggregate, have a material adverse impact on the Company, or (B) if the amount, applicability or validity is being contested in good faith by appropriate proceedings.

Section 5.08 *Rule 144A Information Requirement.* Within the period prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision), the Company covenants and agrees that it shall, during any period in which it is not subject to Section 13 or 15(d) under the Exchange Act, make available to any holder or beneficial holder of Notes or any Common Stock issued upon conversion thereof

which continue to be Restricted Securities in connection with any sale thereof and any prospective purchaser of Notes or such Common Stock designated by such holder or beneficial holder, the information required pursuant to Rule 144A(d)(4) under the Securities Act upon the request of any holder or beneficial holder of the Notes or such Common Stock and it will take such further action as any holder or beneficial holder of such Notes or such Common Stock may reasonably request, all to the extent required from time to time to enable such holder or beneficial holder to sell its Notes or Common Stock without registration under the Securities Act within the limitation of the exemption provided by Rule 144A, as such Rule may be amended from time to time. Upon the request of any holder or any beneficial holder of the Notes or such Common Stock, the Company will deliver to such holder or beneficial holder a written statement as to whether it has complied with such requirements.

Section 5.09 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law which would prohibit or forgive the Company from paying all or any portion of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or which may affect the covenants or the performance of this Indenture and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 5.10 *Compliance Certificate.* The Company shall deliver to the Trustee, within 120 days after the end of each fiscal year of the Company, a certificate signed by either the principal executive officer, principal financial officer or principal accounting officer of the Company, stating whether or not to the best knowledge of the signer thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and the status thereof of which the signer may have knowledge.

The Company will deliver to the Trustee, forthwith upon becoming aware of (i) any default in the performance or observance of any covenant, agreement or condition contained in this Indenture, or (ii) any Event of Default, an Officers' Certificate specifying with particularity such default or Event of Default and further stating what action the Company has taken, is taking or proposes to take with respect thereto.

Any notice required to be given under this Section 5.10 or Section 4.05 hereof shall be delivered to a Responsible Officer of the Trustee at its Corporate Trust Office. In the event that the payment of the Notes is accelerated because of an Event of Default, the Company shall promptly provide written notice to the Trustee specifying the names and addresses of the holders of Senior Indebtedness or a Representative of such Senior Indebtedness if the Trustee (and not the Company) is to provide holders of Senior Indebtedness or such Representative notice of such acceleration under Section 4.05 hereof.

Section 5.11 *Liquidated Damages Notice.* In the event that the Company is required to pay Liquidated Damages to holders of Notes pursuant to the Registration Rights Agreement, the Company will provide written notice ("**Liquidated Damages Notice**") to the Trustee of its obligation to pay Liquidated Damages no later than 15 days prior to the proposed payment date for the Liquidated Damages, and the Liquidated Damages Notice shall set forth the amount of Liquidated Damages to be paid by the Company on such payment date. The Trustee shall not at any time be under any duty or responsibility to any holder of Notes to determine the Liquidated Damages, or with respect to the nature, extent or calculation of the amount of Liquidated Damages when made, or with respect to the method employed in such calculation of the Liquidated Damages.

ARTICLE 6
NOTEHOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 6.01 *Noteholders' Lists.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semiannually, not more than 15 days after each June 15 and December 15 in each year beginning with December 15, 2004, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the holders of Notes as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished by the Company to the Trustee so long as the Trustee is acting as the sole Note registrar.

Section 6.02 *Preservation And Disclosure Of Lists. (a)* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the holders of Notes contained in the most recent

list furnished to it as provided in Section 6.01 hereof or maintained by the Trustee in its capacity as Note registrar or co-registrar in respect of the Notes, if so acting. The Trustee may destroy any list furnished to it as provided in Section 6.01 hereof upon receipt of a new list so furnished.

(b) The rights of Noteholders to communicate with other holders of Notes with respect to their rights under this Indenture or under the Notes, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act or this Indenture.

(c) Every Noteholder, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of holders of Notes made pursuant to the Trust Indenture Act.

Section 6.03 *Reports By Trustee. (a)* Within 60 days after June 1 of each year, the Trustee shall transmit to holders of Notes such reports dated as of June 1 of the year in which such reports are made concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant thereto.

(b) A copy of such report shall, at the time of such transmission to holders of Notes, be filed by the Trustee with each stock exchange and automated quotation system upon which the Notes are listed and with the Company. The Company will promptly notify the Trustee in writing when the Notes are listed on any stock exchange or automated quotation system or delisted therefrom.

Section 6.04 *Reports by Company.* The Company shall file with the Trustee (and the Commission at any time after the Indenture becomes qualified under the Trust Indenture Act), and transmit to holders of Notes, such information, documents and other reports and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Act, whether or not the Notes are governed by such Act; *provided*, *however*, that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee' s receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company' s compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

Section 7.01 *Events of Default.* In case one or more of the following Events of Default (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body) shall have occurred and be continuing:

(a) default in the payment of any installment of interest (including Liquidated Damages, if any) upon any of the Notes as and when the same shall become due and payable, and continuance of such default for a period of 30 days, whether or not such payment is permitted under Article 4 hereof; or

(b) default in the payment of the principal of or premium, if any, on any of the Notes as and when the same shall become due and payable either at maturity or in connection with any purchase pursuant to Article 3, by acceleration or otherwise, whether or not such payment is permitted under Article 4 hereof; or

(c) failure on the part of the Company duly to observe or perform any other of the covenants or agreements on the part of the Company in the Notes or in this Indenture (other than a covenant or agreement a default in whose performance or whose breach is elsewhere in this Section 7.01 specifically dealt with) continued for a period of 60 days after the date on which written notice of such failure, requiring the Company to remedy the same, shall have been given to the Company by the Trustee, or the Company and a Responsible Officer of the Trustee by the holders of at least 25% in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 hereof; or

(d) the Company shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any substantial part of the property of the Company, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against the Company, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(e) an involuntary case or other proceeding shall be commenced against the Company seeking liquidation, reorganization or other relief with respect to the Company or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any substantial part of the property of the Company, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 consecutive days;

then, and in each and every such case (other than an Event of Default specified in Section 7.01(d) or 7.01(e) hereof), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding hereunder determined in accordance with Section 9.04 hereof by notice in writing to the Company (and to the Trustee if given by Noteholders), may declare the principal of and premium, if any, on all the Notes and the interest accrued thereon (including Liquidated Damages, if any) to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Notes contained to the contrary notwithstanding. If an Event of Default specified in Section 7.01(d) or 7.01(e) hereof occurs, the principal of all the Notes and the interest accrued thereon (including Liquidated Damages, if any) shall be immediately and automatically due and payable without necessity of further action. This provision, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay all matured installments of interest (including Liquidated Damages, if any) upon all Notes and the principal of and premium, if any, on any and all Notes which shall have become due otherwise than by acceleration (with interest on overdue installments of interest (including Liquidated Damages, if any) (to the extent that payment of such interest is enforceable under applicable law) and on such principal and premium, if any, at the rate of 0.5% per annum from the due date to the date of such payment or deposit) and amounts due to the Trustee pursuant to Section 8.06 hereof, and if any and all defaults under this Indenture, other than the nonpayment of principal of and premium, if any, and accrued interest on (including Liquidated Damages, if any) Notes which shall have become due by acceleration, shall have been cured or waived pursuant to Section 7.07 hereof, then and in every such case the holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all defaults or Events of Default and rescind and annul such declaration and its consequences; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent default or Event of Default, or shall impair any right consequent thereon. The Company shall notify in writing a Responsible Officer of the Trustee, promptly upon becoming aware thereof, of any Event of Default.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of such waiver or rescission and annulment or for any other reason or

shall have been determined adversely to the Trustee, then and in every such case the Company, the holders of Notes, and the Trustee shall be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the holders of Notes, and the Trustee shall continue as though no such proceeding had been taken (subject to any determination to the contrary).

Section 7.02 *Payments of Notes on Default; Suit Therefor.* Subject to Section 7.01 hereof, the Company covenants that (a) in case default shall be made in the payment of any installment of interest (including Liquidated Damages, if any) upon any of the Notes as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (b) in case default shall be made in the payment of the principal of or premium, if any, on any of the Notes as and when the same shall have become due and payable, whether at maturity of the Notes or in connection with any redemption, by or under this Indenture or otherwise, then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the holders of the Notes, the whole amount that then shall have become due and payable on all such Notes for principal and premium, if any, or interest (including Liquidated Damages, if any), as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest (including Liquidated Damages, if any) at the rate of 0.5% per annum from the date due until the date payment is made, and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other amounts due the Trustee under Section 8.06 hereof. Until such demand by the Trustee, the Company may pay the principal of and premium, if any, and interest on (including Liquidated Damages, if any) the Notes to the registered holders, whether or not the Notes are overdue.

In case the Company shall fail forthwith to pay such amounts upon such demand, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of the sums so due and unpaid, and may prosecute any such action or proceeding to judgment or final decree, and may enforce any such judgment or final decree against the Company or any other obligor on the Notes and collect in the manner provided by law out of the property of the Company or any other obligor on the Notes wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar

official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the case of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 7.02 shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal, premium, if any, and interest (including Liquidated Damages, if any) owing and unpaid in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Noteholders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due the Trustee under Section 8.06 hereof, and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Noteholders to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to the Noteholders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including counsel fees incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property which the holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Notes, and it shall not be necessary to make any holders of the Notes parties to any such proceedings.

Section 7.03 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 7 shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of all amounts due the Trustee under Section 8.06 hereof;

SECOND: Subject to the provisions of Article 4, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest (including Liquidated Damages, if any) on the Notes in default in the order of the maturity of the installments of such interest, with interest (including Liquidated Damages, if any) (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest (including Liquidated Damages, if any) at the rate of 0.5% per annum, such payments to be made ratably to the Persons entitled thereto;

THIRD: Subject to the provisions of Article 4, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid, to the payment of the whole amount then owing and unpaid upon the Notes for principal and premium, if any, and interest (including Liquidated Damages, if any), with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest (including Liquidated Damages, if any) at the rate of 0.5% per annum, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal and premium, if any, and interest (including Liquidated Damages, if any) without preference or priority of principal and premium, if any, over interest (including Liquidated Damages, if any), or of interest (including Liquidated Damages, if any) over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest; and

FOURTH: Subject to the provisions of Article 4, to the payment of the remainder, if any, to the Company or any other Person lawfully entitled thereto.

Section 7.04 *Proceedings By Noteholder.* No holder of any Note shall have any right by virtue of or by reference to any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as hereinbefore provided, and unless also the holders of not less than 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.07 hereof; it being understood and intended, and being expressly covenanted by the taker and holder of every Note with every other taker and holder and the Trustee, that no one or more holders of Notes shall have any right in any manner whatever by virtue of or by reference to any provision of this Indenture to affect, disturb or prejudice the rights of any other holder of Notes, or to obtain or seek to obtain priority over or preference to any other such holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Notes (except as otherwise provided herein). For the protection and enforcement of this Section 7.04, each and every Noteholder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any holder of any Note to receive payment of the principal of and premium, if any (including the purchase price upon purchase pursuant to Article 3), and accrued interest on (including Liquidated Damages, if any) such Note, on or after the respective due dates expressed in such Note or in the event of purchase, or to institute suit for the enforcement of any such payment on or after such respective dates against the Company shall not be impaired or affected without the consent of such holder.

Anything in this Indenture or the Notes to the contrary notwithstanding, the holder of any Note, without the consent of either the Trustee or the holder of any other Note, in its own behalf and for its own benefit, may enforce, and may institute and maintain any proceeding suitable to enforce, its rights of conversion as provided herein.

Section 7.05 *Proceedings By Trustee.* In case of an Event of Default, the Trustee may, in its discretion, proceed to protect and enforce the rights vested

in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 7.06 *Remedies Cumulative And Continuing.* Except as provided in Section 2.06 hereof, all powers and remedies given by this Article 7 to the Trustee or to the Noteholders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any holder of any of the Notes to exercise any right or power accruing upon any default or Event of Default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or any acquiescence therein, and, subject to the provisions of Section 7.04 hereof, every power and remedy given by this Article 7 or by law to the Trustee or to the Noteholders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Noteholders.

Section 7.07 *Direction of Proceedings and Waiver of Defaults By Majority of Noteholders.* The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 hereof shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, *however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, (b) the Trustee may take any other action which is not inconsistent with such direction and (c) the Trustee may decline to take any action that would benefit some Noteholder to the detriment of other Noteholders. The holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 hereof may, on behalf of the holders of all of the Notes, waive any past default or Event of Default hereunder and its consequences except (i) subject to Section 7.01 hereof, a default in the payment of interest (including Liquidated Damages, if any) or premium, if any, on, or the principal of, any Note, which may not be waived without the consent of the holder of such Note, (ii) a failure by the Company to convert any Note into Common Stock, which may not be waived without the consent of the holder of such Note, (iii) a default in the payment of the purchase price pursuant to Article 3, which may not be waived without the consent of the holder of such Note, and (iv) a default in respect of a covenant or provisions hereof that under Article 11 cannot be modified or amended without the consent of the holders of each or all Notes then outstanding or affected

thereby. Upon any such waiver, the Company, the Trustee and the holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default hereunder shall have been waived as permitted by this Section 7.07 said default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon.

Section 7.08 *Notice of Defaults.* The Trustee shall, within 90 days after a Responsible Officer of the Trustee has knowledge of the occurrence of a default, mail to all Noteholders, as the names and addresses of such holders appear upon the Note register, notice of all defaults known to a Responsible Officer, unless such defaults shall have been cured or waived before the giving of such notice; *provided*, *however*, that except in the case of default in the payment of the principal of, or premium, if any, or interest (including Liquidated Damages, if any) on any of the Notes, the Trustee shall be protected in withholding such notice if and so long as a trust committee of directors and/or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interests of the Noteholders.

Section 7.09 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each holder of any Note by his acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided*, *however*, that the provisions of this Section 7.09 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Noteholder, or group of Noteholders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 9.04 hereof, or to any suit instituted by any Noteholder for the enforcement of the payment of the principal of or premium, if any, or interest (including Liquidated Damages, if any) on any Note on or after the due date expressed in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 15.

ARTICLE 8

THE TRUSTEE

Section 8.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture and the Trust Indenture Act, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture or the Trust Indenture Act against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions which by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless the Trustee was negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the written direction of the holders of not less than a majority in principal amount of the Notes at the time outstanding determined as provided in Section 9.04 hereof relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any paying agent or any records maintained by any co-registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred; and

(g) the Trustee shall not be deemed to have knowledge of any Event of Default hereunder unless it shall have been notified in writing of such Event of Default by the Company or the holders of at least 10% in aggregate principal amount of the Notes.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Section 8.02 *Reliance on Documents, Opinions, Etc*. Except as otherwise provided in Section 8.01 hereof:

(a) the Trustee may rely and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its own selection and any advice or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Noteholders pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby;

(e) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney; and

(f) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care hereunder.

Section 8.03 *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee' s certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 8.04 *Trustee, Paying Agents, Conversion Agents or Registrar May Own Notes*. The Trustee, any paying agent, any conversion agent or Note registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not Trustee, paying agent, conversion agent or Note registrar.

Section 8.05 *Monies to Be Held in Trust.* Subject to the provisions of Sections 4.02 and 13.04 hereof, all monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust hereunder need not be

segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 8.06 *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to from time to time in writing between the Company and the Trustee, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as may arise from its negligence, willful misconduct, recklessness or bad faith. The Company also covenants to indemnify the Trustee (or any officer, director or employee of the Trustee), acting in any capacity under this Indenture and its agents and any authenticating agent for, and to hold them harmless against, any and all loss, liability, claim or expense incurred without negligence, willful misconduct, recklessness or bad faith on the part of the Trustee or such officers, directors, employees and agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this trust or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the premises. The obligations of the Company under this Section 8.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a lien prior to that of the Notes upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the holders of particular Notes. The obligation of the Company under this Section shall survive the satisfaction and discharge of this Indenture.

When the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 7.01(d) or 7.01(e) hereof with respect to the Company occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 8.07 *Officers' Certificate as Evidence.* Except as otherwise provided in Section 8.01 hereof, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed)

may, in the absence of bad faith or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee.

Section 8.08 *Conflicting Interests of Trustee.* If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

Section 8.09 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least $50,000,000 (or if such Person is a member of a bank holding company system, its bank holding company shall have a combined capital and surplus of at least $50,000,000). If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.09, it shall resign immediately in the manner and with the effect hereinafter specified in this Article 8.

Section 8.10 *Resignation or Removal of Trustee*.

(a) The Trustee may at any time resign by giving written notice of such resignation to the Company and to the holders of Notes. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment 60 days after the mailing of such notice of resignation to the Noteholders, the resigning Trustee may, upon 10 business days' notice to the Company and the Noteholders, appoint a successor identified in such notice or may petition, at the expense of the Company, any court of competent jurisdiction for the appointment of a successor trustee, or, if any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 7.09 hereof, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall fail to comply with Section 8.08 hereof after written request therefor by the Company or by any Noteholder who has been a bona fide holder of a Note or Notes for at least six months; or

(ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 hereof and shall fail to resign after written request therefor by the Company or by any such Noteholder; or

(iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation;

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09 hereof, any Noteholder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee; *provided*, *however*, that if no successor Trustee shall have been appointed and have accepted appointment 60 days after either the Company or the Noteholders has removed the Trustee, the Trustee so removed may petition, at the expense of the Company, any court of competent jurisdiction for an appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Notes at the time outstanding may at any time remove the Trustee and nominate a successor trustee which shall be deemed appointed as successor trustee unless, within 10 days after notice to the Company of such nomination, the Company objects thereto, in which case the Trustee so removed or any Noteholder, or if such Trustee so removed or any Noteholder fails to act, the Company, upon the terms and conditions and otherwise as in Section 8.10(a) hereof provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.11 hereof.

Section 8.11 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 8.10 hereof shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amount then due it pursuant to the provisions of Section 8.06 hereof, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property and funds held or collected by such trustee as such, except for funds held in trust for the benefit of holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 8.06 hereof.

No successor trustee shall accept appointment as provided in this Section 8.11 hereof unless, at the time of such acceptance, such successor trustee shall be qualified under the provisions of Section 8.08 hereof and be eligible under the provisions of Section 8.09 hereof.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.11 hereof, the Company (or the former trustee, at the written direction of the Company) shall mail or cause to be mailed notice of the succession of such trustee hereunder to the holders of Notes at their addresses as they shall appear on the Note register. If the Company fails to mail such notice within 10 days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 8.12 *Succession by Merger, Etc.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all of the corporate trust business of the Trustee (including any trust created by this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided* that in the case of any corporation succeeding to all or substantially all of the corporate trust business of the Trustee, such corporation shall be qualified under the provisions of Section 8.08 hereof and eligible under the provisions of Section 8.09 hereof.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or any authenticating agent appointed by such successor trustee may authenticate such Notes in the name of the successor trustee; and in all such cases such certificates shall have the full force that is provided in the Notes or in this Indenture; *provided*, *however*, that the right to adopt the certificate of authentication of any predecessor Trustee or authenticate Notes in the name of any predecessor Trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 8.13 *Preferential Collection of Claims.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Notes), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of the claims against the Company (or any such other obligor).

Section 8.14 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the holders of the Notes or holders of Senior Indebtedness under this Indenture, including, without limitation, under Article 4 hereof) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 9
THE NOTEHOLDERS

Section 9.01 *Action by Noteholders.* Whenever in this Indenture it is *provided* that the holders of a specified percentage in aggregate principal amount of the Notes may take any action (including the making of any demand or request,

the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Noteholders in person or by agent or proxy appointed in writing, or (b) by the record of the holders of Notes voting in favor thereof at any meeting of Noteholders duly called and held in accordance with the provisions of Article 10, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Noteholders. Whenever the Company or the Trustee solicits the taking of any action by the holders of the Notes, the Company or the Trustee may fix in advance of such solicitation, a date as the record date for determining holders entitled to take such action. The record date shall be not more than 15 days prior to the date of commencement of solicitation of such action.

Section 9.02 *Proof of Execution by Noteholders.* Subject to the provisions of Sections 8.01, 8.02 and 10.05 hereof, proof of the execution of any instrument by a Noteholder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the registry of such Notes or by a certificate of the Note registrar.

The record of any Noteholders' meeting shall be proved in the manner provided in Section 10.06 hereof.

Section 9.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any paying agent, any conversion agent and any Note registrar may deem the Person in whose name such Note shall be registered upon the Note register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note registrar) for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any paying agent nor any conversion agent nor any Note registrar shall be affected by any notice to the contrary. All such payments so made to any holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge the liability for monies payable upon any such Note.

Section 9.04 *Company-owned Notes Disregarded.* In determining whether the holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes which are owned by the Company or any other obligor on the Notes or any Affiliate of the Company or any other obligor on the Notes shall be disregarded

and deemed not to be outstanding for the purpose of any such determination; *provided*, *however*, that, for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action, only Notes which a Responsible Officer knows are so owned shall be so disregarded. Notes so owned which have been pledged in good faith may be regarded as outstanding for the purposes of this Section 9.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee' s right to vote such Notes and that the pledgee is not the Company, any other obligor on the Notes or any Affiliate of the Company or any such other obligor. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons, and, subject to Section 8.01 hereof, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination. Nothing herein shall prevent the Company or any of its Subsidiaries from tendering for or repurchasing any Notes, subject to applicable laws.

Section 9.05 *Revocation of Consents, Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01 hereof, of the taking of any action by the holders of the percentage in aggregate principal amount of the Notes specified in this Indenture in connection with such action, any holder of a Note which is shown by the evidence to be included in the Notes the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02 hereof, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the holder of any Note shall be conclusive and binding upon such holder and upon all future holders and owners of such Note and of any Notes issued in exchange or substitution therefor, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor.

ARTICLE 10
MEETINGS OF NOTEHOLDERS

Section 10.01 *Purpose Of Meetings.* A meeting of Noteholders may be called at any time and from time to time pursuant to the provisions of this Article 10 for any of the following purposes:

(1) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to

consent to the waiving of any default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Noteholders pursuant to any of the provisions of Article 7.

(2) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 8.

(3) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02 hereof; or

(4) to take any other action authorized to be taken by or on behalf of the holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 10.02 *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Noteholders to take any action specified in Section 10.01 hereof, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Noteholders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 9.01 hereof, shall be mailed to holders of Notes at their addresses as they shall appear on the Note register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Noteholders shall be valid without notice if the holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the holders of all Notes outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 10.03 *Call of Meetings by Company or Noteholders.* In case at any time the Company, pursuant to a resolution of its Board of Directors, or the holders of at least 10% in aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Noteholders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Noteholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 10.01 hereof by mailing notice thereof as provided in Section 10.02 hereof.

Section 10.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Noteholders a person shall (a) be a holder of one or more Notes on the record date pertaining to such meeting or (b) be a person appointed by an

instrument in writing as proxy by a holder of one or more Notes on the record date pertaining to such meeting. The only persons who shall be entitled to be present or to speak at any meeting of Noteholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 10.05 *Regulations*. Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Noteholders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Noteholders as provided in Section 10.03 hereof, in which case the Company or the Noteholders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 9.04 hereof, a quorum for the conduct of business at a meeting of Noteholders shall exist when the holders of a majority of the Notes then outstanding shall be present, in person or by proxy, at any meeting duly called pursuant to Section 10.02 or 10.03 hereof, and at any meeting each Noteholder or proxyholder shall be entitled to one vote for each $1,000 principal amount of Notes held or represented by him; *provided*, *however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by him or instruments in writing as aforesaid duly designating him as the proxy to vote on behalf of other Noteholders. Any meeting of Noteholders duly called pursuant to the provisions of Section 10.02 or 10.03 hereof may be adjourned from time to time by the holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 10.06 *Voting.* The vote upon any resolution submitted to any meeting of Noteholders shall be by written ballot on which shall be subscribed the signatures of the holders of Notes or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who

shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Noteholders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02 hereof. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 10.07 *No Delay of Rights by Meeting.* Nothing contained in this Article 10 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Noteholders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Noteholders under any of the provisions of this Indenture or of the Notes.

ARTICLE 11
SUPPLEMENTAL INDENTURES

Section 11.01 *Supplemental Indentures Without Consent Of Noteholders.* The Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time, and at any time enter into an indenture or indentures supplemental hereto for one or more of the following purposes:

(a) make provision with respect to the conversion rights of the holders of Notes pursuant to the requirements of Section 15.07 hereof and the purchase obligations of the Company pursuant to the requirements of Section 3.02(e) hereof;

(b) subject to Article 4, to convey, transfer, assign, mortgage or pledge to the Trustee as security for the Notes, any property or assets;

(c) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Article 12;

(d) to add to the covenants of the Company such further covenants, restrictions or conditions as the Board of Directors and the Trustee shall consider to be for the benefit of the holders of Notes, and to make the occurrence, or the occurrence and continuance, of a default in any such additional covenants, restrictions or conditions a default or an Event of Default permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided*, *however*, that in respect of any such additional covenant, restriction or condition, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

(e) to provide for the issuance under this Indenture of Notes in coupon form (including Notes registrable as to principal only) and to provide for exchangeability of such Notes with the Notes issued hereunder in fully registered form and to make all appropriate changes for such purpose;

(f) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture that may be defective or inconsistent with any other provision contained herein or in any supplemental indenture, or to make such other provisions in regard to matters or questions arising under this Indenture that shall not materially adversely affect the legal rights of the holders of the Notes hereunder;

(g) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Notes; or

(h) to modify, eliminate or add to the provisions of this Indenture to such extent as shall be necessary to effect the qualifications of this Indenture under the Trust Indenture Act, or under any similar federal statute hereafter enacted, or to comply with any applicable rule, regulation or requirement of the Commission.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any supplemental indenture, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained and to accept the conveyance, transfer and assignment of any property thereunder, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee' s own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.01 hereof may be executed by the Company and the Trustee without the consent of the holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 11.02 hereof.

Notwithstanding any other provision of the Indenture or the Notes, the Registration Rights Agreement and the obligation to pay Liquidated Damages thereunder may be amended, modified or waived in accordance with the provisions of the Registration Rights Agreement.

Section 11.02 *Supplemental Indenture With Consent Of Noteholders.* With the consent (evidenced as provided in Article 9) of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, the Company, when authorized by the resolutions of the Board of Directors, and the Trustee may, from time to time and at any time, enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the holders of the Notes; *provided*, *however*, that no such supplemental indenture shall (i) extend the fixed maturity of any Note, or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or premium, if any, thereon, or reduce any amount payable on purchase thereof, or impair the right of any Noteholder to institute suit for the payment thereof, or make the principal thereof or interest or premium, if any, thereon payable in any coin or currency other than that provided in the Notes, or modify the provisions of this Indenture with respect to the subordination of the Notes in a manner adverse to the Noteholders in any material respect, or change the obligation of the Company to purchase any Note upon the happening of a Fundamental Change in a manner adverse to the holder of Notes, or impair the right to convert the Notes into Common Stock subject to the terms set forth herein, including Sections 15.02. 15.06 and 15.07 hereof, in each case, without the consent of the holder of each Note so affected, or (ii) reduce the aforesaid percentage of Notes, the holders of which are required to consent to any such supplemental indenture, or reduce the percentage of Notes, the holders of which are required to constitute a quorum at a meeting of Noteholders under Section 10.05 hereof, without the consent of the holders of all Notes then outstanding.

Upon the written request of the Company, accompanied by a copy of the resolutions of the Board of Directors certified by its Secretary or Assistant Secretary authorizing the execution of any such supplemental indenture, and upon the filing with the Trustee of evidence of the consent of Noteholders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee' s own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

It shall not be necessary for the consent of the Noteholders under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

Section 11.03 *Effect of Supplemental Indenture.* Any supplemental indenture executed pursuant to the provisions of this Article 11 shall comply with the Trust Indenture Act, as then in effect, *provided* that this Section 11.03 shall not require such supplemental indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to such supplemental indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act or the Indenture has been qualified under the Trust Indenture Act. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 11 this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the holders of Notes shall thereafter be determined, exercised and enforced hereunder, subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 11.04 *Notation On Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 11 may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company' s expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 16.11 hereof) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 11.05 *Evidence Of Compliance Of Supplemental Indenture To Be Furnished To Trustee.* Prior to entering into any supplemental indenture, the Trustee may request an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 11.

Section 12.01 *Company May Consolidate On Certain Terms.* Subject to the provisions of Section 12.02 hereof, nothing contained in this Indenture or in any of the Notes shall prevent any consolidation or merger of the Company with or into any other Person or Persons (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease (or successive sales, conveyances or leases) of all or substantially all of the property of the Company, to any other Person (whether or not affiliated with the Company), authorized to acquire and operate the same and that shall be organized under the laws of the United States of America, any state thereof or the District of Columbia, or, if not organized in any such jurisdiction, *provided* that (i) such Person agrees to be subject to the service of process laws of the State of New York and (ii) under the laws of such Person' s jurisdiction of organization, payments on the Notes (in cash or in shares of Common Stock upon conversion of the Notes) would not be subject to withholding tax; *provided, however*, that upon any such consolidation, merger, sale, conveyance or lease, the due and punctual payment of the principal of and premium, if any, and interest (including Liquidated Damages, if any) on all of the Notes, according to their tenor and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed by the Company, shall be expressly assumed, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee by the Person (if other than the Company) formed by such consolidation, or into which the Company shall have been merged, or by the Person that shall have acquired or leased such property, and such supplemental indenture shall provide for the applicable conversion rights set forth in Section 15.07 hereof.

Section 12.02 *Successor Corporation To Be Substituted.* In case of any such consolidation, merger, sale, conveyance or lease and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of this first part. Such successor Person thereupon may cause to be signed, and may issue either in its own name or in the name of Kulicke and Soffa Industries, Inc. (if such name is generally used by such successor Person) any or all of the Notes, issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the

terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Notes that such successor Person thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale or conveyance, the Person named as the "**Company**" in the first paragraph of this Indenture or any successor that shall thereafter have become such in the manner prescribed in this Article 12 shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and at any time thereafter such Person may, but is not bound to, be dissolved, wound up and liquidated. The foregoing sentence shall not apply in the event of a lease of all or substantially all of the property of the Company or of any successor to the Company under this Article 12.

In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 12.03 *Opinion Of Counsel To Be Given Trustee.* The Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance or lease and any such assumption complies with the provisions of this Article 12.

ARTICLE 13
SATISFACTION AND DISCHARGE OF INDENTURE

Section 13.01 *Discharge Of Indenture.* When (a) the Company shall deliver to the Trustee for cancellation all Notes theretofore authenticated (other than any Notes that have been destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) and not theretofore canceled, or (b) all the Notes not theretofore canceled or delivered to the Trustee for cancellation shall have become due and payable, or are by their terms to become due and payable within one year, and the Company shall deposit with the Trustee, in trust, funds sufficient to pay at maturity or upon redemption of all of the Notes (other than any Notes that shall have been mutilated, destroyed, lost or stolen and in lieu of or in substitution for which other Notes shall have been authenticated and delivered) not theretofore canceled or delivered to the Trustee for cancellation, the principal and premium, if any, and interest due or to become due to such date of maturity or redemption date, as the

case may be, accompanied by a verification report, as to the sufficiency of the deposited amount, from an independent certified accountant or other financial professional satisfactory to the Trustee, and if the Company shall also pay or cause to be paid all other sums payable hereunder by the Company, then this Indenture shall cease to be of further effect (except as to (i) remaining rights of registration of transfer, substitution and exchange and conversion of Notes, (ii) rights hereunder of Noteholders to receive payments of principal of and premium, if any, and interest (including Liquidated Damages, if any) on, the Notes and the other rights, duties and obligations of Noteholders, as beneficiaries hereof with respect to the amounts, if any, so deposited with the Trustee and (iii) the rights, obligations and immunities of the Trustee hereunder), and the Trustee, on written demand of the Company accompanied by an Officers' Certificate and an Opinion of Counsel as required by Section 16.05 hereof and at the cost and expense of the Company, shall execute proper instruments acknowledging satisfaction of and discharging this Indenture; the Company, however, hereby agrees to reimburse the Trustee for any costs or expenses thereafter reasonably and properly incurred by the Trustee and to compensate the Trustee for any services thereafter reasonably and properly rendered by the Trustee in connection with this Indenture or the Notes.

Section 13.02 *Deposited Monies To Be Held In Trust By Trustee.* Subject to Section 13.04 hereof, all monies deposited with the Trustee pursuant to Section 13.01 hereof, provided such deposit was not in violation of Article 4, shall be held in trust for the sole benefit of the Noteholders and not to be subject to the subordination provisions of Article 4, and such monies shall be applied by the Trustee to the payment, either directly or through any paying agent (including the Company if acting as its own paying agent), to the holders of the particular Notes for the payment or redemption of which such monies have been deposited with the Trustee, of all sums due and to become due thereon for principal and interest (including Liquidated Damages, if any) and premium, if any.

Section 13.03 *Paying Agent To Repay Monies Held.* Upon the satisfaction and discharge of this Indenture, all monies then held by any paying agent of the Notes (other than the Trustee) shall, upon written request of the Company, be repaid to it or paid to the Trustee, and thereupon such paying agent shall be released from all further liability with respect to such monies.

Section 13.04 *Return Of Unclaimed Monies.* Subject to the requirements of applicable law, any monies deposited with or paid to the Trustee for payment of the principal of, premium, if any, or interest (including Liquidated Damages, if any) on Notes and not applied but remaining unclaimed by the holders of Notes for two years after the date upon which the principal of, premium, if any, or interest (including Liquidated Damages, if any) on such Notes, as the case may be, shall have become due and payable, shall be repaid to the Company by the

Trustee on demand and all liability of the Trustee shall thereupon cease with respect to such monies; and the holder of any of the Notes shall thereafter look only to the Company for any payment that such holder may be entitled to collect unless an applicable abandoned property law designates another Person.

Section 13.05 *Reinstatement.* If the Trustee or the paying agent is unable to apply any money in accordance with Section 13.02 hereof by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company' s obligations under this Indenture and the Notes shall be revived and reinstated as though no deposit had occurred pursuant to Section 13.01 hereof until such time as the Trustee or the paying agent is permitted to apply all such money in accordance with Section 13.02 hereof; *provided, however*, that if the Company makes any payment of interest (including Liquidated Damages, if any) on or principal of any Note following the reinstatement of its obligations, the Company shall be subrogated to the rights of the holders of such Notes to receive such payment from the money held by the Trustee or paying agent.

ARTICLE 14
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 14.01 *Indenture And Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or premium, if any, or interest on any Note, or for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer, director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 15
CONVERSION OF NOTES

Section 15.01 *Right To Convert.* Subject to and upon compliance with the provisions of this Indenture, including, without limitation, Article 4, the holder of any Note shall have the right, to the extent that a Conversion Termination has not occurred pursuant to Section 15.02 of this Indenture, at its

option, at any time through the close of business on the final maturity date of the Notes to convert each $1,000 principal amount of the Notes into a number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) equal to the Conversion Rate in effect at such time, by surrender of the Note so to be converted in whole or in part in the manner provided, together with any required funds, in Section 15.03 hereof. A Note in respect of which a holder is exercising its option to require purchase upon a Fundamental Change pursuant to Section 15.03 hereof may be converted only if such holder withdraws its election to exercise in accordance with Section 3.02(b) hereof. If a holder surrenders its Notes (or any portion thereof) for conversion after receipt of a Company Notice and prior to the Purchase Date, and the Fundamental Change related to the Company Notice constitutes a Cash Buy-Out, the Company will pay a Make-Whole Premium to such holder as provided for in Section 3.02, in addition to the shares of Common Stock deliverable upon conversion of the Notes. A holder of Notes is not entitled to any rights of a holder of Common Stock until such holder has converted his Notes to Common Stock, and only to the extent such Notes are deemed to have been converted to Common Stock under this Article 15.

Section 15.02 *Termination of Conversion Right*. The Company may terminate the right of holders to convert their Notes into Common Stock (the "**Conversion Right**"), at any time on or after June 30, 2006, if the Closing Price of the Common Stock has exceeded 140% of the Conversion Price then in effect for at least 20 Trading Days within a period of 30 consecutive Trading Days (a "**Conversion Termination Trigger Event**"). If the Company elects to terminate the Conversion Right upon a Conversion Termination Trigger Event, then the Company will be required to deliver an irrevocable notice to record holders of Notes within five Trading Days of the date of the applicable Conversion Termination Trigger Event (the "**Conversion Termination Notice**," and the date of such Conversion Termination Notice, the "**Conversion Termination Notice Date**"). Holders may convert their Notes at any time on or prior to the twentieth (20^{th}) day following the Conversion Termination Notice Date (the "**Conversion Termination Date**"). The Conversion Rights of all holders shall terminate after the Conversion Termination Date (a "**Conversion Termination**"), and thereafter the holders shall have no rights to convert and receive shares of Common Stock under the Notes or this Indenture.

The Company will not be required to make any interest payment on an interest payment date with respect to any Note that is surrendered for conversion after the Conversion Termination Notice Date and prior to the Conversion Termination Date on a Conversion Date that is between a record date for the payment of interest to the next succeeding interest payment date; *provided, however,* in the case of the June 30, 2006 interest payment, if the Company has elected to terminate the Conversion Right, the Company will be required to make

such June 30, 2006 interest payment with respect to Notes surrendered for conversion on a Conversion Date that is during the five day period prior to the June 30, 2006.

The Company shall mail the Conversion Termination Notice to the Trustee and to each record holder. The Conversion Termination Notice shall include the form of the conversion notice to be completed by the holder and shall state:

(1) the Conversion Termination Date;

(2) the Conversion Price then in effect;

(3) briefly, the conversion rights of the Notes;

(4) the name and address of each paying agent and conversion agent; and

(5) the Conversion Rate and any adjustments thereto.

Concurrently with or before the mailing of the Conversion Termination Notice, the Company shall issue a press release announcing such Conversion Termination Trigger Event referred to in the Conversion Termination Notice, the form and content of which press release shall be determined by the Company in its sole discretion.

Whenever in this Indenture or in the Notes there is a reference, in any context, to any conversion obligation of the Company, such reference shall be qualified by the conversion termination provisions of this Section 15.02, and the Company will not be required to comply with any of the conversion provisions of this Indenture or the Notes (including, without limitation, Article 15 (other than this Section 15.02)) after a Conversion Termination has occurred pursuant to the provisions of this Section 15.02, and any express mention of the conversion termination provisions of this Section 15.02 in any provision of this Indenture shall not be construed as excluding the conversion termination provisions of this Section 15.02 in those provisions of this Indenture when such express mention is not made.

Section 15.03 *Exercise Of Conversion Privilege; Issuance Of Common Stock On Conversion, No Adjustment For Interest Or Dividends.* In order to exercise the conversion privilege with respect to any Note in certificated form, the holder of any such Note to be converted in whole or in part shall surrender such Note, duly endorsed, at an office or agency maintained by the Company pursuant to Section 5.02 hereof, accompanied by the funds, if any, required by the penultimate paragraph of this Section 15.03, and shall give written notice of

conversion in the form provided on the Notes (or such other notice which is acceptable to the Company) to the office or agency that the holder elects to convert such Note or the portion thereof specified in said notice. Such notice shall also state the name or names (with address or addresses) in which the certificate or certificates for shares of Common Stock which shall be issuable on such conversion shall be issued, and shall be accompanied by transfer taxes, if required pursuant to Section 15.08 hereof. Each such Note surrendered for conversion shall, unless the shares issuable on conversion are to be issued in the same name as the registration of such Note, be duly endorsed by, or be accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or his duly authorized attorney.

In order to exercise the conversion privilege with respect to any interest in a Global Note, the beneficial holder must complete, or cause to be completed, the appropriate instruction form for conversion pursuant to the Depositary' s book-entry conversion program, deliver, or cause to be delivered, by book-entry delivery an interest in such Global Note, furnish appropriate endorsements and transfer documents if required by the Company or the Trustee or conversion agent, and pay the funds, if any, required by this Section 15.03 and any transfer taxes if required pursuant to Section 15.08 hereof.

As promptly as practicable after satisfaction of the requirements for conversion set forth above, subject to compliance with any restrictions on transfer if shares issuable on conversion are to be issued in a name other than that of the Noteholder (as if such transfer were a transfer of the Note or Notes (or portion thereof) so converted), the Company shall issue and shall deliver to such Noteholder at the office or agency maintained by the Company for such purpose pursuant to Section 5.02, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such Note or portion thereof as determined by the Company in accordance with the provisions of this Article 15 and a check or cash in respect of any fractional interest in respect of a share of Common Stock arising upon such conversion, calculated by the Company as provided in Section 15.04 hereof. In case any Note of a denomination greater than $1,000 shall be surrendered for partial conversion, and subject to Section 2.03 hereof, the Company shall execute and the Trustee shall authenticate and deliver to the holder of the Note so surrendered, without charge to him, a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note.

Each conversion shall be deemed to have been effected as to any such Note (or portion thereof) on the date on which the requirements set forth above in the first two paragraphs of this Section 15.03 have been satisfied as to such Note (or portion thereof) (such date of effectiveness, the "**Conversion Date**"), and the Person in whose name any certificate or certificates for shares of Common Stock

shall be issuable upon such conversion shall be deemed to have become on said date the holder of record of the shares represented thereby; *provided, however*, that any such surrender on any date when the stock transfer books of the Company shall be closed shall constitute the Person in whose name the certificates are to be issued as the record holder thereof for all purposes on the next succeeding day on which such stock transfer books are open, but such conversion shall be at the Conversion Rate in effect on the date upon which such Note shall be surrendered.

No adjustment in respect of interest on any Note converted or dividends on any shares issued upon conversion of such Note will be made upon any conversion except as provided herein. If such Note (or portion thereof) is surrendered for conversion during the period from the close of business on any record date for the payment of interest to the close of business on the Business Day preceding the following interest payment date, such Note (or portion being converted) must be accompanied by an amount, in New York Clearing House funds or other funds acceptable to the Company, equal to the interest payable on such interest payment date on the principal amount being converted; *provided, however*, that no such payment shall be required if there shall exist at the time of conversion a default in the payment of interest on the Notes or if, in the case of the June 30, 2006 interest payment, the Company has elected to terminate the Conversion Right pursuant to Section 15.02 and such Note is surrendered for conversion during the five day period prior to June 30, 2006. If any Note (or portion thereof) is submitted for conversion on an interest payment date or on the final maturity date, the interest payable on such date shall be paid to the holder of record as of the close of business on the immediately preceding record date.

Upon the conversion of an interest in a Global Note, the Trustee (or other conversion agent appointed by the Company), or the Custodian at the direction of the Trustee (or other conversion agent appointed by the Company), shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversions of Notes effected through any conversion agent other than the Trustee.

Section 15.04 *Cash Payments In Lieu Of Fractional Shares.* No fractional shares of Common Stock or scrip representing fractional shares shall be issued upon conversion of Notes. If more than one Note shall be surrendered for conversion at one time by the same holder, the number of full shares that shall be issuable upon conversion shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted hereby) so surrendered. If any fractional share of stock would be issuable upon the conversion of any Note or Notes, the Company shall make an adjustment and payment therefor in cash at the current market price thereof to the

holder of Notes. The current market price of a share of Common Stock shall be the Closing Price on the last Business Day immediately preceding the day on which the Notes (or specified portions thereof) are deemed to have been converted.

Section 15.05 *Conversion Rate.* Each $1,000 principal amount of the Notes shall be convertible into the number of shares of Common Stock specified in the form of Note (the "**Conversion Rate**") attached as Exhibit A hereto, subject to adjustment as provided in this Article 15.

Section 15.06 *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company as follows:

(a) In case the Company shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by dividing the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

(i) the numerator of which shall be the number of shares of the Common Stock outstanding at the close of business on the date fixed for such determination; and

(ii) the denominator of which shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purpose of this Section 15.06(a), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company. If any dividend or distribution of the type described in this Section 15.06(a) is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) In case the Company shall issue rights or warrants to all holders of its outstanding shares of Common Stock entitling them (for a period expiring within 45 days after the date fixed for determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the Current Market Price (as defined below) on the date fixed for determination of stockholders entitled to receive such rights or warrants, the Conversion Rate shall be adjusted so that the same shall equal the

rate determined by dividing the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at such Current Market Price, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Common Stock offered for subscription or purchase.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. In the event that such rights or warrants are not so issued, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such Current Market Price, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) (i) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and (ii) in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced. Any such increase or reduction, as the case may be, shall become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(d) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of capital stock of the Company or evidences of its indebtedness or assets (including securities, but excluding any rights or warrants referred to in Section 15.06(b) hereof, and excluding any dividend or distribution (x) paid exclusively in cash or (y) referred to in Section 15.06(a) hereof (any of the foregoing hereinafter in this Section 15.06(d) called the "**Securities**")), then, in each such case (unless the Company elects to reserve such Securities for distribution to the Noteholders upon the conversion of the Notes so that any such holder converting Notes will receive upon such conversion, in addition to the shares of Common Stock to which such holder is entitled, the amount and kind of such Securities which such holder would have received if such holder had converted its Notes into Common Stock immediately prior to the Record Date (as defined in Section 15.06(h)(iv) hereof for such distribution of the Securities)), the Conversion Rate shall be adjusted so that the same shall be equal to the rate determined by dividing the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

(i) the numerator of which shall be the Current Market Price per share of the Common Stock on such Record Date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record Date of the portion of the Securities so distributed applicable to one share of Common Stock; and

(ii) the denominator of which shall be the Current Market Price per share of the Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; *provided, however*, that in the event the then Fair Market Value (as so determined) of the portion of the Securities so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price of the Common Stock on the Record Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each Noteholder shall have the right to receive upon conversion the amount of Securities such holder would have received had such holder converted each Note on the Record Date. In the event that such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this Section 15.06(d) by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price of the Common Stock.

Rights or warrants distributed by the Company to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Company' s capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this Section 15.06 (and no adjustment to the Conversion Rate under this Section 15.06 will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 15.06(d). If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 15.06 was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights and warrants had not been issued.

No adjustment of the Conversion Rate shall be made pursuant to this Section 15.06(d) in respect of rights or warrants distributed or deemed distributed on any Trigger Event to the extent that such rights or warrants are actually distributed, or reserved by the Company for distribution to holders of Notes upon conversion by such holders of Notes to Common Stock.

For purposes of this Section 15.06(d) and Sections 15.06(a) and 15.06(b) hereof, any dividend or distribution to which this Section 15.06(d) is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this Section 15.06(d) with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by Sections 15.06(a) and 15.06(b) hereof with respect to such dividend or distribution shall then be made), except (A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "the date fixed for the determination of stockholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of Sections 15.06(a) and 15.06(b) hereof, and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of Section 15.06(a) hereof.

(e) In case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock cash (excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Company, whether voluntary or involuntary), then, in such case, the Conversion Rate shall be increased so that the Conversion Rate shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Record Date for such dividend or distribution by a fraction,

(i) the numerator of which shall be the average of the Closing Prices of the Common Stock for the three consecutive Trading Days ending on the Trading Day immediately preceding the ex-dividend date for such dividend or distribution (the "**Pre-Dividend Sale Price**"), and

(ii) the denominator of which shall be the Pre-Dividend Sale Price, minus the full amount of such cash dividend or distribution applicable to one share of Common Stock,

such adjustment to become effective on the Business Day next following the ex-dividend date for such dividend or distribution; *provided* that no adjustment to the Conversion Rate or the ability of a holder of a Note to convert will be made pursuant to this Section 15.06(e) if the Company provides that holders of Notes will participate in such cash dividend or distribution on an as-converted basis without conversion; *provided*, *further*, that if the denominator of the foregoing fraction is less than $1.00 (including a negative amount), then in lieu of the

foregoing adjustment, adequate provision shall be made so that each holder shall have the right to receive upon conversion, in addition to the Common Stock issuable upon such conversion, the amount of cash such holder would have received had such holder converted its Note immediately prior to the Record Date for such dividend or distribution. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(f) In case a tender or exchange offer made by the Company or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "**Expiration Time**") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the last reported sale price of the Common Stock (determined as provided in the definition of Current Market Price) on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "**Purchased Shares**") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the last reported sale price of the Common Stock (determined as provided in the definition of Current Market Price) on the Trading Day next succeeding the Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by last reported sale price of the Common Stock (determined as provided in the definition of the Current Market Price) on the Trading Day next succeeding the Expiration Time

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. In the event that the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such

purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

(g) In case of a tender or exchange offer made by a Person other than the Company or any Subsidiary for an amount that increases the offeror' s ownership of Common Stock to more than 25% of the Common Stock outstanding and shall involve the payment by such Person of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) as of the last time (the "**Offer Expiration Time**") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds the last reported sale price of the Common Stock (determined as provided in the definition of the Current Market Price) on the Trading Day next succeeding the Offer Expiration Time, and in which, as of the Offer Expiration Time the Board of Directors is not recommending rejection of the offer, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Offer Expiration Time by a fraction

(i) the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "**Accepted Purchased Shares**") and (y) the product of the number of shares of Common Stock outstanding (less any Accepted Purchased Shares) at the Offer Expiration Time and the last reported sale price of the Common Stock (determined as provided in the definition of the Current Market Price) on the Trading Day next succeeding the Offer Expiration Time, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Offer Expiration Time multiplied by the last reported sale price of the Common Stock (determined as provided in the definition of the Current Market Price) on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Offer Expiration Time. In the event that such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person is permanently prevented by applicable law from effecting any such

purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 15.06(g) shall not be made if, as of the Offer Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Article 12.

(h) For purposes of this Section 15.06, the following terms shall have the meaning indicated:

(i) "**Closing Price**" with respect to any security on any day shall mean the closing sale price, regular way, on such day or, in case no such sale takes place on such day, the average of the reported closing bid and asked prices, regular way, in each case as quoted on the Nasdaq National Market or, if such security is not quoted or listed or admitted to trading on such Nasdaq National Market, on the principal national securities exchange or quotation system on which such security is quoted or listed or admitted to trading or, if not quoted or listed or admitted to trading on any national securities exchange or quotation system, the average of the closing bid and asked prices of such security on the over-the-counter market on the day in question as reported by the National Quotation Bureau Incorporated, or a similar generally accepted reporting service, or if not so available, in such manner as furnished by any New York Stock Exchange member firm selected from time to time by the Board of Directors for that purpose, or a price determined in good faith by the Board of Directors or, to the extent permitted by applicable law, a duly authorized committee thereof, whose determination shall be conclusive.

(ii) "**Current Market Price**" shall mean the average of the daily Closing Prices per share of Common Stock for the 10 consecutive Trading Days selected by the Company commencing no more than 30 Trading Days before and ending not later than the earlier of such date of determination and the day before the "ex" date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. For purpose of this paragraph 15.06(h)(ii), the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective.

In the event that another issuance, distribution, subdivision, combination or tender or exchange offer to which this Section 15.06 applies occurs during the period applicable for calculating "**Current Market Price**" pursuant to the definition in the preceding paragraph, "**Current Market Price**" shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision, combination or tender or exchange offer on the Closing Price of the Common Stock during such period.

(iii) "**Fair Market Value**" shall mean the amount which a willing buyer would pay a willing seller in an arm' s-length transaction.

(iv) "**Record Date**" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

(v) "**Trading Day**" shall mean (x) if the applicable security is quoted on the Nasdaq National Market, a day on which trades may be made thereon or (y) if the applicable security is listed or admitted for trading on the New York Stock Exchange or another national securities exchange, a day on which the New York Stock Exchange or another national securities exchange is open for business or (z) if the applicable security is not so listed, admitted for trading or quoted, any day other than a Saturday or Sunday or a day on which banking institutions in the State of New York are authorized or obligated by law or executive order to close.

(i) The Company may make such increases in the Conversion Rate, in addition to those required by Sections 15.06(a), (b), (c), (d), (e), (f) and (g) hereof as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

To the extent permitted by applicable law, the Company from time to time may increase the Conversion Rate by any amount for any period of time if the period is at least 20 days, the increase is irrevocable during the period and the Board of Directors shall have made a determination that such increase would be

in the best interests of the Company, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Company shall mail to holders of record of the Notes a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

Any adjustment made pursuant to this Section 15.06(i) will not be made without first obtaining shareholder approval if such approval is required by law or the Nasdaq listing standards.

(j) All calculations under this Article 15 shall be made by the Company and shall be made to the nearest cent or to the nearest 1/10,000 of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Company plan for reinvestment of dividends or interest. To the extent the Notes become convertible into cash, assets, property or securities (other than capital stock of the Company), no adjustment need be made thereafter as to the cash, assets, property or such securities. Interest will not accrue on the cash.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee and any conversion agent other than the Trustee an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the holder of each Note at his last address appearing on the Note register provided for in Section 2.05 hereof, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) In any case in which this Section 15.06 provides that an adjustment shall become effective immediately after (1) a record date or Record Date for an event, (2) the date fixed for the determination of stockholders entitled to receive a dividend or distribution pursuant to Section 15.06(a) hereof, (3) a date fixed for the determination of stockholders entitled to receive rights or warrants pursuant to Section 15.06(b) hereof, (4) the Expiration Time for any tender or exchange offer pursuant to Section 15.06(f) hereof, or (5) the Offer Expiration Time for a tender or exchange offer pursuant to Section 15.06(g) hereof (each a "**Determination Date**"), the Company may elect to defer until the occurrence of the relevant

Adjustment Event (as hereinafter defined) (x) issuing to the holder of any Note converted after such Determination Date and before the occurrence of such Adjustment Event, the additional shares of Common Stock or other securities issuable upon such conversion by reason of the adjustment required by such Adjustment Event over and above the Common Stock issuable upon such conversion before giving effect to such adjustment and (y) paying to such holder any amount in cash in lieu of any fraction pursuant to Section 15.04 hereof. For purposes of this Section 15.06(l), the term "**Adjustment Event**" shall mean:

(i) in any case referred to in Section 15.06(l)(1) hereof, the occurrence of such event,

(ii) in any case referred to in Section 15.06(l)(2) hereof, the date any such dividend or distribution is paid or made,

(iii) in any case referred to in Section 15.06(l)(3) hereof, the date of expiration of such rights or warrants, and

(iv) in any case referred to in Section 15.06(l)(4) or Section 15.06(l)(5) hereof, the date a sale or exchange of Common Stock pursuant to such tender or exchange offer is consummated and becomes irrevocable.

(m) For purposes of this Section 15.06, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock. The Company will not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company.

Section 15.07 *Effect Of Reclassification, Consolidation, Merger Or Sale.* If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which Section15.06(c) hereof applies), as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, (ii) any consolidation, merger or combination of the Company with another Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a

supplemental indenture (which shall comply with the Trust Indenture Act as in force at the date of execution of such supplemental indenture) providing that each Note shall be convertible into the kind and amount of shares of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Notes (assuming, for such purposes, a sufficient number of authorized shares of Common Stock are available to convert all such Notes) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance (*provided* that, if the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("**Nonelecting Share**"), then for the purposes of this Section 15.07 the kind and amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance for each Nonelecting Share shall be deemed to be the kind and amount so receivable per share by a plurality of the Nonelecting Shares). Such supplemental indenture shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 15.

The Company shall cause notice of the execution of such supplemental indenture to be mailed to each holder of Notes, at its address appearing on the Note register provided for in Section 2.05 hereof, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

The above provisions of this Section shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances.

If this Section 15.07 applies to any event or occurrence, Section 15.06 hereof shall not apply.

Section 15.08 *Taxes On Shares Issued.* The issue of stock certificates on conversions of Notes shall be made without charge to the converting Noteholder for any tax in respect of the issue thereof. The Company shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of stock in any name other than that of the holder of any Note converted, and the Company shall not be required to issue or deliver any

such stock certificate unless and until the Person or Persons requesting the issue thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Section 15.09 *Reservation Of Shares, Shares To Be Fully Paid; Compliance With Governmental Requirements; Listing Of Common Stock.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for the conversion of the Notes from time to time as such Notes are presented for conversion.

Before taking any action which would cause an adjustment increasing the Conversion Rate to an amount that would cause the Conversion Price to be reduced below the then par value, if any, of the shares of Common Stock issuable upon conversion of the Notes, the Company will take all corporate action which may, in the opinion of its counsel, be necessary in order that the Company may validly and legally issue shares of such Common Stock at such adjusted Conversion Rate.

The Company covenants that all shares of Common Stock which may be issued upon conversion of Notes will upon issue be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares may be validly issued upon conversion, the Company will in good faith and as expeditiously as possible, to the extent then permitted by the rules and interpretations of the Securities and Exchange Commission (or any successor thereto), endeavor to secure such registration or approval, as the case may be.

The Company further covenants that, if at any time the Common Stock shall be listed on the Nasdaq National Market or any other national securities exchange or automated quotation system, the Company will, if permitted by the rules of such exchange or automated quotation system, list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, all Common Stock issuable upon conversion of the Notes; *provided, however*, that, if the rules of such exchange or automated quotation system permit the Company to defer the listing of such Common Stock until the first conversion of the Notes into Common Stock in accordance with the provisions of this Indenture, the Company covenants to list such Common Stock issuable upon conversion of the Notes in accordance with the requirements of such exchange or automated quotation system at such time.

Section 15.10 *Responsibility Of Trustee.* The Trustee and any other conversion agent shall not at any time be under any duty or responsibility to any holder of Notes to determine the Conversion Rate or whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other conversion agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities or property, which may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other conversion agent make no representations with respect thereto. Neither the Trustee nor any conversion agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article 15. Without limiting the generality of the foregoing, neither the Trustee nor any conversion agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 15.07 hereof relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Noteholders upon the conversion of their Notes after any event referred to in Section 15.07 hereof or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 8.01 hereof, may accept as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 15.11 *Notice To Holders Prior To Certain Actions.* In case:

(a) the Company shall declare a dividend (or any other distribution) on its Common Stock that would require an adjustment in the Conversion Rate pursuant to Section 15.06 hereof; or

(b) the Company shall authorize the granting to the holders of all or substantially all of its Common Stock of rights or warrants to subscribe for or purchase any share of any class or any other rights or warrants; or

(c) of any reclassification or reorganization of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company is required, or of the sale or transfer of all or substantially all of the assets of the Company; or

(d) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

the Company shall cause to be filed with the Trustee and to be mailed to each holder of Notes at his address appearing on the Note register provided for in Section 2.05 hereof, as promptly as possible but in any event at least 10 days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights or warrants, or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, transfer, dissolution, liquidation or winding up.

Section 15.12 *Rights Issued In Respect Of Common Stock Issued Upon Conversion.* Each share of Common Stock issued upon conversion of Notes pursuant to this Article 15 shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights agreement adopted by the Company, as the same may be amended from time to time (in each case, a "**Rights Agreement**").

ARTICLE 16
MISCELLANEOUS PROVISIONS

Section 16.01 *Provisions Binding On Company's Successors.* All the covenants, stipulations, promises and agreements by the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 16.02 *Official Acts By Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any Person that shall at the time be the lawful sole successor of the Company.

Section 16.03 *Addresses For Notices, Etc.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the holders of Notes on the Company shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Kulicke and Soffa Industries, Inc., 2101 Blair Mill Road, Willow Grove, Pennsylvania 19090, Attention: Treasurer. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or served by being deposited, postage prepaid, by registered or certified mail in a post office letter box addressed to the Corporate Trust Office, which office is, at the date as of which this Indenture is dated, located at 1650 Market Street, Suite 5210, Philadelphia, Pennsylvania, 19103, Attention: Institutional Trust Services.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Noteholder shall be mailed to him by first class mail, postage prepaid, at his address as it appears on the Note register and shall be sufficiently given to him if so mailed within the time prescribed.

Failure to mail a notice or communication to a Noteholder or any defect in it shall not affect its sufficiency with respect to other Noteholders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

Section 16.04 *Governing Law.* This Indenture and each Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York.

Section 16.05 *Evidence Of Compliance With Conditions Precedent, Certificates To Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with, and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include: (1) a statement that the person making such certificate or opinion has read such covenant or condition; (2) a brief statement as

to the nature and scope of the examination or investigation upon which the statement or opinion contained in such certificate or opinion is based; (3) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and (4) a statement as to whether or not, in the opinion of such person, such condition or covenant has been complied with.

Section 16.06 *Legal Holidays.* In any case in which the date of maturity of interest on or principal of the Notes or the date fixed for purchase of any Note will not be a Business Day, then payment of such interest on or principal of the Notes need not be made on such date, but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for purchase, and no interest shall accrue for the period from and after such date.

Section 16.07 *Trust Indenture Act.* This Indenture is hereby made subject to, and shall be governed by, the provisions of the Trust Indenture Act required to be part of and to govern indentures qualified under the Trust Indenture Act; *provided, however*, that, unless otherwise required by law, notwithstanding the foregoing, this Indenture and the Notes issued hereunder shall not be subject to the provisions of subsections (a)(1), (a)(2), and (a)(3) of Section 314 of the Trust Indenture Act as now in effect or as hereafter amended or modified; *provided further* that this Section 16.07 shall not require this Indenture or the Trustee to be qualified under the Trust Indenture Act prior to the time such qualification is in fact required under the terms of the Trust Indenture Act, nor shall it constitute any admission or acknowledgment by any party to the Indenture that any such qualification is required prior to the time such qualification is in fact required under the terms of the Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with another provision hereof which is required to be included in an indenture qualified under the Trust Indenture Act, such required provision shall control.

Section 16.08 *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction in which property of the Company or its subsidiaries is located.

Section 16.09 *Benefits Of Indenture.* Nothing in this Indenture or in the Notes, express or implied, shall give to any Person, other than the parties hereto, any paying agent, any authenticating agent, any Note registrar and their successors hereunder, the holders of Notes and the holders of Senior Indebtedness, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 16.10 *Table Of Contents, Headings, Etc.* The table of contents and the titles and headings of the Articles and Sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 16.11 *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf, and subject to its direction, in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of Notes hereunder, including under Sections 2.04, 2.05, 2.06, 2.07 and 3.02 hereof, as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee' s certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 8.09 hereof.

Any corporation into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation is otherwise eligible under this Section 16.11, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee shall either promptly appoint a successor authenticating agent or itself assume the duties and obligations of the former authenticating agent under this Indenture and, upon such appointment of a successor authenticating agent, if made, shall give written notice of such appointment of a successor authenticating agent to the Company and shall mail notice of such appointment of a successor authenticating agent to all holders of Notes as the names and addresses of such holders appear on the Note register.

The Company agrees to pay to the authenticating agent from time to time such reasonable compensation for its services as shall be agreed upon in writing between the Company and the authenticating agent.

The provisions of Sections 8.02, 8.03, 8.04 and 9.03 hereof and this Section 16.11 shall be applicable to any authenticating agent.

Section 16.12 *Execution In Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 16.13 *Severability.* In case any provision in this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions herein above set forth.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed.

KULICKE AND SOFFA INDUSTRIES, INC.

By:
/s/ Maurice E. Carson

Name: Maurice E. Carson

Title: Vice President and
Chief Financial Officer

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By:
/s/ Catherine Lenhardt

Name:
Catherine Lenhardt

Title:
Vice President

EXHIBIT A

[Global Note] [UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK, NEW YORK) (THE "**DEPOSITARY**", WHICH TERM INCLUDES ANY SUCCESSOR DEPOSITARY FOR THE CERTIFICATES) TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY (AND ANY PAYMENT HEREIN IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THIS NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT AND THE ISSUE DATE OF THIS NOTE IS JUNE 30, 2004. THE COMPANY AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS NOTE, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF ORIGINAL ISSUE DISCOUNT, ISSUE DATE AND YIELD TO MATURITY. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO THE COMPANY AT THE FOLLOWING ADDRESS: KULICKE AND SOFFA INDUSTRIES, INC., 2101 BLAIR MILL ROAD, WILLOW GROVE, PENNSYLVANIA 19090, ATTENTION: VICE PRESIDENT AND CORPORATE TREASURER.

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"). THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, AGREES FOR THE BENEFIT OF THE COMPANY THAT THIS SECURITY MAY NOT BE RESOLD, PLEDGED OR OTHERWISE TRANSFERRED (X) PRIOR TO THE EXPIRATION OF THE HOLDING PERIOD UNDER RULE 144(K) (OR ANY SUCCESSOR THERETO) UNDER THE SECURITIES ACT WHICH IS APPLICABLE TO THIS SECURITY OR (Y) BY ANY HOLDER THAT WAS AN "**AFFILIATE**" (WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY AT ANY TIME DURING THE THREE MONTHS PRECEDING THE DATE OF SUCH TRANSFER, IN EITHER CASE, OTHER THAN (1) TO THE COMPANY, (2) SO LONG AS THIS SECURITY IS ELIGIBLE FOR RESALE PURSUANT TO RULE 144A UNDER THE SECURITIES ACT ("**RULE 144A**"), TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A QUALIFIED INSTITUTIONAL BUYER WITHIN THE MEANING OF RULE 144A,

PURCHASING FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE RESALE, PLEDGE OR OTHER TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (3) TO AN INSTITUTION THAT IS AN "**ACCREDITED INVESTOR**" AS DEFINED IN RULE 501(A)(1), (2) OR (7) UNDER THE SECURITIES ACT ("**INSTITUTIONAL ACCREDITED INVESTOR**"), (4) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, INCLUDING THE EXEMPTION PROVIDED BY RULE 144 (IF APPLICABLE) OF THE SECURITIES ACT OR (5) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. PRIOR TO A TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER PURSUANT TO CLAUSE (5) ABOVE), THE HOLDER OF THIS SECURITY MUST FURNISH TO THE COMPANY AND THE TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AND LEGAL OPINIONS AS THEY MAY REASONABLY REQUIRE. THE HOLDER HEREOF, BY PURCHASING THIS SECURITY, REPRESENTS AND AGREES FOR THE BENEFIT OF THE COMPANY THAT IT IS (1) A QUALIFIED INSTITUTIONAL BUYER OR (2) AN INSTITUTIONAL ACCREDITED INVESTOR AND THAT IT IS HOLDING THIS SECURITY FOR INVESTMENT PURPOSES AND NOT FOR DISTRIBUTION. IN ANY CASE THE HOLDER HEREOF WILL NOT, DIRECTLY OR INDIRECTLY, ENGAGE IN ANY HEDGING TRANSACTION WITH REGARD TO THIS SECURITY OR ANY COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY EXCEPT AS PERMITTED BY THE SECURITIES ACT.

KULICKE AND SOFFA INDUSTRIES, INC.

1% CONVERTIBLE SUBORDINATED NOTE DUE 2010

CUSIP: [ ]

No. [ ]

$[ ]

Kulicke and Soffa Industries, Inc., a corporation duly organized and validly existing under the laws of the Commonwealth of Pennsylvania (the "**Company**," which term includes any successor corporation under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to CEDE & CO. or its registered assigns, the principal sum of [ ] on June 30, 2010 at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, and to pay interest, semiannually on June 30 and December 30 of each year, commencing December 30, 2004, on said principal sum at said office or agency, in like coin or currency, at the rate per annum of 1%, from the June 30 or December 30, as the case may be, next preceding the date of this Note to which interest has been paid or duly provided for, unless the date hereof is a date to which interest has been paid or duly provided for, in which case from the date of this Note, or unless no interest has been paid or duly provided for on the Notes, in which case from June 30, 2004, until payment of said principal sum has been made or duly provided for. Notwithstanding the foregoing, if the date hereof is after any June 15 or December 15 (excluding June 15, 2004), as the case may be, and before the following June 30 or December 30, this Note shall bear interest from such June 30 or December 30; *provided however*, that if the Company shall default in the payment of interest due on such June 30 or December 30, then this Note shall bear interest from the next preceding June 30 or December 30 to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for on such Note, from June 30, 2004. Except as otherwise provided in the Indenture, the interest payable on the Note pursuant to the Indenture on any June 30 or December 30 will be paid to the Person entitled thereto as it appears in the Note register at the close of business on the record date, which shall be the June 15 or December 15 (whether or not a Business Day) next preceding such June 30 or December 30, as provided in the Indenture; *provided*, *however*, that any such interest not punctually paid or duly provided for shall be payable as provided in the Indenture. Interest may, at the option of the Company, be paid either (i) by check mailed to the registered address of such Person (*provided* that the holder of Notes with an aggregate principal amount in excess of $2,000,000 shall, at the written election of such holder, be paid by wire transfer of immediately available funds) or (ii) by transfer to an account maintained by such Person located in the United States; *provided*, *however*, that payments to the Depositary will be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions subordinating the payment of principal of and premium, if any, and interest on the Notes to the prior payment in full of all Senior Indebtedness, as defined in the Indenture, and provisions giving the holder of this Note the right to convert this Note into Common Stock of the Company on the terms and subject to the limitations referred to on the reverse hereof and as more fully specified in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

The right of the holder of this Note to institute any lawsuit or other proceeding, or otherwise assert a claim relating to this Note may be limited by the Indenture.

This Note shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with and governed by the laws of the State of New York.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been manually signed by the Trustee or a duly authorized authenticating agent under the Indenture.

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

KULICKE AND SOFFA INDUSTRIES, INC.

By: _____

Name:

Title:

Attest: _____

Name:

Dated: _____

TRUSTEE' S CERTIFICATE OF AUTHENTICATION

This is one of the Notes described in the within-named Indenture.

J.P. MORGAN TRUST COMPANY,
NATIONAL ASSOCIATION, as Trustee

By: _____

Name:

Title:

, or

By: _____
As Authenticating Agent (if different from Trustee)

FORM OF REVERSE OF NOTE

KULICKE AND SOFFA INDUSTRIES, INC.

1% CONVERTIBLE SUBORDINATED NOTE DUE 2010

This Note is one of a duly authorized issue of Notes of the Company, designated as its 1% Convertible Subordinated Notes due 2010 (the "**Notes**"), limited to the aggregate principal amount of $65,000,000, or up to $75,000,000 if the Initial Purchaser' s option to purchase additional Notes is exercised, all issued or to be issued under and pursuant to an Indenture dated as of June 30, 2004 (the "**Indenture**"), between the Company and J.P. Morgan Trust Company, National Association, as trustee (the "**Trustee**"), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the holders of the Notes.

In case an Event of Default (as defined in the Indenture) shall have occurred and be continuing, the principal of, premium, if any, and accrued interest (including Liquidated Damages (as defined in the Registration Rights Agreement), if any) on all Notes may be declared, by either the Trustee or the holders of not less than 25% in aggregate principal amount of the Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions provided in the Indenture.

The Indenture contains provisions permitting the Company and the Trustee, with the consent of the holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, to execute supplemental indentures adding any provisions to or changing in any manner or eliminating any of the provisions of the Indenture or of any supplemental indenture or modifying in any manner the rights of the holders of the Notes; *provided*, *however*, that no such supplemental indenture shall (i) extend the fixed maturity of any Note, or reduce the rate or extend the time of payment of interest thereon, or reduce the principal amount thereof or premium, if any, thereon, or reduce any amount payable upon purchase thereof, or impair the right of any Noteholder to institute suit for the payment thereof, or make the principal thereof or interest or premium, if any, thereon payable in any coin or currency other than that provided in the Notes, or modify the provisions of the Indenture with respect to the subordination of the Notes in a manner adverse to the Noteholders in any material respect, or change the obligation of the Company to purchase any Note upon the happening of a Fundamental Change (as defined in the Indenture) in a manner adverse to the holder of the Notes, or impair the right to convert the Notes into Common Stock subject to the terms set forth in the Indenture, including Sections 15.02, 15.06 and 15.07 thereof, in each case without the consent of the holder of each Note so affected or (ii) reduce the aforesaid percentage of Notes, the holders of which are

required to consent to any such supplemental indenture, or reduce the percentage of Notes, the holders of which are required to constitute a quorum at a meeting of Noteholders under Section 10.05 of the Indenture, without the consent of the holders of all Notes then outstanding. Subject to the provisions of the Indenture, the holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the holders of all of the Notes waive any past default or Event of Default under the Indenture and its consequences except a default in the payment of interest (including Liquidated Damages, if any) or any premium on, or the principal of, any of the Notes, or a failure by the Company to convert any Notes into Common Stock of the Company, or a default in the payment of the purchase price pursuant to Article 3 of the Indenture, or a default in respect of a covenant or provisions of the Indenture which under Article 11 of the Indenture cannot be modified without the consent of the holders of each or all Notes then outstanding or affected thereby. Any such consent or waiver by the holder of this Note (unless revoked as provided in the Indenture) shall be conclusive and binding upon such holder and upon all future holders and owners of this Note and any Notes which may be issued in exchange or substitution hereof, irrespective of whether or not any notation thereof is made upon this Note or such other Notes.

The indebtedness evidenced by the Notes is, to the extent and in the manner provided in the Indenture, expressly subordinated and subject in right of payment to the prior payment in full of all Senior Indebtedness of the Company, whether outstanding at the date of the Indenture or thereafter incurred, and this Note is issued subject to the provisions of the Indenture with respect to such subordination. Each holder of this Note, by accepting the same, agrees to and shall be bound by such provisions and authorizes the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee his attorney-in-fact for such purpose.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium and interest (including Liquidated Damages, if any) on this Note at the place, at the respective times, at the rate and in the coin or currency herein prescribed.

Interest on the Notes shall be computed on the basis of a 360-day year of twelve 30-day months.

The Notes are issuable in fully registered form, without coupons, in denominations of $1,000 principal amount and any integral multiple of $1,000. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, without payment of any service charge but with payment of a sum sufficient to cover any tax,

assessment or other governmental charge that may be imposed in connection with any registration or exchange of Notes, Notes may be exchanged for a like aggregate principal amount of Notes of any other authorized denominations.

The Notes are not subject to redemption (except to the extent that a purchase following a Fundamental Change may be deemed a redemption) by the Company or through the operation of any sinking fund.

If there shall occur a Fundamental Change at any time prior to maturity of the Notes, then each Noteholder shall have the right, at such holder' s option, to require the Company to purchase all of such holder' s Notes, or any portion thereof that is an integral multiple of $1,000 principal amount, for cash, on the date (the "**Purchase Date**") that is 30 days after the date of the Company Notice (as defined in Section 3.02(b) of the Indenture) of such Fundamental Change (or, if such 30th day is not a Business Day, the next succeeding Business Day) at a purchase price equal to 100% of the principal amount thereof, plus accrued but unpaid interest, and Liquidated Damages, if any, to (but excluding) the Purchase Date;; *provided*, *however*, that, if such Purchase Date is a June 30 or December 30, then the interest payable on such date shall be paid to the holder of record of the Notes as of the close of business on the preceding June 15 or December 15, respectively. If there shall have occurred a Fundamental Change and at least sixty percent (60%) of the consideration for the Common Stock in the transaction or transactions constituting the Fundamental Change consists of cash (a "**Cash Buy-Out**"), the Company will pay a Make-Whole Premium to the holders of Notes in addition to the purchase price. If a holder surrenders its Notes (or any portion thereof) for conversion after receipt of a Company Notice and prior to the Purchase Date, and the Fundamental Change related to the Company Notice constitutes a Cash Buy-Out, the Company will pay a Make-Whole Premium to such holder, in addition to the shares of Common Stock deliverable upon conversion of the Notes.

The "Make-Whole Premium" per Note will equal (a) the average of the Closing Trading Prices of a Note for the five Trading Days immediately prior to the Public Announcement Date of the Cash Buy-Out, less (b) the greater of (i) $1,000 or (ii) the product of (x) the average Closing Prices of the Common Stock for the five Trading Days immediately prior to the Public Announcement Date of the Cash Buy-Out and (y) the applicable Conversion Rate; and will be payable in cash. The Make-Whole Premium, if any, will not be less than zero.

The Company shall mail to all holders of record of the Notes a notice of the occurrence of a Fundamental Change and of the purchase right arising as a result thereof on or before the 10th day after the occurrence of such Fundamental Change. For a Note to be so purchased at the option of the holder, the Company must receive at the office or agency of the Company maintained for that purpose

in accordance with the terms of the Indenture, such Note with the form entitled "Option to Elect Repayment Upon a Fundamental Change" on the reverse thereof duly completed, together with such Note, duly endorsed for transfer, on or before the 30th day after the date of such notice of a Fundamental Change (or if such 30th day is not a Business Day, the immediately succeeding Business Day).

Subject to the provisions of the Indenture, the holder hereof has the right, to the extent that a Conversion Termination has not occurred, at its option, at any time through the close of business on the final maturity date of the Notes, to convert each $1,000 principal amount of the Notes into 77.8743 shares of the Company' s Common Stock (the "**Conversion Rate**"), as such shares shall be constituted at the date of conversion and subject to adjustment from time to time as provided in the Indenture, upon surrender of this Note, duly endorsed, together with a conversion notice as provided in the Indenture (the form entitled "**Conversion Notice**" on the reverse hereof), to the Company at the office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, including the Corporate Trust Office (as defined in the Indenture), and, unless the shares issuable on conversion are to be issued in the same name as this Note, duly endorsed by, or accompanied by instruments of transfer in form satisfactory to the Company duly executed by, the holder or by his duly authorized attorney. No adjustment in respect of interest on any Note converted or dividends on any shares issued upon conversion of such Note will be made upon any conversion except as set forth in the next sentence or except as provided in the Indenture. If this Note (or portion hereof) is surrendered for conversion during the period from the close of business on any record date for the payment of interest to the close of business on the Business Day preceding the following interest payment date, this Note (or portion hereof being converted) must be accompanied by an amount, in New York Clearing House funds or other funds acceptable to the Company, equal to the interest payable on such interest payment date on the principal amount being converted; *provided, however*, that no such payment shall be required if there shall exist at the time of conversion a default in the payment of interest on the Notes or if, in the case of the June 30, 2006 interest payment, the Company has elected to terminate the Conversion Right pursuant to Section 15.02 of the Indenture and such Note is surrendered for conversion during the five day period prior to June 30, 2006. No fractional shares will be issued upon any conversion, but an adjustment and payment in cash will be made, as provided in the Indenture, in respect of any fraction of a share which would otherwise be issuable upon the surrender of any Note or Notes for conversion. A Note in respect of which a holder is exercising its right to require purchase upon a Fundamental Change may be converted only if such holder withdraws its election to exercise such right in accordance with the terms of the Indenture.

The Company may terminate the right of holders to convert their Notes into Common Stock (the "**Conversion Right**"), at any time on or after June 30, 2006, if the Closing Price of the Common Stock has exceeded 140% of the Conversion Price then in effect for at least 20 Trading Days within a period of 30 consecutive Trading Days (a "**Conversion Termination Trigger Event**"). If the Company elects to terminate the Conversion Right upon a Conversion Termination Trigger Event, then the Company will be required to deliver an irrevocable notice to record holders of Notes within five Trading Days of the date of the applicable Conversion Termination Trigger Event (the "**Conversion Termination Notice**," and the date of such Conversion Termination Notice, the "**Conversion Termination Notice Date**"). Holders may convert their Notes at any time on or prior to the twentieth (20th) day following the Conversion Termination Notice Date (the "**Conversion Termination Date**"). The Conversion Rights of all holders shall terminate after the Conversion Termination Date (a "**Conversion Termination**"), and thereafter the holders shall have no rights to convert and receive shares of Common Stock under the Notes or this Indenture.

The Company will not be required to make any interest payment on an interest payment date with respect to any Note that is surrendered for conversion after the Conversion Termination Notice Date and prior to the Conversion Termination Date on a Conversion Date that is between a record date for the payment of interest to the next succeeding interest payment date; *provided, however,* in the case of the June 30, 2006 interest payment, if the Company has elected to terminate the Conversion Right, the Company will be required to make such June 30, 2006 interest payment with respect to Notes surrendered for conversion on a Conversion Date that is during the five day period prior to the June 30, 2006.

Upon due presentment for registration of transfer of this Note at an office or agency of the Company maintained for that purpose in accordance with the terms of the Indenture, a new Note or Notes of authorized denominations for an equal aggregate principal amount will be issued to the transferee in exchange thereof, subject to the limitations provided in the Indenture, without charge except for any tax, assessment or other governmental charge imposed in connection therewith.

The Company, the Trustee, any paying agent, any conversion agent and any Note registrar may deem and treat the registered holder hereof as the absolute owner of this Note (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon made by anyone other than the Company or any Note registrar) for the purpose of receiving payment hereof, or on account hereof, for the conversion hereof and for all other purposes, and neither the Company nor the Trustee nor any paying agent nor other conversion

agent nor any Note registrar shall be affected by any notice to the contrary. All payments made to or upon the order of such registered holder shall, to the extent of the sum or sums paid, satisfy and discharge liability for monies payable on this Note.

No recourse for the payment of the principal of or any premium or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in the Indenture or any supplemental indenture or in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, officer or director or subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

This Note shall be deemed to be a contract made under the laws of New York, and for all purposes shall be construed in accordance with the laws of New York.

Terms used in this Note (and not otherwise defined herein) that are defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM –	as tenants in common	UNIF GIFT MIN –	__ Custodian __
TEN ENT –	as tenant by the entireties		(Cust) (Minor)
			under Uniform Gifts to Minors Act
JT TEN –	as joint tenants with right of survivorship and not as tenants in common		_____
			(State)

Additional abbreviations may also be used though not in the above list.

CONVERSION NOTICE

TO: KULICKE AND SOFFA INDUSTRIES, INC.
J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby irrevocably exercises the option to convert this Note, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, into shares of Common Stock of Kulicke and Soffa Industries, Inc. in accordance with the terms of the Indenture referred to in this Note, and directs that the shares issuable and deliverable upon such conversion, together with any check in payment for fractional shares and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If shares or any portion of this Note not converted are to be issued in the name of a person other than the undersigned, the undersigned will provide the appropriate information below and pay all transfer taxes payable with respect thereto. Any amount required to be paid by the undersigned on account of interest accompanies this Note.

Dated:_____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Note registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

Fill in the registration of shares of Common Stock if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

_____

(Name)

_____

Street Address

_____

(City, State and Zip Code)

_____

Please print name and address

Principal amount to be converted (if less than all):

$ _____

Social Security or Other Taxpayer
Identification Number

_____

OPTION TO ELECT REPAYMENT
UPON A FUNDAMENTAL CHANGE

TO: KULICKE AND SOFFA INDUSTRIES, INC.
J.P. MORGAN TRUST COMPANY, NATIONAL ASSOCIATION

The undersigned registered owner of this Note hereby irrevocably acknowledges receipt of a notice from Kulicke and Soffa Industries, Inc. (the "**Company**") as to the occurrence of a Fundamental Change with respect to the Company and requests and instructs the Company to repay the entire principal amount of this Note, or the portion thereof (which is $1,000 or an integral multiple thereof) below designated, in accordance with the terms of the Indenture referred to in this Note at the price of 100% of such entire principal amount or portion thereof, together with accrued interest to, but excluding, such repayment date, to the registered holder hereof.

Dated:_____

_____

_____

Signature(s)

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Principal amount to be repaid (if less than all):

$ _____

_____

Social Security or Other Taxpayer
Identification Number

ASSIGNMENT

For value received _____ hereby sell(s) assign(s) and transfer(s) unto _____ _____ (Please insert social security or other Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the Note prior to the expiration of the holding period applicable to sales thereof under Rule 144(k) under the Securities Act (or any successor provision) (other than any transfer pursuant to a registration statement that has been declared effective under the Securities Act), the undersigned confirms that such Note is being transferred:

To Kulicke and Soffa Industries, Inc. or a subsidiary thereof; or

Inside the United States pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended; or

Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended;

and unless the box below is checked, the undersigned confirms that such Note is not being transferred to an "affiliate" of the Company as defined in Rule 144 under the Securities Act of 1933, as amended (an "**Affiliate**").

The transferee is an Affiliate of the Company.

Dated:_____

_____

_____

Signature(s)

Signature(s) must be guaranteed by an "eligible guarantor institution" meeting the requirements of the Note registrar, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("**STAMP**") or such other "signature guarantee program" as may be determined by the Note registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

_____

Signature Guarantee

NOTICE: The signature of the conversion notice, the option to elect repayment upon a Fundamental Change or the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Exhibit 4.2

REGISTRATION RIGHTS AGREEMENT

by and among

KULICKE AND SOFFA INDUSTRIES, INC.,

as Issuer,

and

MERRILL LYNCH & CO.,
MERRILL LYNCH, PIERCE, FENNER & SMTIH INCORPORATED,

as Initial Purchaser

Dated as of June 30, 2004

THIS REGISTRATION RIGHTS AGREEMENT is made and entered into as of June 30, 2004 by and among Kulicke and Soffa Industries, Inc., a Pennsylvania corporation (the "**Company**"), and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "**Initial Purchaser**") pursuant to the Purchase Agreement dated June 24, 2004 (the "**Purchase Agreement**") between the Company and the Initial Purchaser. In order to induce the Initial Purchaser to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement. The execution of this Agreement is a condition to the closing under the Purchase Agreement.

The Company agrees with the Initial Purchaser, (i) for its benefit as Initial Purchaser and (ii) for the benefit of the beneficial owners (including the Initial Purchaser) from time to time of the Notes (as defined herein) and the beneficial owners from time to time of the Underlying Common Stock (as defined herein) issued upon conversion of the Notes (each of the foregoing a "**Holder**" and together the "**Holders**"), as follows:

Section 1. *Definitions.* Capitalized terms used herein without definition shall have their respective meanings set forth in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"**Affiliate**" means, with respect to any specified person, an "affiliate," as defined in Rule 144, of such person.

"**Amendment Effectiveness Deadline Date**" has the meaning set forth in Section 2(d) hereof.

"**Amount of Registrable Securities**" means (i) with respect to the Notes, the aggregate principal amount of all such Notes outstanding; (ii) with respect to the Underlying Common Stock, the aggregate number of such shares of Common Stock outstanding multiplied by the Conversion Price or, if no Notes are then outstanding, the last Conversion Price that was in effect under the Indenture when any Notes were last outstanding; and (iii) with respect to combinations thereof, the sum of (i) and (ii) for the relevant Registrable Securities (without duplication).

"**Applicable Conversion Price**" as of any date of determination means the Conversion Price in effect as of such date of determination or, if no Notes are then outstanding, the Conversion Price that would be in effect were Notes then outstanding.

"**Business Day**" means each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in The City of New York are authorized or obligated by law or executive order to close.

"**Common Stock**" means the shares of common stock, without par value, of the Company and any other shares of common stock as may constitute "Common Stock" for purposes of the Indenture, including the Underlying Common Stock.

"**Conversion Price**" has the meaning assigned such term in the Indenture.

"**Damages Accrual Period**" has the meaning set forth in Section 2(e) hereof.

"**Damages Payment Date**" means each interest payment date under the Indenture in the case of Notes, and each June 30, 2004 and December 30, 2004 in the case of the Underlying Common Stock.

"**Deferral Notice**" has the meaning set forth in Section 3(i) hereof.

"**Deferral Period**" has the meaning set forth in Section 3(i) hereof.

"**Effectiveness Deadline Date**" has the meaning set forth in Section 2(a) hereof.

"**Effectiveness Period**" means the period commencing on the date hereof and ending on the date that all Registrable Securities have ceased to be Registrable Securities.

"**Event**" has the meaning set forth in Section 2(e) hereof.

"**Event Date**" has the meaning set forth in Section 2(e) hereof.

"**Event Termination Date**" has the meaning set forth in Section 2(e) hereof.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"**Filing Deadline Date**" has the meaning set forth in Section 2(a) hereof.

"**Holder**" has the meaning set forth in the second paragraph of this Agreement.

"**Indenture**" means the Indenture dated as of June 30, 2004 between the Company and J.P. Morgan Trust Company, National Association, as trustee, pursuant to which the Notes are being issued.

"**Initial Purchaser**" means Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated.

"**Initial Shelf Registration Statement**" has the meaning set forth in Section 2(a) hereof.

"**Issue Date**" means the first date of original issuance of the Notes.

"**Liquidated Damages Amount**" has the meaning set forth in Section 2(e) hereof.

"**Losses**" has the meaning set forth in Section 6(a) hereof.

"**Material Event**" has the meaning set forth in Section 3(i) hereof.

"**Notes**" means the 1% Convertible Subordinated Notes due 2010 of the Company to be purchased pursuant to the Purchase Agreement.

"**Notice and Questionnaire**" means a written notice delivered to the Company containing substantially the information called for by the Selling Securityholder Notice and Questionnaire attached as Annex A to the Offering Memorandum of the Company dated June 24, 2004 relating to the Notes.

"**Notice Holder**" means, on any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

"**Purchase Agreement**" has the meaning set forth in the preamble hereof.

"**Prospectus**" means the prospectus included in any Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any amendment or prospectus supplement, including post-effective amendments, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such Prospectus.

"**Record Holder**" means (i) with respect to any Damages Payment Date relating to any Notes as to which any such Liquidated Damages Amount has accrued, the holder of record of such Note on the record date with respect to the interest payment date under the Indenture on which such Damages Payment Date shall occur and (ii) with respect to any Damages Payment Date relating to the Underlying Common Stock as to which any such Liquidated Damages Amount has accrued, the registered holder of such Underlying Common Stock 15 days prior to such Damages Payment Date.

"**Registrable Securities**" means the Notes until such Notes have been converted into or exchanged for the Underlying Common Stock and, at all times subsequent to any such conversion or exchange, the Underlying Common Stock and any securities into or for which such Underlying Common Stock has been converted or exchanged, and any security issued with respect thereto upon any stock dividend, split or similar event until, in the case of any such security, (A) the earliest of (i) its effective registration under the Securities Act and resale in accordance with the Registration Statement covering it, (ii) expiration of the holding period that would be applicable thereto, under Rule 144(k) and (iii) its sale to the public pursuant to Rule 144 (or any similar provision then in force, but not Rule 144A) under the Securities Act, and (B) as a result of the event or circumstance described in any of the foregoing clauses (i) through (iii), the legend with respect to transfer restrictions required under the Indenture is removed or removable in accordance with the terms of the Indenture or such legend, as the case may be.

"**Registration Expenses**" has the meaning set forth in Section 5 hereof.

"**Registration Statement**" means any registration statement of the Company that covers any of the Registrable Securities pursuant to the provisions of this Agreement including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits, and all materials incorporated by reference or explicitly deemed to be incorporated by reference in such registration statement.

"**Restricted Securities**" means "Restricted Securities" as defined in Rule 144.

"**Rule 144**" means Rule 144 under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

"**Rule 144A**" means Rule 144A under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated by the SEC thereunder.

"**Shelf Registration Statement**" has the meaning set forth in Section 2(a) hereof.

"**Special Counsel**" means Wilson Sonsini Goodrich & Rosati, Professional Corporation or one such other successor counsel as shall be specified by the Holders of a majority of the Registrable Securities, but which may, with the written consent of the Initial Purchaser (which shall not be unreasonably withheld), be another nationally recognized law firm experienced in securities law matters designated by the Company, the reasonable fees and expenses of which will be paid by the Company pursuant to Section 5 hereof.

"**Subsequent Shelf Registration Statement**" has the meaning set forth in Section 2(b) hereof.

"**TIA**" means the Trust Indenture Act of 1939, as amended.

"**Trustee**" means J.P. Morgan Trust Company, National Association, the trustee under the Indenture.

"**Underlying Common Stock**" means the Common Stock into which the Notes are convertible or issued upon any such conversion.

Section 2. *Shelf Registration.* (a) The Company shall prepare and file or cause to be prepared and filed with the SEC, as soon as practicable but in any event by the date (the "**Filing Deadline Date**") 120 days after the Issue Date, a Registration Statement for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act (a "**Shelf Registration Statement**") registering the resale from time to time by Holders thereof of all of the Registrable Securities (the "**Initial Shelf Registration Statement**"). The Initial Shelf Registration Statement shall be on Form S-3 or another appropriate form selected by the Company permitting registration of such Registrable Securities for resale by such Holders in accordance with the methods of distribution elected by the Holders and set forth in the Initial Shelf Registration Statement. The Company shall use its reasonable best efforts to cause the Initial Shelf Registration Statement to be declared effective under the Securities Act as promptly as is practicable but in any event by the date (the "**Effectiveness Deadline Date**") that is 210 days after the Issue Date, and to keep the Initial Shelf Registration Statement (or any Subsequent Shelf Registration Statement) continuously effective under the Securities Act until the expiration of the Effectiveness Period. At the time the Initial Shelf Registration Statement is declared effective, each Holder that became a Notice Holder on or prior to the date 10 Business Days prior to such time of effectiveness shall be named as a selling securityholder in the Initial Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of Registrable Securities in accordance with applicable law. None of the Company' s security holders (other than the Holders of Registrable Securities) shall have the right to include any of the Company' s securities in the Shelf Registration Statement.

(b) If the Initial Shelf Registration Statement or any Subsequent Shelf Registration Statement ceases to be effective for any reason at any time during the Effectiveness Period (other than because all Registrable Securities registered thereunder shall have been resold pursuant thereto or shall have otherwise ceased to be Registrable Securities), the Company shall use its reasonable best efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within 30 days of such cessation of effectiveness amend the Shelf Registration Statement in a manner reasonably expected to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional Shelf Registration Statement covering all of the securities that as of the date of such filing are Registrable Securities (a "**Subsequent Shelf Registration Statement**"). If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to cause the Subsequent Shelf Registration Statement to become effective as promptly as is practicable after such filing and to keep such Registration Statement (or subsequent Shelf Registration Statement) continuously effective until the end of the Effectiveness Period.

(c) The Company shall supplement and amend the Shelf Registration Statement if required by the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement, if required by the Securities Act or as reasonably requested by the Initial Purchaser or by the Trustee on behalf of the Holders of the Registrable Securities covered by such Shelf Registration Statement.

(d) Each Holder of Registrable Securities agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 3(h) hereof. Each Holder of Registrable Securities wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least three Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a Notice and Questionnaire is delivered, and in any event upon the later of (x) 15 Business Days after such date or (y) 15 Business Days after the expiration of any Deferral Period in effect when the Notice and Questionnaire is delivered, or put into effect within 15 Business Days of such delivery date, (i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its reasonable best efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as is practicable, but in any event by the date (the "**Amendment Effectiveness Deadline Date**") that is 45 days after the date such post-effective amendment is required by this clause to be filed; (ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i) hereof; and (iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i) hereof; *provided* that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period in accordance with Section 3(i) hereof. Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that is not a Notice Holder as a selling securityholder in any Registration Statement or related Prospectus and the (ii) Amendment Effectiveness Deadline Date shall be extended by up to 10 Business Days from the expiration of a Deferral Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

(e) The parties hereto agree that the Holders of Registrable Securities will suffer damages, and that it would not be feasible to ascertain the extent of such damages with precision, if: (i) the Initial Shelf Registration Statement has not been filed on or prior to the Filing Deadline Date; (ii) the Initial Shelf Registration Statement has not been declared effective under the Securities Act on or prior to the Effectiveness Deadline Date; (iii) the Company has failed to perform its obligations set forth in Section 2(d) hereof within the time period required therein; or (iv) the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(i) hereof (each of the events of a type described in any of the foregoing clauses (i) through (iv) are individually referred to herein as an "**Event**," and the next day following the Filing Deadline Date in the case of clause (i), the next day following the Effectiveness Deadline Date in the case of clause (ii), the next day following the date by which the Company is required to perform its obligations set forth in Section 2(d) hereof in the case of clause (iii) (including the filing of any post-effective amendment on or prior to the Amendment Effectiveness Deadline Date), and the date on which the aggregate duration of Deferral Periods in any period exceeds the number of days permitted by Section 3(i) hereof in the case of clause (iv), being referred to herein as an "**Event Date**"). Events shall be deemed to continue until the "**Event Termination Date**," which shall be the following dates with respect to the respective types of Events: the date the Initial Shelf Registration Statement is filed in the case of an Event of the type described in clause (i), the date the Initial Shelf Registration Statement is declared effective under the Securities Act in the case of an Event of the type described in clause (ii), the date the Company performs its obligations set forth in Section 2(d) hereof in the case of an Event of the type described in clause (iii) (including, without limitation, the date the relevant post-effective amendment to the Shelf Registration Statement is declared effective under the Securities Act), and termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods in a period set forth in Section 3(i) hereof to be exceeded in the case of the commencement of an Event of the type described in clause (iv).

Accordingly, commencing on (and including) any Event Date and ending on (but excluding) the next date on which there are no Events that have occurred and are continuing (a "**Damages Accrual Period**"), the Company agrees to pay, as liquidated damages and not as a penalty, an amount (the "**Liquidated Damages Amount**"), payable in cash on the Damages Payment Dates to Record Holders of Notes that are Registrable Securities and of shares of Underlying Common Stock issued upon conversion of Notes that are Registrable Securities, as the case may be, accruing, for each portion of such Damages Accrual Period beginning on and including a Damages Payment Date (or, in respect of the first time that the Liquidated Damages Amount is to be paid to Holders on a Damages Payment Date as a result of the occurrence of any particular Event, from the Event Date) and ending on but excluding the first to occur of (A) the date of the

end of the Damages Accrual Period or (B) the next Damages Payment Date, at a rate equal to (i) 0.25% per annum of the Amount of Registrable Securities with respect to the first 90-day period during which an Event shall have occurred and be continuing and (ii) 0.50% per annum of the Amount of Registrable Securities with respect to the period commencing on the 91st day following the day an Event shall have occurred and be continuing, in each case determined as of the Business Day immediately preceding the next Damages Payment Date; *provided* that in no event shall the Liquidated Damages Amount accrue at a rate per annum exceeding 0.50% of the Amount of Registrable Securities; *provided*, *further*, that in the case of a Damages Accrual Period that is in effect solely as a result of an Event of the type described in Section 2(e)(iii) hereof, such Liquidated Damages Amount shall be paid only to the Holders that have delivered Notice and Questionnaires that caused the Company to incur the obligations set forth in Section 2(d) hereof the non-performance of which is the basis of such Event; *provided*, *further*, that any Liquidated Damages Amount accrued with respect to any Note (or portion thereof) submitted for purchase on a purchase date or converted into Underlying Common Stock on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Note (or portion thereof) for purchase or conversion on the applicable purchase date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). Notwithstanding the foregoing, no Liquidated Damages Amounts shall accrue as to any Registrable Security from and after the earlier of (x) the date such security is no longer a Registrable Security and (y) expiration of the Effectiveness Period. Notwithstanding the occurrence of multiple concurrent Events, the rate of accrual of the Liquidated Damages Amount with respect to any period shall not exceed the rate per annum of 0.50% of the Amount of Registrable Securities. Following the cure of all Events requiring the payment by the Company of Liquidated Damages Amounts to the Holders of Registrable Securities pursuant to this Section, accrual of Liquidated Damages Amounts will cease (without in any way limiting the effect of any subsequent Event requiring the payment of Liquidated Damages Amount by the Company).

The Trustee shall be entitled, on behalf of Holders of Notes or Underlying Common Stock, to seek any available remedy for the enforcement of this Agreement, including for the payment of any Liquidated Damages Amount. Notwithstanding the foregoing, the parties agree that the sole damages payable for a violation of the terms of this Agreement with respect to which liquidated damages are expressly provided shall be such liquidated damages. Nothing shall preclude a Notice Holder or Holder of Registrable Securities from pursuing or obtaining specific performance or other equitable relief with respect to this Agreement.

All of the Company' s obligations set forth in this Section 2(e) that are outstanding with respect to any Registrable Security at the time such security ceases to be a Registrable Security shall survive until such time as all such obligations with respect to such security have been satisfied in full (notwithstanding termination of this Agreement pursuant to Section 8(k) hereof).

The parties hereto agree that the liquidated damages provided for in this Section 2(e) constitute a reasonable estimate of the damages that may be incurred by Holders of Registrable Securities by reason of the failure of the Shelf Registration Statement to be filed or declared effective or available for effecting resales of Registrable Securities in accordance with the provisions hereof.

Section 3. *Registration Procedures.* In connection with the registration obligations of the Company under Section 2 hereof, the Company shall:

(a) Prepare and file with the SEC a Registration Statement or Registration Statements on any appropriate form under the Securities Act selected by the Company available for the sale of the Registrable Securities by the Holders thereof in accordance with the intended method or methods of distribution thereof, and use its reasonable best efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided* that before filing any Registration Statement or Prospectus or any amendments or supplements thereto with the SEC, the Company shall furnish to the Initial Purchaser and the Special Counsel of such offering, if any, copies of all such documents proposed to be filed and use its reasonable best efforts to reflect in each such document when so filed with the SEC such comments as the Special Counsel reasonably shall propose within five Business Days of the delivery of such copies to the Initial Purchaser and the Special Counsel.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement continuously effective for the applicable period specified in Section 2(a) hereof; cause the related Prospectus to be supplemented by any required Prospectus supplement, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) under the Securities Act; and use its reasonable best efforts to comply with the provisions of the Securities Act applicable to it with respect to the disposition of all securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of disposition by the sellers thereof set forth in such Registration Statement as so amended or such Prospectus as so supplemented.

(c) As promptly as practicable give notice to the Notice Holders, the Initial Purchaser and the Special Counsel, (i) when any Prospectus, Prospectus supplement, Registration Statement or post-effective amendment to a Registration Statement has been filed with the SEC and, with respect to a Registration Statement or any post-effective amendment, when the same has been declared effective, (ii) of any request, following

the effectiveness of the Initial Shelf Registration Statement under the Securities Act, by the SEC or any other federal or state governmental authority for amendments or supplements to any Registration Statement or related Prospectus or for additional information, (iii) of the issuance by the SEC or any other federal or state governmental authority of any stop order suspending the effectiveness of any Registration Statement or the initiation or threatening of any proceedings for that purpose, (iv) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose, (v) of the occurrence of a Material Event (but not the nature of or details concerning such Material Event) and (vi) of the determination by the Company that a post-effective amendment to a Registration Statement will be filed with the SEC, which notice may, at the discretion of the Company (or as required pursuant to Section 3(i) hereof), state that it constitutes a Deferral Notice, in which event the provisions of Section 3(i) hereof shall apply.

(d) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of a Registration Statement or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction in which they have been qualified for sale, in either case at the earliest possible moment, and provide immediate notice to each Notice Holder and the Initial Purchaser of the withdrawal of any such order.

(e) If reasonably requested by the Initial Purchaser or any Notice Holder, as promptly as practicable incorporate in a Prospectus supplement or post-effective amendment to a Registration Statement such information as the Initial Purchaser and the Special Counsel, or such Notice Holder shall on the basis of an opinion of nationally-recognized counsel experienced in such matters, determine to be required to be included therein by applicable law and make any required filings of such Prospectus supplement or post-effective amendment.

(f) As promptly as practicable furnish to each Notice Holder, the Special Counsel and the Initial Purchaser, without charge, at least one conformed copy of the Registration Statement and any amendment thereto, including financial statements but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference and all exhibits (unless requested by such Notice Holder, Special Counsel, Initial Purchaser or underwriter).

(g) During the Effectiveness Period, deliver to each Notice Holder, the Special Counsel and the Initial Purchaser, in connection with any sale of Registrable Securities pursuant to a Registration Statement, without charge, as many copies of the Prospectus or Prospectuses relating

to such Registrable Securities (including each preliminary prospectus) and any amendment or supplement thereto as such Notice Holder may reasonably request; and the Company hereby consents (except during such periods that a Deferral Notice is outstanding and has not been revoked) to the use of such Prospectus or each amendment or supplement thereto by each Notice Holder in connection with any offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto in the manner set forth therein.

(h) Prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to register or qualify or cooperate with the Notice Holders and the Special Counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Notice Holder reasonably requests in writing (which request may be included in the Notice and Questionnaire); prior to any public offering of the Registrable Securities pursuant to the Shelf Registration Statement, use its reasonable best efforts to keep each such registration or qualification (or exemption therefrom) effective during the Effectiveness Period in connection with such Notice Holder' s offer and sale of Registrable Securities pursuant to such registration or qualification (or exemption therefrom) and do any and all other acts or things reasonably necessary or advisable to enable the disposition in such jurisdictions of such Registrable Securities in the manner set forth in the relevant Registration Statement and the related Prospectus; *provided* that the Company will not be required to (i) qualify as a foreign corporation or as a dealer in securities in any jurisdiction where it would not otherwise be required to qualify but for this Agreement or (ii) take any action that would subject it to general service of process in suits or to taxation in any such jurisdiction where it is not then so subject.

(h) Upon (A) the issuance by the SEC of a stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of proceedings with respect to the Shelf Registration Statement under Section 8(d) or 8(e) of the Securities Act, (B) the occurrence of any event or the existence of any fact (a "**Material Event**") as a result of which any Registration Statement shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or any Prospectus shall contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, or (C) the occurrence or existence of any pending corporate development (including, without limitation, a potential acquisition or divestiture, a financing or the review by the SEC of the Company' s prior filings) that, in the reasonable discretion of the Company,

makes it appropriate to suspend the availability of the Shelf Registration Statement and the related Prospectus for a discrete period of time, (i) in the case of clause (B) above, subject to the next sentence, as promptly as practicable prepare and file, if necessary pursuant to applicable law, a post-effective amendment to such Registration Statement or a supplement to the related Prospectus or any document incorporated therein by reference or file any other required document that would be incorporated by reference into such Registration Statement and Prospectus so that such Registration Statement does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and such Prospectus does not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, and, in the case of a post-effective amendment to a Registration Statement, subject to the next sentence, use its reasonable best efforts to cause it to be declared effective as promptly as is practicable, and (ii) give notice to the Notice Holders, the Special Counsel and the managing underwriters, if any, that the availability of the Shelf Registration Statement is suspended (a "**Deferral Notice**") and, upon receipt of any Deferral Notice, each Notice Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until such Notice Holder' s receipt of copies of the supplemented or amended Prospectus provided for in clause (i) above, or until it is advised in writing by the Company that the Prospectus may be used, and has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus. The Company will use its reasonable best efforts to ensure that the use of the Prospectus may be resumed (x) in the case of clause (A) above, as promptly as is practicable, (y) in the case of clause (B) above, as soon as, in the sole judgment of the Company, public disclosure of such Material Event would not be prejudicial to or contrary to the interests of the Company or, if necessary to avoid unreasonable burden or expense, as soon as practicable thereafter and (z) in the case of clause (C) above, as soon as in the reasonable discretion of the Company, such suspension is no longer appropriate. Notwithstanding any other provision of this Agreement, the Company shall be entitled to exercise its right under this Section 3(i) to suspend the availability of the Shelf Registration Statement or any Prospectus, without incurring or accruing any obligation to pay liquidated damages pursuant to Section 2(e) hereof, no more than an aggregate of 45 days in any three-month period or an aggregate of 90 days in any twelve-month period (each such period during which the availability of the Registration Statement and any Prospectus is suspended, a "**Deferral Period**"); *provided* that in the case of a Material Event relating to an acquisition or a probable acquisition or financing,

recapitalization, business combination or other similar transaction, or the review by the SEC of the Company' s prior filings, the Company may, without incurring any obligation to pay liquidated damages pursuant to Section 2(e) hereof, deliver to Notice Holders a second notice to the effect set forth above, which shall have the effect of extending the Deferral Period to an aggregate of up to 60 days in any three-month period, or such shorter period of time as is specified in such second notice.

(j) If requested in writing in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make reasonably available for inspection during normal business hours by a representative for the Notice Holders of such Registrable Securities, and any broker-dealers, attorneys and accountants retained by such Notice Holders or underwriter, all relevant financial and other records and pertinent corporate documents and properties of the Company and its subsidiaries, and cause the appropriate officers, directors and employees of the Company and its subsidiaries to make reasonably available for inspection during normal business hours on reasonable notice all relevant information reasonably requested by such representative for the Notice Holders, or any such broker-dealers, attorneys or accountants in connection with such disposition, in each case as is customary for similar "**due diligence**" examinations; *provided* that such persons shall first agree in writing with the Company that any information that is reasonably and in good faith designated by the Company in writing as confidential at the time of delivery of such information shall be kept confidential by such persons and shall be used solely for the purposes of exercising rights under this Agreement, unless (i) disclosure of such information is required by court or administrative order or is necessary to respond to inquiries of regulatory authorities, (ii) disclosure of such information is required by law (including any disclosure requirements pursuant to federal securities laws in connection with the filing of any Registration Statement or the use of any prospectus referred to in this Agreement), (iii) such information becomes generally available to the public other than as a result of a disclosure or failure to safeguard by any such person or (iv) such information becomes available to any such person from a source other than the Company and such source is not bound by a confidentiality agreement; and *provided* that the foregoing inspection and information gathering shall, to the greatest extent possible, be coordinated on behalf of all the Notice Holders and the other parties entitled thereto by the counsel referred to in Section 5 hereof.

(k) Comply with all applicable rules and regulations of the SEC and make generally available to its securityholders earning statements (which need not be audited) satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any three-month period (or 90 days after the end of any twelve-month

period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company commencing after the effective date of a Registration Statement, which statements shall cover said periods.

(l) Cooperate with each Notice Holder to facilitate the timely preparation and delivery of certificates representing Registrable Securities sold or to be sold pursuant to a Registration Statement, which certificates shall not bear any restrictive legends, and cause such Registrable Securities to be in such denominations as are permitted by the Indenture and registered in such names as such Notice Holder may request in writing at least one Business Day prior to any sale of such Registrable Securities.

(m) Provide a CUSIP number for all Registrable Securities covered by each Registration Statement not later than the effective date of such Registration Statement and provide the Trustee and the transfer agent for the Common Stock with printed certificates for the Registrable Securities that are in a form eligible for deposit with The Depository Trust Company.

(n) Cooperate and assist in any filings required to be made with the National Association of Securities Dealers, Inc.

(o) Upon (i) the filing of the Initial Registration Statement and (ii) the effectiveness of the Initial Registration Statement, announce the same, in each case by release to Reuters Economic Services and Bloomberg Business News.

Section 4. *Holder's Obligations.* Each Holder agrees, by acquisition of the Registrable Securities, that no Holder of Registrable Securities shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Notice Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Notice Holder not misleading and any other information regarding such Notice Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

Section 5. *Registration Expenses.* The Company shall bear all fees and expenses incurred in connection with the performance by the Company of its obligations under Section 2 and Section 3 hereof whether or not any of the Registration Statements are declared effective. Such fees and expenses shall include, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses (x) with respect to filings required to be made with the National Association of Securities Dealers, Inc. and (y) of compliance with federal and state securities or Blue Sky laws (including, without limitation, reasonable fees and disbursements of the Special Counsel in connection with Blue Sky qualifications of the Registrable Securities under the laws of such jurisdictions as Notice Holders of a majority of the Registrable Securities being sold pursuant to a Registration Statement may designate), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company), (iii) duplication expenses relating to copies of any Registration Statement or Prospectus delivered to any Holders hereunder, (iv) fees and disbursements of counsel for the Company and the Special Counsel in connection with the Shelf Registration Statement; *provided* that the Company shall not be liable for the fees and expenses of more than one separate firm for all parties participating in any transaction hereunder, (v) reasonable fees and disbursements of the Trustee and its counsel and of the registrar and transfer agent for the Common Stock and (vi) Securities Act liability insurance obtained by the Company in its sole discretion. In addition, the Company shall pay the internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing by the Company of the Registrable Securities on any securities exchange on which similar securities of the Company are then listed and the fees and expenses of any person, including special experts, retained by the Company. Notwithstanding the provisions of this Section 5, each seller of Registrable Securities shall pay selling expenses and all registration expenses to the extent required by applicable law.

Section 6. *Indemnification.*

(a) *Indemnification by the Company*. The Company shall indemnify and hold harmless each Notice Holder and each person, if any, who controls any Notice Holder (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) from and against any losses, liabilities, claims, damages and expenses (including, without limitation, any legal or other expenses reasonably incurred in connection with defending or investigating any such action or claim) (collectively, "**Losses**"), arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or based upon 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; *provided*, *however*, that the Company shall not be liable in any such case to the extent that any such Losses arise out of or are based upon an untrue statement or alleged untrue statement contained in or omission or alleged omission from any of such documents in reliance upon and conformity with any of the information relating to the Holders furnished to the Company in writing by a Holder expressly for use therein; *provided*, *further*, that the indemnification contained in this paragraph shall not inure to the benefit of any Holder of Registrable Securities (or to the benefit of any person controlling such Holder) on account of any such Losses arising out of or based upon an untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary prospectus provided in each case the Company has performed its obligations under Section 3(a) hereof if either (A) (i) such Holder failed to send or deliver a copy of the Prospectus with or prior to the delivery of written confirmation of the sale by such Holder to the person asserting the claim from which such Losses arise and (ii) the Prospectus would have corrected such untrue statement or alleged untrue statement or such omission or alleged omission, or (B) (x) such untrue statement or alleged untrue statement, omission or alleged omission is corrected in an amendment or supplement to the Prospectus and (y) having previously been furnished by or on behalf of the Company with copies of the Prospectus as so amended or supplemented, such Holder thereafter fails to deliver such Prospectus as so amended or supplemented, with or prior to the delivery of written confirmation of the sale of a Registrable Security to the person asserting the claim from which such Losses arise.

(b) *Indemnification by Holders of Registrable Securities*. Each Holder agrees severally and not jointly to indemnify and hold harmless the Company and its respective directors and officers, and each person, if any, who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) or any other Holder, from and against all Losses arising out of or based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement or Prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or based upon 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, to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with information furnished to the Company by such Holder expressly for use in such Registration Statement or Prospectus or amendment or supplement thereto. In no event shall the liability of any selling Holder of Registrable Securities hereunder be greater in amount than the dollar amount of the proceeds received by such Holder upon the sale of the Registrable Securities pursuant to the Registration Statement giving rise to such indemnification obligation.

(c) *Conduct of Indemnification Proceedings*. In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to Section 6(a) or 6(b) hereof, such person (the "**indemnified party**") shall promptly notify the person against whom such indemnity may be sought (the "**indemnifying party**") in writing and the indemnifying party, upon request of the indemnified party, shall retain counsel reasonably satisfactory to the indemnified party to represent the indemnified party and any others the indemnifying party may designate in such proceeding and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such indemnified party unless (i) the indemnifying party and the indemnified party shall have mutually agreed to the retention of such counsel or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them. It is understood that the indemnifying party shall not, in respect of the legal expenses of any indemnified party in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the fees and expenses of more than one separate firm (in addition to any local counsel) for all indemnified parties, and that all such fees and expenses shall be reimbursed as they are incurred. Such separate firm shall be designated in writing by, in the case of parties indemnified pursuant to Section 6(a) hereof, the Holders of a majority (with Holders of Notes deemed to be the Holders, for purposes of determining such majority, of the number of shares of Underlying Common Stock into which such Notes are or would be convertible or exchangeable as of the date on which such designation is made) of the Registrable Securities covered by the Registration Statement held by Holders that are indemnified parties pursuant to Section 6(a) hereof and, in the case of parties indemnified pursuant to Section 6(b) hereof, the Company. The indemnifying party shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the indemnifying party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second and third sentences of this Section 6(c), the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 60 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such proceeding.

(d) *Contribution*. To the extent that the indemnification provided for in this Section 6 hereof is unavailable to an indemnified party under Section 6(a) or 6(b) hereof in respect of any Losses or is insufficient to hold such indemnified party harmless, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such Losses (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party or parties on the other hand or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and of the indemnified party or parties on the other hand in connection with the statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. Benefits received by the Company shall be deemed to be equal to the total net proceeds from the initial placement pursuant to the Purchase Agreement (before deducting expenses) of the Registrable Securities to which such Losses relate. Benefits received by any Holder shall be deemed to be equal to the value of receiving Registrable Securities that are registered under the Securities Act. The relative fault of the Holders on the one hand and the Company on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Holders or by the Company, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Holders' respective obligations to contribute pursuant to this Section 6(d) are several in proportion to the respective number of Registrable Securities they have sold pursuant to a Registration Statement, and not joint.

The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6(d) were determined by *pro rata* allocation or by any other method or allocation that does not take into account the equitable considerations referred to in this Section 6(d). The amount paid or payable by an indemnified party as a result of the Losses referred to in this Section 6(d) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding this Section 6(d), an indemnifying party that is a selling Holder of Registrable Securities shall not be required to contribute any amount in excess of the amount by which the total price at which the Registrable Securities sold by such indemnifying party and distributed to the public were offered to the public exceeds the amount of any damages that such indemnifying party has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The indemnity, contribution and expense reimbursement obligations of the parties hereunder shall be in addition to any liability any indemnified party may otherwise have hereunder, under the Purchase Agreement or otherwise.

(f) The indemnity and contribution provisions contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or any person controlling any Holder, or the Company, or the Company' s officers or directors or any person controlling the Company and (iii) the sale of any Registrable Securities by any Holder.

Section 7. *Information Requirements.* The Company covenants that, if at any time before the end of the Effectiveness Period the Company is not subject to the reporting requirements of the Exchange Act, it will cooperate with any Holder of Registrable Securities and take such further reasonable action as any Holder of Registrable Securities may reasonably request in writing (including, without limitation, making such reasonable representations as any such Holder may reasonably request), all to the extent required from time to time to enable such Holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by Rule 144 and Rule 144A under the Securities Act and customarily taken in connection with sales pursuant to such exemptions. Upon the written request of any Holder of Registrable Securities, the Company shall deliver to such Holder a written statement as to whether it has complied with such filing requirements, unless such a statement has been included in the Company' s most recent report filed pursuant to Section 13 or Section 15(d) of Exchange Act. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities (other than the Common Stock) under any section of the Exchange Act.

Section 8. *Miscellaneous.*

(a) *No Conflicting Agreements.* The Company is not, as of the date hereof, a party to, nor shall it, on or after the date of this Agreement, enter into, any agreement with respect to its securities that conflicts with the rights granted to the Holders of Registrable Securities in this Agreement. The Company represents and warrants that the rights granted to the Holders of Registrable Securities hereunder do not in any way conflict with the rights granted to the holders of the Company' s securities under any other agreements.

(b) *Amendments and Waivers.* The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Company has obtained the written consent of Holders of a majority of the then outstanding Underlying Common Stock

constituting Registrable Securities (with Holders of Notes deemed to be the Holders, for purposes of this Section, the number of outstanding shares of Underlying Common Stock into which such Notes are or would be convertible or exchangeable as of the date on which such consent is requested). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect the rights of other Holders of Registrable Securities may be given by Holders of at least a majority of the Registrable Securities being sold by such Holders pursuant to such Registration Statement; *provided* that the provisions of this sentence may not be amended, modified, or supplemented except in accordance with the provisions of the immediately preceding sentence. Each Holder of Registrable Securities outstanding at the time of any such amendment, modification, supplement, waiver or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver or consent effected pursuant to this Section 8(b) whether or not any notice, writing or marking indicating such amendment, modification, supplement, waiver or consent appears on the Registrable Securities or is delivered to such Holder.

(c) *Notices*. All notices and other communications provided for or permitted hereunder shall be made in writing by hand delivery, by telecopier, by courier guaranteeing overnight delivery or by first-class mail, return receipt requested, and shall be deemed given (i) when made, if made by hand delivery, (ii) upon confirmation, if made by telecopier, (iii) one Business Day after being deposited with such courier, if made by overnight courier or (iv) on the date indicated on the notice of receipt, if made by first-class mail, to the parties as follows:

(x) if to a Holder of Registrable Securities, at the most current address given by such Holder to the Company in a Notice and Questionnaire or any amendment thereto;

(y) if to the Company, to:

Kulicke and Soffa Industries, Inc.
2101 Blair Mill Road
Willow Grove, PA 19090
Attention: David J. Anderson, Esq.
Facsimile No.: 215-784-7575

and

Drinker Biddle & Reath LLP
One Logan Square
Philadelphia, PA 19103
Attention: F. Douglas Raymond III, Esq.
Facsimile No.: 215-988-2757

(z) if to the Initial Purchaser, to:

Merrill Lynch & Co.
Merrill Lynch, Pierce, Fenner & Smith
Incorporated
4 World Financial Center
New York, New York 10080
and
101 California Street, Suite 1420
San Francisco, California 94111
Attention: Investment Banking Counsel

and

Wilson Sonsini Goodrich & Rosati, Professional
Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Robert A. Claassen, Esq.
Facsimile No.: (650) 493-6811

or to such other address as such person may have furnished to the other persons identified in this Section 8(c) in writing in accordance herewith.

(d) *Approval of Holders*. Whenever the consent or approval of Holders of a specified percentage of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) (other than the Initial Purchaser or subsequent Holders of Registrable Securities if such subsequent Holders are deemed to be such affiliates solely by reason of their holdings of such Registrable Securities) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(e) *Successors and Assigns.* Any person who purchases any Registrable Securities from the Initial Purchaser shall be deemed, for purposes of this Agreement, to be an assignee of the Initial Purchaser. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and shall inure to the benefit of and be binding upon each Holder of any Registrable Securities.

(f) *Counterparts*. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be original and all of which taken together shall constitute one and the same agreement.

(g) *Headings.* The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) *Governing Law*. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(i) *Severability*. If any term provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(j) *Entire Agreement*. This Agreement is intended by the parties as a final expression of their agreement and is intended to be a complete and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and the registration rights granted by the Company with respect to the Registrable Securities. Except as provided in the Purchase Agreement, there are no restrictions, promises, warranties or undertakings, other than those set forth or referred to herein, with respect to the registration rights granted by the Company with respect to the Registrable Securities. This Agreement supersedes all prior agreements and undertakings among the parties with respect to such registration rights. No party hereto shall have any rights, duties or obligations other than those specifically set forth in this Agreement. In no event will such methods of distribution take the form of an underwritten offering of the Registrable Securities without the prior agreement of the Company.

(k) *Termination.* This Agreement and the obligations of the parties hereunder shall terminate upon the end of the Effectiveness Period, except for any liabilities or obligations under Section 4, 5 or 6 hereof and the obligations to make payments of and provide for liquidated damages under Section 2(e) hereof to the extent such damages accrue prior to the end of the Effectiveness Period, each of which shall remain in effect in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

KULICKE AND SOFFA INDUSTRIES, INC.

By: /s/ Maurice E. Carson

Name: Maurice E. Carson

Title: Vice President and
Chief Financial Officer

Confirmed and accepted as of
the date first above written:

MERRILL LYNCH & CO.
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

By: MERRILL LYNCH, PIERCE, FENNER &
SMITH INCORPORATED

By: /s/ Gopal Garuda
Authorized Signatory
VICE PRESIDENT

"XXXXX" indicates that a portion of the exhibit has been omitted based on a request for confidential treatment submitted to the Security and Exchange Commission. The omitted portions have been filed separately with the Commission.

SALE AND BUYBACK OF FINE METAL AGREEMENT

Made on the 21st day of June 2004

BETWEEN:

(1) AGR MATTHEY ABN 33 824 096 614 (hereinafter called "AGR MATTHEY") being a partnership between WA Mint ABN 44 590 221 751 (The Perth Mint), Australian Gold Alliance Pty Ltd ABN 67 095 743 703 and Johnson Matthey (Aust) Ltd ABN 62 004 146 838, of Horrie Miller Drive, Newburn, Western Australia and;

(2) KULICKE & SOFFA (SEA) PTE LTD (hereinafter called "K&S"), a company incorporated in Singapore with its principal office at 6, Serangoon North Ave, 5, #03-16 Singapore 554910

WHEREAS:

A. AGR MATTHEY at the request of K&S has agreed to sell Gold in the required quantum of troy ounces as stipulated in Item 1 of the attached Schedule 1.

B. K&S has agreed to purchase from AGR MATTHEY Gold on the terms and conditions herein contained.

NOW IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless there is something in the subject or context inconsistent therewith, the following expressions have the following meanings:

"Agreement" means this Sale and Buyback of Fine Metal Agreement as it may be amended, varied or extended by mutual agreement from time to time;

"Bank Standby Letter of Credit" means a bank guarantee or standby letter of credit issued by a bank acceptable to AGR MATTHEY in favor of AGR MATTHEY as well as in a form and substance acceptable to AGR MATTHEY;

"Business Day" means any day on which banks are open for general banking business in Perth, Sydney, New York and Singapore;

"Conditions Precedent" means the conditions specified in Clause 4;

"Delivery" means the physical act of delivery, where custody of the Gold shall pass from one party to the other, as evidenced by the Transportation Agent' s delivery receipt signed by a duly authorized K&S employee. A list of duly authorized K&S employees is annexed herewith as Appendix 1.

"Delivery Point" means K&S' s manufacturing facility as stated in Item 7 of Schedule 1;

"Dispute" means any dispute or disagreement between the Parties in connection with this Agreement;

"Event of Default" means an event of default under this Agreement pursuant to Clause 11.1;

"Fine Metal Delivered" or "Gold Delivered" means the Fine Metal delivered to K&S by AGR MATTHEY not purchased and settled in full by K&S (in accordance with Clause 5) and not bought back by AGR MATTHEY (in accordance with Clause 7), expressed as fine troy ounces of Gold;

"Gold" means Gold metal in any of its physical forms. The physical supply of Gold by AGR MATTHEY to K&S shall conform to technical specifications specified in paragraph 4 of Schedule 2.

"Gold AM Fix" means the USD Gold price as determined by LBMA Fixing Members at 10.30am (London time) daily and displayed as such on Reuters.

"Gold PM Fix" means the USD Gold price as determined by the LBMA Fixing Members at 3 PM (London time) daily and displayed as such on Reuters.

"Guaranteed Sum" means the sum secured under the Bank Standby Letter of Credit from time to time;

"Initial Date" means the date falling 24 months after the date of this Agreement;

"LBMA" means the London Bullion Market Association;

"Margin Payment" means the cash deposit payable, the provision of a further Bank Standby Letter of Credit or the buyback of Gold (in accordance to Clause 7) at such time as the Market Value of Fine Metal Delivered exceeds ninety percent (90%) of the Guaranteed Sum under the Bank Standby Letter of Credit in accordance with the terms set out in Clause 6;

"Market Value" of the Gold on any day means the price per Troy Ounce of Gold in USD as determined by the latest Gold PM Fix prior to that day;

"Metals Account" means an unallocated Gold metal account denominated in fine troy ounces held in the name of K&S representing the balance of Fine Metal Delivered;

"Parties" means the parties to this Agreement and "Party," means either one of the Parties to this Agreement;

"Period" means the term of this Agreement commencing from the date of this Agreement and terminating in accordance with Clause 2.2;

"Product Fee" means the fee payable by K&S to AGR MATTHEY as specified in Item 5 of the Schedule 1 and detailed in Clause 5;

"Sale and Buyback of Fine Metal Facility" means the facility described and detailed in Clause 2.

"Security" means the Bank Standby Letter of Credit provided pursuant to Clause 3.1 and (if any) any USD cash deposit provided by K&S as a result of a margin call by AGR MATTHEY in accordance with Clause 6.1(a);

"Transportation Agent" means Securicor International Valuables Transport Pty Ltd or Brinks Australia Pty Ltd or any other agent as agreed in writing by both AGR MATTHEY and K&S;

"Troy Ounce" or "Toz" means 31.1035 grams.

"USD" and "United States Dollars" means the lawful currency of the United States of America;

1.2 Interpretation

In the interpretation of the Agreement, unless there is something in the subject or context inconsistent therewith: -

(a) Words importing the singular shall be deemed to include the plural and vice versa.

(b) Words importing any gender shall be deemed to include all other genders.

(c) Words importing persons shall be deemed to include all bodies and associations, corporate or unincorporate, and vice versa.

(d) Any reference to a statute or statutory provision shall be deemed to include any statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and any orders, regulations, instruments or other subordinate legislation made thereunder.

(e) Headings are included for convenience only and shall not affect the interpretation of the Agreement.

(f) All references to Clauses and Recitals are to clauses of and recitals to this Agreement.

(g) Expressions cognate with expressions defined in Clause 1 shall be construed accordingly.

(h) All references to dates and times are to Perth, Western Australia time unless otherwise specified.

(i) All terminology used with respect to Gold in this Agreement which is not expressly defined herein shall have the meanings given to such terminology by the practices and requirements of the LBMA.

1.3 Schedule 1 and Schedule 2

The Schedule1 and Schedule 2 attached to this Agreement form part of this Agreement.

2. SALE AND BUYBACK OF FINE METAL Facility

2.1 This Agreement shall be deemed to continue in operation and effect from the date of this Agreement and subsist until it is terminated in accordance with Clause 2.2

2.2 After the Initial Period, either of the Parties may terminate this Agreement by giving to the other at least six (6) months written notice. In the event of such termination, the amount of Gold Delivered to K&S must be paid for in full (in accordance with Clause 5) or sold back to AGR MATTHEY (in accordance with Clause 7) before the expiration of the six (6) month notice period.

2.3 During the period of this Agreement, the total Market Value of the Gold Delivered to K&S is not to exceed ninety percent (90%) of the Guaranteed Sum.

2.4 Drawdown

The drawdown of Gold by K&S is subject to the conditions of this Agreement and will be pursuant to Clause 2.5 of this Agreement.

2.5 Usage of Gold

2.5.1 K&S shall be responsible for all costs and charges relating to the processing by K&S of Gold Delivered supplied by AGR MATTHEY to K&S.

2.5.2 K&S may use the Gold Delivered in the conduct of its normal manufacturing operations (as they are from time to time) and may be used and processed in such operations.

2.5.3 For the avoidance of doubt, all Gold Delivered to K&S by AGR MATTHEY shall form part of the total volume of Fine Metal Delivered to K&S even where the Gold Delivered is held in storage in the vaulting facilities of K&S.

2.6 Risk and Title

Risk and Title to the Gold shall pass from AGR MATTHEY to K&S upon Delivery of a shipment of Gold at the Delivery Point.

2.7 Delivery of Gold

(a) AGR MATTHEY shall deliver Gold (within the specifications set out in paragraph 4 of Schedule 2) to K&S within 7 days from the date of its receipt of K&S' s order (in accordance with paragraph 1 of Schedule 2). Delivery by AGR MATTHEY to K&S is deemed to have occurred upon physical delivery at the Delivery Point as evidenced by the Transportation Agent' s delivery receipt signed by one of the duly authorized K&S employees as listed in Appendix 1.

(b) The terms on which K&S will deliver Gold to AGR MATTHEY are set out in paragraph 5 of Schedule 2 and the Refining Charges to be paid by K&S are stated in Item 4 of Schedule 1. Delivery by K&S to AGR MATTHEY is deemed to have occurred upon physical delivery at AGR MATTHEY' s refinery in Perth, Western Australia as evidenced by K&S' s Transportation Agent' s delivery receipt signed by one of the duly authorized AGR MATTHEY employees as listed in Appendix 2. Risk for Gold delivered by K&S to AGR MATTHEY shall pass from K&S to AGR MATTHEY upon Delivery. Title to the Gold delivered to AGR MATTHEY by K&S shall pass from K&S to AGR MATTHEY upon the crediting of an equal amount of Gold contained in the Gold delivered by K&S to the Metals Account in accordance with Clause 5 of Schedule 2.

3. COLLATERAL SECURITY

3.1 Bank Standby Letter of Credit

3.1.1 K&S is to procure or provide AGR MATTHEY with the following security against the Sale and Buyback of Fine Metal Facility:

A Bank Standby Letter of Credit for an amount to be agreed between the Parties (such amount may be varied by the Parties by mutual consent from time to time).

3.1.2 The said Bank Standby Letter of Credit must have an expiry date no earlier than 15 (fifteen) days after the Initial Date of this Agreement or as mutually agreed in writing.

3.1.3 Where the Bank Standby Letter of Credit is to be renewed, this renewal is to be effected and confirmed by K&S' s banker(s) to AGR MATTHEY' s banker(s) via SWIFT at least 14 (fourteen) days before the expiry date of the existing Bank Standby Letter of Credit. Failure by K&S or their banker(s) to renew the Bank Standby Letter of Credit at least seven (7) days prior to the expiry of the Bank Standby Letter of Credit shall confer upon AGR MATTHEY the right to require K&S to sell back the Fine Metal Delivered in accordance with Clause 7 and commence drawdown proceedings against the Bank Standby Letter of Credit for the value of Gold Delivered inclusive of any other charges stipulated in Clause 5. Any fees and charges resulting due to the commencement of drawdown proceedings are for the account of K&S.

3.2 Calls on Bank Standby Letter of Credit

If at any time K&S defaults pursuant to Clause 11, in the performance of its obligations under this Agreement, and fails to remedy the default within five (5) Business Days of written notice from AGR MATTHEY requiring it to do so, then AGR MATTHEY may require payment, without notice to K&S, by the relevant bank which has issued a Bank Standby Letter of Credit of the whole or any part of the sum guaranteed under that Bank Standby Letter of Credit.

4. CONDITIONS PRECEDENT

The first drawdown of Gold by K&S will be subject to the satisfaction of the following conditions precedent:

(a) confirmation from K&S that its Memorandum and Articles of Association contains provisions to authorize all necessary corporate actions to perform its obligations under this Agreement and an extract of the minutes of a K&S board meeting providing authority for the signing of this Agreement;

(b) execution of a Bank Standby Letter of Credit pursuant to Clause 3.1 to secure the obligations of K&S under this Agreement and the delivery of such Bank Standby Letter of Credit to AGR MATTHEY;

(c) due execution of this Agreement by both K&S and AGR MATTHEY; and

(d) delivery of the specimen signatures of K&S' s officers who are authorized to sign advises and documents on behalf of K&S to AGR MATTHEY.

5. PURCHASE

5.1 The consideration payable for the purchase of Gold by K&S shall comprise the following:

(a) AGR MATTHEY' s quoted selling price at the time of the transaction (as determined in the manner set out in paragraph 2 of Schedule 2) or on either the Gold AM or PM Gold Fix (where an additional fix fee of XXXXX will be charged) with settlement of proceeds payable to AGR MATTHEY in USD for value within two (2) business days of the transaction date unless alternative terms are agreed upon by AGR MATTHEY;

(b) A Gold Supply Delivery Fee based on the daily balance of the Gold Delivered and calculated in accordance with the formula set out below:

Gold Supply Delivery Fee in relation to a day = Gold Delivered x Gold Price x (Gold Rate ÷ 360)

Where:

Gold Delivered (a term defined in the definitions of this Agreement) as at the close of that calendar day.

Gold Rate (expressed as a rate per annum) for each Fixed Period (as defined in Clause 5.3.2) is the USD LIBOR rate minus GOFO (the Gold Forward Rate) as at the first Business Day of each Fixed Period plus XXXXX

Gold Price is the Gold PM Fix on the first calendar day of each Fixed Period or when no such price is available, reference shall be made to the spot price (as determined in the manner set out in paragraph 2 of Schedule 2) as at 08.00 AM Perth time on the following day.

(c) Product Fee of USD as stipulated in Item 5 of Schedule 1;

(d) Annual Australian Manufacturing Plant Production Fee as stipulated in Item 5 of Schedule 1.

5.2 For the avoidance of doubt, the Parties hereto expressly agree that the consideration payable for the purchase of Gold to K&S shall be one composite price comprising the sum total of the value of the various constituent components set out in Clause 5.1 (a) to (d) It is further expressly agreed that, apart from contributing to the determination of the composite price, none of the items set out in Clause 5.1 (a) to (d) shall be viewed as an independent or separate consideration in itself.

5.3 Gold Supply Delivery Fees

5.3.1 The Gold Supply Delivery Fees payable by K&S to AGR MATTHEY pursuant to this Clause will accrue on a daily basis and as per the formula set out in Clause 5.1(b). It is agreed that K&S shall pay AGR MATTHEY the Gold Supply Delivery Fee no later than 14 days from invoice date (in arrears on a monthly basis) of such Gold Supply Delivery Fees.

5.3.2 K&S may fix the Gold Rate for a specified period of between one month and one year (*Fixed Period*). The fix date is the first Business Day of a Fixed Period. The Fixed Period is not to exceed the expiry date on the Bank Standby Letter of Credit. AGR MATTHEY is to be notified in writing of any intention to fix no later than the first Business Day after the preceding Fixed Period expires. If K&S fails to notify AGR MATTHEY of its intention to fix the Gold Rate for a specified period by the first Business Day after the expiry of the preceding Fixed Period, K&S shall be deemed to have fixed the Gold Rate for a period of one month

5.4 Annual Australian Manufacturing Plant Production Fee

This fee shall be paid in equal monthly installments in advance within 14 [fourteen] Business Days of the invoice date.

5.5 Product Fee

The Product Fee shall be payable to AGR MATTHEY on the second Business Days following the date that K&S and AGR MATTHEY set the price for the purchase of Gold in accordance with Clause 5.1(a).

Basis:

The Product Fee payable to AGR MATTHEY is for door to door delivery loco K&S Singapore subject to shipping availability acceptable to AGR MATTHEY and to a minimum shipment size of 200 Kgs. If the shipment size is less than 200 Kgs, K&S shall pay an additional fee (to be determined by the Parties) in addition to the Product Fee.

6. MARGIN PAYMENT

6.1 At any time and from time to time, during the period of this Agreement, if the aggregate Market Value of the Fine Metal Delivered exceeds ninety percent (90%) of the Guaranteed Sum, K&S shall, at its option, within five (5) Business Days after notice has been served by AGR MATTHEY:

(a) Make a deposit in cash in USD, to AGR MATTHEY' s account at:

J P Morgan Chase Bank, New York

Account Name:	AGR MATTHEY – USD Account
Account Number:	xxxxx
SWIFT:	xxxxx

AND/OR

(b) Provide AGR MATTHEY with a further Bank Standby Letter of Credit for an amount in excess of the Guaranteed Sum

AND/OR

(c) Sell back a quantity of Gold to AGR MATTHEY (or to AGR MATTHEY' s agent as directed by AGR MATTHEY in writing) in accordance with Clause 7

so that after the deposit of cash, provision of the further Bank Standby Letter of Credit and/or sell back of Gold in accordance with Clause 7, the aggregate Market Value of the Fine Metal Delivered does not exceed ninety percent (90%) of the Guaranteed Sum.

6.2 Any USD cash deposit made pursuant to Clause 6.1 to AGR MATTHEY in satisfaction of such Margin Payment shall earn interest based on daily balances of such deposits at a rate equal to the prevailing USD overnight rate of interest of Westpac Banking Corporation, Perth, Australia. Interest earned on any such deposit shall be paid to K&S in accordance with Clause 8.

6.3 Interest earned pursuant to Clause 6.2 together with any USD cash deposit made pursuant to Clause 6.1 shall be paid to K&S in full by the bank holding the USD cash deposit upon the direction of AGR MATTHEY when the USD cash deposit is returned to K&S.

6.4 At the request of K&S, AGR MATTHEY shall return to K&S the USD cash deposit and/or Further Bank Standby Letter of Credit held as a Margin Payment to K&S, as the case may be, when the aggregate Market Value of the outstanding Gold Delivered has dropped back to or below 90% (ninety percent) of the Guaranteed Sum and has remained so for five (5) consecutive Business Days.

7. BUYBACK

7.1 K&S shall have the option to sell any quantum of the Gold to AGR MATTHEY, and AGR MATTHEY shall purchase such quantum of Gold Delivered sold at the option of K&S.

7.2 K&S shall deliver the Gold in the form and state which was delivered to K&S by AGR MATTHEY or in any other form and state acceptable to AGR MATTHEY (currently being in wire, granule, gold scrap or bar form).

7.3 In consideration of the purchase of Gold by AGR MATTHEY, AGR MATTHEY shall cause a credit entry to be made to the Metals Account of K&S to reflect the amount of Gold purchased from K&S in accordance with Clause 2.7(b) and paragraph 5 of Schedule 2.

7.4 With regard to the delivery and the passing of the risk and title of Gold from K&S to AGR MATTHEY, the provisions of Clause 2.7(b) shall apply.

7.5 In the event that instead of delivering Gold to AGR MATTHEY' s refinery in Perth, Western Australia, K&S in its sole discretion agrees to AGR MATTHEY' s request to deliver Gold to a person within Singapore (hereinafter called "Singapore Recipient") or to a place within Singapore (hereinafter called "Singapore Place"), it shall be on the conditions that (a) AGR MATTHEY shall at all times indemnify K&S from and against any and all loss and damage, cost and expense whatsoever arising therefrom including without limitation Goods and Services Tax under the Goods and Services Act (Cap. 117A) of Singapore and such other, if any, value added or consumption tax by whatever name called in respect of which K&S will or may be held chargeable to or otherwise held accountable for whether on K&S' s own account or the account of AGR MATTHEY' s or any other person' s by any tax or other relevant authority and (b) for the purposes of delivery of and the passing of the risk and title of Gold by K&S to AGR MATTHEY shall be deemed to have occurred upon physical delivery to the Singapore Recipient or at the Singapore Place.

8. WITHHOLDING

8.1 Payments to be free and clear: All sums payable by either Party under this Agreement shall be paid free of any restriction or condition, and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or withholding or otherwise.

8.2 Grossing-up of Payments

(i) If one of the Parties, must at any time deduct or withhold from tax or other amount from any sum paid or payable by, or received or receivable from, it shall pay such additional amount as is necessary to ensure that the other Party receives and retains (free from any liabilities other than tax on its own Overall Net Income) a net sum equal to what it would have received and so retained had no such deduction or withholding been required or made.

(ii) If one of the Parties must at any time pay any tax or other amount on, or calculated by reference to, any sum received or receivable by the other Party (except for payment by the other Party of tax on its Overall Net Income), it shall pay or procure the payment of that tax or other amount before any interest or penalty becomes payable.

(iii) Within 30 days after paying any sum which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any tax or other amount which it is required by sub-Clause (ii) above to pay, the Party making such payment shall deliver to the other Party evidence satisfactory to the other Party of that deduction, withholding or payment and (where remittance is required) of the remittance thereof to the relevant taxing or other authorities.

(iv) In this Clause "Tax on Overall Income" of a Party shall be construed as reference to tax (other than tax deducted or withheld from any payment) imposed on that person by the jurisdiction in which its principal office is located on (1) the net income, profits or gains of that person worldwide or (2) such of its net income, profits or gains as arise in or relate to that jurisdiction.

9. OVERDUE AMOUNTS

If K&S fails to make payment when due any sum of money payable to AGR MATTHEY (whether at its stated due date, by acceleration or otherwise) under this Agreement then to the fullest extent permitted by law, K&S shall pay interest to AGR MATTHEY on such unpaid sums for each day during the period from and including its due date but excluding the day such amount is received in full by AGR MATTHEY at the percentage rate per annum which is the sum of:

The Westpac Banking Corporation USD Account Overdraft Rate of Interest + three percentage points (3.00%).

10. INSURANCE

(a) K&S shall be fully responsible for all losses and damages to the Gold Delivered from any cause whatsoever after K&S has taken Delivery of such from AGR MATTHEY.

(b) Without limiting the generality of the foregoing, K&S will be responsible from the time of Delivery of the Gold at the Delivery Point for all losses, damages, costs and expenses incurred in respect of the Gold Delivered including all taxes, duties fees or imposts assessed or levied. Each party shall be responsible for taxes and duties in their respective country subject to Clause 8.

(c) During the term of this Agreement, each Party must, at its own expense, effect and maintain insurance with a reputable and substantial insurer in respect of the Gold Delivered in its possession as a result of this Agreement against fraud, employee infidelity, theft, loss, damage, destruction and any such other insurable risk standard within the industry in an amount not less than the Market Value of the Gold.

(d) Each Party shall promptly advise the other Party of any act or omission or any event of which they have actual, imputed or constructive knowledge and which may invalidate or render unenforceable in whole or in part any such insurance.

11. K&S default

11.1 Events of Default

K&S shall be deemed to be in default if any of the following Event(s) of Default occur:

(a) If K&S fails to make any due delivery of all or part of the Gold liable to be delivered to AGR MATTHEY pursuant to Clause 2.2 read with Clause 7.

(b) If K&S fails to pay on the due date any amount (apart from amounts pursuant to Sub-clause (a) of this Clause), fee, or charge payable by it under this Agreement and does not remedy such Default within a period of five (5) Business Days after notice from AGR MATTHEY.

(c) If K&S fails to perform or observe any of the terms and conditions of this Agreement (other than those referred to in sub-Clauses (a) and (b) of this Clause and Clause 6) or under the Security and where such Default is capable of remedy, K&S does not remedy such Default within a period of five (5) Business Days after written notice of such Default had been given to K&S by AGR MATTHEY.

(d) If an order is made or an effective resolution is passed for the winding up of K&S (or Kulicke & Soffa Industries, Inc of the USA) or if a meeting is convened for the purpose of considering any such resolution and the same is not dismissed or withdrawn within ten (10) Business Days (unless the winding up is for the purpose of amalgamation or reconstruction the terms of which shall previously have been approved by AGR MATTHEY in writing, such approval shall not be unreasonably withheld or delayed).

(e) If a provisional liquidator, administrator, receiver or receiver and manager is appointed to K&S in respect of the undertaking, property or assets or any part thereof of K&S or if K&S causes a meeting of its creditors to be summoned for the purpose of considering any resolution for such appointment.

(f) If any distress or execution for an amount of USD 250,000.00 (Two Hundred and Fifty Thousand United States Dollars) or more is levied or enforced upon K&S or is made against the assets or any part thereof of K&S and such shall not have been paid out, removed or discharged within twenty one (21) Business Days.

(g) If K&S is unable to pay its debts as they fall due or is unable to certify that it is able to pay its debts as they fall due.

(h) If a compromise or arrangement is proposed between K&S and its creditors or any class of them or if an application is made to a court for an order summoning a meeting of creditors of K&S or any class of them.

(i) If any present or future indebtedness due from K&S becomes due and payable prior to the date of maturity thereof as a result of K&S' s default or any such indebtedness is not paid at the maturity thereof or upon the expiration of applicable grace periods thereof or any guarantee or indebtedness or performance bond given by K&S is not honored when due and called upon or any mortgage or charge, present or future, and created or assumed by K&S becomes enforceable.

(j) If any representation, warranty or statement made by K&S herein or in any document given to AGR MATTHEY by K&S or by Kulicke & Soffa Industries, Inc of the USA in connection with or pursuant to the Agreement is not being complied with or shall prove to be untrue or misleading in any material respect.

(k) K&S fails to comply with AGR MATTHEY' s margin call requirement within five (5) Business Days as per Clause 6 of this Agreement.

11.2 In the event that K&S is deemed to be in default pursuant to Clause 11.1:

(i) AGR MATTHEY shall have the absolute irrevocable right to terminate immediately the Sale and Buyback of Fine Metal Facility as well as this entire Agreement, and

(ii) AGR MATTHEY shall have the absolute irrevocable right to charge K&S the price of the Gold Delivered to K&S at that time with reference to the international market spot price for Gold with reference to Reuters as determined by AGR MATTHEY, such price to be payable by K&S within two (2) Business Days from the date of pricing, or AGR MATTHEY is entitled to demand immediate payment by way of calling on the Bank Standby Letter of Credit pursuant to Clause 3.2.

11.3 K&S shall indemnify AGR MATTHEY and keep AGR MATTHEY indemnified against any losses, damages and/or expenses incurred by AGR MATTHEY arising or resulting from K&S' s default as set out in Clause 11.1 excluding such losses, damages and expenses to the extent it arises or results from AGR MATTHEY' s negligent act or omission or willful misconduct. AGR MATTHEY shall furnish documentary evidence to K&S of such loss or damage.

12. SET - OFF

12.1 K&S hereby authorizes AGR MATTHEY at any time after any Event of Default has occurred and so long as it shall be continuing:

(a) to apply any credit balances of metal or currency standing in the Metals Account of K&S with AGR MATTHEY, in or towards satisfaction of any sum due to AGR MATTHEY; and

(b) in the names of K&S and/or AGR MATTHEY to do all such acts and execute all such documents as may be necessary or expedient for any such purpose.

12.2 Nothing in the foregoing shall, however, be implied to mean that AGR MATTHEY shall be compelled to exercise the right of set-off in an Event of Default.

12.3 Upon the occurrence and during the continuance of any Event(s) of Default or non-performance by K&S, AGR MATTHEY is hereby authorized at any time and from time to time, without notice to K&S (any such right to notice being expressly waived by K&S) to set-off and apply all deposits (general or special term of demand, provisional or final) at any time held and other indebtedness at any time owing by AGR MATTHEY to or for the credit or the account of K&S against any and all of the obligations of K&S now or hereafter existing although such obligations may be unmatured

In the event of a dispute as to whether an Event of Default or non performance by K&S has occurred, the Parties shall refer the dispute for resolution in accordance to Clause 18.

12.4 AGR MATTHEY will promptly notify K&S after any set-off and application of proceeds under this Clause 12, provided that the failure to give such notice shall not affect the validity of set-off and application.

12.5 The rights of AGR MATTHEY under this Clause 12 are in addition to other rights and remedies (including without limitation, other rights of set-off) which AGR MATTHEY may have.

13. AGR MATTHEY

13.1 AGR MATTHEY Covenants

AGR MATTHEY covenants that:

(1) it shall deliver Gold within the specifications as stipulated in paragraph 4 of Schedule 2;

(2) it shall take all possible actions to avoid supply delays;

(3) it shall hold in stock an average of twice the average weekly consumption of K&S. The average weekly consumption of K&S shall be determined on the basis of the average consumption of the 4 preceding weeks;

(4) in addition to the primary production process, namely Aqua Regia Digest (ARD) it shall maintain a second production process in a separate area of the refinery, namely the Electrolytic Gold Room (EGR). Gold manufactured through the EGR process has previously been tested and qualified by K&S. Provided that the specification of the Gold meets with the K&S specifications AGR MATTHEY may supply from either process. K&S may inspect the AGR MATTHEY facility from time to time to ensure that AGR MATTHEY is maintaining the second production process;

(5) it shall give K&S 90 days notice of any change to the process location, a change to the process or a major equipment change;

(6) in the event that AGR MATTHEY is not able to supply Gold within the specifications and in the time-frame as stipulated in this Agreement, then K&S may source from an alternative supplier. In the event that the cost of Gold sourced from the alternative supplier is of a greater cost to K&S than the cost under the terms of this Agreement, then AGR MATTHEY shall pay to K&S such additional costs within fourteen (14) Business Days of notification from K&S. Prior to any commitment by K&S to purchase Gold from an alternative supplier, K&S must notify AGR MATTHEY in writing of their proposed course of action;

(7) it shall meet the delivery requirements as set out in paragraph 1 (a) and (b) of Schedule 2 ;

(8) it shall not subcontract the manufacture of Gold supplied to K&S without the prior written consent of K&S, such consent not being unreasonably withheld;

(9) should AGR MATTHEY find itself in a position such that it is unable to meet the supply requirements of K&S, then AGR MATTHEY shall immediately inform K&S. Furthermore, AGR MATTHEY, with the consent of K&S, shall source Gold from an alternative supplier that meets the minimum specifications as stated in this Agreement, such consent not to be unreasonably withheld by K&S; and

(10) In the event that there is a dispute over the assay of the Gold supplied, then AGR MATTHEY will arrange for an assay to be carried out by an agreed independent laboratory to determine the correct assay. In the event that the Gold supplied by AGR MATTHEY to K&S is not within the specifications as stipulated in this Agreement as determined by the independent laboratory, then the cost to deliver the Gold to AGR MATTHEY and the cost of the independent laboratory' s assay shall be borne by AGR MATTHEY. If determined by the independent laboratory that the Gold is within specification then K&S will be responsible for the cost to deliver the Gold to AGR MATTHEY and the cost of the independent laboratory' s assay.

13.2 AGR MATTHEY shall indemnify K&S and keep K&S indemnified against any losses, damages and/or expenses incurred by K&S arising or resulting from AGR MATTHEY' s breach of any Covenant(s) set out in Clause 13.1(1) to (10) excluding such losses, damages and expenses to the extent it arises or results from K&S' s negligent act or omission or willful misconduct. K&S shall furnish documentary evidence to AGR MATTHEY of such loss or damage.

13.3 Termination by K&S

Having followed the process of Dispute Resolution in accordance with Clause 16 and subject to the outcome of the process of Dispute Resolution, K&S may terminate this Agreement with immediate effect by giving notice to AGR MATTHEY if:

(a) The Panel determines that AGR MATTHEY has breached any provision of this Agreement and fails to remedy the breach within 5 Business Days after receiving notice requiring it to do so;

(b) The Panel determines that AGR MATTHEY has breached a material provision of this Agreement where that breach is not capable of remedy. For the avoidance of doubt, clauses 14.1(1) to (10) are material provisions; or

(c) The Panel determines that any event referred to in clause 14.4 happens to AGR MATTHEY.

13.4 Notification of events

AGR MATTHEY must notify K&S immediately if:

(a) there is any change in the direct or indirect beneficial ownership or control of AGR MATTHEY;

(b) it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;

(c) it ceases to carry on business;

(d) it ceases to be able to pay its debts as they become due;

(e) any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;

(f) any step is taken to enter into any arrangement between AGR MATTHEY and its creditors;

(g) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or

(h) where AGR MATTHEY is a partnership, any step is taken to dissolve that partnership.

13.5 Accrued rights and remedies

Termination of this Agreement under this clause 14 or under clause 15 does not affect any accrued rights or remedies of either Party.

14. FORCE MAJEURE

14.1 Definition

Force Majeure Event affecting a person means anything outside that Party' s reasonable control including, but not limited to, fire, storm, flood, earthquake, explosion, war, invasion, rebellion, sabotage, epidemic, labor dispute, labor shortage, failure or delay in transportation, and act or omission (including laws, regulations, disapprovals or failures to approve) of any third person (including, but not limited to, subcontractors, customers, governments or government agencies).

14.2 Occurrence of Force Majeure Event

If a Force Majeure Event affecting a Party precludes that Party (Precluded Party) partially or wholly from complying with its obligations (except its Security and payment obligations) under this Agreement then:

(a) as soon as reasonably practicable after that Force Majeure Event arises, the Precluded Party must notify the other Party of:

(i) the Force Majeure Event;

(ii) which obligations the Precluded Party is precluded from performing (Affected Obligations);

(iii) the extent to which the Force Majeure Event precludes the Precluded Party from performing the Affected Obligations (Precluded Extent); and

(iv) the expected duration of the delay arising directly out of the Force Majeure Event;

(b) the Precluded Party' s obligation to perform the Affected Obligations will, to the Precluded Extent, be suspended for the duration of the actual delay arising directly out of the Force Majeure Event (Actual Delay); and

(c) the other Party' s obligations to perform any obligations dependent on the Affected Obligations will be suspended until the Precluded Party resumes performance.

14.3 Termination

If the Actual Delay continues for more than 30 days, the other Party may terminate this Agreement immediately by giving notice to the Precluded Party.

14.4 Consequences of termination

If a Party terminates this Agreement under clause 15.3:

(a) the rights and obligations of the Parties under this Agreement (including, but not limited to, any license) cease; and

(b) any accrued rights or remedies of a Party are not affected.

15. K&S

15.1 K&S COVENANTS

K&S covenants that during the period of time that this Agreement is in effect it shall provide notice to AGR MATTHEY in the event that K&S intends to receive supplies of Gold from a party other than AGR MATTHEY, subject to clause 14.1 (6).

16. DISPUTE RESOLUTION

16.1 Reference to a Panel

(a) If any Dispute arises between the Parties, either Party may, by notice in writing to the other Party to the Dispute (the "Referral Notice"), refer the dispute to a panel constituted under clause 17.1(b) (the "Panel") who will meet to discuss the Dispute (with any appropriate technical experts and/or an independent party) and endeavor to resolve the Dispute, within 10 Business Days of their first meeting ("Resolution Period").

(b) The Panel will consist of a director or the chief executive officer or chairman (as the relevant Party may decide) of each of the Parties.

16.2 Condition precedent to litigation

A Party must not commence any proceedings in any court in respect of any other Dispute which is referable to a Panel under clause 17.1 unless the Dispute has first been referred to a Panel and the Panel does not meet or resolve the dispute under clause 17.1 before the expiry of the relevant Resolution Period.

16.3 Interlocutory

Nothing in clause 17.2 prevents a party from commencing proceedings in any court where the proceedings are required to obtain urgent interlocutory relief.

16.4 Performance of obligations pending resolution of Dispute

Prior to the resolution of a Dispute, the Parties must continue to perform their obligations under this Agreement insofar as those obligations are not the subject matter of the Dispute.

16.5 Extension of time

In the case of a Dispute which is referable to a Panel under clause 16.1, any time periods specified in this Agreement in relation to the subject matter of the Dispute will be extended by the time between the date on which the Referral Notice is delivered (or deemed to be delivered) and the sooner of the date the Panel determines the Dispute; and the date the Resolution Period expires.

17. MISCELLANEOUS

17.1 Entire Agreement

This Agreement constitutes the entire Agreement between AGR MATTHEY and K&S with respect to the subject matter hereof and supersedes and extinguishes all prior agreements and understandings between AGR MATTHEY and K&S with respect to the matters covered herein.

17.2 Amendments

This Agreement may not be amended, modified or supplemented except by a written instrument executed by persons duly authorized on behalf of AGR MATTHEY and K&S.

17.3 Waivers and Remedies Cumulative

(a) No failure to exercise and no delay in exercising any right, power or remedy under this Agreement or any Bank Standby Letter of Credit by AGR MATTHEY or K&S shall operate as a waiver, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy.

(b) The rights, powers and remedies provided to AGR MATTHEY or K&S under this Agreement are cumulative and are not exclusive of any rights, powers or remedies provided by law.

17.4 Assignment

17.4.1 Upon providing AGR MATTHEY with evidence that the assignee has the financial ability to honor the obligations contained within this Agreement, K&S may assign, transfer or charge all or any of its rights or obligations under this Agreement subject to K&S first obtaining AGR MATTHEY' s prior written consent which shall not be unreasonably withheld or delayed.

17.4.2 Upon providing K&S with evidence that the assignee has the financial ability to honor the obligations contained within this Agreement AGR MATTHEY may assign, transfer or charge all or any of its rights or obligations under this Agreement subject to AGR MATTHEY first obtaining K&S' s prior written consent which shall not be unreasonably withheld or delayed.

17.4.3 This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

17.5 Notices

All notices, requests, demands, consents, approvals, agreements or other communications to or by a party to this Agreement shall:

(a) be in writing addressed to the address of the recipient shown in Item 6 of Schedule 1 or such other address as it may have notified the senders;

(b) be signed by the sender;

(c) be deemed to be duly given or made (in the case of delivery in person or by post or by facsimile transmission) when delivered to the recipient at such address, but if such delivery or receipt is later than 5.00pm (local time) on a day which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been duly given or made at the commencement of business on the next such day in that place.

17.6 Maintenance of Records

(a) K&S hereby request that AGR MATTHEY establishes/maintains a Metals Account.

(b) AGR MATTHEY shall record all transactions relating to the Delivered Gold in the Metals Account. The balance of the Metals Account (*Supply Balance*) shall reflect the quantum of Gold Delivered .

(c) AGR MATTHEY shall provide a statement detailing all debits and credits to the Metals Account on a monthly basis or upon the request of K&S.

17.7 Governing Law and Jurisdiction

This Agreement is governed by the laws of Western Australia and K&S submits to the non-exclusive jurisdiction of the courts of Western Australia.

17.8 Counterparts

This Agreement may be executed in any number of counterparts. All such counterparts, when signed by the respective Parties, taken together shall be deemed to constitute one instrument.

IN WITNESS WHEROF the Parties have duly executed this Agreement on the date of first above mentioned.

}

AGR MATTHEY }

}

Chief Executive Officer /s/ Brian F. Bath

Chief Finance Officer /s/ John Shephard

THE COMMON SEAL of
}

KULICKE & SOFFA (SEA) PTE LTD
}

was hereunto affixed in
}

accordance with its Articles of
}

Association in the presence of
}

Director /s/ Ho Siew Foong

Director / Secretary /s/ Sabrina Ruskin

SCHEDULE 1

This schedule is supplemental to the Sale and Buyback of Fine Metal Agreement dated 21 of June 2004 between AGR MATTHEY and KULICKE & SOFFA (SEA) PTE LTD and constitutes a part of that Agreement and constitutes a Contract between them.

Date of signature of Schedule:

Item 1	Gold Delivered	90% of the value of the Guaranteed Sum.
		Current value of Security being USD 12 million.
Item 2	Period of Agreement	
	Commencement Date:	As per date of execution of the Agreement.
	Initial Date:	The date falling 24 months after the date of this Agreement. The Agreement may not be terminated by notice within the period from the Commencement Date to the Initial Date. After the Initial Date, the prices and terms of this Agreement may be varied by mutual agreement and the Agreement may be terminated by either party by giving six-months' written notice to the other party.
Item 3	Gold Supply Delivery Fee:	Gold Rate to be determined by AGR MATTHEY on the basis set out in clause 5.1(b).
		At the election of K&S and with the consent of AGR MATTHEY, K&S may fix the Gold Rate for a pre-elected period.
Item 4	Refining Charges	For Gold of up to 99.99% Assay:
		XXXXX
		For Gold of 99.99% and over 99.99% Assay:
		XXXXX
Item 5	Other Fees	
	Annual Australian Manufacturing Plant Production Fee:	XXXXX
	Product Fee:	XXXXX

(All fees and charges excludes any Singapore taxes, levies or imposts payable by K&S)

Item 6	Address for Service:	AGR MATTHEY Horrie Miller Drive Newburn WESTERN AUSTRALIA 6104 AUSTRALIA Facsimile: (61 8) 9479 9919 AND Kulicke & Soffa (SEA) Pte Ltd 6 Serangoon North Avenue 5 #03-16 Singapore 554910 Facsimile: 65 6880 9662
Item 7	Delivery Point:	K&S manufacturing facility located at: Block 5002, Ang Mo Kio Avenue 5 #05-06 TECHplace II Singapore 569871

Signed for and on behalf of

AGR MATTHEY
By

John Shephard, Chief Finance Officer /s/ John Shephard

(Signature)

Signed for and on behalf of

KULICKE & SOFFA (SEA) PTE LTD
By

Ho Siew Foong, Director
/s/ Ho Siew Foong

(Signature)

SCHEDULE 2

WORKING METHODOLOGY

1. Gold Supply

On a weekly basis K&S shall supply to AGR MATTHEY:

(a) An order for the quantity of Gold that K&S will require to be dispatched in seven calendar days, and

(b) An estimate for the quantity of Gold that K&S will require to be dispatched in fourteen calendar days. In order for AGR MATTHEY to guarantee supply K&S shall ensure that this estimate is within a 20% tolerance of the actual requirement when the order is placed.

2. Gold Pricing

Spot Pricing

During any normal business hours, an authorized representative of K&S (as listed in Appendix 1) may contact the Treasury department of AGR MATTHEY by telephone and request the current USD Gold selling price for the purchase of gold at a quantity as determined by K&S. AGR MATTHEY will provide K&S with their current selling price (being based on the Reuters Gold offer price at that time) and if acceptable to K&S the Parties will confirm the transaction. AGR MATTHEY will send a fax copy of the deal confirmation (setting out the selling price and the quantity of Gold Delivered to be purchased by K&S) to K&S and K&S shall immediately sign and return the deal confirmation to AGR MATTHEY. K&S shall settle the amount due to AGR MATTHEY on the following second Business Day.

LBMA Fix Pricing

Prior to the end of the Business Day in Perth, an authorized representative of K&S (as listed in Appendix 1) may contact the Treasury department of AGR MATTHEY by telephone and place an order to buy Gold at a quantity as determined by K&S on either the Gold AM or PM Fix for that day. Transactions conducted on the Gold AM or PM Fix shall attract a premium XXXXX. At the commencement of business on the following Business Day AGR MATTHEY will send a fax copy of the deal confirmation (setting out the selling price and the quantity of Gold Delivered to be purchased by K&S) to K&S and K&S shall immediately sign and return the deal confirmation to AGR MATTHEY. K&S shall settle the amount due to AGR MATTHEY on the second Business Day following the date of the Gold AM or PM Fix.

3. Record keeping

At the end of each month, K&S will provide AGR MATTHEY with a confirmation detailing the volume of Gold Delivered to K&S at the close of business on the last Business Day of the month (in Toz)

AGR MATTHEY shall maintain a Metals Account in the name of K&S.

At the end of each month, AGR MATTHEY will provide K&S with:

(a) a statement showing the daily balance of Gold Delivered to K&S (in Toz)

(b) an invoice and statement detailing the Annual Australian Manufacturing Plant Production Supply Fees due, such charges to be paid by K&S within fourteen Business Days of the invoice date

(c) a summary of transactions conducted during the month

4. Specification of Gold supplied by AGR MATTHEY to K&S

Maximum allowable limits of impurities to meet K&S specification are listed below.

xxxxx	**xxxxx**
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	XXXXX
XXXXX	

Calculate Fine Gold content by difference.

Fine Gold Content = 100.0000% - (Total Impurities mg/l /10000)

5. Delivery of Gold by K&S to AGR MATTHEY

At the cost of K&S, K&S may deliver Gold in the form of wire, granule, gold scrap or bar to AGR MATTHEY' s Perth refinery. AGR MATTHEY will charge K&S Refining Charges as stipulated in Item 4 of Schedule 1. Within two Business Days of delivering such Gold to

AGR MATTHEY' s Perth refinery, AGR MATTHEY will provide K&S with an Assay of the Gold delivered and simultaneously credit K&S' s Metals Account held with AGR MATTHEY thereby reducing the Gold Delivered to K&S.

Appendix 1

List of authorized K&S employees

XXXXX

- XXXXX
- XXXXX
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XXXXX

Appendix 2

List of authorized AGR Matthey employees

XXXXX

XXXXX

XXXXX

XXXXX

XXXXX

XXXXX

XXXXX

XXXXX

TABLE OF CONTENTS

Exhibit 10.2

EXECUTION COPY

DATED JUNE 21, 2004

KULICKE & SOFFA (S.E.A.) PTE. LTD.
(Registration No. 199503535R)
as Borrower

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH
as Issuing Bank

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH
and
ARAB BANK plc, SINGAPORE BRANCH
as Initial Lenders

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH
as Facility Agent

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH
as Security Agent

GUARANTEE ISSUANCE FACILITY AGREEMENT
US$17,000,000

BAKER & McKENZIE.WONG & LEOW
1 Temasek Avenue #27-01
Millenia Tower
Singapore 039192
Telephone: (65) 6338 1888
Facsimile: (65) 6337 5100

CONTENTS

THIS AGREEMENT is made on the 21 day of June 2004

BETWEEN:

(1) KULICKE & SOFFA (S.E.A.) PTE. LTD., a company incorporated in Singapore (Registration No. 199503535R) whose registered office is at 6 Serangoon North Avenue 5, #03-16, Singapore 554910 as borrower (the "Borrower");

(2) NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH as issuing bank (in such capacity, the "Issuing Bank");

(3) NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH and ARAB BANK plc, SINGAPORE BRANCH whose addresses are set out in Schedule 1 (each an "Initial Lender" and collectively, the "Initial Lenders");

(4) NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH as facility agent acting for and on behalf of the Finance Parties (in such capacity, the "Facility Agent"); and

(5) NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH as security agent and trustee acting for and on behalf of the Finance Parties (in such capacity, the "Security Agent").

IT IS AGREED as follows:

1. Interpretation

1.1 Definitions. In this Agreement, unless the context requires otherwise:

"Acceptance Date" means 15 March 2004.

"ACRA" means the Accounting Corporate Regulatory Authority of Singapore (formerly known as the Registry of Companies and Businesses of Singapore).

"AFW" means American Fine Wire Limited, a corporation established under the laws of the Cayman Islands acting through its Singapore Branch at 5002 Ang Mo Kio Avenue 5, #04-05, Techplace II Singapore 569871.

"AFW Debenture" means the charge dated 31 December 1992 (registered as Charge No. 9300051) and executed by AFW in favour of Rothschild pursuant to which AFW had charged and assigned certain of its existing and future assets in favour of Rothschild to secure all the obligations expressed to be secured therein and upon the terms and conditions set out therein.

"AFW Further Debenture" means the charge dated 2 October 1995 (registered as Charge No. 9506220) and executed by AFW in favour of Rothschild pursuant to which AFW had charged and assigned certain of its existing and future assets in favour of Rothschild to secure all the obligations expressed to be secured therein and upon the terms and conditions set out therein.

"AFW Payables Amount" means the purchase consideration of S$48,420,000 due and payable by the Borrower to AFW under the AFW Purchase Agreement.

"AFW Purchase Agreement" means the sale and purchase agreement dated 21 June 2004 and made between AFW and the Borrower under which AFW has agreed to sell to the Borrower, and the Borrower has agreed to purchase from AFW, the business of AFW carried on in Singapore through its Singapore registered branch, including the business of AFW carried on under AFW' s name and under the business name, "K&S Packaging Materials", upon the terms and conditions set out therein.

"Availability Period" means the period commencing on the date of this Agreement and ending on the earlier of (a) the date twenty-four (24) months after the date of this Agreement and (b) the date on which the Facility is fully utilized or terminated under the provisions of this Agreement.

"Beneficiary" means AGR Matthey (ABN 33 824 096 614), being a partnership between WA Mint (ABN 44 590 221 751) (The Perth Mint), Australian Gold Alliance Pty Ltd (ABN 67 095 743 703) and Johnson Matthey (Aust) Ltd (ABN 62 004 146 838), of Horrie Miller Drive, Newburn, Western Australia.

"Business Day" means a day (excluding Saturday) on which banks are open for business in Singapore and, if on that day a payment is to be made under this Agreement, in New York City.

"Charged Accounts" means collectively, all the Dollar and Singapore Dollar denominated accounts of the Borrower and/or K&S Packaging Materials (as the case may be) with the Facility Agent more particularly described in Schedule 3 into which the proceeds of the getting in or realisation of the Receivables (as such term is defined in the Debenture) are to be paid from time to time and all additions to or renewals or replacements thereof (in whatever currency) and:

(i) all sums now or in future deposited thereto;

(ii) all interest or other sums which may accrue from time to time thereon; and

(iii) all rights of the Borrower and/or K&S Packaging Materials to repayment of any of the foregoing by the Facility Agent.

"Commitment" means, in relation to each Initial Lender, the principal amount set opposite the Initial Lender' s name in Schedule 1 and, in relation to each New Lender, the amount indicated as its Commitment in the Facility in the relevant assignment document, in each case as reduced by its Participation in the Guarantee(s) issued from time to time, an assignment and/or transfer made by it pursuant to Clause 19.3 (*Assignment and Transfer by Lender*) or otherwise in accordance with this Agreement, being the maximum amount from time to time which that Lender is committed to make available under the Facility.

"Contingent Liability" means, at any relevant time, the aggregate amount payable or which may become payable under any outstanding Guarantee.

"Debenture" means the debenture incorporating a fixed and floating charge and assignment of insurances executed or to be executed by the Borrower in favour of the Security Agent over all of Borrower' s existing and future assets, and which shall be in form and substance satisfactory to the Security Agent.

"Dollars" and "US$" mean the lawful currency for the time being of the United States of America.

"Encumbrance" means:

(a) any mortgage, charge, pledge, lien, encumbrance, hypothecation or other security interest or security arrangement of any kind;

(b) any arrangement whereby any rights are subordinated to any rights of any third party; and

(c) any contractual right of set-off; and

(d) the interest of a vendor or lessor under any conditional sale agreement, lease, hire purchase agreement or other title retention arrangement other than an interest in a lease or hire purchase agreement which arose in the ordinary course of business.

"Event of Default" means any event or circumstance specified as such in Clause 12 (*Events of Default*).

"Facility" means the guarantee facility to be made available under this Agreement.

"Final Expiry Date" means the date falling twenty-four (24) months after the date of the issue of the first Guarantee.

"Finance Documents" means this Agreement, any Security Document and any other document designated as such by the Facility Agent and the Borrower and "Finance Document" means any one of them.

"Finance Parties" means the Facility Agent, the Security Agent, the Issuing Bank and the Lenders and "Finance Party" means any one of them.

"Gold" means any gold metals in any physical form (including without limitation, in the form of granule, scrap, bar or wire).

"Gold Inventories" means all Gold and products and other materials (whether in completed form, semi-completed form or otherwise) derived or manufactured from Gold or have a gold content now or at any time hereafter belonging to the Borrower and whether located at the Borrower' s premises or elsewhere (including without limitation, work-in-progress, finished goods, semi-finished goods, inventories and raw materials).

"Gold PM Fix" means the Gold price in Dollars as determined by the London Bullion Market Association Fixing Members at 3 pm (London time) daily and displayed as such on Reuters.

"Group" means the Borrower and its Subsidiaries for the time being.

"Guarantee" means a guarantee issued or to be issued by the Issuing Bank in respect of the obligations of the Borrower under the SBFMA.

"Guarantee Period" means the period commencing on the date of the issue of the first Guarantee and ending on the date twenty-four (24) months after such date.

"Guarantee Request" means an issue request in the form set out in Appendix 1.

"K&S Packaging Materials" means K&S Packaging Materials (Registration No. 52868080C) of 5002 Ang Mo Kio Avenue 5, #04-05, Techplace II, Singapore 569871, a sole proprietorship of which the Borrower is the sole proprietor.

"Lenders" means:

(a) the Initial Lenders; and

(b) each New Lender,

provided that, if a Lender does not have either a Commitment or a Participation in the Loan, it shall cease to be a Lender for the purposes of any provision of this Agreement which might otherwise require any person to consult or obtain a consent from or comply with an instruction of that Lender.

"Lending Office" means:

(a) in relation to the Initial Lenders, their respective offices at the addresses specified in Schedule 1; and

(b) in relation to any New Lender, its office at the address specified in the relevant assignment document and notified to the Facility Agent,

or such other offices as the relevant Lender may later select pursuant to Clause 19.6 (*Lending Offices*).

"Majority Lenders" means:

(i) at any time prior to any effective assignment being made by any of the Initial Lenders pursuant to Clause 19.3 (*Assignment and Transfer by Lender*), the Initial Lenders; and

(ii) at any time after an effective assignment has been made by any of the Initial Lenders pursuant to Clause 19.3 (*Assignment and Transfer by Lender*), the Lenders whose aggregate Commitments exceed sixty-six and two-thirds per cent (66 2/3%) of all the Commitments.

"Market Value" of any Gold on any day means the price per Troy Ounce of Gold in Dollars as determined by the latest Gold PM Fix prior to that day.

"Material Adverse Effect" means, in the opinion of the Majority Lenders, a material adverse effect on:

(a) the ability of the Borrower to perform its obligations under any of the Finance Documents;

(b) the business, operations, assets, financial or other condition or prospects of the Group taken as a whole; or

(c) the validity or enforceability of any Finance Document, the value of any security under any Security Document or the rights or remedies of any Finance Party under the Finance Documents.

"New Lender" means any assignee lender (other than an Initial Lender) (as defined in Clause 19.3 (*Assignment and Transfer by Lender*) to which an effective assignment and/or transfer has been made pursuant to Clause 19.3 (*Assignment and Transfer by Lender*).

"Participation" means in relation to each Lender, in respect of any amount owing to the Lenders hereunder, the proportion of such amount which is owing to that Lender or, in respect of any amount payable by the Lenders to the Issuing Bank in respect of any Guarantee, the proportion of that sum which is to be paid by that Lender and "Participation in the Facility" shall be construed accordingly.

"Potential Event of Default" means any event or circumstance which with the giving of notice, the passage of time, any determination of materiality or the satisfaction of any applicable condition (or any combination of them) would reasonably be expected to become an Event of Default.

"Rothschild" means NM Rothschild & Sons (Australia) Limited (ABN 32 008 458 366), a corporation established under the laws of Australia, with its registered office at Level 16, 1 0' Connell Street, Sydney, NSW 2000.

"Rothschild Charge" means the charge dated 28 November 2002 (registered as Charge No. 200205559 with ACRA) and executed by the Borrower in favor of Rothschild pursuant to which the Borrower had charged and assigned certain of its existing and future assets in favor of Rothschild to secure all the obligations expressed to be secured therein and upon the terms and conditions set out therein.

"SBFMA" means the Sale and Buyback of Fine Metal Agreement dated 21 June 2004 and entered into between the Beneficiary and the Borrower relating to the supply of Gold by the Beneficiary to the Borrower' s production of gold bonding wire.

"Security Documents" means the Debenture and any other document executed from time to time by whatever person as a further guarantee of or security for all or any part of the Borrower' s obligations under this Agreement.

"Singapore Dollars" and "S$" mean the lawful currency of Singapore.

"Subsidiary" in relation to any company means any other company or other entity directly or indirectly under the control of the first-mentioned company; for this purpose "control" means ownership of more than fifty per cent (50%) of the voting share capital or equivalent right of ownership of such company or entity, or power to direct its policies and management whether by contract or otherwise and "Holding Company" in relation to any company means the company of which such last-mentioned company is a Subsidiary.

"Troy Ounce" or "Toz" means 31.1035 grams.

"Trust Property" means the undertaking of the Borrower contained in Clause 15.3 (*Covenant to Pay*) and all or any part of the assets, rights, interests and benefits which may now or at any time in the future be mortgaged, charged, assigned or granted or the subject of an Encumbrance in favour of the Security Agent pursuant to this Agreement or any Security Document and, for the avoidance of doubt, the proceeds of any of the foregoing.

"Ultimate Holding Company" means Kulicke & Soffa Industries, Inc. of 2101 Blair Mill Road, Willow Grove PA 19090.

1.2 Construction. In this Agreement, unless the context requires otherwise, any reference to:

an "authorization" includes any approvals, consents, licenses, permits, franchises, permissions, registrations, resolutions, directions, declarations and exemptions;

an Event of Default or Potential Event of Default which is "continuing" means an Event of Default or Potential Event of Default which has not been remedied or waived;

"including" or "includes" means including or includes without limitation;

"indebtedness" includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

"law" and/or "regulation" includes any constitutional provisions, treaties, conventions, statutes, acts, laws, decrees, ordinances, subsidiary and subordinate legislation, orders, rules and regulations having the force of law and rules of civil and common law and equity;

an "order" includes any judgment, injunction, decree, determination or award of any court, arbitration or administrative tribunal;

a "person" includes any individual, company, body corporate or unincorporate or other juridical person, partnership, firm, joint venture or trust or any federation, state or subdivision thereof or any government or agency of any thereof; and

"tax" includes any tax, levy, duty, charge, impost, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing or other authority and includes any interest, penalty or other charge payable or claimed in respect thereof and "taxation" shall be construed accordingly.

1.3 Successors and Assigns. The expressions "Issuing Bank", "Borrower", "Lenders", "Facility Agent", "Security Agent" and "Finance Party" shall, where the context permits, include their respective successors and permitted assigns and any persons deriving title under them.

Where the context permits, references to the "Facility Agent" include the person acting as Facility Agent in its capacity as Security Agent.

1.4 Miscellaneous. In this Agreement, unless the context requires otherwise, references to provisions of any law or regulation shall be construed as references to those provisions as replaced, amended, modified or re-enacted from time to time; words importing the singular include the plural and *vice versa* and words importing a gender include every gender; references to this Agreement or any other Finance Document shall be construed as references to such document as the same may be amended, supplemented or novated from time to time; unless otherwise stated, references to Clauses, Schedules and Appendices are to clauses of and schedules and appendices to this Agreement and references to this Agreement include its Schedules and Appendices. Clause headings are inserted for reference only and shall be ignored in construing this Agreement.

1.5 Third Party Rights. The Contracts (Rights of Third Parties) Act (Chapter 53B) shall not apply to this Agreement and, unless expressly provided to the contrary in this Agreement, no person not party to this Agreement shall have or acquire any right to enforce any term of it pursuant to that Act. This Clause 1.5 shall not affect any right or remedy of any third party which exists or is available otherwise than by reason of that Act and shall prevail over any other provision of this Agreement which is inconsistent with it.

2. The Facility

2.1 Amount and Participations. Subject to the provisions of this Agreement:

(a) the aggregate principal amount of the Facility available to the Borrower is the lesser of:

(i) US$17,000,000; and

(ii) that amount which is equivalent to one hundred and eleven percent (111%) of the value of Gold supplied by the Beneficiary to the Borrower under the SBFMA, calculated in accordance with the terms of the SBFMA;

(b) each Lender will participate in the Facility in the proportion which its Commitment bears to the aggregate Commitments of all the Lenders.

2.2 Purpose. The Guarantee(s) issued under this Facility to the Beneficiary shall be for the purpose of guaranteeing the obligations of the Borrower to the Beneficiary under the SBFMA.

2.3 Finance Parties' Several Liability. The rights and obligations of the Finance Parties hereunder are several and accordingly:

(a) the amount at any time outstanding hereunder to each Finance Party by the Borrower shall be a separate and independent debt and each Finance Party shall be entitled to protect and enforce its respective rights arising out of this Agreement;

(b) the failure of any Finance Party to perform its obligations hereunder shall not relieve any other Finance Party or the Borrower of any of its respective obligations, nor shall any Finance Party be responsible for the obligations of any other Finance Party.

3. Conditions Precedent

3.1 Conditions. The Lenders shall not be obliged to procure the issue of any Guarantee, and the Issuing Bank shall not be obliged to issue any Guarantee, unless and until the Facility Agent shall have received:

Guarantee Issuance Facility Agreement

(a) this Agreement duly executed by all the parties;

Corporate Documents

(b) in relation to the Borrower, certified true copies of:

(i) its certificate of incorporation and memorandum and articles of association;

(ii) a list of its directors;

(iii) a list of its shareholders and their respective shareholdings;

(iv) resolutions of its board of directors approving the terms of this Agreement and the Security Documents and authorizing a person or persons to execute this Agreement, the relevant Security Documents, the Guarantee Request and any other notices or documents required in connection herewith or therewith, and the specimen signature(s) of such person(s);

Security Documents

(c) the Debenture duly executed by the Borrower including all other documents required pursuant thereto;

Charged Accounts

(d) evidence that the Charged Accounts have been opened by the Borrower with the Facility Agent;

Rothschild Charge

(e) a certified true copy of the deed of release and discharge satisfactory to the Lenders duly executed by the Borrower and Rothschild in respect of the Rothschild Charge; and

(f) a letter of undertaking from the Borrower addressed to the Facility Agent that the Borrower will, within five (5) Business Days (or such other period as may be agreed by the Facility Agent) from the date of the deed of release and discharge referred to in paragraph (e) above, file such deed of release and discharge with ACRA to notify ACRA of the release and discharge in full of the Rothschild Charge;

AFW Debenture and AFW Further Debenture

(g) a certified true copy of the deed of release and discharge satisfactory to the Lenders duly executed by AFW and Rothschild in respect of the AFW Debenture and AFW Further Debenture; and

(h) a letter of undertaking from AFW addressed to the Facility Agent that AFW will, within five (5) Business Days (or such other period as may be agreed by the Facility Agent) from the date of the deed of release and discharge referred to in paragraph (g) above, file such deed of release and discharge with ACRA to notify ACRA of the release and discharge in full of the AFW Debenture and the AFW Further Debenture;

AFW Purchase Agreement

(i) a certified true copy of the AFW Purchase Agreement duly executed by AFW and the Borrower;

(j) a certified true copy of the resolutions of the board of directors of the Borrower approving the terms of the AFW Purchase Agreement and the execution by the Borrower of the AFW Purchase Agreement;

(k) certified true copies of :

(i) the resolution of the board of directors of the Borrower convening an Extra-Ordinary General Meeting of the Borrower (the "EGM") to approve the increase in the authorized share capital of the Borrower (and where relevant, to confer power on the directors to allot new shares);

(ii) the Notice of the EGM;

(iii) the Agreement to Shorter Notice by K&S Interconnect, Inc., the sole shareholder of the Borrower;

(iv) the Minutes by the Representative of Holding Company relating to proceedings of subsidiary company;

(v) the Certificate of Appointment of the corporate representative of K&S Interconnect, Inc.;

(vi) the share application form for 48,420,000 number of shares in the Borrower duly executed by AFW; and

(vii) the resolution of the board of directors of the Borrower approving the allotment of shares (the "New Shares") to AFW;

(l) a letter of confirmation from the Borrower that the New Shares are allotted to AFW as consideration under the AFW Purchase Agreement and that the New Shares are allotted as fully paid up shares;

(m) a letter of undertaking from the Borrower that it will file with ACRA and the relevant authorities all the relevant documents relating to the increase in the share capital of the Borrower and the allotment of shares in the share capital of the Borrower to AFW within one (1) month of the date of the issuance of the first Guarantee;

(n) a letter from AFW in form and substance satisfactory to the Facility Agent to the effect that, AFW, agrees and undertakes to the Borrower that all obligations of the Borrower to AFW under the AFW Purchase Agreement shall, until the occurrence of the conversion of the AFW Payables into issued and paid-up share capital in the Borrower, be subordinated to all the obligations of the Borrower under the Finance Documents;

Miscellaneous

(o) evidence that the Borrower has taken out policies of insurance in form and substance satisfactory to the Facility Agent in respect of all the Gold Inventories and has named the Facility Agent as a loss payee under each such policy;

(p) a copy of the report on the form, quantity and state of all the Gold Inventories prepared two (2) weeks before the issue of the first Guarantee audited and certified without qualification by an internationally recognized firm of independent accountants acceptable to the Facility Agent;

(q) evidence that all authorizations have been obtained and that all necessary filings, registrations and other formalities have been or will be completed in order to ensure that the Finance Documents are valid and enforceable and to preserve the Security Agent' s priority under any Security Document;

(r) legal opinions covering such matters of Singapore and other laws relevant to this transaction as the Facility Agent may request; and

(s) such other documents relating to any of the matters contemplated herein as the Facility Agent may reasonably request.

3.2 Facility Agent' s Approval. All the documents and evidence referred to in Clause 3.1 (*Conditions*) shall be in form and substance satisfactory to the Facility Agent and shall be supplied in such number of copies or counterparts as the Facility Agent may require. Copies required to be certified shall be certified in a manner satisfactory to the Facility Agent by a director or responsible officer of the Borrower or other party concerned.

3.3 Notice. Upon receipt of all the documents and evidence referred to in Clause 3.1 (*Conditions*), the Facility Agent shall give notice of that fact to the Borrower, the Lenders and the Issuing Bank.

4. ISSUE OF GUARANTEE

4.1 Availability of Guarantee. Subject to Clause 4.2 (*Conditions of Issue*) and the other terms and conditions of this Agreement, the Borrower may on any Business Day during the Availability Period request the issue of a Guarantee in favor of the Beneficiary, provided that:

(a) Guarantee Request: not more than three (3) requests may be made by the Borrower and the first request must be made on the date of this Agreement;

(b) Number: only one Guarantee may be issued and outstanding at any one time;

(c) Amount: the face value of the Guarantee issued under this Agreement shall not exceed the aggregate principal amount of the Facility available under this Agreement; and

(d) Expiry Date: all the Guarantees issued under this Agreement shall expire on the Final Expiry Date.

4.2 Conditions of Issue. The issuance of any Guarantee is also subject to the following conditions that:

(a) the requirements of Clause 3 (*Conditions Precedent*) shall have been satisfied;

(b) the Facility Agent shall have received at least two (2) Business Days before the proposed date of issue, a duly completed and signed original Guarantee Request except that, in respect of the issuance of the first Guarantee, the Lenders and the Issuing Bank hereby agree that this paragraph (b) shall be deemed to have been satisfied if the Facility Agent shall have received a duly completed and signed original Guarantee Request for the first Guarantee on the same day as the day of the proposed issue of such Guarantee;

(c) no Guarantee shall have been issued which would result in the face value of the Guarantee issued hereunder exceeding the principal amount of the Facility;

(d) the second Guarantee (if requested) shall not become effective unless and until the first Guarantee has been returned to the Issuing Bank for cancellation;

(e) the third Guarantee (if requested) shall not become effective unless and until the second Guarantee has been returned to the Issuing Bank for cancellation;

(f) no Event of Default or Potential Event of Default shall have occurred (or would be likely to occur as a result of the Guarantee being issued) and all representations and warranties made by the Borrower in or in connection with this Agreement shall be true and correct as at the date of the issue of the Guarantee with reference to the facts and circumstances then subsisting; and

(g) not later than 11:00 a.m. (Singapore time) on the date on which the Guarantee is to be issued, the Facility Agent shall have received and found satisfactory such additional information, legal opinions and documents relating to the Borrower or any Finance Document as the Facility Agent acting on the instructions of the Majority Lenders may reasonably require as a result of circumstances arising or becoming known to the Facility Agent or the Lenders since the date of the issuance of the previous Guarantee or, if no previous Guarantee has been issued, the date of this Agreement.

4.3 Notification and Manner of Issue. Upon receipt of the Guarantee Request complying with the terms of this Agreement and upon the satisfaction of all the requirements of Clause 3 (*Conditions Precedent*) and Clause 4.2 (*Conditions of Issue*), the Facility Agent shall forthwith notify the Lenders and the Issuing Bank and, subject to the terms of this Agreement, the Issuing Bank shall issue the Guarantee in the amount and on the requested date of issue, in each case, as specified in the Guarantee Request, in favour of the Beneficiary.

4.4 Irrevocable. The Guarantee Request once given shall be irrevocable and shall not be postponed, cancelled or revoked by the Borrower, and subject as otherwise provided in this Agreement, the Lenders shall be entitled to procure the issuance by the Issuing Bank, and the Issuing Bank shall be entitled to issue, the Guarantee in accordance therewith, except as otherwise provided under this Agreement. If notwithstanding the giving of the Guarantee Request, the Guarantee should not have been issued, the Borrower shall be liable to pay to the Facility Agent for the account of the Lenders and/or the Issuing Bank, on demand, such amount (if any) as the Facility Agent, the Issuing Bank and/or any relevant Lender shall certify to be necessary to compensate it for any actual loss sustained or expense reasonably and properly incurred by it as a consequence of the Guarantee having been issued in accordance with the Guarantee Request.

4.5 Cancellation. If no Guarantee is issued by the end of the Availability Period, the Facility shall be cancelled and the Lenders shall be under no further obligation to procure the issuance of any Guarantee and the Issuing Bank shall be under no further obligation to issue any Guarantee.

5. INDEMNITIES

5.1 Liability. Each of the Borrower and the Lenders hereby irrevocably authorizes the Issuing Bank to pay in accordance with the terms thereof any sum which is demanded under any Guarantee, forthwith, without investigation or enquiry or requiring any evidence or proof that such sum is due and payable and notwithstanding that the Borrower or any Lender may dispute the validity of such demand or the amount thereof, and any sum so paid shall be deemed to have been properly paid pursuant to the relevant Guarantee. In particular, neither the Issuing Bank, the Lenders nor the Facility Agent shall be responsible for, and the obligations of the Borrower and the Lenders under this Agreement shall not be affected by, the propriety of any claim or demand made under any Guarantee or the form, legal effect, validity, accuracy, sufficiency or genuineness of any documents tendered or given to any person in connection with any claim or demand made under any Guarantee or as to any misrepresentation as to any matter stated therein or related thereto or the fact that the Issuing Bank was or might have been justified in refusing payment in full or in part under or in respect of any Guarantee.

5.2 Lenders' Liability. Each Lender agrees to indemnify the Issuing Bank, upon its first demand in writing, to the extent of its Commitment of any relevant amount, from and against any and all payments made by the Issuing Bank under any Guarantee and against all direct or indirect costs, losses, liabilities, claims, actions, penalties, orders, suits, damages and expenses (including legal fees and disbursements on a full indemnity basis) of any nature whatsoever which may be imposed on, incurred by or asserted against the Issuing Bank in any way relating to or arising out of any Guarantee, or arising from any act or omission of the Issuing Bank acting in its capacity as such under this Agreement, save and except in the case of negligence or willful misconduct of the Issuing Bank, its servants or agents.

5.3 The Borrower' s Indemnity. The Borrower agrees to indemnify each Lender forthwith on demand, from and against any and all sums which such Lender may pay or be required to pay to the Issuing Bank pursuant to Clause 5.2 (*Lenders' Liability*) above and against any and all direct or indirect costs, losses, liabilities, claims, actions, penalties, orders, suits, damages and expenses (including legal fees and disbursements on a full indemnity basis) of any nature whatsoever which may be imposed on, incurred by or asserted against such Lender in any way relating to or arising out of the issue or payment under any Guarantee or its obligations pursuant to Clause 5.2 (*Lenders' Liability*) above, save and except in the case of negligence or willful misconduct of such Lender, its servants or agents. The Borrower further agrees to indemnify the Issuing Bank (to the extent that the Issuing Bank has not been fully indemnified by the Lenders pursuant to Clause 5.2 (*Lenders' Liability*)) forthwith on demand, from and against any and all sums which the Issuing Bank pay or may be required to pay under any Guarantee and against any and all direct or indirect costs, losses, liabilities, claims, actions, penalties, orders, suits, damages and expenses (including legal fees and disbursements on a full indemnity basis) of any nature whatsoever which may be imposed on, incurred by or asserted against the Issuing Bank in any way relating to or arising out of the issue or payment under any Guarantee, save and except in the case of negligence or willful misconduct of the Issuing Bank, its servants or agents.

5.4 General Indemnity. The Borrower shall indemnify each Finance Party against all losses, liabilities, damages, costs and expenses which such Finance Party may incur as a consequence of any circumstance contemplated by any Event of Default or Potential Event of Default.

5.5 Currency Indemnity. Dollars shall be the currency of account and of payment in respect of sums payable under this Agreement. If an amount is received by any Finance Party in another currency, pursuant to a judgment or order or in the liquidation of the Borrower or otherwise, the Borrower' s obligations under this Agreement shall be discharged only to the extent that such Finance Party may purchase Dollars with such other currency in accordance with normal banking procedures upon receipt of such amount. If the amount in Dollars which may be so purchased, after deducting any costs of exchange and any other related costs, is less than the relevant sum payable under this Agreement, the Borrower shall indemnify such Finance Party against the shortfall. This indemnity shall be an obligation of the Borrower independent of and in addition to its other obligations under this Agreement and shall take effect notwithstanding any time or other concession granted to the Borrower or any judgment or order being obtained or the filing of any claim in the liquidation, dissolution, judicial management or bankruptcy (or analogous process) of the Borrower.

5.6 Unconditional Obligations. The Borrower' s liability, pursuant to Clauses 5.3 (*Borrower' s Indemnity*), 5.4 (*General Indemnity*) and 5.5 (*Currency Indemnity*) above, is an absolute and unconditional obligation and shall not be affected by:

(a) the amount paid by the Issuing Bank under any Guarantee, and in respect of which the Lenders made payment pursuant to Clause 5.2 (*Lenders' Liability*), not being properly due under the relevant Guarantee, whether because the corresponding amount was not properly due to the Beneficiary under the Guarantee or for any other reason (other than in the case of the Issuing Bank' s negligence or willful misconduct); or

(b) the SBFMA and/or any Guarantee being void or invalid or not being binding on or enforceable against the Borrower or the Issuing Bank, respectively, for any reason whatsoever, whether known to the Issuing Bank or any Lender or not, including the effect of any enactment, any legal limitation, illegality, disability, lack of corporate capacity or lack of powers of any party thereto.

5.7 No Liability. Neither Finance Party shall, in any circumstances whatsoever (except where it has acted in bad faith or with negligence) be liable to the Borrower in respect of any loss or damage suffered by the Borrower by reason of any payment having been made under any Guarantee.

5.8 No Discharge. The liabilities and obligations of the Borrower under this Agreement shall remain in full force and effect notwithstanding any act, omission, neglect, event or matter whatsoever, except the full, prompt and complete performance of all the terms of this Agreement, including the proper and valid payment of all amounts which become due to the Issuing Bank, the Facility Agent and each Lender hereunder and, subject to Clause 5.9 (*Conditional Discharge*) below, an absolute discharge or release of the Borrower signed by the Facility Agent; and without prejudice to its generality, the foregoing shall apply in relation to anything which would have discharged the Borrower (wholly or in part) or which would have afforded the Borrower any legal or equitable defense and in relation to any winding-up or dissolution of, or any change in corporate identity by any relevant person.

5.9 Conditional Discharge. Any such discharge or release referred to in Clause 5.8 (*No Discharge*) above, and any composition or arrangement which the Borrower may effect with the Issuing Bank, the Facility Agent or any Lender shall be deemed to be made subject to the condition that it will be void if any payment or security which the Issuing Bank, the Facility Agent or such Lender may previously have received or may thereafter receive under this Agreement, any Security Document or the Guarantee, is void, voidable or set aside for any reason whatsoever under any law (including, without limitation, under any law relating to preferences, bankruptcy, insolvency, liquidation, administration, judicial management or winding up) or proves to have been for any reason invalid.

5.10 No Waiver. Without prejudice to the generality of Clause 5.8 (*No Discharge*) and Clause 5.9 (*Conditional Discharge*) above, none of the liabilities or obligations of the Borrower under this Agreement shall be impaired by (without limitation):

(a) any misrepresentation or non-disclosure with respect to the affairs or condition of the Beneficiary or the SBFMA made to the Borrower by any person other than where such misrepresentation or non disclosure arises from any Finance Party and is not due to any act or omission by the Borrower;

(b) the Beneficiary releasing or granting any time or any indulgence whatsoever to, or making any settlement, composition or arrangement with, the Borrower, the Issuing Bank or any other person;

(c) any Finance Party releasing or granting any time or any indulgence whatsoever or making any settlement, composition or arrangement with the Beneficiary, the Borrower or any other person;

(d) the Beneficiary or any Finance Party (or any of them) asserting or pursuing, failing or neglecting to assert or pursue, or delaying in asserting or pursuing, or waiving, any of their rights or remedies (arising under or by virtue of the SBFMA, any Guarantee, any Security Agreement, this Agreement or otherwise) against the Beneficiary, the Borrower, any other Finance Party or any other person;

(e) the Beneficiary or the Issuing Bank or any Lender (or all or any of them) with or without the Borrower' s consent making, whether expressly or by conduct, any variation to the SBFMA, any Guarantee or this Agreement;

(f) the Beneficiary, the Borrower or any Finance Party (or any of them) taking, accepting, varying, dealing with, enforcing, abstaining from enforcing, surrendering or releasing any security in relation to the Beneficiary, the Borrower, or any other person, in such manner as it or they think fit, or claiming, proving for, accepting or transferring any payment in respect of the liabilities of the Beneficiary and/or Borrower under the SBFMA, any Security Document or any Guarantee and any composition by, or winding up of the Borrower and/or any third party, or abstaining from so claiming, proving, accepting or transferring.

6. Change of Law or Circumstances

6.1 Unlawfulness. If it becomes, or it becomes apparent that it is or will be, unlawful or contrary to any requirement of any governmental, fiscal, monetary or other authority (whether or not having the force of law) for any Finance Party to give effect to its obligations hereunder, such Finance Party shall through the Facility Agent so notify the Borrower, whereupon such Finance Party' s outstanding Commitment shall be cancelled and such Finance Party shall not thereafter be obliged to participate in any Guarantee or issue any Guarantee. If a Guarantee has been issued under this Agreement and the Facility Agent on behalf of such Finance Party so requires, the Borrower shall on such date as the Facility Agent shall have specified ensure that the liabilities of such Finance Party under or in respect of such Guarantee are reduced to zero or otherwise secured in an amount equal to such Finance Party' s maximum actual and contingent liabilities under such Guarantee.

6.2 Increased Cost. If a Finance Party determines that the introduction of, or any change in, any applicable law or regulation or in the interpretation or application thereof or compliance by such Finance Party with any applicable direction, request or requirement (whether or not having the force of law, and including any such direction, request or requirement which affects the manner in which such Finance Party or any Holding Company of such Finance Party is required to or does allocate or maintain capital in support of its assets or liabilities) of any competent governmental, fiscal, monetary, or other authority does or will:

(a) subject such Finance Party or any Holding Company of such Finance Party to any tax or other payment with reference to sums payable by the Borrower under this Agreement (except (i) tax on such Finance Party' s overall net income in the jurisdiction of its principal office or Lending Office) or (ii) as referred to in Clause 7 (*Taxes and Other Deductions*)); or

(b) impose on such Finance Party or any Holding Company of such Finance Party any other condition the effect of which is to (i) increase the cost to such Finance Party or its Holding Company of such Finance Party participating in the Facility or (ii) reduce the amount of any payment receivable by, or the effective return to, such Finance Party in respect of the Facility or (iii) impose a cost on such Finance Party or any Holding Company of such Finance Party resulting from such Finance Party' s participation in the Facility,

such Finance Party may through the Facility Agent so notify the Borrower, and the Borrower shall from time to time upon demand pay to the Facility Agent for the account of such Finance Party such amounts as such Finance Party may certify to be necessary to compensate it or its Holding Company for such tax, payment, increased cost or reduction (each an "increased cost"). Where such increased cost arises from circumstances contemplated above which affect the Finance Party' s business generally or the manner in which or extent to which that Finance Party allocates capital resources, the Finance Party shall be entitled to such increased cost as it determines and certifies is fairly allocable to its participation in the Facility. Nothing in this Clause 6.2 (*Increased Cost*) shall require any Finance Party to disclose confidential information relating to the organization of its business or the business of any Holding Company. The Borrower and the Facility Agent, in consultation with such Finance Party, shall discuss whether any alternative arrangement may be made to avoid such increased cost.

7. Taxes and Other Deductions

7.1 No Deductions or Withholdings. All sums payable by the Borrower under this Agreement shall be paid in full without set-off or counterclaim or any restriction or condition and free and clear of any tax or other deductions or withholdings of any nature. If the Borrower or any other person is required by any law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment for the account of any Finance Party, the Borrower shall, together with such payment, pay such additional amount as will ensure that such Finance Party receives (free and clear of any tax or other deductions or withholdings) the full amount which it would have received if no such deduction or withholding had been required. The Borrower shall promptly forward to the Facility Agent copies of official receipts or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxation or other authority.

7.2 Advance Notification. If at any time the Borrower becomes aware that any such deduction, withholding or payment contemplated by Clause 7.1 (*No Deductions or Withholdings*) is or will be required, it shall immediately notify the Facility Agent and supply all available details thereof.

8. Fees and Expenses

8.1 Basic Issuance Fee: The Borrower shall pay to the Facility Agent, for the *pro rata* account of the Lenders in Dollars, a basic issuance fee of US$270,000 (the "Basic Issuance Fee") which shall be payable in advance in two equal annual installments:

(i) First Installment: the first installment of the Basic Issuance Fee shall be paid on the date which is the earlier of (i) the date of the issue of the first Guarantee and (ii) the date six (6) months after the Acceptance Date (such date being the "First Payment Date"); and

(ii) Second Installment: the second installment of the Basic Issuance Fee shall be paid on the first anniversary of the First Payment Date (such date being the "Second Payment Date").

8.2 Additional Issuance Fee: In the event that the face value of any Guarantee exceeds US$15,000,000, the Borrower shall pay to the Facility Agent, for the *pro rata* account of the Lenders in Dollars, an additional fee for the issuance of such Guarantee (the "Additional Issuance Fee"), calculated at the rate of zero point nine percent (0.9%) per annum on the face value of such Guarantee which is in excess of US$15,000,000 and for the period commencing on and including the date of the issue of such Guarantee (the "Issuance Date") up to and including the last day of the Guarantee Period. The Borrower shall pay any such Additional Issuance Fee in two equal installments:

(i) First Installment: the first installment of any Additional Issuance Fee shall be paid on the relevant Issuance Date of such Guarantee; and

(ii) Second Installment: the second installment of any Additional Issuance Fee shall be paid on the Second Payment Date,

provided that if the Issuance Date in respect of any Guarantee occurs after the Second Repayment Date, the Additional Issuance Fee payable in respect of such Guarantee shall instead be paid in one lump sum on the Issuance Date of such Guarantee.

The Additional Issuance Fee shall be calculated on the basis of the actual number of days elapsed and a 360 day year.

8.3 Expenses. The Borrower shall forthwith on demand and whether or not any Guarantee is issued pay to or reimburse each of the Finance Parties and the Issuing Bank for its own account for all costs, charges and expenses (including legal and other fees on a full indemnity basis and printing, translation, communication, advertisement, travel and all other out-of-pocket expenses and any applicable goods and services, value added or other similar taxes) incurred:

(a) Documents: by the Facility Agent (acting on behalf of itself and the other Finance Parties) in connection with the negotiation, preparation, execution and (where relevant) registration of:

(i) this Agreement, the Debenture and any other documentation required in connection herewith or therewith executed on or around the date of this Agreement (up to the maximum amount as agreed between the Borrower and the Facility Agent); and

(ii) any other documents required in connection with any Finance Document executed after the date of this Agreement;

(b) Amendment: by it in connection with any amendment of this Agreement or any other Finance Document; and

(c) Consents: by it in connection with any inspection, calculation, approval, consent or waiver to be made or given by the Lenders or any other Finance Party pursuant to or in respect of any provision of this Agreement or any other Finance Document.

8.4 Enforcement Costs. The Borrower shall from time to time forthwith on demand pay to or reimburse each of the Finance Parties and the Issuing Bank for all costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by it in investigating any event which it reasonably believes is an Event of Default or Potential Event of Default or in exercising any of its rights or powers under any Finance Document or in suing for or seeking to recover any sums due under any Finance Document or otherwise preserving or enforcing its rights under any Finance Document or in defending any claims brought against it in respect of any Finance Document or in releasing or re-assigning any Security Document.

8.5 Taxes. The Borrower shall pay all present and future stamp and other like duties and taxes and all notarial, registration, recording and other like fees which may be payable in respect of any Finance Document and shall indemnify each of the Finance Parties and the Issuing Bank against all liabilities, costs and expenses which may result from any default in paying such duties, taxes or fees.

9. Payments and Evidence of Debt

9.1 Payments by the Lenders. All payments to be made by the Lenders under this Agreement shall be made available to the Facility Agent not later than 11:00 a.m. (Singapore time) on the relevant due date by remittance to the Facility Agent (Bank Account No: 001255-02-01) (or to such other account in Singapore as the Facility Agent may designate). The Facility Agent shall make available to the Issuing Bank or the Borrower, as the case may be, the amounts received by it from the Lenders by payment to Bank Account No: 001255-02-01 of the Issuing Bank with Natexis Banques Populaires, New York City (in the case of the Issuing Bank) and Bank Account No.: 015 149 0202 of the Borrower with Natexis Banques Populaires, Singapore Branch (in the case of the Borrower) or to such other account in Singapore or New York City (as the case may be) as the Issuing Bank or the Borrower shall have previously agreed with the Facility Agent).

9.2 Payments by Borrower. All payments by the Borrower under this Agreement shall be made to the Facility Agent not later than 11:00 a.m. (Singapore time) on the relevant due date by remittance to the Facility Agent to Bank Account No: 001255-02-01 of the Facility Agent with Natexis Banques Populaires, New York City (or to such other account in New York City as the Facility Agent may designate). The Facility Agent shall forthwith distribute to each Lender its due proportion (if any) of the amounts received by it in like funds as are received by the Facility Agent and to such account in New York City as such Lender shall have previously notified to the Facility Agent.

9.3 Allocation of Receipts. If any amount received by the Facility Agent hereunder is less than the full amount due, the Facility Agent in consultation with the other Finance Parties shall have the right to allocate the amount received towards principal, interest and/or other sums owing under this Agreement as it considers appropriate.

9.4 Payments by Facility Agent and Refunds. Where any sum is to be paid to the Facility Agent under any Finance Document for the account of the Borrower, the Issuing Bank or any Finance Party, the Facility Agent shall not be obliged to pay that sum to the Borrower, the Issuing Bank or such Finance Party (as the case may be) or enter into or perform any related exchange contract unless and until the Facility Agent has established to its satisfaction that it has actually received that sum. Where any sum is to be paid under this Agreement to the Facility Agent for the account of another person, the Facility Agent may assume that the payment will be made when due and may (but shall not be obliged to) make such sum available to the person so entitled and:

(a) Amounts Due from Borrower: if the Facility Agent distributes to a Finance Party, an amount which the Facility Agent should have but has not in fact received from the Borrower (or from any other person for the Borrower' s account), such Finance Party shall on request promptly refund such amount to the Facility Agent together with interest thereon for the relevant period at the rate per annum certified by the Facility Agent to represent the cost to it of funding such amount for such period;

(b) Refunds to Borrower: if the Facility Agent has distributed to a Finance Party, an amount which is required to be repaid to the Borrower (or to any other person for the Borrower' s account), such Finance Party shall on request promptly refund such amount to the Facility Agent together with such interest thereon (if any) as is required to be paid to the Borrower, as the case may be; and

(c) Amounts Due from Finance Parties: if the Facility Agent makes an amount available to the Borrower, as the case may be, which the Facility Agent should have but has not in fact received from a Finance Party, as the case may be, the Borrower shall on request promptly refund such amount to the Facility Agent together with interest thereon for the relevant period at the rate per annum certified by the Facility Agent to represent the cost to it of funding such amount for such period,

and, in each such case, the person by which such sum was payable shall indemnify the Facility Agent for all losses, liabilities, damages, costs and expenses which the Facility Agent may incur as a consequence of such sum not having been paid when due.

9.5 Business Days. If any sum would otherwise become due for payment on a non-Business Day that sum shall become due on the next following Business Day.

9.6 Evidence of Debt. The Facility Agent shall maintain on its books in accordance with its usual practice a set of accounts recording the amounts from time to time owing by the Borrower hereunder. In any legal proceeding and otherwise for the purposes of this Agreement the entries made in such accounts (and showing the computation of such entries) shall, in the absence of manifest error, be conclusive and binding on the Borrower as to the existence and amounts of the obligations of the Borrower recorded therein.

9.7 Certificate Conclusive and Binding. Where any provision of this Agreement provides that a Finance Party may certify or determine an amount or rate payable by the Borrower, a certificate by such Finance Party as to such amount or rate (and showing the computation of such amount or rate) shall be conclusive and binding on the Borrower in the absence of manifest error.

10. Representations and Warranties

10.1 Representations and Warranties. The Borrower represents and warrants to each Finance Party that:

(a) Status: the Borrower is a company duly incorporated with limited liability and validly existing under the laws of Singapore, and has full power, authority and legal right to own its property and assets and to carry on its business;

(b) Power and authority: the Borrower has full power, authority and legal right to enter into and engage in the transactions contemplated by the Finance Documents and has taken or obtained all necessary corporate and other action and consents to authorize the execution and performance of the Finance Documents;

(c) Binding obligations: the Finance Documents constitute, or when executed and delivered will constitute, legal, valid and binding obligations of the Borrower enforceable in accordance with their terms;

(d) No conflict with other obligations: neither the execution of the Finance Documents nor the performance by the Borrower of any of its obligations or the exercise of any of its rights thereunder will conflict with or result in a breach of any law, regulation, judgment, order, authorization, agreement or obligation applicable to it or cause any limitation placed on it or the powers of its directors to be exceeded or result in the creation of or oblige the Borrower to create an Encumbrance in respect of any of its property or assets except in favor of the Security Agent under or pursuant to the Security Documents;

(e) Authorizations: all authorizations and any third party consent required from any governmental or other authority or from any shareholders or creditors of the Borrower for or in connection with the execution, validity and performance of the Finance Documents have been obtained and are in full force and effect and there has been no default under the conditions of any of the same;

(f) No filings or taxes: it is not necessary in order to ensure the validity, enforceability, priority or admissibility in evidence in proceedings of any of the Finance Documents in Singapore or any other relevant jurisdiction that any of them or any other document be filed or registered with any authority in Singapore or elsewhere or that any tax be paid in respect thereof except that the Debenture is required to be registered with the Singapore Accounting and Corporate Regulatory Authority within thirty (30) days of their respective execution and the Debenture is required to be stamped with the relevant amount of stamp duty in Singapore;

(g) No litigation: no litigation, arbitration or administrative proceeding is currently taking place or pending or, to the knowledge of the Borrower, threatened against the Borrower or its assets or revenues;

(h) No default: the Borrower is not in default under any law, regulation, judgment, order, authorisation, agreement or obligation applicable to it or its assets or revenues, the consequences of which default could have a Material Adverse Effect, and no Event of Default or Potential Event of Default has occurred;

(i) No Encumbrances: no Encumbrance exists over all or any part of the property, assets or revenues of the Borrower to secure the indebtedness of its Holding Company, the Ultimate Holding Company or any other person except as created by the Security Documents or liens arising by operation of law in the ordinary course of business or as previously disclosed in writing to and agreed by the Facility Agent;

(j) No indebtedness: the Borrower has no indebtedness to any party except indebtedness arising in the ordinary course of its business or as previously disclosed in writing to and agreed by the Facility Agent;

(k) Financial statements: the most recent audited financial statements of the Borrower for the time being (including the audited profit and loss account and balance sheet) were prepared in accordance with applicable laws and regulations of Singapore and generally accepted accounting principles and policies consistently applied and show a true and fair view of the financial position of the Borrower as at the end of, and the results of its operations for, the financial period to which they relate and, as at the end of such period the Borrower did not have any significant liabilities (contingent or otherwise) or any unrealized or anticipated losses which are not disclosed by or reserved against in, such financial statements, and there has been no material adverse change in the business or financial condition of the Borrower since the date of such financial statements;

(l) No misleading information: all information provided to the Finance Parties by or on behalf of the Borrower in connection with the Facility is true and accurate in all material respects and all forecasts and projections contained therein were arrived at after due and careful consideration on the part of the Borrower and were, in its considered opinion, fair and reasonable when made; the Borrower is not aware of any fact which has not been disclosed in writing to the Facility Agent which might have a Material Adverse Effect or which might affect the willingness of the Lenders to lend upon the terms of this Agreement;

(m) No immunity: the Borrower is generally subject to civil and commercial law and to legal proceedings and neither the Borrower nor any of its assets or revenues is entitled to any immunity or privilege (sovereign or otherwise) from any set-off, judgment, execution, attachment or other legal process;

(n) *Pari Passu*: the Borrower' s obligations under this Agreement will at all times rank at least *pari passu* in all respects with all its other unsecured and unsubordinated obligations, except those which in a winding-up of the Borrower would be preferred solely by operation of law; and

(o) Accuracy of Particulars: the particulars of the Charged Accounts set out in the Schedule 3 are accurate.

10.2 Continuing Representation and Warranty. The Borrower also represents and warrants to and undertakes with each of the Finance Parties that the foregoing representations and warranties will be true and accurate throughout the continuance of the Finance Documents with reference to the facts and circumstances subsisting from time to time.

10.3 Acknowledgement of Reliance. The Borrower acknowledges that each of the Finance Parties has entered into this Agreement in reliance upon the representations and warranties contained in this Clause.

11. Undertakings

11.1 Affirmative Undertakings. The Borrower undertakes and agrees with each Finance Party throughout the continuance of the Finance Documents and so long as any sum remains owing thereunder that the Borrower will, unless the Majority Lenders otherwise agree in writing:

(a) Financial and other information: supply to the Facility Agent in sufficient number for each Lender:

(i) as soon as they are available, but in any event within one hundred and eighty (180) days after the end of each financial year of the Borrower, copies of its financial statements in respect of such financial year (including a profit and loss account and balance sheet) audited and certified without qualification by an internationally recognized firm of independent accountants acceptable to the Facility Agent;

(ii) as soon as they are available, but in any event within ninety (90) days after the end of each half of each financial year of the Borrower, copies of its unaudited financial statements (including a profit and loss account and balance sheet) prepared on a basis consistent with the audited financial statements of the Borrower together with a certificate signed by the principal financial officer of the Borrower to the effect that such financial statements are true in all respects and present fairly the financial position of the Borrower as at the end of, and the results of its operations for, such half-year period;

(iii) within thirty (30) days of each date for the provision of the accounts referred to in (i) and (ii) above, a certificate signed by one of the directors of the Borrower certifying that there did not exist any Event of Default or Potential Event of Default as at the end of such half year (or if an Event of Default or Potential Event of Default did exist specifying the same). Each such certificate shall be accompanied by a certificate from the auditors of the Borrower certifying whether or not the financial undertakings referred to in Clause 11.3 (*Financial Undertakings*) had been complied with throughout such half-year;

(iv) at the time of issue, copies of all statements and circulars to the shareholders or to any class of creditors of the Borrower;

(v) promptly on request, such additional financial or other information (including, but not limited to, cash flows and profit and loss projections) relating to the Borrower as the Facility Agent may from time to time reasonably request;

(b) Notification of default: promptly inform the Facility Agent of:

(i) the occurrence of any Event of Default or Potential Event of Default;

(ii) any litigation, arbitration or administrative proceeding as referred to in Clause 10.1(g) (*No Litigation*) which involves a claim against the Borrower in an amount not less than US$500,000;

(c) Compliance with laws: maintain its corporate existence and conduct its business in a proper and efficient manner and in compliance with all laws, regulations, authorizations, agreements and obligations applicable to it and pay all taxes imposed on it when due;

(d) Ownership: procure that there is no change of the shareholdings in or ownership or control (direct or indirect) of the Borrower which would have a Material Adverse Effect;

(e) Amendments to constitution: procure that no amendment or supplement is made to the memorandum or articles of association of the Borrower without the prior written consent of the Facility Agent (which consent shall not be unreasonably withheld);

(f) Authorizations: maintain in full force and effect all such authorizations as are referred to in Clause 10.1(e) (*Authorizations*), and take immediate steps to obtain and thereafter maintain in full force and effect any other authorizations which may become necessary or advisable for the purposes stated therein and comply with all conditions attached to all authorizations obtained;

(g) Ranking of obligations: ensure that its obligations under this Agreement at all times rank at least *pari passu* in all respects with all other unsecured and unsubordinated obligations of the Borrower, except those which in a winding-up of the Borrower would be preferred solely by operation of law;

(h) Use of proceeds: use the Facility exclusively for the purposes specified in Clause 2.2 (*Purpose*);

(i) Payment obligations: punctually pay all sums due from it and otherwise comply with its obligations under the Finance Documents;

(j) Utilization of Gold: use the Gold supplied by the Beneficiary under the SBFMA exclusively for the purpose of supporting its production of gold bonding wire;

(k) Payment under SBFMA: pay all fees, interest, expenses, charges and all other amounts due and payable by it to the Beneficiary under the SBFMA through the relevant Charged Accounts;

(l) Compliance with SBFMA: at all time, comply with its obligations under the SBFMA;

(m) Maintenance of Gold: at all times, maintain all the Gold owned by it (already purchased and settled in full by the Borrower), which does not form part of the Gold supplied or to be supplied by the Beneficiary under the SBFMA, at a minimum Market Value of at least US$3,000,000;

(n) Books and records on Gold: keep proper records and books of account in respect of its business including, without limitation, in respect of all the Gold Inventories and permit the Lenders, the Facility Agent and/or any professional consultants appointed by the Lenders or the Facility Agent at any time to inspect and examine the records and books of account in respect of such Gold Inventories to verify the level of fully paid and/or unpaid Gold;

(o) Payment into Charged Accounts: maintain the Charged Accounts and pay or procure that all cash collections (whether principal, interest or otherwise) and all other cash proceeds, revenues or receivables in relation to the sale or realization of any Gold Inventory are paid forthwith and directly into the relevant Charged Accounts;

(p) Undertakings relating to SBFMA: supply and/or provide to the Facility Agent documentary evidence satisfactory to the Facility Agent showing:

(i) on a daily basis, the day-end Gold quantity under the SBFMA; and

(ii) on a daily basis, the day-end Gold quantity which has been purchased and paid for by the Borrower;

(iii) any fixings made by the Borrower with the Beneficiary for any purchase of Gold under the SBFMA with confirmation from the Beneficiary in relation thereto;

(iv) any payments due and payable by it to the Beneficiary for any purchase of Gold under the SBFMA;

(v) any deliveries of Gold from the Beneficiary to the Borrower; and

(iv) any outgoing shipments of Gold from the Borrower;

(q) Undertakings relating to SBFMA: supply and/or provide to the Facility Agent:

(i) a copy of the SBFMA certified as a true copy by a director of the Borrower;

(ii) weekly statements from the Beneficiary, showing all daily trading movements and outstanding balances of the Gold (supplied under the SBFMA) in the Borrower' s possession and the daily fees/ amounts payable by the Borrower to the Beneficiary. The Borrower shall procure that such statements are sent directly by the Beneficiary to the Facility Agent;

(iii) copies of the weekly projections provided by it to the Beneficiary showing the Borrower' s Gold requirement;

(iv) monthly summary statements prepared by the Beneficiary detailing the daily balances of Gold delivered to the Borrower (in troy ounces), invoices and fees paid and fees due from the Borrower to the Beneficiary;

(v) quarterly top ten (10) customers aging report of the Borrower;

(vi) copies of any request from the Borrower to the Beneficiary for any replenishment of Gold; and

(vii) half-yearly report on the form, quantity and state of any outstanding Gold in the Borrower' s possession.

(r) Others:

(i) file with ACRA the deed of release and discharge in respect of the Rothschild Charge referred to in Clause 3.1(e) within five (5) Business Days from the date of such deed of release and discharge to notify ACRA of the release and discharge in full of the Rothschild Charge;

(ii) file with ACRA and the relevant authorities all the relevant documents relating to the increase in the share capital of the Borrower and the allotment of shares in the share capital of the Borrower to AFW within one (1) month of the date of the issuance of the first Guarantee;

(iii) procure that AFW file with ACRA the deed of release and discharge in respect of the AFW Debenture and the AFW Further Debenture referred to in Clause 3.1(g) within five (5) Business Days from the date of such deed of release and discharge to notify ACRA of the release and discharge in full of the AFW Debenture and the AFW Further Debenture.

(s) K&S Packaging Materials: maintain its sole proprietorship of K&S Packaging Materials and not sell, transfer or otherwise dispose of any of its rights, title and interest in the business name "K&S Packaging Materials".

11.2 Negative Undertakings. The Borrower undertakes and agrees with each Finance Party throughout the continuance of the Finance Documents and so long as any sum remains owing thereunder that the Borrower will not, unless the Majority Lenders otherwise agree in writing:

(a) Merger: merge or consolidate with any other entity or take any step with a view to dissolution, liquidation or winding-up;

(b) Reduction of capital: purchase or redeem any of its issued shares or reduce its share capital or make a distribution of assets or other capital distribution to its shareholders or make a repayment in respect of any loans or other indebtedness owing to any of its shareholders;

(c) Dividends: declare or pay any dividend or make any other income distribution to its shareholders in excess of its net profit available for distribution in the relevant financial year of the Borrower;

(d) Subsidiaries: establish or acquire any Subsidiary or invest in any other entity or provide financing to any person the consequences of which would have a Material Adverse Effect;

(e) Change of business: materially change the nature of its business from that carried on at the date of this Agreement;

(f) Disposals: sell, transfer or otherwise assign, deal with or dispose of all or any part of its business or (except for good consideration in the ordinary course of its business) its assets or revenues, whether by a single transaction or by a number of transactions whether related or not;

(g) Lending; guarantees: make or grant any loan or advance or guarantee or in any other manner be or become directly or indirectly or contingently liable for any indebtedness or other obligation of any other person (including without limitation the Borrower' s Holding Company, the Ultimate Holding Company or the Borrower' s related company(s), except as may be necessary in the ordinary course of the Borrower' s business;

(h) Negative pledge: create or attempt or agree to create or permit to arise or exist any Encumbrance over all or any part of its property, assets or revenues except (i) any Encumbrance created under the Security Documents or (ii) any possessory lien arising by operation of law in the ordinary course of its business and not in connection with the borrowing or raising of money or credit and provided that the debt which is thereby secured is paid when due or contested in good faith by appropriate proceedings and properly provisioned. For the purposes of this Clause 11.2(h) only, the term "Encumbrance" shall mean (a) any mortgage, charge, pledge, lien, encumbrance, hypothecation or other security interest or security arrangement of any kind, (b) any arrangement whereby any rights are subordinated to any rights of any third party; and (c) any contractual right of set-off other than those arising pursuant to contracts entered into in the ordinary course of business on normal commercial terms.

(i) Amendment to SBFMA: amend, vary or supplement the SBFMA without the prior written consent of the Facility Agent (which consent shall not be unreasonably withheld); or

(j) Other obligations: enter into any agreement or obligation which might materially and adversely affect its financial or other condition.

11.3 Financial Undertakings. The Borrower undertakes with each of the Finance Parties in the terms of Schedule 2.

12. Events of Default

12.1 Events of Default. Each of the following events and circumstances shall be an Event of Default:

(a) Non-payment: the Borrower fails to pay any sum payable under the SBFMA or any Finance Document when due or otherwise in accordance with the provisions thereof and does not remedy such failure to the Facility Agent' s satisfaction within three (3) Business Days after receipt of written notice from the Facility Agent requiring it to do so;

(b) Other obligations: the Borrower fails duly and punctually to perform or comply with any of its obligations or undertakings under the SBFMA which in the opinion of the Lenders is material or the Borrower fails duly and punctually to perform or comply with any of its obligations or undertakings under any Finance Document and, in each case, in respect only of a failure which in the opinion of the Facility Agent is capable of remedy and which is not a failure to pay money, does not remedy such failure to the Facility Agent' s satisfaction within three (3) Business Days (or such longer period as the Facility Agent may approve) after receipt of written notice from the Facility Agent requiring it to do so;

(c) Misrepresentation: any representation or warranty made or deemed to be made by the Borrower in or in connection with the SBFMA or any Finance Document proves to have been incorrect or misleading in any respect considered by the Majority Lenders to be material;

(d) Cross default: the Borrower defaults or receives notice of default under the SBFMA or any agreement or obligation relating to borrowing or any indebtedness of the Borrower in an aggregate amount of not less than US$1,000,000 (or its equivalent in other currency) becomes payable or capable of being declared payable before its stated maturity or is not paid when due or any Encumbrance, guarantee or other security now or hereafter created by the Borrower becomes enforceable unless such default or indebtedness is due to or arises as a result of a bona fide dispute which is being contested in good faith by the Borrower and in respect of which appropriate reserves have been made;

(e) Authorization: any of the authorizations referred to in Clause 10.1(e) (*Authorizations*) is not granted or ceases to be in full force and effect or is modified in a manner which, in the opinion of the Majority Lenders, might have a Material Adverse Effect, or if any law, regulation, judgment or order (or the repeal or modification of any of the foregoing) suspends, varies, terminates or excuses performance by the Borrower of any of its obligations under the SBFMA or any Finance Document or purports to do any of the same;

(f) Creditors' process: a creditor takes possession of all or any part of the business or assets of the Borrower or any execution or other legal process is enforced against the business or any asset of the Borrower and is not discharged within fourteen (14) days;

(g) Damage to Gold: any of the Gold Inventories is seized, expropriated or made subject to any compulsory acquisition or requisition for use or is wholly or substantially damaged or destroyed, or any loss or damage occurs in respect of any such Gold Inventory whether insured or not, and in the opinion of the Majority Lenders reasonably held, such loss or damage is substantial or the Borrower' s ability to perform any of its obligations under any Finance Document has been or will be materially and adversely affected;

(h) Insolvency proceedings: a petition is presented or a proceeding is commenced or an order is made or an effective resolution is passed or a notice is issued convening a meeting for the purpose of passing any resolution or any other step is taken by any person for the winding-up, insolvency, judicial management, administration, reorganization, reconstruction, dissolution or bankruptcy of the Borrower or for the appointment of a liquidator, receiver, judicial manager, administrator, trustee or similar officer of the Borrower or of all or any part of its business or assets;

(i) Suspension of payments: the Borrower stops or suspends payments to the Beneficiary or any of its creditors generally or is unable or admits its inability to pay its debts as they fall due or seeks to enter into any composition or other arrangement with its creditors or is declared or becomes bankrupt or insolvent;

(j) Analogous events: any event occurs which in the opinion of the Facility Agent appears to have an effect analogous to the matters set out in paragraphs (f), (h) or (i) above in any jurisdiction in which the Borrower is incorporated or carries on business;

(k) Cessation of business; expropriation: the Borrower ceases or threatens to cease to carry on its business or any substantial part thereof or changes or threatens to change the nature or scope of its business or the Borrower disposes of or threatens to dispose of or any governmental or other authority expropriates or threatens to expropriate all or any substantial part of its business or assets;

(l) Other parties: any event which has an effect equivalent or similar to the events described in paragraphs (f), (h), (i) or (j) occurs, *mutatis mutandis*, in relation to the Ultimate Holding Company or any Subsidiary of the Borrower;

(m) Unlawfulness: the SBFMA or any Finance Document or any provision thereof ceases for any reason to be in full force and effect or is terminated or jeopardized or becomes invalid or unenforceable or if there is any dispute regarding the validity or enforceability of the same, which is the opinion of the Lenders is material or if there is any purported termination or repudiation of the same or it becomes impossible or unlawful for the Borrower or any other party thereto to perform any of its obligations thereunder or for any Finance Party to exercise all or any of its rights, powers and remedies thereunder or any undertaking in Clause 11.1 (*Affirmative Undertakings*) is not enforceable as such and the Borrower fails to do, or fails to refrain from doing, the activity which it purported to undertake to do or, as the case may be, not to do;

(n) Material adverse change: any situation occurs which in the opinion of the Majority Lenders gives reasonable grounds to believe that a material adverse change in the business of financial condition of the Borrower has occurred or that the ability of the Borrower to perform its obligations under the SBFMA or any Finance Document has been or will be materially and adversely affected;

(o) Declared Company: the Borrower is declared by the Minister of Finance to be a declared company under the provisions of Part IX of the Companies Act (Chapter 50) of the Statutes of the Republic of Singapore; or

(p) K&S Packaging Materials: the Borrower ceases to be the sole proprietor of K&S Packaging Materials or otherwise disposes all or any part of its rights, title and interest in the business name "K&S Packaging Materials".

12.2 Declarations. If an Event of Default has occurred the Facility Agent may, and upon written request by the Majority Lenders shall, by written notice to the Borrower:

(a) declare the Facility terminated whereupon the obligation of the Lenders to procure the issue of, and of the Issuing Bank to issue, any Guarantee (if none has been already been issued) shall immediately cease; and

(b) require the Borrower to pay to the Facility Agent, such amount as the Facility Agent shall certify to be equal to the Contingent Liability of all the Lenders outstanding at the date of such notice (to the extent that such amount has not already been paid or reimbursed by the Borrower) and all other sums whatsoever, whether by way of fees, indemnities or otherwise, payable by the Borrower under the Facility (or any part thereof), whereupon such amount shall become immediately or in accordance with such notice due and payable.

13. DEFAULT INTEREST

If the Borrower fails to pay any sum payable under this Agreement when due, the Borrower shall pay interest on such sum from and including the due date to the date of actual payment (as well after as before judgment) at the rate per annum conclusively determined by the Facility Agent to be the aggregate of (i) two percent (2%) and (ii) the rate from time to time certified by each of the Lenders to be the rate representing the cost to it of funding the unpaid sum. Interest at the rate or rates determined from time to time as aforesaid shall accrue from day to day, shall be calculated on the basis of the actual number of days elapsed and a 360 day year and shall be payable from time to time on demand.

14. Set-off and Pro Rata Sharing

14.1 Set-Off. If an Event of Default has occurred each Finance Party shall have the right, without notice to the Borrower or any other person, to set off and apply any credit balance on any account (whether subject to notice or not and whether matured or not and in whatever currency) of the Borrower with such Finance Party, and any other indebtedness owing by such Finance Party to the Borrower, against the liabilities of the Borrower under the Finance Documents to which it is a party, and each Finance Party is authorized to purchase with the monies standing to the credit of any such account such other currencies as may be necessary for this purpose. This Clause shall not affect any general or banker' s lien, right of set-off or other right to which any Finance Party may be entitled.

14.2 *Pro Rata* Sharing. If a Finance Party (a "Recovering Finance Party") receives or recovers any amount from the Borrower or otherwise in respect of sums due from the Borrower (other than in accordance with Clause 9.2 (*Payments by Borrower*)) and applies that amount to a payment due under the Finance Documents then:

(a) the Recovering Finance Party shall, within three (3) Business Days, notify details of the receipt or recovery, to the Facility Agent;

(b) the Facility Agent shall determine whether the receipt or recovery is in excess of the amount the Recovering Finance Party would have been paid had the receipt or recovery been received or made by the Facility Agent and distributed in accordance with Clause 9.2 (*Payments by Borrower*), without taking account of any tax which would be imposed on the Facility Agent in relation to the receipt, recovery or distribution; and

(c) the Recovering Finance Party shall, within three (3) Business Days of demand by the Facility Agent, pay to the Facility Agent an amount (the "Sharing Payment") equal to such receipt or recovery less any amount which the Facility Agent determines may be retained by the Recovering Finance Party as its share of any payment to be made, in accordance with this Clause 14.2.

The Facility Agent shall treat the Sharing Payment as if it had been paid by the Borrower and distribute it between the Finance Parties (other than the Recovering Finance Party) in accordance with this Clause 14.2. On a distribution by the Facility Agent under this Clause 14.2, the Recovering Finance Party will be subrogated to the rights of the Finance Parties which have shared in the redistribution. If and to the extent that the Recovering Finance Party is not able to rely on its rights of subrogation, the Borrower shall be liable to the Recovering Finance Party for a debt equal to the Sharing Payment which is immediately due and payable. If any part of the Sharing Payment received or recovered by a Recovering Finance Party becomes repayable and is repaid by that Recovering Finance Party, then:

(i) each Finance Party which has received a share of the relevant Sharing Payment pursuant to this Clause 14.2 shall, upon request of the Facility Agent, pay to the Facility Agent for the account of that Recovering Finance Party an amount equal to the appropriate part of its share of the Sharing Payment (together with an amount as is necessary to reimburse that Recovering Finance Party for its proportion of any interest on the Sharing Payment which that Recovering Finance Party is required to pay); and

(ii) that Recovering Finance Party' s rights of subrogation in respect of any reimbursement shall be cancelled and the Borrower will be liable to the reimbursing Finance Party for the amount so reimbursed.

This Clause 14.2 shall not apply to the extent that the Recovering Finance Party would not, after making any payment pursuant to this Clause, have a valid and enforceable claim against the Borrower. A Recovering Finance Party is not obliged to share with any other Finance Party any amount which the Recovering Finance Party has received or recovered as a result of taking legal or arbitration proceedings, if it notified that other Finance Party of the legal or arbitration proceedings and that other Finance Party had an opportunity to participate in those legal or arbitration proceedings but did not do so as soon as reasonably practicable having received notice and did not take separate legal or arbitration proceedings.

14.3 No Encumbrance. Clause 14.2 (*Pro Rata Sharing*) shall not constitute and shall not be construed as constituting an Encumbrance by any Lender over all or any part of any sum received or recovered by it in the manner set out in Clause 14.2 (*Pro Rata Sharing*).

15. The Finance Parties

15.1 Appointment. Each of the other Finance Parties hereby appoints the Facility Agent to act as its agent in relation to the administration of the Facility and the Security Agent to act as its agent and trustee in relation to the Security Documents and authorizes the Security Agent to enter into the Security Documents on its behalf and authorizes the Security Agent to settle the rights, benefits and interests as described in each of the Security Documents on trust on its behalf and authorizes each of the Facility Agent and the Security Agent to take such action on its behalf and to exercise and enforce such rights, powers and discretions as are expressly or by implication delegated to the Facility Agent or, as the case may be, the Security Agent by the terms of this Agreement and the Security Documents and such rights, powers and discretions as are reasonably incidental thereto.

15.2 Declaration of Trust. The Security Agent hereby declares that it will hold the Trust Property upon trust for the Finance Parties from time to time in accordance with the Finance Documents. The trusts of the Trust Property shall remain in full force and effect until such date as the Security Agent on the instructions of the Facility Agent shall specify on which:

(i) all the obligations which are secured by the Security Documents have been fully and finally discharged; and

(ii) no Finance Party is under any commitment, obligation or liability (whether actual or contingent) to make advances or provide any other financial accommodation to the Borrower under any Finance Document,

after which the trusts set out in this Agreement shall be wound up and the Security Agent shall release, without recourse or warranty, all of the security created by the Security Documents.

15.3 Covenant to Pay. Without prejudice to its respective obligations to the Finance Parties under the other provisions of the Finance Documents to which it is a party, the Borrower undertakes to the Security Agent to pay to the Security Agent from time to time on demand (any such demand being expressed to be made under this Clause) all amounts from time to time due and payable by it for the account of any other party to this Agreement pursuant to any Finance Document to the extent not already paid. Any payment made pursuant to any such demand shall, to the extent of such payment, also discharge the Borrower' s obligation to make payment for the account of the person concerned.

15.4 Nature of Duties. The duties and functions of the Facility Agent and the Security Agent shall be of a mechanical and administrative nature only. The Facility Agent shall not be deemed to be a trustee of any Finance Party except as specified in the Finance Documents and shall not be deemed to be an agent or trustee of the Borrower for any purpose. The Facility Agent and the Security Agent shall have no duties or obligations except those expressly set out in the Finance Documents.

15.5 Specific Duties. The Facility Agent shall:

(a) promptly account to each Lender for its due proportion of all payments received by the Facility Agent from the Borrower or otherwise in connection with the Facility;

(b) promptly inform each Lender of:

(i) the contents of any document which the Facility Agent receives in respect of the Facility and which it considers to be material; and

(ii) any material Event of Default of which an officer of the Facility Agent acting in respect of the Finance Documents and in his capacity as such has actual knowledge;

(c) except as otherwise provided in this Agreement, take or refrain from taking any action in accordance with any lawful and proper instructions given to it by the Majority Lenders, and any such instructions shall be binding on all the Finance Parties, and the Facility Agent shall have no liability to the Borrower or any other Finance Party if it acts (or refrains from taking any action) in accordance with any lawful and proper instructions of the Majority Lenders;

(d) consult with the other Finance Parties to the extent practicable before making any declaration or demand under Clause 12.2 (*Declarations*) or effecting any amendment or waiver under Clause 16 (*Amendment*) and Clause 17 (*Waiver and Severability*) respectively.

15.6 Rights and Powers. The Facility Agent may:

(a) perform any of its duties and functions through its directors, officers, employees or agents;

(b) engage and pay for the advice or services of lawyers, accountants or other professional advisers or experts as the Facility Agent may consider necessary or desirable and rely and act upon such advice;

(c) refrain from exercising any of its rights, powers and discretions unless and until instructed to do so, and as to the manner of doing so, by the Majority Lenders, and refrain from acting upon any instructions to take enforcement action until it has been indemnified or secured to its satisfaction against any liabilities, costs and expenses which it may incur;

(d) (but shall not be obliged to) in the absence of any instructions from the Majority Lenders (or, if appropriate, the Lenders), act (or refrain from taking action) as it considers to be in the best interest of the Finance Parties;

(e) refrain from taking any action which in its opinion would or might contravene any law or regulation or render it liable to any person, and do all things which in its opinion may be necessary in order to comply with any law or regulation;

(f) if any Finance Party owes an amount to the Facility Agent under any Finance Document, after giving notice to that Finance Party deduct an amount not exceeding the amount owed by the Finance Party from any payment which the Facility Agent would otherwise be obliged to make to that Finance Party under the Finance Documents and apply the amount deducted in or towards satisfaction of the amount owed to the Facility Agent, and for the purposes of the Finance Documents that Finance Party shall be regarded as having received any amount so deducted;

(g) disclose to the other Finance Parties any information which, in the opinion of the Facility Agent, is received by it in its capacity as the Facility Agent;

(h) deduct from any amount received by it for the account of the other Finance Parties pro rata any unpaid fees, costs and expenses of the Facility Agent incurred by it in connection with the Finance Documents;

(i) assume that no Event of Default or Potential Event of Default has occurred, that any representation made by the Borrower in or in connection with any Finance Document is true and that no party is in breach of its obligations under any Finance Document unless the Facility Agent receives specific written notice to the contrary;

(j) rely upon any communication or document which it believes to be genuine and, as to any matters of fact which can reasonably be expected to be within the knowledge of any other party to any Finance Document, rely upon a certificate signed by or on behalf of that party;

(k) assume that each Lending Office is that identified in Schedule 1 until it has received from the relevant Lender or transferee a notice designating another office as its Lending Office and may act upon such notice until the same is superseded by a further such notice; and

(l) deposit any instruments, documents or deeds delivered to it with any bank or professional custodian or with its or any Finance Party' s legal advisers and shall not be liable for any loss thereby incurred in the absence of any negligence or willful default by it and the Facility Agent shall not be in any way liable for any loss incurred through the misconduct or default of such delegate.

15.7 No Liability to Finance Party. The Facility Agent shall have no liability or obligation to any other Finance Party:

(a) as a result of any failure or delay by the Borrower or any other party in performing its respective obligations under any Finance Document;

(b) for the authorization, execution, legality, validity, enforceability, effectiveness, genuineness or sufficiency of any Finance Document or any other document relevant to this transaction or for the collectability of any sum payable under any Finance Document;

(c) for:

(i) the accuracy or completeness of any other information supplied by any person at any time whether or not such information was or is circulated by the Facility Agent;

(ii) the accuracy of any representation, warranty or statement (whether written or oral) made in or at any time in connection with any Finance Document;

(d) to take any steps to ascertain whether an Event of Default or Potential Event of Default has occurred or whether the Borrower or any other party is otherwise in breach of any of its respective obligations or any representation or warranty under any Finance Document;

(e) to provide any credit or other information relating to the Borrower or any member of the Group or otherwise relating to the Facility, except as expressly stated in this Agreement;

(f) to account for any sum received by the Facility Agent (other than for the account of the other Finance Parties) by way of fees or reimbursement of expenses in connection with any Finance Document or for any benefit received by it arising out of any present or future banking or other relationship with the Borrower or any person connected with the Borrower;

(g) for any delay (or any related consequences) in crediting an account with any amount required to be paid by the Facility Agent under any Finance Document if the Facility Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Facility Agent for that purpose;

(h) as a result of any act or omission by the Facility Agent or any director, officer, employee or agent of the Facility Agent in connection with the Facility, except in the case of the Facility Agent' s negligence or willful misconduct.

Each other Finance Party agrees that it will not seek to make any claim against any director, officer, employee or agent of the Facility Agent in respect of any of the matters described in this Clause 15.7.

15.8 No Liability to Borrower. The Facility Agent shall have no liability or obligation to the Borrower as a result of any failure or delay by any Finance Party or any other party in performing its respective obligations under any Finance Document.

15.9 Indemnity. The Lenders shall indemnify the Facility Agent upon demand from and against all claims, actions, liabilities, damages, penalties, losses, costs and expenses (including legal fees) which the Facility Agent may incur in any way relating to or arising out of any Finance Document or relating to or arising out of any action taken or omitted to be taken by the Facility Agent in seeking to protect, exercise or enforce the rights of the Finance Parties or otherwise in connection with the Facility, unless and to the extent that any of the foregoing results directly from the Facility Agent' s negligence or willful misconduct. The Lenders shall be severally liable under the foregoing indemnity in proportion to their respective Commitments in the Facility. The Borrower shall immediately on demand reimburse each Lender for any payment made under this Clause.

15.10 Acknowledgement by other Finance Parties. Each of the other Finance Parties acknowledges to and agrees with the Facility Agent that:

(a) it has itself been and will continue to be solely responsible for making its own independent analysis of and investigations into the status, creditworthiness, prospects, business, operations, assets and condition of the Borrower, any member of the Group and any other person referred to herein and for making its own decisions as to the entering into or the taking or not taking of any action in connection with this transaction; and

(b) it has not relied upon any representation or statement made by the Facility Agent as being an inducement to enter into any of the Finance Documents.

15.11 Certifications by Facility Agent. Where any provision of any Finance Document provides that the Facility Agent may certify or determine an amount or rate payable by the other Finance Parties or any of them, a certificate by the Facility Agent as to such amount or rate shall be conclusive and binding on each such other Finance Party in the absence of manifest error.

15.12 No Restriction of Business. The Facility Agent shall have the same rights and powers in its capacity as a Lender as any other Lenders and may exercise such rights and powers as if it was not acting as an agent in relation to any of the Finance Documents. The Facility Agent may engage in any banking or other business with the Borrower or any person connected with the Borrower and may treat as confidential, and shall not be obliged to disclose to any other Finance Party, any information which it receives in connection with such other business.

15.13 Resignation of Facility Agent. The Facility Agent may resign at any time by giving not less than thirty (30) days' prior written notice to the Lenders and the Borrower. The Majority Lenders, on behalf of the Finance Parties, shall have the right to appoint a successor Facility Agent, but if they do not do so within the period of such notice the retiring Facility Agent may appoint a successor Facility Agent. The Facility Agent' s resignation shall not take effect until a successor Facility Agent has been appointed. Upon such appointment the successor Facility Agent shall succeed to and become vested with all the rights, powers, discretions and duties of the retiring Facility Agent and the retiring Facility Agent shall be discharged from any further duties and obligations hereunder. The parties to this Agreement agree to execute whatever documents may be necessary to effect such a change of Facility Agent. After any retiring Facility Agent' s resignation the provisions of this Clause 15 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Facility Agent.

15.14 Security Agent. The following provisions shall apply to the Security Agent in its capacity as trustee in relation to any of the Security Documents:

(a) the Security Agent:

(i) may accept without enquiry or objection such title as the Borrower may have to any assets which are subject to any of the Security Documents and shall not be liable for any lack of or defect in such title, whether apparent or not and whether capable of remedy or not;

(ii) shall not be liable for any omission or delay in giving notice to any third party, or effecting any filing or registration, or obtaining any authorization, or otherwise perfecting the security constituted by any of the Security Documents;

(iii) shall not be obliged to hold any share certificates, title or other documents relating to the assets charged under any of the Security Documents in its own possession or to take any steps to protect or preserve such documents, and may permit the Borrower (or its lawyers or representatives) to retain such documents in its possession if it is reasonable in the circumstances;

(iv) may procure that any investment or all or any part of the property and assets charged or assigned under the Security Documents, or the proceeds thereof, is held and/or registered in the name of its nominee;

(b) unless provided otherwise in any Security Document, monies which are received by the Security Agent and held by it as trustee in relation to any of the Security Documents may be invested in the name of or under the control of the Security Agent in any investment authorized by Singapore law for the investment of trust money by trustees or in any other investments which may be selected by the Security Agent, and if not otherwise invested such monies may be placed on deposit in the name of or under the control of the Security Agent at such bank or institution (including the Security Agent) and upon such terms as the Security Agent may think fit;

(c) each of the other Finance Parties authorizes the Security Agent (by itself or by such person(s) as it may nominate) to execute and enforce the Security Documents as trustee, as agent or as otherwise provided, and confirms that the Security Agent shall have an independent right to release from any Security Document any asset permitted to be disposed of under this Agreement or the relevant Security Document and authorizes the Security Agent to execute any document which is reasonably required to achieve the release of any property or asset subject to the relevant Security Document as permitted or required by the terms of this Agreement or the relevant Security Document;

(d) the Security Agent may appoint any person established or resident in any jurisdiction (whether a trust corporation or not) to act as a trustee or agent, either separately or jointly with the Security Agent, in relation to any of the Security Documents if the Security Agent considers that such an appointment is necessary or desirable for the purpose of conforming with any legal requirement in any relevant jurisdiction or otherwise for the purpose of holding, administering, protecting or enforcing any of the Security Documents, and any such trustee or agent shall have such powers and discretions (not exceeding those conferred on the Security Agent) and such obligations as shall be conferred or imposed on it by the Security Agent;

(e) in relation to any Security Document governed by a law other than Singapore law, each Finance Party:

(i) shall execute and deliver any Security Document which, under applicable law, cannot be entered into by the Security Agent on its behalf, for example, because the security constituted by the Security Document must be entered into by it as creditor having a pro rata claim of the claims secured thereby;

(ii) grants the Security Agent power of representation in relation to the execution, enforcement and administration of the Security Documents; and

(iii) shall enter into such notarial deeds or other deeds or documents as are required under any applicable law relating to the security constituted by the Security Documents to enable the Security Agent or another attorney-in-fact to execute any Security Document on such Finance Party' s behalf and administer and enforce such security;

(f) Clauses 15.6 to 15.13 shall also apply to the Security Agent as if references therein to the Facility Agent in its capacity as such were references to the Security Agent in its capacity as trustee in relation to any of the Security Documents.

15.15 No Partnership. Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership between any of the parties to this Agreement.

16. Amendment

Any amendment or waiver of any provision of this Agreement and any waiver of any default under this Agreement shall only be effective if made in writing and signed by or on behalf of the party against whom the amendment or waiver is asserted. For these purposes, any amendment or waiver which is made in writing by the Facility Agent at the direction of the Majority Lenders shall be binding on all Finance Parties, except that the written approval of all Lenders is required where that amendment or waiver relates to:

(a) an increase of the Facility or of any Lender' s Commitment or the length of the Availability Period or the Guarantee Period or the amount or currency of or the due date for any payment of principal or interest on the Facility;

(b) a reduction in the rate or rates of interest or any commitment or other fees or other amounts payable to the Lenders hereunder;

(c) any voluntary or mandatory prepayment;

(d) any amendment of the definition of "Majority Lenders" or of the provisions of this Clause;

(e) the provision of any guarantee of or security for the Borrower' s obligations under this Agreement or the release or amendment of any Security Document or the release of any security created thereby; or

(f) any provision of this Agreement which expressly requires the consent of all Lenders.

Any amendment affecting the rights of the Facility Agent or the Security Agent shall also require the consent of the Facility Agent or the Security Agent as appropriate.

17. Waiver and Severability

Time is of the essence of this Agreement but no failure or delay by any Finance Party in exercising any right, power or remedy hereunder shall impair such right, power or remedy or operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy. The rights, powers and remedies herein provided are cumulative and do not exclude any other rights, powers and remedies provided by law. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Agreement, shall not be affected or impaired thereby.

18. Miscellaneous

18.1 Execution. This Agreement shall become effective as of the date hereof.

18.2 Entire Agreement. The Finance Documents constitute the entire obligation of the Finance Parties and supersede any previous expressions of intent or understandings in respect of this transaction.

18.3 Publicity. No announcement or other publicity in connection with this Agreement or relating in any way to the Facility shall be made or arranged except by the Facility Agent or with the Facility Agent' s prior written consent.

18.4 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts which when taken together shall be deemed to constitute one agreement.

19. Assignment AND Lending Offices

19.1 The Borrower. The Borrower shall not assign or transfer all or any part of its rights or obligations under this Agreement.

19.2 The Issuing Bank. The Issuing Bank shall not assign or transfer all or any part of its rights or obligations under this Agreement.

19.3 Assignment and Transfer by Lender. Any Lender (an "assignor lender") may at any time, subject to (a) providing the Facility Agent with prior notice, and (b) the consent of the Issuing Bank assign and/or transfer to any one or more banks or other financial institutions (an "assignee lender") all or any part of the rights, benefits and obligations of the assignor lender under or arising out of this Agreement, Provided that:

(a) if the assignor lender is an Initial Lender, it shall also obtain the prior consent of the other Initial Lender;

(b) the assignee lender shall, by delivery of such undertaking or agreement as the Facility Agent and the Issuing Bank may approve and prior to the assignment and/or transfer taking effect, agree to assume and perform that proportion of the assignor lender' s obligations hereunder as corresponds with the proportion of its rights hereunder so assigned and/or transferred;

(b) the Borrower shall execute and do all such transfers, assignments, assurances, acts and things as the Facility Agent or the Issuing Bank may require for perfecting and completing the assignment and/or transfer of such rights, benefits and obligations; and

(c) the assignor lender (and not the Borrower) shall reimburse the Facility Agent and the Issuing Bank upon demand for all reasonable costs, charges and expenses (including legal fees) incurred by it in preparing or approving any document as aforesaid or otherwise in connection with such assignment and/or transfer.

Upon the assignment and/or transfer taking effect (i) the assignor lender shall be released from such obligations and the Borrower and (if and to the extent applicable) the Finance Parties shall look only to the assignee lender in respect of such obligations and (ii) references in the Finance Documents to the assignor lender shall be construed accordingly as references to the assignee lender or the assignor lender, as relevant. All agreements, representations and warranties made herein shall survive any assignments made pursuant to this Clause and shall inure to the benefit of all assignee lenders as well as all assignor lenders.

19.4 Participations. A Lender may at any time grant one or more participations in its rights and/or obligations under the Finance Documents but no other party thereto shall be concerned in any way with any participation so granted.

19.5 Disclosure. A Finance Party may disclose to (a) any assignee, transferee or participant or potential assignee, transferee or participant, (b) any Holding Company of such Finance Party or (c) any Subsidiary of such Finance Party or of its Holding Company on a confidential basis such information about the Borrower as such Finance Party shall consider appropriate. Any Finance Party and any person to whom disclosure has been made pursuant to this Clause may also make such disclosures as may be required by any applicable law of Singapore or elsewhere.

19.6 Lending Offices. Each Lender shall act initially through its Lending Office specified in Schedule 1 and may act subsequently through any of its other offices as selected by it from time to time. A Lender shall promptly notify the Facility Agent of any change of its Lending Office.

19.7 No Increased Cost, Taxes or Deductions. The Borrower shall not become liable to pay any amount under Clause 7.1 *(No Deductions or Withholdings)* if and to the extent that the liability to pay that amount would arise at the time of, and solely as a result of, an assignment or transfer of rights, benefits or obligations or a change of Lending Office pursuant to Clause 19.3 (*Assignment and Transfer by Lenders*) or Clause 19.6 *(Lending Offices)*, unless:

(a) Approval: the Borrower shall have previously requested such assignment, transfer or change; or

(b) Unlawfulness: it would have been or would have become unlawful for the Lender which has transferred such rights, benefits or obligations or changed its Lending Office to have continued to participate in the Facility or to have continued to do so through its previous Lending Office.

20. Notices

20.1 Delivery. Each notice, demand or other communication to be given or made under this Agreement shall be in writing and delivered or sent to the relevant party at its address or fax number set out below (or such other address or fax number as the addressee has by five (5) days' prior written notice specified to the other parties):

To the Borrower: KULICKE & SOFFA (S.E.A.) PTE. LTD.

6 Serangoon North Avenue 5

#03-16

Singapore 554910

Fax Number : (65) 6880 9662

Attention : Ho Siew Foong/ Conrad Wee

To the Facility Agent: NATEXIS BANQUES POPULAIRES

SINGAPORE BRANCH

50 Raffles Place #41-01

Singapore Land Tower

Singapore 048623

Telephone No. : (65) 6224 1455

Fax Number : (65) 6224 8651

Attention : Karen Lim/ Kelly Yan

and to the Lenders at their respective Lending Offices.

20.2 Deemed Delivery. Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the relevant address, (b) if given or made by fax, when despatched with electronic confirmation of complete and error-free transmission, Provided that, if such day is not a working day in the place to which it is sent, such notice, demand or other communication shall be deemed delivered on the next following working day at such place.

20.3 Facility Agent. All communications between the Lenders and the Borrower and/or the Issuing Bank in relation to this Agreement shall be made through the Facility Agent.

20.4 Language. Each notice, demand or other communication hereunder and any other documents required to be delivered hereunder shall be either in English or accompanied by a certified translation thereof into the English language.

21. Governing Law and Jurisdiction

21.1 Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Singapore.

21.2 Jurisdiction. The Borrower irrevocably agrees for the benefit of each of the Finance Parties that any legal action or proceeding arising out of or relating to this Agreement may be brought in the courts of Singapore and irrevocably submits to the non-exclusive jurisdiction of such courts.

21.3 No Limitation on Right of Action. Nothing herein shall limit the right of the Finance Parties to commence any legal action against the Borrower and/or its property in any other jurisdiction or to serve process in any manner permitted by law, and the taking of proceedings in any jurisdiction shall not preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

21.4 Waiver; Final Judgment Conclusive. The Borrower irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Singapore as the venue of any legal action arising out of or relating to this Agreement and agrees not to claim that any court thereof is not a convenient or appropriate forum. The Borrower also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

21.5 Waiver of Immunity. The Borrower irrevocably and unconditionally waives any immunity to which it or its property may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any set-off or legal action in Singapore or elsewhere, including immunity from service of process, immunity from jurisdiction of any court or tribunal, and immunity of any of its property from attachment prior to judgment or from execution of a judgment.

IN WITNESS whereof this Agreement has been executed by the parties hereto as of the date stated at the beginning of this Agreement.

SCHEDULE 1

THE INITIAL LENDERS

Name and Lending Office	Commitment
NATEXIS BANQUES POPULAIRES	US$12,000,000
SINGAPORE BRANCH	
50 Raffles Place #41-01	
Singapore Land Tower	
Singapore 048623	
Telephone No. : (65) 6224 1455	
Fax No. : (65) 6224 8651	
Attention : Clara Hang	
ARAB BANK plc	US$5,000,000
SINGAPORE BRANCH	
Arab Bank plc, Singapore Branch	
80 Raffles Place #32-20	
UOB Plaza 2	
Singapore 048624	

Telephone No.	:	(65) 6533 0055
Fax No.	:	(65) 6532 2150/ (65) 6435 5803
Attn	:	Lynette Boey/ Wong Fook Keong

SCHEDULE 2

FINANCIAL UNDERTAKINGS

The Borrower undertakes and agrees with each of the Finance Parties throughout the continuance of this Agreement and so long as any sum remains owing hereunder that the Borrower will, unless the Majority Lenders otherwise agree in writing, ensure that:

(a) the Total Net Worth shall not at any time be less than twenty nine million United States of America Dollars (US$29,000,000);

(b) the ratio of Total Liabilities to Total Net Worth shall not at any time exceed 2:1;

(c) the ratio of EBITDA to Interest Expense shall not at any time be less than 2.25:1;

(d) the ratio of Total Current Assets to Total Current Liabilities shall at all times exceed 1.2:1.

The financial covenants set out in paragraphs (a) to (d) shall be tested on a semi-annual basis based on the Borrower' s financial year.

"Borrowed Money" means indebtedness (other than ordinary trade indebtedness) incurred in respect of (a) money borrowed or raised, (b) any bond, note, loan stock, debenture or similar instrument, (c) acceptance credit, documentary credit or commercial paper facilities, (d) deferred payments for assets or services acquired, (e) rental payments under leases (whether in respect of land, machinery, equipment or otherwise) entered into primarily as a method of raising finance or of financing the acquisition of the asset leased, (f) guarantees, bonds, standby letters of credit or other instruments issued in connection with the performance of contracts, (g) receivables sold or discounted otherwise than on a non-recourse basis, (h) any other transaction having the commercial effect of borrowing or raising of money (including forward sale or purchase agreements) and (i) guarantees or other assurances against financial loss in respect of Borrowed Money of any person falling within any of (a) to (h) above;

"EBITDA" means, in relation to the Borrower, in respect of any financial year, its earnings before Interest Expense, taxation, depreciation and amortization after exceptional items, determined by reference to the Relevant Financial Statements;

"Relevant Financial Statements" means, at any particular time, the then latest financial statements of the Borrower delivered to the Facility Agent pursuant to Clause 11.1(a) (*Financial and other Information*);

"Total Current Assets" means the amount equal to the aggregate of the assets of the Borrower which, in accordance with generally accepted accounting principles in Singapore, would be classified as current assets;

"Total Current Liabilities" means the amount equal to the aggregate of the liabilities of the Borrower which, in accordance with generally accepted accounting principles in Singapore, would be classified as current liabilities;

"Total Interest Expense" means, for any period, the aggregate interest expense, fees and other payments of a similar nature accrued or due from the Borrower in respect of Borrowed Money (determined in accordance with generally accepted accounting principles in Singapore), but in any event including:

(a) interest on bank borrowings, guaranteed convertible and exchangeable notes and other loan payable;

(b) capitalized interest;

(c) the amount of all amortization, discounts and similar allowances on the issue or disposal of guaranteed convertible and exchangeable notes and other debt instruments;

(d) all finance charges under finance leases, and hire purchase agreements of a financing nature;

(e) the amount in the nature of interest payable in respect of any shares other than equity share capital;

(f) the net amount payable in respect of any interest hedging arrangements of a financing nature;

(g) non-cash interest payments or accruals, or commissions, discounts, other fees and charges owed with respect to letters of credit and bankers acceptance financing and net cost associated with swap agreements; and

(h) all other expenses and amounts that are required by generally accepted accounting principles in Singapore to be treated as interest,

but without deducting any Total Interest Income earned from any banks;

"Total Interest Income" means, for any period, the aggregate interest income in respect of indebtedness (determined in accordance with generally accepted accounting principles in Singapore) owing to the Borrower, but in any event including interest income on redeemable convertible notes owned by the Borrower;

"Total Liabilities" means the total liabilities of the Borrower calculated by reference to the Relevant Financial Statements and in accordance with generally accepted accounting principles in Singapore and shall, insofar as not otherwise taken into account, be deemed to include the following:

(a) all indebtedness of the Borrower, including indebtedness under this Agreement, but excluding shareholders' loans to the Borrower which are subordinated to all other indebtedness of the Borrower;

(b) all actual liabilities of whatsoever nature of the Borrower including but not limited to any premium mandatorily payable on redemption of any indebtedness, all contingent liabilities incurred in respect of any indebtedness of any person other than the Borrower, and all other liabilities in the nature of guarantees to the extent that such liabilities are required to be included under generally accepted accounting principles in Singapore, provided that no liability shall be included in the calculation of Total Liabilities more than once; and

"Total Net Worth" means the aggregate of:

(a) the amount for the time being paid up or credited as paid up on the issued share capital of the Borrower; and

(b) the amounts for the time being standing to the credit of the capital and revenue reserves of the Borrower including any share premium account, capital redemption reserve fund, property valuation reserve (where the revaluation in question is in accordance with a report of a professional valuer approved by the Facility Agent) and profit and loss account;

(c) shareholders' loans to the Borrower which are subordinated to all other indebtedness of the Borrower,

(d) the sum equal to the AFW Payables Amount;

all as shown in the Relevant Financial Statements, but after:

(i) deducting therefrom (if not otherwise deducted) any amounts attributable to intangible assets, including goodwill, distribution rights and intellectual property, and the amount of any debit balance on profit and loss account;

(ii) deducting therefrom a sum equal to the amounts by which the book value of any assets (not being current assets) of the Borrower are written up (other than as a result of any change in currency exchange rates) after the date of this Agreement; for the purpose of this definition any increase in the book value of any asset resulting from their transfer by any of its Subsidiaries to the Borrower shall be deemed to result from a writing up of the book value of such asset;

(iii) deducting therefrom any amount distributed or proposed to be distributed to persons other than the Borrower out of profits accrued on or before the date of, and not provided for in, the Relevant Financial Statements;

(iv) making such other adjustments (if any) as the Borrower' s auditors consider appropriate.

SCHEDULE 3

THE CHARGED ACCOUNTS

Name of Bank	Account Name	Currency of Account
Natexis Banques Populaires, Singapore Branch	Kulicke & Soffa (SEA) Pte Ltd	Singapore Dollar
Natexis Banques Populaires, Singapore Branch	Kulicke & Soffa (SEA) Pte Ltd	Dollar
Natexis Banques Populaires, Singapore Branch	Kulicke & Soffa (SEA) - (K&S Packaging Materials)	Dollar

EXECUTION

THE BORROWER

SIGNED for and on behalf of)

KULICKE & SOFFA)

(S.E.A.) PTE. LTD.)

by)

/s/ Ho Siew Foong

(Signature)

THE ISSUING BANK

SIGNED for and on behalf of)

NATEXIS BANQUES POPULAIRES)

SINGAPORE BRANCH)

by)

/s/ Clara Hang

(Signature)

/s/ Philippe Petitgas

(Signature)

THE INITIAL LENDERS

SIGNED for and on behalf of)

NATEXIS BANQUES POPULAIRES)

SINGAPORE BRANCH)

by)

/s/ Clara Hang

(Signature)

/s/ Philippe Petitgas

(Signature)

SIGNED for and on behalf of)

ARAB BANK plc)

SINGAPORE BRANCH)

by)

/s/ Loke Puh Lam

(Signature)

/s/ Christopher Cheong

(Signature)

THE FACILITY AGENT

SIGNED for and on behalf of)

NATEXIS BANQUES POPULAIRES)

/s/ Clara Hang /s/ Philippe Petitgas

SINGAPORE BRANCH)

(Signature) (Signature)

by)

THE SECURITY AGENT

SIGNED for and on behalf of)

NATEXIS BANQUES POPULAIRES)

/s/ Clara Hang /s/ Philippe Petitgas

SINGAPORE BRANCH)

(Signature) (Signature)

by)

APPENDIX 1

FORM OF GUARANTEE REQUEST

From:

KULICKE & SOFFA (S.E.A.) PTE. LTD.

To:

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH

_____ 200_

Dear Sirs,

US$17,000,000 GUARANTEE ISSUANCE FACILITY AGREEMENT dated [ ] 200_

We refer to the above Guarantee Issuance Facility Agreement, and hereby request that a Guarantee in the amount of US$_____ be issued on _____ in favor of AGR Matthey according to the following wording:

QUOTE:

To:

AGR Matthey
Horrie Miller Drive
Newburn
Western Australia, 6104

Guarantee No. [ ]

In consideration of AGR Matthey of Horrie Miller Drive, Newburn, Western Australia, 6104, granting a gold lease facility (pursuant to the Sale and Buyback of Fine Metal Agreement dated _____) (the "SBFMA") to Kulicke & Soffa (S.E.A.) Pte. Ltd. of 6 Serangoon North Avenue 5, #03-16, Singapore 554910 (hereinafter referred to as "the Accountee"), we, Natexis Banques Populaires, Singapore Branch hereby unconditionally guarantee to pay to AGR Matthey on receipt of written demand from time to time any sum or sums which may be demanded by AGR Matthey up to a maximum aggregate amount which is the lesser of:

(a) US$17,000,000; and

(b) that amount which is equivalent to one hundred and eleven percent (111%) of the value of Gold supplied by AGR Matthey to the Accountee under the SBFMA, calculated in accordance with the terms of the SBFMA.

Demand under this Guarantee may be made only once.

Payment under this Guarantee may be made, at the sole discretion of Natexis Banques Populaires, Singapore Branch either in cash or in gold (in granule and/or scrap and/or bar and/or wire form). Any gold delivered to AGR Matthey as payment under this Guarantee shall be valued on terms similar or better than that offered by AGR Matthey to the Accountee under the SBFMA.

This Guarantee shall remains in full force and effect until the Expiry Date, whereupon this Guarantee shall be void and of no effect and Natexis Banques Populaires, Singapore Branch' s liability hereunder shall cease absolutely. All and any claims which has arisen and/or accrued prior to the Expiry Date must be presented to Natexis Banques Populaires, Singapore Branch through tested telex/ authenticated swift at the latest within fifteen (15) days of the Expiry Date in order to be taken into consideration.

For the purposes of this Guarantee, the term "Expiry Date" means the date which is the earlier of:

(i) [*please insert the date which is 24 months after the date of the issue of the first Guarantee*]; and

(ii) the date on which a demand is made by AGR Matthey under this Guarantee.

This Guarantee is not transferable or assignable in whole or in part.

This Guarantee shall be governed by and construed in accordance with the laws of the Singapore and the courts of Singapore shall have exclusive jurisdiction.

(place and date)

Natexis Banques Populaires, Singapore Branch

UNQUOTE

We confirm that:

(a) the representations and warranties set out in clause 10.1 of the Guarantee Issuance Facility Agreement, repeated with reference to the facts and circumstances subsisting at the date of this notice, remain true and correct; and

(b) no Event of Default or Potential Event of Default has occurred which remains unwaived or unremedied.

Terms defined in the Guarantee Issuance Facility Agreement have the same meanings when used in this notice.

For and on behalf of
KULICKE & SOFFA (S.E.A.) PTE. LTD.

Exhibit 10.3

EXECUTION COPY

DATED JUNE 21, 2004

KULICKE & SOFFA (S.E.A.) PTE. LTD.
(Registration No. 199503535R)
as Chargor

and

NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH
as Security Agent
for the Lenders referred to herein

DEBENTURE
incorporating Fixed and Floating Charges
and Assignment of Insurances

BAKER & McKENZIE.WONG & LEOW
1 Temasek Avenue, #27-01
Millenia Tower
Singapore 039192
Tel: (65) 6338-1888
Fax: (65) 6337-5100

CONTENTS

THIS DEED is made the 21 day of June 2004

BETWEEN

(1) KULICKE & SOFFA (S.E.A.) PTE LTD, a company incorporated in Singapore (Registration No. 199503535R) whose registered office is at 6 Serangoon North Avenue 5, #03-16, Singapore 554910 as chargor (the "Chargor"); and

(2) NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH of 50 Raffles Place #41-01, Singapore Land Tower, Singapore 048623 as security agent and trustee for the Finance Parties (as defined in the Guarantee Issuance Facility Agreement referred to below) from time to time (in such capacity, the "Security Agent").

WHEREAS:

(A) Under a guarantee issuance facility agreement dated 21 June 2004 (the "Guarantee Issuance Facility Agreement") entered into between (1) the Chargor as borrower, (2) Natexis Banques Populaires, Singapore Branch and Arab Bank plc, Singapore Branch as initial lenders, (3) Natexis Banques Populaires, Singapore Branch as issuing bank, (4) Natexis Banques Populaires, Singapore Branch as facility agent (the "Facility Agent"), and (5) Natexis Banques Populaires, Singapore Branch as security agent, the Lenders (as defined in the Guarantee Issuance Facility Agreement) have agreed to make available to the Chargor a guarantee issuance facility of up to US$17,000,000 (the "Facility") upon the terms set out therein.

(B) It is a condition precedent to the Lenders making the Facility available to the Chargor that the Chargor enters into this Deed.

IT IS AGREED as follows:

1. Interpretation

1.1 Definitions and Construction. In this Deed, unless the context requires otherwise, terms and expressions defined in or construed for the purposes of the Guarantee Issuance Facility Agreement and not defined below shall have the same meanings or be construed in the same manner when used in this Deed, and the following terms shall have the following meanings:

"Charged Accounts" has the meaning ascribed to it in the Guarantee Issuance Facility Agreement.

"Charged Assets" means all or any part of the Equipment, Receivables, undertaking, property, assets and rights of the Chargor hereby expressed to be charged or assigned including, without limitation, the Receivables Account and the Gold Inventories (and references to the Charged Assets shall include references to any part of it).

"CLPA" means the Conveyancing and Law of Property Act (Chapter 61) of the Statutes of the Republic of Singapore.

"Debtor" means any person who is liable (whether as principal debtor or as surety and whether actually or contingently) to pay or discharge a Receivable;

"Equipment" means all items of plant, equipment and machinery now or hereafter owned by the Chargor and all replacements thereof and additions thereto.

"Gold Receivables" means all cash collections and proceeds of sale or other realization in respect of any Gold Inventories including, without limitation, all account receivables and revenues of the Chargor in relation thereto.

"Insurances" means all policies or contracts of insurance which are now or may hereafter be effected in respect of the Gold Inventories or any part thereof (but expressly excluding any insurances arranged solely for the benefit of third parties in accordance with legislative requirements), which as at the date hereof consist of the policies set out in Schedule 1, and all benefits and proceeds thereof, including all claims of whatever nature and returns of premiums.

"Intellectual Property" means all rights in any intellectual property or similar rights now or at any time in the future belonging to the Chargor, including patents, trade marks and brand names, service marks, designs, copyrights, design rights, computer software, applications for registration of (and the right to apply for) any of the foregoing in any part of the world, improvements and extensions of any of the foregoing, moral rights, inventions, trade secrets and know-how and similar rights anywhere in the world together with the benefit of all licences of any of the foregoing granted to or by the Chargor and all revenues and other rights derived from any of the foregoing.

"Receivables" means the Gold Receivables and all other present and future book and other debts and receivables, commissions, revenues, claims and chooses in action of whatsoever nature and howsoever and wheresoever arising, due or owing or to become due or owing to or acquired by the Chargor including bank deposits and credit balances and the full benefit of all rights and remedies relating thereto including, but not limited to, all claims for damages and other remedies for non-payment of the same and all claims against insurers and under Encumbrances, guarantees and other security and all proceeds and forms of remittance in respect of the same.

"Receivables Account" means any of the Charged Accounts and/or any other account opened and maintained in the name of the Chargor with the Facility Agent into which Receivables are paid, and all sums now or hereafter deposited into such account and all additions to or renewals or replacements thereof (in whatever currency) and all interest or other sums which may accrue from time to time thereon.

"Receiver" means each and any receiver, manager, receiver and manager or other similar officer appointed by the Security Agent in respect of the security created by or pursuant to this Deed;

"Related Rights" means:

(a) all rights and benefits whatsoever deriving from or incidental to any Securities and all dividends and interest paid or payable in relation thereto;

(b) all shares, securities, rights, monies or other assets accruing, offered or issued at any time by way of redemption, conversion, exchange, substitution, bonus, preference, option or otherwise in respect thereof,

and the certificates representing any of the foregoing.

"Secured Indebtedness" means all monies, obligations and liabilities of any kind now or at any time in the future due, owing, incurred or payable (whether actually or contingently) by the Chargor under or pursuant to any Finance Document (whether on account of principal, interest, fees, expenses, indemnity payments, losses, damages or otherwise) and all other monies hereby secured.

"Securities" means all stocks, shares, debentures, bonds, notes, warrants and other securities of any kind (including loan capital) now or at any time in the future beneficially owned by Chargor or in which the Chargor has an interest (and all present and future rights of the Chargor against any clearance or settlement system or any custodian in respect of any of the foregoing); and

the expression "Security Agent" shall mean the Security Agent acting in its capacity as trustee for itself and the other Finance Parties pursuant to the trust declared by clause 15.2 of the Guarantee Issuance Facility Agreement in respect of holding and releasing the rights, benefits and interests conferred by Clause 3.1 (*Grant of Charge and Assignment*). and, in all other contexts shall mean the Security Agent acting on its own behalf and in its capacity as agent and trustee for the Finance Parties, and the expression "Finance Parties" shall have the meaning ascribed to it in the Guarantee Issuance Facility Agreement.

1.2 Successors and Assigns. The expressions "Chargor", "Security Agent" and "Lender" shall, where the context permits, include their respective successors and permitted assigns and any persons deriving title under them.

1.3 Miscellaneous. In this Deed, unless the context requires otherwise:

(a) Statutes: references to provisions of any law or regulation shall be construed as references to those provisions as amended, modified, re-enacted or replaced from time to time;

(b) Construction: words importing the singular include the plural and *vice versa*; words importing a gender include the other gender;

(c) Finance Documents: references to this Deed, the Guarantee Issuance Facility Agreement, any other Security Document or any other document shall be construed as references to this deed or such document as the same may be amended, supplemented, restated or novated from time to time;

(d) Clauses, Etc: references to Clauses and the Schedules are to clauses of and the schedule to this Deed and references to this Deed include the Schedules; and

(e) Headings: Clause headings are inserted for reference only and shall be ignored in construing this Deed.

1.4 Third Party Rights. The Contracts (Rights of Third Parties) Act (Chapter 53B) shall not apply to this Deed and, unless expressly provided to the contrary in this Deed, no person not party to this Deed shall have or acquire any right to enforce any term of it pursuant to that Act. This Clause shall not affect any right or remedy of any third party which exists or is available otherwise than by reason of that Act and shall prevail over any other provision of this Deed which is inconsistent with it.

2. COVENANT TO PAY

2.1 Covenant to Pay. In consideration of the Lenders agreeing to make the Facility available to the Chargor on the terms and conditions of the Guarantee Issuance Facility Agreement, the Chargor covenants that it will pay to the Security Agent the Secured Indebtedness in accordance with the terms of the Guarantee Issuance Facility Agreement.

2.2 Interest. The Chargor shall with respect to all monies payable under this Deed pay interest from the due date to the date of payment (as well after as before any demand or judgment and notwithstanding the liquidation or winding-up of the Chargor) at such rates determined by the Lenders in accordance with the provisions of clause 13 of the Guarantee Issuance Facility Agreement and all such interest shall form part of the monies hereby secured. Any interest accruing under this Clause 2.2 shall be immediately payable by the Chargor to the Security Trustee in accordance with the terms of the Guarantee Issuance Facility Agreement.

3. Fixed and Floating Charges

3.1 Grant of Charge and Assignment. In consideration of the Lenders agreeing to make the Facility available to the Chargor on the terms and conditions of the Guarantee Issuance Facility Agreement:

(a) Charge: the Chargor as beneficial owner charges and agrees to charge to the Security Agent:

(i) Fixed Charge: by way of first fixed charge the Charged Assets specified in Clause 3.2 (*Fixed Charge*);

(ii) Floating Charge: by way of first floating charge the Charged Assets specified in Clause 3.3 (*Floating Charge*) and all of the Chargor' s right, title, interest and benefit from time to time in and to the Receivables and the Receivables Account; and

(b) Assignment: the Chargor as beneficial owner assigns and agrees to assign to the Security Agent absolutely all the Chargor' s right, title, interest and benefit in and to the Insurances and the business name of "K&S Packaging Materials",

as a continuing security for the due and punctual payment and discharge of the Secured Indebtedness and the due and punctual observance and performance by the Chargor of all other obligations of the Chargor contained in the Guarantee Issuance Facility Agreement and/or any other Finance Documents.

3.2 Fixed Charge. The property charged by way of fixed charge is the following:

(a) Real Property: all estates and other interests in freehold, leasehold and other immovable property wheresoever situate now or hereafter belonging to the Chargor and all buildings, trade and other fixtures, fixed plant and machinery from time to time on any such freehold, leasehold or other immovable property;

(b) Chattels: all chattels now or hereafter hired, leased or rented by the Chargor to any person together in each case with the benefit of the related hiring, leasing or rental contract and any guarantee, indemnity or such other security for the performance of the obligations of any person under or in respect of such contract;

(c) Equipment: the Equipment;

(d) Securities: the Securities and Related Rights;

(e) Intellectual Property: the Intellectual Property (which, to the extent that it consists of copyrights and patents, shall be assigned by way of mortgage);

(f) Licenses: the benefit of all present and future licenses, consents and authorizations (statutory or otherwise) held in connection with the Chargor' s business or the use of any of its assets, and the right to all compensation which may at any time become payable to it in respect thereof;

(g) Agreements: (to the extent that they do not fall within any other paragraph of this Clause 3.2) all of the Chargor' s rights and benefits under any distributorship, agency, partnership, joint venture or similar agreements, any letters of credit issued in its favor and all bills of exchange and other negotiable instruments held by it;

(h) Records: all books of account, registers, records, vouchers, computer software, computer printouts and other documents relating in any way to the business of the Chargor; and

(i) Goodwill: the goodwill of the Chargor and its uncalled and called but unpaid capital and premiums now or at any time hereafter in existence and future calls (whether made by the directors of the Chargor or by a receiver, administrator or liquidator).

3.3 Floating Charge. The property charged by way of floating charge is the whole of the Chargor' s undertaking and all its present and future property and assets including without limitation the Gold Inventories (in each case, wherever situated), other than any property or assets from time to time or for the time being effectively charged by way of fixed charge to the Security Agent by Clauses 3.1 (*Grant of Charge and Assignment*) and 3.2 (*Fixed Charge*). If any charge over any asset mentioned in Clause 3.2 (Fixed Charge) above does not take effect as, or ceases to be, a fixed charge, it shall instead take effect as (or, as the case may be, become) a floating charge.

3.4 Conversion of Floating Charge to Fixed Charge. The Security Agent may at any time by notice in writing to the Chargor convert the floating charge hereby created into a fixed charge as regards any property, assets or rights specified in the notice if:

(a) an event of Default or a Potential Event of Default has occurred;

(b) the Security Agent reasonably considers that the relevant Charged Asset may be in jeopardy or in danger of being seized or sold pursuant to any form of legal process; or

(c) the Security Agent reasonably considers that it is desirable to do so in order to protect or preserve the security created by or pursuant to this Deed over that Charged Asset and/or its priority.

The service by the Security Agent of any notice pursuant to this Clause 3.4 (*Conversion of Floating Charge to Fixed Charge*) in relation to any Charged Asset shall not be construed as a waiver or abandonment of the Security Agent' s rights to serve similar notices in respect of any other Charged Asset or of any other rights of the Security Agent under this Deed.

3.5 Automatic Crystallization. Notwithstanding Clause 3.4 (*Conversion of Floating Charge to Fixed Charge*) and without prejudice to any rule of law which may have a similar effect, the floating charge under Clause 3.3 (*Floating Charge*) shall automatically be converted with immediate effect into a fixed charge as regards all the property and assets subject to the floating charge and without notice from the Security Agent to the Chargor upon:

(a) the presentation of a petition for the compulsory winding up of the Chargor;

(b) the convening of a meeting for the passing of a resolution for the voluntary winding up or judicial management of the Chargor;

(c) the presentation or making of an application for a warrant of execution, garnishee order, charging order or other similar process in respect of any part of the property or assets of the Chargor subject to the floating charge;

(d) the occurrence of an Event of Default or a Potential Event of Default; or

(e) the Chargor creating, incurring or permitting to arise or submitting to any Encumbrance over any Charged Asset (except in favor of the Security Agent under or pursuant to this Deed) or attempting or taking or suffering any steps so to do.

3.6 De-crystallization. If the floating charge over any Charged Assets becomes fixed in accordance with Clause 3.4 *(Conversion of Floating Charge to Fixed Charge)* or 3.5 *(Automatic Crystallization)* it shall again become a floating charge over those Charged Assets if the Security Agent gives the Chargor a notice in writing to that effect.

3.7 Notice. The Chargor will, forthwith upon the execution of this Deed (or, if later, upon any policy or contract of insurance comprised in the Insurances coming into force), give notice of the assignment of the Insurances herein contained to and obtain an acknowledgement from the relevant insurers substantially in the form set out in Schedule 2 and in any event in a form satisfactory to the Security Agent.

3.8 Dealings with Parties. Notwithstanding the assignment of the Insurances herein contained but otherwise subject to the terms of this Deed, the Security Agent authorizes the Chargor to continue to deal with the other parties to the Insurances and each of them in relation thereto as if the Chargor remained solely entitled to all the right, title, interest and benefit thereunder but, save as herein provided, not directly to receive any moneys payable under the Insurances provided that if an Event of Default or Potential Event of Default occurs the foregoing authority shall immediately cease to have effect.

3.9 Condition of Deposit. Notwithstanding any other terms on which any monies or Receivables may have been deposited in any Receivables Account, it is a condition of such deposit that, throughout the subsistence of this Deed for so long as any Secured Indebtedness is or may become payable, unless the Security Agent otherwise agrees in writing or the terms of the Guarantee Issuance Facility Agreement otherwise permit, no Receivables Account nor any part thereof shall be in any way assignable or transferable and no Encumbrance or trust shall be capable of being created over or in respect of any Receivables Account or any part thereof.

3.10 Operation of Receivables Accounts.

(a) Subject to paragraph (b) below, the Chargor shall be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Receivables Account in the ordinary course of its business;

(b) At any time after the declaration by the Security Agent of an Event of Default or a Potential Event of Default or, if earlier, the conversion of any floating charge created by Clause 3.1(A)(b) (*Floating Charge*) into a fixed charge in accordance with Clause 3.4 *(Conversion of Floating Charge to Fixed Charge)* or Clause 3.5 *(Automatic Crystallization),* the Chargor shall not be entitled to receive, withdraw or otherwise transfer any credit balance from time to time on any Receivables Account except with the prior consent of the Security Agent; and

(c) The Chargor shall not release, grant time or indulgence or compound with any third party or suffer to arise any set-off or other adverse rights against any Receivables Account nor do or omit to do anything which may delay or prejudice the right of the Security Agent to receive payment from any Receivables Account at any time after the security created by or pursuant to this Deed has become enforceable.

3.11 Discharge. Upon payment in full of all the Secured Indebtedness to the satisfaction of the Finance Parties, the Security Agent shall, at the request and cost of the Chargor, and in such form as the Security Agent shall approve, discharge the security created by this Deed, subject to Clause 18.5 (*Release of Charge Conditional*).

4. Continuing Security

4.1 Continuing Security. This Deed shall be a continuing security and shall remain in full force and effect until the Secured Indebtedness has been paid in full and the Finance Parties do not have any further obligation or liability (actual or contingent) under the Guarantee Issuance Facility Agreement or any Security Document, notwithstanding the insolvency or liquidation or any incapacity or change in the constitution or status of the Chargor or any other person or any intermediate settlement of account or other matter whatsoever.

4.2 Independent Security. This Deed is in addition to, and independent of, any Encumbrance, guarantee or other security or right or remedy now or at any time in the future held by or available to the Finance Parties.

5. Representations and Warranties

5.1 Memorandum and Articles. The Chargor hereby certifies that neither the execution of this Deed nor the creation of the charges hereby constituted contravenes any of the provisions of the memorandum and articles of association of the Chargor.

5.2 Representations and Warranties. The Chargor represents and warrants to the Security Agent (as security agent and trustee for the Finance Parties) that:

(a) Capacity: the Chargor is a company duly incorporated with limited liability and existing under the laws of Singapore and has full power, authority and legal right and has taken all necessary corporate action and has obtained all necessary consents in order to incur the Secured Indebtedness and to create security over the Charged Assets on the terms of this Deed and to perform its obligations under this Deed;

(b) Enforceability: this Deed constitutes legal, valid and binding obligations of the Chargor in accordance with its terms;

(c) No Encumbrances: the Charged Assets are or when acquired will be beneficially owned by the Chargor free from any Encumbrance except as created under or pursuant to this Deed and (other than as disclosed to the Security Agent) no person other than the Chargor has the use, occupation or possession of the Charged Assets or any part thereof;

(d) No Litigation: no litigation, arbitration or administrative proceeding which involves a claim against the Chargor for an amount not less than US$500,000 (other than those which are vexatious or frivolous) is currently taking place or pending or threatened against the Chargor or in relation to any of the Charged Assets;

(e) Accuracy of Particulars: the particulars of the Insurances set out in Schedule 1 are true and accurate in all respects;

(f) Validity: each of the Insurances is valid and in full force and effect and enforceable in accordance with its terms against the parties thereto and is not void or voidable;

(g) Receivables: all Receivables are fully collectible in the ordinary course of business;

(h) Marketable Security: the Chargor has good title to all of the Charged Assets; and

(i) Payment: all premiums and other monies (if any) payable in respect of any of the Insurances have been duly paid and all covenants, terms and conditions contained in each of the Insurances have been duly observed and performed.

5.3 Continuing Representation and Warranty. The Chargor also represents and warrants to and undertakes with the Security Agent (as security agent for the Finance Parties) that the foregoing representations and warranties will be true and accurate throughout the continuance of this Deed with reference to the facts and circumstances subsisting from time to time.

6. Undertakings

The Chargor undertakes and agrees with the Security Agent (as security agent for the Finance Parties) that throughout the continuance of this Deed and so long as any Secured Indebtedness is or may become payable that the Chargor will, unless the Security Agent otherwise agrees in writing:

General

(a) Information: provide the Security Agent with such information relating to the Charged Assets as the Security Agent may from time to time reasonably request;

(b) Litigation: forthwith upon becoming aware of the same, notify the Security Agent of any litigation, arbitration or administrative proceedings which involves a claim against the Chargor for an amount not less than US$500,000 (other than those which are vexatious or frivolous) and which are brought or (to its knowledge) threatened against the Chargor or any material notices issued to it by any person in relation to the Charged Assets;

(c) Conduct of Business: conduct its business in a proper and efficient manner and not materially change the nature or scope of its business and keep proper books and records in respect thereof;

(d) Material Adverse Effect: as soon as it becomes aware of the same, notify the Security Agent of any occurrence which could materially and adversely affect the ability of the Chargor to perform its obligations under this Deed;

(e) Payment of Debts: punctually pay and discharge all debts and obligations which by law have priority over the security hereby constituted;

(f) Punctual Payment: punctually pay all sums due from it to the Finance Parties and otherwise comply with its obligations under this Deed

(g) Notification of Events: immediately inform the Security Agent of:

(i) any damage, loss, theft, arrest, confiscation, seizure or any other event which affects or might affect the rights of the Lenders under this Deed or involves any loss or reduction in value of any Charged Assets in an aggregate amount exceeding US$1,000,000;

(ii) any material notices issued to it by any person in relation to the Charged Assets;

(h) Protection of Charged Assets: upon demand by the Security Agent take or defend all such legal proceedings, and take all such other steps, as the Security Agent may reasonably require for the protection of any Charged Assets;

(i) Access: permit the Security Agent, the Receiver or any other person appointed by either of them at all reasonable times with prior appointment to have access to and view the state, order and condition of the Charged Assets and take inventories thereof;

(j) Deposit of Documents: except as may be provided otherwise in the Guarantee Issuance Facility Agreement or any Security Document, deposit with the Security Agent or to its order all deeds, certificates and documents (including original policies of insurance) which constitute or evidence title to any Charged Assets when required to do so by the Security Agent;

(k) Maintenance: keep all its property and assets including, but not limited to, all plant, equipment, machinery, buildings, fixtures, fittings, vehicles and other effects in reasonable state of repair (fair and tear excepted) and in reasonable working condition and not pull down, dismantle or remove any of the same except in the ordinary course of use, repair, maintenance or improvement;

(l) Payments: punctually pay all rents, rates, taxes, duties, fees, transportation costs, godown charges, impositions and outgoings whatsoever which may be payable in respect of the Charged Assets and observe and perform all the covenants, terms and conditions contained in any title deeds, leases or other documents of title under which any property hereby charged is for the time being held provided that if the Chargor defaults in making any such payments or in the performance or observance of any of the above undertakings or in effecting insurance or in paying insurance premiums or in repairing, the Security Agent or the Receiver may make such payments or perform and observe such undertakings, effect such insurance or repairs or pay such insurance premiums and the Chargor shall forthwith repay to the Security Agent or the Receiver (as the case may be) on demand all monies expended by the Security Agent or the Receiver in so doing together with interest thereon at such rates determined by the Lenders in accordance with the provisions of clause 13 of the Guarantee Issuance Facility Agreement from the time of the same having been paid or incurred and until such repayment such monies together with such interest shall be secured by this Deed;

(m) Laws and Notices: comply with all applicable laws and regulations in connection with the Charged Assets and any notices or orders given thereunder and pay all outgoings and liabilities relating thereto immediately when due;

(n) Negative Pledge: not:

(i) create or attempt or agree to create or permit to arise or exist any Encumbrance over the Charged Assets or any interest therein (except under or pursuant to this Deed or as may be permitted in the Guarantee Issuance Facility Agreement or any Security Document) and no Encumbrance purported to be created in breach of this restriction shall take priority over or rank *pari passu* with this Deed and to the intent of affording the Security Agent further and better security the Chargor agrees and declares that the rule in Clayton' s Case or any other rule of law or equity shall not apply so as to affect or diminish in any way the Security Agent' s rights under this Deed provided always that upon any such breach by the Chargor the Security Agent may open new or separate accounts in the name of the Chargor in the Security Agent' s books and if the Security Agent has not in fact opened such new or separate accounts the Security Agent shall nevertheless be deemed to have done so at the time of such breach and as from that time all payments made by the Chargor to the Security Agent shall (notwithstanding any legal or equitable rule or presumption to the contrary) be placed or deemed to have been placed to the credit of such new or separate accounts and shall not go in reduction of the amounts due by the Chargor to the Security Agent at the time of such breach notwithstanding that such payments had been paid into the existing accounts of the Chargor or were shown to be credited to the Chargor' s existing accounts on the Security Agent' s statements and the Security Agent shall immediately after the time of such breach have an absolute right of appropriation of such payments;

(ii) sell, transfer, part with possession of, factor or otherwise deal with or dispose of or grant any option or right over any of the Charged Assets or attempt or agree to do so except as may otherwise be provided in the Guarantee Issuance Facility Agreement or any Security Document, except, in the case of stock-in-trade (and subject to the other provisions of this Deed) by way of sale at full market value in the usual course of trading as now conducted by the Chargor and for the purpose of carrying on the Chargor' s business; or on normal commercial terms obsolete assets or assets no longer required for the purpose of the Chargor' s business; or disposals for full consideration by cash, or the exchange for other assets of a similar nature and value, or the sale of the assets on normal commercial terms for cash, payable in full on completion of such sale, which is to be and is approved towards the purchase of similar assets; or any disposal agreed by the Security Agent (such approval not to be unreasonably withheld);

(o) Not Prejudice: not do or permit to be done anything which may in any way depreciate, jeopardise or otherwise prejudice the value of the security provided under this Deed or the value of the Charged Assets;

Intellectual Property

(p) Maintenance: maintain and preserve its Intellectual Property by all means available to it, not limited to registration and payment of fees and not abandon any of the same

(q) No Grant of Exclusive Rights: not grant any exclusive rights in relation to any of its Intellectual Property;

(r) No License: not sell, transfer, license or otherwise dispose of all of such Intellectual Property or any part thereof which is material to the conduct of the Chargor' s business;

(s) No Abandonment: not permit such Intellectual Property which is registered, or any part thereof which is material to the conduct of the Chargor' s business, to be abandoned or cancelled, to lapse or to be liable to any claim of abandonment or cancellation for non-use or otherwise;

Insurances

(t) Insurances: insure and keep insured the Charged Assets of an insurable nature against loss or damage by fire and other usual risks and by such other risks and contingencies as the Security Agent may reasonably require, in such amounts as may be agreed between the Chargor and the Security Agent or, in the absence of any such specification, in their full insurable values and maintain such other insurances, including third party and public liability insurance, as are commonly maintained by prudent companies carrying on similar businesses or activities, in each case with such insurance company or office and through such insurance brokers as the Security Agent shall approve (such approval not to be unreasonably withheld);

(u) Insurers: ensure that all policies of insurance are issued by an insurer reasonably acceptable to the Security Agent;

(v) Loss Payee Clause: procure that a loss payable and notice of cancellation clause, substantially in the form of Schedule 3, and in any event in a form satisfactory to the Security Agent, is included in each of the policies or contracts of insurance comprised in the Insurances;

(w) Consent: procure that, on or prior to any policy or contract of insurance comprised in the Insurances coming into force (or, if later, the execution of this Deed), the insurance brokers and insurers in respect of such insurance give their written consent to the assignment of the Insurances pursuant to this Deed.

(x) Maintenance: take all steps which may be necessary or expedient to keep the Insurances in full force and effect and protect the interests of the Chargor, the Security Agent and the other Finance Parties in the Insurances;

(y) Not Prejudice: ensure that no such insurances becomes voidable, vitiated or liable to an increased premium and not do or fail to do anything to prejudice any claim thereunder or vary or terminate any policy;

(z) Premiums: punctually pay all premiums and other amounts due in respect of the Insurances (and provide the Security Agent with receipts therefor) and deliver to the Security Agent certified true copies of all policies (including any alteration, addition or amendment thereto), cover notes and other relevant documents relating to the Insurances;

(aa) Renewal: renew all policies or contracts of insurance comprised in the Insurances no later than fourteen (14) days before the expiry of such policies or contracts;

(bb) Reimbursement: reimburse on demand to the Security Agent any amount paid by the Security Agent or any of the Finance Parties to any insurer of any of the Insurances in respect of any premium or other amount due to such insurer in respect of the Insurances, together with interest thereon from the date of payment to the date of reimbursement at the rates determined by the Lenders in accordance with the provisions of clause 13 of the Guarantee Issuance Facility Agreement;

(cc) Enforcement: do or permit to be done every act or thing which the Security Agent may from time to time reasonably require for the purpose of enforcing the rights of the Security Agent hereunder;

(dd) Settlement: not, without the prior written consent of the Security Agent (such consent not to be unreasonably withheld), waive, release, settle, compromise or abandon any claim under the Insurances or do or omit to do any other act or thing whereby the recovery in full of any amounts in respect of the Insurances as and when they become payable may be impeded

(ee) Insurance of Leasehold Property: in the case of any leasehold property where the landlord (or other third party) is obliged by the terms of the relevant lease to insure the relevant property, procure (where it is empowered to do so), or otherwise use all reasonable endeavours to ensure that the landlord (or other third party) procures, insurance in accordance with the terms of the relevant lease;

Receivables and Receivables Account

(ff) Variation: not permit or agree to any variation of rights attaching to any Receivables Account or close any Receivables Account;

(gg) Realization: get in and realize all Receivables in the ordinary course of business and pay into the Receivables Account all monies which it may receive in respect of the same;

(hh) Default: inform the Security Agent of any Debtor which is likely to be unable to pay debts immediately upon it being reasonable to suspect the same;

(ii) Payment of Receivables: promptly deposit and pay all monies which it may receive in respect of the Receivables into the Receivables Account, and ensure that each Debtor pays all monies in respect of the Receivables directly into the Receivables Account;

(jj) Dealing with Receivables Accounts: deal with the collected Receivables and any other monies in the Receivables Accounts in accordance with Clause 3.10 (*Operation of Receivables Accounts*);

(kk) Recovery: use its best endeavours to recover the full amount of each Receivable in the ordinary course of trade and not:

(i) release any of the Receivables save upon a full discharge thereof or otherwise commute the liability of any Debtor (whether by reducing the amount due, extending the time for payment or otherwise); or

(ii) grant any rebate, refund or adjustment of any Receivable,

except in the ordinary course of trade for the relevant Debtors.

Securities

(ll) No Lending: not lend any Securities to any person;

(mm) No Restrictions: not permit any Securities to be or become subject to restrictions on transfer and promptly pay all calls in respect of Securities and Related Rights; and

(nn) Transfer: immediately inform the Security Agent on each occasion when any Related Rights arise and transfer any Securities or Related Rights to the Security Agent or its nominee immediately when required to do so.

Equipment

(oo) Notification: forthwith notify the Security Agent if it acquires a new item of Equipment (whether by way of addition to or replacement of an existing item of Equipment or otherwise howsoever) giving full details thereof and execute such deed, acknowledgment or other document as the Security Agent may reasonably require to ensure that such new item of Equipment is subject to a first fixed charge in favor of the Security Agent upon the same terms and conditions as set out in this Deed; and

(pp) Markings: attach to each item of Equipment, if required by the Security Agent, a notice in such conspicuous place and in such form as the Security Agent may reasonably require stating that such item is subject to a charge in favor of the Security Agent and shall not conceal, alter or remove such marking or permit it to be concealed, altered or removed;

Real Property

(qq) Observance of Law: at all times observe and perform the provisions of any planning legislation and comply with any conditions attached to any planning permissions relating to or affecting any part of the Real Property and not carry out any development on all or any part of the Real Property or make any material change in the use thereof and not without the prior consent in writing of the Security Agent (such consent not to be unreasonably withheld) or make any application for planning permission or implement any planning permission so obtained without in any such case the prior written consent of the Security Agent (such consent not to be unreasonably withheld);

(rr) Information: within seven (7) days after receipt of the same give full particulars to the Security Agent of any material notice, order, direction, designation, resolution or proposal having application to the Real Property or the area in which it is situate which may be given or made by any planning authority or other public or competent body or authority whatever which may materially and adversely affect such Real Property or its value as security and if reasonably required by the Security Agent as soon as practicable and at the Chargor' s cost take all necessary steps to comply with such material notice, order, direction, designation, resolution or proposal or otherwise and at the reasonable request of the Security Agent and at the cost of the Chargor make such objection or representation against or in respect of or relating to such material notice, order, direction, designation, resolution or proposal as aforesaid as the Security Agent shall reasonably deem expedient;

(ss) Rent: pay the rents reserved by and observe and perform all covenants, stipulations and obligations reserved by or contained in any lease, agreement for lease or tenancy agreement under or subject to which any part of the Real Property may be held and neither take any step nor omit to take any step whatsoever if in consequence of the taking of or omission to take such step such lease, agreement for lease or tenancy agreement may be surrendered or forfeited or the rent thereunder may be increased;

(tt) Letting: not without the prior consent in writing of the Security Agent (such consent not to be unreasonably withheld) confer on any other person any right or license to assign or sub-let any part of the Real Property or grant, create or permit to be acquired any easement, right or privilege relating to or affecting the Real Property or any part thereof other than in the ordinary course of its business and indemnify the Security Agent (and as a separate covenant any Receiver or Receivers appointed by it) against all existing and future rents, taxes, duties, fees, renewal fees, charges, assessments, impositions and outgoings whatsoever (whether imposed by deed or statute or otherwise and whether in the nature of capital or revenue and even though of a wholly novel character) which now or at any time during the continuance of the security constituted by or pursuant to this Deed are payable in respect of the Charged Assets or any part thereof or by the owner or occupier thereof;

(uu) Leasing: not exercise any of the powers reserved to a mortgagor by section 23 of the CLPA or otherwise grant or agree to grant any lease or tenancy of the Real Property or any part thereof or surrender or accept or agree to accept a surrender of any lease or tenancy thereof other than in the ordinary course of its business;

(vv) Occupation: except with the prior consent in writing of the Security Agent (such consent not to be unreasonably withheld), not allow any person any license or other right to occupy or share possession of the Real Property or any part thereof (save as may already exist) other than in the ordinary course of its business; and

(ww) Notification of Legal Mortgages: forthwith notify the Security Agent of any proposal or contract made by the Chargor for the acquisition by the Chargor of any land or immovable property or any interest therein and, in the case of any such land or immovable property situated in Singapore, execute in favor of the Security Agent, or as it may reasonably direct, such further or other legal assignments, transfers, mortgages, legal or other charges or securities as in each such case the Security Agent shall reasonably stipulate over the Chargor' s estate or interest in such land or immovable property for the purpose of perfecting the security hereby created over or in respect of such land or immovable property, and, in the case of any such land or immovable property situated outside the Republic of Singapore, forthwith give notice thereof to the Security Agent and such other information as the Security Agent may reasonably require and do all such acts as may, in the reasonable opinion of the Security Agent, be necessary or desirable for protecting or perfecting the security hereby created over or in respect of such land or immovable property.

7. CHARGOR' S LIABILITY

Notwithstanding the assignment of the Insurances herein contained, the Chargor shall remain liable under the Insurances to observe and perform all the obligations assumed by it thereunder and none of the Finance Parties shall have any obligation or liability thereunder. The Security Agent shall not be obliged to make any enquiry as to the nature or sufficiency of any payment received by it or to make any claim or take any other action to collect any monies or to enforce any rights and benefits hereby assigned.

8. ENFORCEMENT OF SECURITY

8.1 Events of Default. Each of the following events and circumstances shall be an Event of Default:

(a) Event of Default: any event or circumstance which would constitute an Event of Default as that term is defined in the Guarantee Issuance Facility Agreement; and/or

(b) Other Encumbrances: the Chargor purports or attempts to create any Encumbrance over all or any part of the Charged Assets (except as created under or pursuant to this Deed) or any third party asserts a claim in respect thereof.

8.2 Enforceability. Immediately upon the occurrence of an Event of Default, the security created by or pursuant to this Deed shall become enforceable in accordance with the provisions of this Deed.

8.3 Power of Security Agent. At any time after this security has become enforceable, the Security Agent may without further notice: (a) appoint a Receiver in accordance with Clause 8.4 (*Appointment of Receiver*); and/or (b) (whether or not it shall have appointed a Receiver) exercise all the powers and discretions hereby conferred either expressly or by implication on a Receiver (but without any limitations imposed by his appointment, and in relation to express powers and discretions as if any reference to the Receiver were a reference to the Security Agent) and all other powers conferred upon mortgagees by law or otherwise Provided that in the case of the exercise of a power of sale in respect of any Charged Asset other than the Gold Inventories, such power shall only be exercised by the Security Agent upon the expiry of fourteen (14) day' s prior written notice from the Security Agent to the Chargor of its intention to exercise such power of sale.

8.4 Appointment of Receiver. At any time after the security hereby created has become enforceable, or if the Chargor so requests (and notwithstanding that an order may have been made or a resolution passed for the winding-up of the Chargor) the Security Agent may appoint in writing any person(s) qualified as required by law to be a receiver or receiver and manager or administrative receiver of all or any part of the Charged Assets on such terms as the Security Agent thinks fit. If two or more persons are so appointed, they may be appointed in respect of different parts of the Charged Assets and each joint Receiver shall have power to act independently of any other joint Receiver (except to the extent specified to the contrary in the appointment). The Security Agent may remove a Receiver and may appoint another in his place.

8.5 Agent of Chargor. The Receiver shall be the agent of the Chargor (which shall be solely liable for his acts, defaults and remuneration) unless and until the Chargor goes into liquidation, after which he shall act as principal and shall not become the agent of the Finance Parties.

8.6 Powers of Receiver. Subject to any specific limitations placed upon him by the terms of his appointment or as provided herein, the Receiver (whether or not an administrative receiver) shall have the following powers exercisable without further notice:

(a) Statutory Powers: all powers, rights and remedies: (i) conferred on an administrative receiver by the Singapore Companies Act (Chapter 50); (ii) conferred on a receiver appointed under the CLPA; (iii) conferred on a mortgagee (including a mortgagee in possession) by the CLPA; and (iv) which the Chargor could (but for this Deed) exercise in relation to the Charged Assets, exercisable as if the Receiver were the absolute beneficial owner of the Charged Assets; and

(b) Additional Powers: without limiting the foregoing:

(i) to take possession of, collect and get in all or any part of the Charged Assets, to receive the rents and profits thereof and for these purposes to take any proceedings in the name of the Chargor or otherwise;

(ii) to manage or carry on or concur in carrying on the business of the Chargor or any part thereof as he may think fit without being responsible for loss or damage (except for loss or damage arising out of its negligence or willful misconduct);

(iii) to make and effect all repairs, renewals, alterations, improvements and developments to or in respect of the Charged Assets;

(iv) to sell by public auction or private contract or otherwise dispose of or deal with the Charged Assets in such manner, for such consideration and generally on such terms and subject to such conditions as the Receiver may think fit with full power to convey or otherwise transfer the Charged Assets in the name of the Chargor or other legal or registered owner provided that in the case of the exercise of a power of sale in respect of any Charged Asset other than the Gold Inventories, such power shall only be exercised by the Receiver upon the expiry of fourteen (14) day' s prior written notice from the Receiver to the Chargor of its intention to exercise such power of sale. Any consideration may be in the form of cash, debentures, shares, stock or other valuable consideration and may be payable immediately or by instalments spread over such period as the Receiver shall think fit and so that any consideration received in a form other than cash shall forthwith on receipt be and become charged with the payment of the Secured Indebtedness. Plant, equipment and machinery and other fixtures may be severed and sold separately from the premises containing them and the Receiver may apportion any rent and the performance of any obligations affecting such premises sold without the consent of the Chargor;

(v) to lease or license the Charged Assets, renew, terminate, surrender or accept the surrender of leases or licenses, in each case on such terms as the Receiver shall think fit (whether at a premium or otherwise) and without the restrictions set out in section 23 of the CLPA;

(vi) to add or sever fixtures and sell them separately from the premises containing them and apportion any rent, proceeds or obligations affecting such premises without the consent of the Chargor;

(vii) to surrender or transfer any of the Charged Assets to any governmental agency (whether for fair compensation or not), and to exchange (whether or not for fair value) any Charged Asset with any person (any asset received being treated as part of the Charged Assets) and to make any settlement, arrangement or compromise with any person or enter into or cancel any contract which the Receiver considers expedient;

(viii) to insure and keep insured the Charged Assets of an insurable nature against loss or damage by such risks and contingencies as the Receiver may think fit, in such manner in all respects as the Receiver may think fit, and to maintain, renew or increase any insurances in respect of the Charged Assets;

(ix) to make calls (conditionally or unconditionally) on the members of the Chargor in respect of uncalled capital;

(x) to promote the formation of companies with a view to the same purchasing all or any of the undertaking, property, assets and rights of the Chargor or otherwise;

(xi) to exercise all voting and other rights attaching to any Securities or Related Rights;

(xii) to institute, prosecute and defend any proceedings in the name of the Chargor or otherwise as may seem expedient;

(xiii) to make any arrangement, settlement or compromise or enter into any contracts which the Receiver shall think expedient in the interests of the Finance Parties;

(xiv) for the purpose of exercising any of the powers, authorities and discretions conferred on him by or pursuant to this Deed and of defraying any costs, charges, losses or expenses (including his remuneration) which shall be incurred by him in the exercise thereof or for any other purpose in connection herewith, to raise and borrow money either unsecured or on the security of the Charged Assets either in priority to this Deed or otherwise and generally on such terms and conditions as he may think fit provided that:

(i) no Receiver shall exercise such power without first obtaining the written consent of the Finance Parties and the Finance Parties shall incur no liability to the Chargor or any other person by reason of its giving or refusing such consent whether absolutely or subject to any limitation or condition; and

(ii) no person lending such money shall be concerned to enquire as to the existence of such consent or the terms thereof or as to the propriety or purpose of the exercise of such power or to see to the application of any money so raised or borrowed;

(xv) to appoint managers, agents, officers, solicitors, accountants, auctioneers, brokers, architects, engineers, workmen or other professional or non-professional advisers, agents or employees for any of the aforesaid purposes at such salaries or for such remuneration and for such periods as the Receiver may determine and to dismiss any of the same or any of the existing staff of the Chargor and to delegate to any person any of the powers hereby conferred on the Receiver;

(xvi) to give receipts for the Charged Assets and any rents and profits thereof and any other monies or assets coming into the Receiver' s hands;

(xvii) in the exercise of any of the above powers to expend such sums as the Receiver may think fit and the Chargor shall forthwith on demand repay to the Receiver all sums so expended together with interest thereon at such rates determined by the Lenders in accordance with the provisions of clause 13 of the Guarantee Issuance Facility Agreement from the time of the same having been paid or incurred and until such repayment such sums together with such interest shall be secured by this Deed; and

(xviii) to have access to and make use of the premises and the accounting and other records of the Chargor and the services of its staff for all or any of the purposes aforesaid.

(c) Ancillary Powers: execute deeds and documents on behalf of the Chargor and do all such other acts and things which the Receiver may reasonably consider to be incidental or conducive to any of the matters or powers referred to above or to the realization of the security created by this Deed and to use the name of the Chargor in the exercise of all or any of the powers conferred by or referred to in this Deed.

All property of any kind acquired in the exercise of the powers conferred by this Deed shall be subject to the security hereby created.

8.7 Remuneration of Receiver. Each Receiver shall be entitled to remuneration for his services at a rate to be fixed by agreement between him and the Security Agent (or, failing such agreement, to be fixed by the Security Agent) appropriate to the work and responsibilities involved upon the basis of charging from time to time adopted in accordance with his current practice or the current practice of his firm.

8.8 No Restrictions on Power of Sale. No restrictions imposed by any ordinance or other statutory provision in relation to the exercise of any power of sale shall apply to this Deed. Provided that in the case of the exercise of a power of sale in respect of any Charged Asset other than the Gold Inventories, such power shall only be exercised by the Security Agent or the Receiver (as the case may be) upon the expiry of fourteen (14) day' s prior written notice from the Security Agent or the Receiver (as the case may be) to the Chargor of its intention to exercise such power of sale.

8.9 Receiver to Conform to Security Agent' s Directions. The Receiver shall in the exercise of the Receiver' s powers, authorities and discretions conform to the directions and regulations from time to time given or made by the Security Agent.

8.10 Give up Possession. The Security Agent may give up possession of any Charged Assets at any time and may discontinue any receivership.

8.11 Not Mortgagee in Possession. Neither the Security Agent nor any Receiver shall by reason of its entering into possession of any of the Charged Assets be liable to account as mortgagee in possession or for anything except actual receipts or be liable for any loss upon realization or for any default or omission for which a mortgagee in possession might otherwise be liable except if such loss, default or omission arises as a result of the Security Agent' s or the Receiver' s negligence or willful misconduct.

8.12 Exclusion of Liability. Neither the Security Agent nor any Receiver shall be responsible for any losses of any kind whatsoever (including, without limitation, negligence, default or dishonesty of any person employed by the Security Agent, any attorney of the Security Agent or any Receiver) which may occur in or about the exercise, or purported exercise or non-exercise of any of the rights, powers or remedies of the Security Agent except if such loss arises as a result of the negligence or willful misconduct of the Security Agent or such Receiver. The Security Agent and every Receiver shall be entitled to all the privileges and immunities conferred on mortgagees and receivers appointed thereunder by the CLPA.

8.13 Exclusion of Statute. Sections 29(6) *(Rate of Remuneration*) and (8*) (Application of Monies Received by Receiver)* of the CLPA shall not apply in relation to the Receiver.

8.14 Purchaser Not Bound to Enquire. No purchaser or other person shall be bound or concerned to see or enquire whether the right of the Security Agent or the Receiver to exercise any of the powers hereby conferred has arisen or not or be concerned with the propriety or regularity of the exercise thereof or be concerned with notice to the contrary or be concerned or responsible for the application of any monies received by the Security Agent or the Receiver and the receipt of the Security Agent or the Receiver for any monies paid to it shall be a good and sufficient discharge to the person paying the same

8.15 Acceptance of Payments. This Deed may be enforced notwithstanding that the Security Agent or any other Finance Parties may have accepted payment of any Secured Indebtedness after the occurrence of an Event of Default.

8.16 Extension and Variation of the CLPA. The foregoing powers conferred on the Security Agent or a Receiver shall be in addition to and not to the prejudice of all statutory and other powers of the Security Agent or a Receiver under the CLPA or otherwise. The Security Agent or Receiver may exercise without any statutory restrictions (in particular the restrictions in Section 25 of the CLPA) all of the powers conferred on the Security Agent or Receiver by the CLPA as hereby varied or extended, which power shall arise and may be exercised at any time after the happening of an Event of Default without further notice. Provided that in the case of the exercise of a power of sale in respect of any Charged Asset other than the Gold Inventories, such power shall only be exercised by the Security Agent upon the expiry of fourteen (14) day' s prior written notice from the Security Agent to the Chargor of its intention to exercise such power of sale.

9. Receipt and Application of Monies

9.1 Application of Monies. All monies received by the Security Agent or the Receiver hereunder shall be applied in or towards satisfaction of the Secured Indebtedness in such order of priority as the Security Agent in its absolute discretion may determine (subject to the prior discharge of all liabilities having priority thereto by law) and subject to any such determination in the following order of priority:

(f) in payment or satisfaction of all costs, charges, expenses and liabilities incurred and payments made by or on behalf of the Security Agent or the Receiver in connection with the exercise of any powers hereunder and in preserving or attempting to preserve this security or the Charged Assets and of all outgoings paid by the Security Agent or the Receiver;

(g) in payment to the Receiver of all remuneration as may be agreed between him and the Security Agent to be paid to him at the time of, or at any time after, his appointment;

(h) in payment or satisfaction of the remaining Secured Indebtedness (interest being satisfied first) or such part thereof as the Security Agent may determine until the whole of the Secured Indebtedness shall have been certified by the Security Agent as having been discharged and so that if the Chargor is contingently liable or will or might be so liable in respect of any monies, obligations or liabilities hereby secured all monies not dealt with under the preceding provisions of this Clause shall be placed on deposit in such separate account as the Security Agent in its absolute discretion may think fit for the purpose of securing the contingent liabilities of the Chargor and shall become subject to this security, to be applied against such contingent liabilities as they fall due,

and the remaining balance (if any) shall be paid to the Chargor or other person entitled thereto.

10. TAXES AND OTHER DEDUCTIONS

10.1 No Deductions or Withholdings. All sums payable by the Chargor under this Deed shall be paid in full without set-off or counterclaim or any restriction or condition and free and clear of any tax or other deductions or withholdings of any nature. If the Chargor or any other person is required by any law or regulation to make any deduction or withholding (on account of tax or otherwise) from any payment for the account of any Finance Party, the Chargor shall, together with such payment, pay such additional amount as will ensure that such Finance Party receives (free and clear of any tax or other deductions or withholdings) the full amount which it would have received if no such deduction or withholding had been required. The Chargor shall promptly forward to the Security Agent copies of official receipts or other evidence showing that the full amount of any such deduction or withholding has been paid over to the relevant taxation or other authority.

10.2 Tax Credits. In the event that any Finance Party actually receives the benefit of a tax credit or allowance resulting solely and directly from a payment by the Chargor under Clause 10.1 (*No Deductions or Withholdings*) then such Finance Party shall pay to the Chargor such part of that benefit as in the opinion of such Finance Party will leave it (after such payments) in no more and no less favorable a position than it would have been if the Chargor had not been required under Clause 10.1 (*No Deductions or Withholdings*) to make payment on account of any deduction or withholding as referred to in Clause 10.1 (*No Deductions or Withholdings*) Provided always that the Finance Party shall:

(a) be the sole judge of the amount of any such benefit and of the date on which it is received;

(b) have an absolute discretion as to the order and manner in which it employs or claims tax credits and allowances available to it; and

not be obliged to disclose to the Chargor any information regarding its tax affairs or tax computations.

11. SET-OFF

11.1 Set-Off. Notwithstanding Clause 8 (*Enforcement of Security*), the Chargor agrees that the Security Agent shall (without prejudice to any general or banker' s lien, right of set-off or any other right to which it may be entitled) have the right (but not the obligation), without notice to the Chargor or any other person, at any time to set off and apply any credit balance on the Receivables Accounts (whether subject to notice or not and whether matured or not and in whatever currency) and any other indebtedness owing by the Security Agent to the Chargor, against the Secured Indebtedness and any monies, obligations and liabilities of the Chargor to the Security Agent on any other account or in any other respect whether actual or contingent. The Security Agent may convert any such credit balance or other indebtedness at the prevailing rate of exchange into such other currencies as may be necessary for this purpose.

11.2 Security Agent May Debit Account of Chargor. The Security Agent may, without prejudice to any other right, power or remedy of the Security Agent, at any time and from time to time, without further authority or notice to the Chargor, debit and charge the Receivables Accounts with any of the monies payable to any of the Finance Parties under the Guarantee Issuance Facility Agreement or this Deed.

12. Costs, Charges and Expenses

12.1 Expenses. The Chargor shall from time to time forthwith on demand pay to or reimburse each Finance Party and the Receiver for:

(a) all reasonable costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by any Finance Party or the Receiver in connection with the preparation, execution and registration of this Deed, any other documents required in connection herewith and any amendment to or extension of, or the giving of any consent or waiver in connection with, this Deed;

(b) all costs, charges and expenses (including legal and other fees on a full indemnity basis and all other out-of-pocket expenses) incurred by any Finance Party or the Receiver in investigating any event which it reasonably believes is an Event of Default or Potential Event of Default or in exercising any of its or their rights or powers hereunder or in suing for or seeking to recover any sums due hereunder or otherwise preserving or enforcing its or their rights hereunder or in connection with the preservation or attempted preservation of the Charged Assets or in defending any claims brought against it or them in respect of this Deed or the Chargor' s interest in the Charged Assets or in releasing or re-assigning this Deed upon payment of all monies hereby secured; and

(c) all remuneration payable to the Receiver,

and, until payment of the same in full, all such costs, charges, expenses and remuneration shall be secured by this Deed.

12.2 Taxes. The Chargor shall pay when due all present and future stamp and other like duties and taxes and all notarial, registration, recording and other similar fees which may be payable in respect of this Deed and any documentation required in connection with this Deed and shall indemnify each of the Finance Parties from and against all liabilities, costs and expenses which may result from any delay or default in paying such duties, taxes or fees (unless such delay or default was caused by or resulted from any willful misconduct or negligence of any such Finance Party).

13. Indemnity

13.1 General Indemnity. The Chargor shall indemnify each of the Finance Parties and the Receiver (and any attorney or delegate of either of them) from and against all losses, liabilities, damages, costs and expenses reasonably incurred by it or them in the execution or performance of the terms and conditions hereof and against all actions, proceedings, claims, demands, costs, charges and expenses which may be incurred, sustained or arise in respect of the non-performance or non-observance of any of the undertakings and agreements on the part of the Chargor herein contained or in respect of any matter or thing done or omitted relating in any way whatsoever to the Charged Assets provided that the Chargor shall not be obliged to indemnify any person pursuant to this Clause 13.1 (*General Indemnity*) to the extent that any such losses, liabilities, damages, costs or expenses were caused by the negligence or willful misconduct of that person.

13.2 Currency Indemnity. If an amount due to any Finance Party from the Chargor in one currency (the "first currency") under this Deed is received by such Finance Party in another currency (the "second currency"), the Chargor' s obligations to such Finance Party in respect of such amount shall only be discharged to the extent that such Finance Party may purchase the first currency with the second currency in accordance with normal banking procedures. If the amount of the first currency which may be so purchased (after deducting any costs of exchange and any other related costs) is less than the amount so due, the Chargor shall indemnify such Finance Party against the shortfall. This indemnity shall be an obligation of the Chargor independent of and in addition to its other obligations under this Deed.

13.3 Payment and Security. The Security Agent may retain and pay out of any money in the Security Agent' s hands all sums necessary to effect the indemnities contained in this Clause and all sums payable by the Chargor under this Clause shall form part of the monies hereby secured.

14. Evidence of Debt

A certificate signed by an authorized officer of the Security Agent stating any amount or rate (and showing reasonable detail of the basis and the computation of such amount or rate) for the purpose of this Deed shall, in the absence of fraud or manifest error, be conclusive and binding on the Chargor.

15. Further Assurance

15.1 Further Assurance. The Chargor shall at any time and from time to time (whether before or after the security hereby created shall have become enforceable) execute such further legal or other mortgages, charges or assignments and do all such transfers, assurances, acts and things as the Security Agent may reasonably require to give effect to the securities created by this Deed over or in respect of all or any of the undertaking, property, assets and rights both present and future of the Chargor to secure all monies, obligations and liabilities hereby covenanted to be paid or hereby secured or for the purposes of perfecting and completing any assignment of the Security Agent' s rights, benefits or obligations hereunder and the Chargor shall also give all notices, orders and directions which the Security Agent may reasonably require.

15.2 Enforcement of Security Agent' s Rights. The Chargor will do or permit to be done everything which the Security Agent may from time to time reasonably require to be done for the purpose of enforcing the Security Agent' s rights under this Deed and will allow its name to be used as and when reasonably required for that purpose.

16. Power of Attorney

The Chargor hereby irrevocably appoints the Security Agent, the Receiver and any persons deriving title under either of them by way of security jointly and severally to be its attorney (with full power of substitution) and in its name or otherwise on its behalf and as its act and deed to sign, seal, execute, deliver, perfect and do all deeds, instruments, acts and things which may be required or which the Security Agent or the Receiver shall reasonably think proper or expedient for carrying out any obligations imposed on the Chargor hereunder or, for carrying out any obligation imposed on for exercising any of the powers hereby conferred or in connection with any sale or disposition of the Charged Assets or the exercise of any rights in respect thereof or for giving to the Security Agent the full benefit of this security and so that the appointment hereby made shall operate to confer on the Security Agent and the Receiver authority to do on behalf of the Chargor anything which it can lawfully do by an attorney. Provided that the parties hereby agree that the Security Agent, the Receiver and any persons deriving title under either of them shall not exercise the powers and authorities hereby conferred until the occurrence of an Event of Default or a Potential Event of Default.

The Chargor ratifies and confirms and agrees to ratify and confirm any deed, instrument, act or thing which such attorney or substitute may execute or do.

17. Other Encumbrances

17.1 Tacking. All monies which are expressed to be secured by this Deed and which are advanced, paid or otherwise provided after any Finance Party receives notice of the creation of any other Encumbrance shall be secured by this Deed in priority to any monies secured by that other Encumbrance, unless the Finance Parties specifically agree otherwise in writing.

17.2 Opening of New Account. If any Finance Party receives actual or constructive notice, of any subsequent charge or other instrument affecting any part of the Charged Assets and/or the proceeds of realization thereof, such Finance Party may open a new account with the Chargor. If such Finance Party does not open a new account it shall nevertheless be treated as if it had done so at the time when it received or was deemed to have received notice, and as from that time all payments made to it shall be credited or be treated as having been credited to the new account and shall not operate to reduce the amount for which this Deed is security.

18. Protective Clauses

18.1 Protective Clauses. Without limiting Clause 4 (*Continuing Security*) neither the liability of the Chargor nor the validity or enforceability of this Deed shall be prejudiced, affected or discharged by:

(a) Other Encumbrances: any other Encumbrance, guarantee or other security or right or remedy being or becoming held by or available to any Finance Party or by any of the same being or becoming wholly or partly void, voidable, unenforceable or impaired or by any Finance Party at any time releasing, refraining from enforcing, varying or in any other way dealing with any of the same or any power, right or remedy any Finance Party may now or hereafter have from or against the Chargor or any other person;

(b) Time: the granting of any time or indulgence to the Chargor or any other person;

(c) Variation: any variation or modification of the Guarantee Issuance Facility Agreement, any of the other Finance Documents or any other document referred to therein;

(d) Invalidity: the invalidity or unenforceability of any obligation or liability of the Chargor under the Guarantee Issuance Facility Agreement or any of the other Finance Documents;

(e) Defective Execution: any invalidity or irregularity in the execution of this Deed, the Guarantee Issuance Facility Agreement or any of the other Finance Documents;

(f) Defective Capacity: any deficiency in the powers of the Chargor to enter into or perform any of its obligations under this Deed or under any of the other Finance Documents or any irregularity in the exercise thereof or any lack of authority by any person purporting to act on behalf of the Chargor;

(g) Change in Constitution: any change in the constitution of the Chargor or any Finance Party or (in relation to any of them) its absorption in or amalgamation with, or the acquisition of all or a part of its undertaking by, any other person;

(h) Insolvency: the insolvency or liquidation or any incapacity, disability or limitation of the Chargor;

(i) Waiver: any waiver, exercise, omission to exercise, compromise, renewal or release of any rights against the Chargor or any other person or any compromise, arrangement or settlement with any of the same; and

(j) Other: any act, omission, event or circumstance which would or may but for this provision operate to prejudice, affect or discharge this Deed or the liability of the Chargor under this Deed.

18.2 Unrestricted Right of Enforcement. This Deed may be enforced without the Finance Parties first having recourse to any other security or rights or taking any other steps or proceedings against the Chargor or any other person or may be enforced for any balance due after resorting to any one or more other means of obtaining payment or discharge of the monies obligations and liabilities hereby secured.

18.3 Restriction on Consolidation. Section 21(1) of the CLPA shall not apply to this Deed.

18.4 Release. The Security Agent may release any of the Charged Assets from the security hereby created at any time and any such release shall not in any way affect, prejudice or invalidate the security created over any other Security Document or the obligations of the Chargor under this Deed or the Guarantee Issuance Facility Agreement or any other Security Document to which it is a party.

18.5 Release of Charge Conditional. Any release, settlement or discharge given or made by the Security Agent in consideration for any assurance, security, disposition or payment made by the Chargor or any other person shall be conditional upon such assurance, security, disposition or payment not being void, voidable, set aside or ordered to be refunded for any reason whatsoever under any law (including, without limitation, any law relating to preferences, bankruptcy, insolvency, administration or winding up). If such condition is not fulfilled:

(a) Enforcement: the Security Agent shall be entitled to enforce the security created by or pursuant to this Deed subsequently to the same extent as if no such assurance, security, disposition or payment had been made and any such release, settlement or discharge had not occurred;

(b) Further Assurance: the Chargor shall, at its own expense, promptly do, execute and deliver, and cause any relevant third person to do, execute and deliver, all such acts and instruments as the Security Agent may reasonably require to reinstate the security expressed to be constituted by this Deed; and

(c) Retention of Security: the Security Agent may retain this Deed, any security hereby created and any document deposited with it hereunder until it is satisfied that such condition has been or will be fulfilled, and this Clause 18.5 shall survive the discharge of this Deed unless the Security Agent expressly agrees otherwise in writing.

19. AMENDMENT, WAIVER AND SEVERABILITY

19.1 Amendment. Any amendment or waiver of any provision of this Deed and any waiver of any default under this Deed shall only be effective if made in writing and signed by the Security Agent.

19.2 Waiver. No failure or delay by any Finance Party in exercising any of its right, power or remedy under this Deed shall impair such right, power or remedy or operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any further exercise thereof or of any other right, power or remedy. The rights, powers and remedies provided in this Deed are cumulative and do not exclude any other rights, powers or remedies provided by law.

19.3 Severability. If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity and enforceability of such provision under the law of any other jurisdiction, and of the remaining provisions of this Deed, shall not be affected or impaired thereby.

20. Miscellaneous

20.1 Counterparts. This Deed may be executed in any number of counterparts and by the different parties to this Deed on separate counterparts which when taken together shall constitute one and the same instrument.

20.2 Survival of Indemnities. The indemnities contained in this Deed are continuing obligations of the Chargor and are separate and independent from the other obligations of the Chargor and shall survive the termination of this Deed.

21. ASSIGNMENT

21.1 Successors and Assigns. This Deed shall be binding upon and inure to the benefit of the parties to this Deed and their respective successors and permitted assigns.

21.2 Assignment by Chargor. The Chargor shall not assign or otherwise transfer the benefit of this Deed or any of its rights, duties or obligations under this Deed without the prior written consent of the Security Agent.

21.3 Assignment by Lenders. The Lenders may assign or grant participations in all or any part of their rights under this Deed in accordance with the provisions of clause 19.3 and clause 19.4 respectively of the Guarantee Issuance Facility Agreement.

21.4 Change of Security Agent. The Security Agent may assign and transfer all of its rights to the Charged Assets and all of its rights and obligations under this Deed to a replacement Security Agent appointed in accordance with the Guarantee Issuance Facility Agreement and, when such assignment and transfer takes effect, the replacement Security Agent shall be for all purposes acting as security agent and trustee in accordance with this Deed and the Guarantee Issuance Facility Agreement.

22. NOTICES

21.1 Delivery. Each notice, demand or other communication to be given or made under this Deed shall be in writing and delivered or sent to the relevant party at its address or fax number set out below (or such other address or fax number as the addressee has by not less than five (5) days' prior written notice specified to the other party):

To the Chargor: KULICKE & SOFFA (S.E.A.) PTE. LTD.

6 Serangoon North Avenue 5

#03-16

Singapore 554910

Fax Number : (65) 6880 9662

Attention : Ho Siew Foong/ Conrad Wee

To the Security Agent: NATEXIS BANQUES POPULAIRES

SINGAPORE BRANCH

50 Raffles Place #41-01

Singapore Land Tower

Singapore 048623

Telephone Number : (65) 6224 1455

Fax Number : (65) 6224 8651

Attention : Karen Lim/ Kelly Yan

22.2 Deemed Delivery. Any notice, demand or other communication so addressed to the relevant party shall be deemed to have been delivered (a) if given or made by letter, when actually delivered to the relevant address, (b) if given or made by fax, when despatched with electronic confirmation of complete and error-free transmission, Provided that, if such day is not a working day in the place to which it is sent, such notice, demand or other communication shall be deemed delivered on the next following working day at such place.

22.3 Language. Each notice or other communication under this Deed shall be in English. Any other documents required to be delivered under this Deed shall be either in English or be accompanied by a certified translation into English.

23. GOVERNING LAW AND JURISDICTION

23.1 Law. This Deed and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of Singapore.

23.2 Jurisdiction. The Chargor irrevocably agrees for the benefit of the Finance Parties that any legal action arising out of or relating to this Deed may be brought in the courts of Singapore and irrevocably submits to the non-exclusive jurisdiction of such courts.

23.3 No Limitation on Right of Action. Nothing in this Deed shall limit the right of any Finance Party to commence any legal action against the Chargor and/or its assets in any other jurisdiction or to serve process in any manner permitted by law, and the taking of proceedings in any jurisdiction shall not preclude any Finance Party from taking proceedings in any other jurisdiction whether concurrently or not.

23.4 Waiver; Final Judgment Conclusive. The Chargor irrevocably and unconditionally waives any objection which it may now or hereafter have to the choice of Singapore as the venue of any legal action arising out of or relating to this Deed and agrees not to claim that any court in that venue is not a convenient or proper forum. The Chargor also agrees that a final judgment against it in any such legal action shall be final and conclusive and may be enforced in any other jurisdiction, and that a certified or otherwise duly authenticated copy of the judgment shall be conclusive evidence of the fact and amount of its indebtedness.

23.5 Waiver of Immunity. The Chargor irrevocably and unconditionally waives any immunity to which it or its assets may at any time be or become entitled, whether characterized as sovereign immunity or otherwise, from any set-off or legal action in Singapore or elsewhere, including immunity from service of process, immunity from jurisdiction of any court or tribunal, and immunity of any of its assets from attachment prior to judgment or from execution of a judgment.

THIS DEED has been executed as a Deed by the parties hereto and is intended to be and is hereby delivered on the date stated at the beginning of this Deed.

Schedule 1

Particulars of Insurances as at the date hereof

Policy No.	:	MD0300409
Name of insurer	:	Underwriting members of Lloyds
Insured	:	Kulicke & Soffa Industries and/or its subsidiaries and/or American Fine Wire and/or N.M. Rothschild & Sons (Australia) Limited for their respective rights and interests.
Period	:	12 months at 1st October 2003
Insurances covered	:	
Type	:	All Risks
Interest	:	Gold and/or bullion and/or numismatic coins and/or precious metals and/or previous metals in whatever form or stage, whether or not specifically identifiable during processing and the process thereof, the property of the Insured or for which they are legally of contractually responsible or for which they have received instruction to insure or deem themselves responsible to insure.
Limit of Liability	:	US$18,000,000 any one loss any one location as per schedule sublimited to US$500,000 any one loss any one location in respect of any other Kulicke & Soffa location.

Schedule 2

Form of Notice

To: [name of Insurer]

_____ 200__

Dear Sirs,

Re: [specify relevant policy or contract of insurance]

We refer to the above insurances (the "Insurances") effected by you in favour of [_____] as detailed in a Debenture (the "Debenture") dated __ 2004, a copy of which is attached hereto.

We give you notice that by the Debenture we have assigned to Natexis Banques Populaires, Singapore Branch (the "Security Agent") acting on its own behalf and as agent and security trustee for the Finance Parties all our right, title, interest and benefit in and to the Insurances and all payments to be made by you thereunder.

We instruct you that until further notice all payments in respect of any claim for an amount which you may be required to make pursuant to the terms of the Insurances should be made in accordance with the terms set out in the enclosed form of loss payable and notice of cancellation clause.

These instructions may not be altered or revoked by us without the prior written consent of the Security Agent.

Please acknowledge these instructions by signing as indicated and returning to the Security Agent the enclosed duplicate of this notice.

Yours faithfully,
For and on behalf of
KULICKE & SOFFA (S.E.A.) PTE. LTD.

_____

Name:

Title:

[enclose form of Loss Payable and Notice of Cancellation Clause]

[On duplicate]

To:

Natexis Banques Populaires, Singapore Branch

Attn: [ ]

(on its own behalf and
as agent and security trustee for the Finance Parties
referred to above)

We acknowledge receipt of the above notice and confirm that we consent to the assignment set out in the above notice and that a loss payable and notice of cancellation clause in the form enclosed with the notice has been included in the Insurances and that we will comply with the instructions contained therein.

Dated _____ 200 __

For and on behalf of
[name of Insurer]

Authorized Signature(s)
Name:
Title:

Schedule 3

Form of Loss Payable and Notice of Cancellation Clause

By a Debenture dated _____ 200 __, KULICKE & SOFFA (S.E.A.) PTE. LTD. (the "Chargor") assigned all its right, title, interest and benefit in and to this policy/contract of insurance and the benefits and proceeds hereof including all claims of whatever nature and returns of premiums to NATEXIS BANQUES POPULAIRES, SINGAPORE BRANCH (the "Security Agent") acting on its own behalf and as agent and security trustee for the Finance Parties (as defined therein). Until notice in writing to the contrary is received by the insurer or insurance broker hereunder from the Security Agent, all proceeds payable hereunder shall be paid directly to the Security Agent.

The Security Agent shall be advised:

(i) if any insurer under this policy/contract gives notice of cancellation of any insurance hereunder, at least fourteen (14) days before any such cancellation is to take effect;

(ii) of any proposed alteration in or termination or expiry of any such insurance at least fourteen (14) days before such alteration, termination or expiry is to take effect;

(iii) promptly of any default in the payment of any premium or call;

(iv) promptly of any act or omission or of any event of which any insurer hereunder has knowledge and which might invalidate or render unenforceable in whole or in part such insurance.

No cancellation, termination or expiry of or alteration to any insurance hereunder shall be effective as against the Security Agent or the Finance Parties unless the relevant provisions of this Clause have been complied with in full.

The rights of the Security Agent and the Finance Parties under this policy/contract of insurance shall not be prejudiced by any act or neglect of the Chargor or any other person nor by any foreclosure or other proceedings or notice of sale of the Gold or any other Charged Assets (as defined in the Debenture).

The Security Agent may, but shall not be required to, pay any insurance premiums unpaid by the Chargor.

EXECUTION

THE CHARGOR

THE COMMON SEAL of)

KULICKE & SOFFA (S.E.A.) PTE. LTD.)

was affixed to this Deed in)

the presence of:)

/s/ Ho Siew Foong

Director

/s/ Sabrina Ruskin

Director/Secretary

THE SECURITY AGENT

SIGNED by)

for and on behalf of)

NATEXIS BANQUES POPULAIRES)

SINGAPORE BRANCH)

in the presence of:)

/s/ Clara Hang

(Signature)

/s/ Philippe Petitgas

(Signature)

Exhibit 31.1

CERTIFICATION

I, C. Scott Kulicke, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Kulicke and Soffa Industries, Inc.;

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) 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

   c) 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 (or persons performing the equivalent functions):

   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: August 12, 2004

/s/ C. SCOTT KULICKE

C. Scott Kulicke

Chairman of the Board and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Maurice E. Carson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Kulicke and Soffa Industries, Inc.;

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) 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

   c) 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 (or persons performing the equivalent functions):

   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: August 12, 2004

/s/ MAURICE E. CARSON

Maurice E. Carson

Vice President and Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, C. Scott Kulicke, the Chief Executive Officer of Kulicke and Soffa Industries, Inc., hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Quarterly Report on Form 10-Q of Kulicke and Soffa Industries, Inc. for the three months ended June 30, 2004 (the "June 30, 2004 Form 10-Q"), which this certification accompanies, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

2. information contained in the June 30, 2004 Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Kulicke and Soffa Industries, Inc.

Dated: August 12, 2004

/s/ C. SCOTT KULICKE

C. Scott Kulicke

Chief Executive Officer

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Maurice E. Carson, the Chief Financial Officer of Kulicke and Soffa Industries, Inc., hereby certify, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. the Quarterly Report on Form 10-Q of Kulicke and Soffa Industries, Inc. for the three months ended June 30, 2004 (the "June 30, 2004 Form 10-Q"), which this certification accompanies, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and

2. information contained in the June 30, 2004 Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Kulicke and Soffa Industries, Inc.

Dated: August 12, 2004

/s/ MAURICE E. CARSON

Maurice E. Carson

Chief Financial Officer