

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SPANSION INC., *et al.*,¹

Debtors.

Chapter 11

Case No.: 09-10690 (KJC)

Jointly Administered

**STIPULATION RESOLVING PROOF OF CLAIM NO. 1047 FILED BY
GENERAL ELECTRIC CAPITAL CORPORATION**

This stipulation (the “**Stipulation**”) is entered into by and between the above-captioned debtors and debtors-in-possession (the “**Debtors**”) and General Electric Capital Corporation (the “**Claimant**” or “**GECC**” and, together with the Debtors, the “**Parties**”), by and through their undersigned counsel.

RECITALS

A. On March 1, 2009 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (as hereafter amended, modified or supplemented, the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), commencing the above-captioned bankruptcy cases (collectively, the “**Chapter 11 Cases**”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. On March 4, 2009, the Court entered an order directing the joint administration of the Chapter 11 Cases under the case of Spansion Inc., Case No. 09-10690 [Docket No. 58].

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Spansion Inc., a Delaware corporation (8239); Spansion Technology LLC, a Delaware limited liability company (3982); Spansion LLC, a Delaware limited liability company (0482); Cerium Laboratories LLC, a Delaware limited liability company (0482), and Spansion International, Inc., a Delaware corporation (7542). The mailing address for each Debtor is 915 DeGuigne Dr., Sunnyvale, CA 94085.

C. Prior to the Petition Date, GECC leased certain equipment to Spansion LLC, one of the Debtors, pursuant to that certain (i) Master Lease Agreement dated as of April 23, 1993 by and between GECC, as lessor, and Spansion LLC, as assignee of Advanced Micro Devices, Inc. (the "**1993 Lease**"), (ii) Master Lease Agreement No. 0104019 dated as of November 1, 2004 between GE Business Financial Services Inc., as assignee of Merrill Lynch Capital, as lessor, and Spansion LLC (the "**2004 Lease**"); (iii) Lease Agreement No. 15878-11500 dated as of September 30, 2005 between GECC, as assignee of Merrill Lynch Capital and Banc of America Leasing & Capital, LLC, as lessor, and Spansion LLC, as lessee (the "**2005 Lease**;" and collectively, with the 1993 Lease and the 2004 Lease, the "**Leases**").

D. In connection with the 1993 Lease, the parties executed certain schedules, including Lease Schedule No. 025 dated March 14, 2008 ("**Schedule 25**") and Schedule No. GES026 dated September 25, 2008 ("**Schedule GES026**").

E. In connection with the 2004 Lease, the parties executed and certain schedules, including Lease Schedule No. 1 dated as of November 1, 2004 ("**Schedule 1**").

F. In connection with the 2005 Lease, the parties executed certain schedules, including Lease Schedule No. 15878-11500-006 ("**Schedule 6**"), Lease Schedule No. 15878-11500-009 ("**Schedule 9**"), and Lease Schedule No. 15878-11500-017 ("**Schedule 17**;" and collectively with Schedule 25, Schedule GES026, Schedule 1, Schedule 6, and Schedule 9, the "**Lease Schedules**").

G. On March 28, 2009, the Debtors filed the *Debtors' First Omnibus Motion For An Order Pursuant to 11 U.S.C. § 365 And Fed. R. Bankr. P. 6006 Authorizing Rejection Of Certain Unexpired Equipment Leases Nunc Pro Tunc To March 28, 2009* [Docket No. 180] (the "**First Rejection Motion**") and the *Debtors' Third Omnibus Motion For An Order Pursuant to 11*

U.S.C. § 365 And Fed. R. Bankr. P. 6006 Authorizing Rejection Of Certain Unexpired Equipment Leases Nunc Pro Tunc To April 3, 2009 [Docket No. 226] (the “**Third Rejection Motion**,” and together with the First Rejection Motion, the “**Motions**”). The Motions sought rejection of certain of the Leases and Lease Schedules and the equipment listed thereon (the “**Rejected Equipment**”).

H. On April 16, 2009, GECC filed the *Objection of General Electric Capital Corporation and GE Business Financial Services Inc. to Debtors (i) First Omnibus Motion for an Order Pursuant to 11 U.S.C. Section 365 and Fed.R.Bankr.P. 6006 Authorizing Rejection of Certain Unexpired Equipment Leases Nunc Pro Tunc to march 28, 2009; and (ii) Third Omnibus Motion for an Order Pursuant to 11 U.S.C. Section 365 and Fed.R.Bankr. 6006 Authorizing Rejection of Certain Unexpired Equipment Leases Nunc Pro Tunc to April 3, 2009* [Docket No. 277] (the “**GECC Objection**”).

I. On August 11, 2009, the Court entered an Order granting in part the Motions with respect to the various Lease Schedules [Docket No. 950] (the “**Rejection Order**”).

J. On May 27, 2009, the Court entered that certain *Order Establishing Bar Dates And Related Procedures For Filing Proofs Of Claims And Approving The Form, Manner And Sufficiency Of Notice Of The Bar Dates Pursuant To Fed. R. Bankr. P. 3003 And 9007* [Docket No. 554] (the “**Bar Date Order**”). Pursuant to the Bar Date Order, (i) the deadline for creditors (other than governmental entities) to file proofs of claim against the Debtors’ estates is sixty (60) days after service of the “Bar Date Notice” and (ii) the deadline for filing proofs of claim arising from the rejection of an executory contract or unexpired lease is the later of the “Bar Date” or the first business day that is at least sixty (60) calendar days after the mailing to the claimant of notice of entry of any order approving the rejection of such executory contract or unexpired

lease.

K. On June 26, 2009, each of the Debtors filed their schedules and statements of financial affairs [Docket Nos. 718-729], which were subsequently amended on July 2, July 22, and July 31, 2009 [Docket Nos. 748-49, 856-861, 920-21, respectively] (collectively, as amended, the “**Schedules**”).

L. On July 6, 2009, the Debtors served the *Notice Of Deadline For Filing Proofs Of Claim Including, Without Limitation, Those Asserted Under 11 U.S.C. § 503(b)(9)* [Docket No. 754] (the “**Bar Date Notice**”), which established September 4, 2009 as the “Bar Date.”

M. On or about September 4, 2009, in accordance with the Bar Date Order and Bar Date Notice, Claimant filed a proof of claim against Spansion LLC in the amount of \$29,184,514.87, plus interest and all other costs and fees due under the Lease, including but not limited to attorneys’ fees and additional late charges (“**Proof of Claim No. 1047**”), which is identified as Claim No. 1047 on the Debtors’ claims register. Proof of Claim No. 1047 is comprised as follows: (i) prepetition rents and other charges in the aggregate amount of \$1,288,163.34; (ii) accrued but unpaid postpetition rents and other charges for which priority was claimed under § 507(a)(2) in the amount of \$4,231,480.51; (iii) rejection damages in the aggregate amount of \$17,074,635.39; and (iv) estimated prospective postpetition rent and other charges through the expiration of the applicable Lease Schedules, which were included as a protective measure in the event the Debtors were to reject the Leases, in the aggregate amount of \$6,742,882.99.

N. The Debtors have reviewed Proof of Claim No. 1047 and raised informal objections to it, which have been discussed with Claimant.

O. The Parties have conferred and agree to resolve Proof of Claim No. 1047 upon the

terms and conditions set forth below.

WHEREFORE, in consideration of the foregoing and subject to the approval of this Court, the Debtors and Claimant hereby stipulate and agree as follows:

STIPULATION

1. **Allowance of Proof of Claim No. 1047.** Upon Court approval of this Stipulation, Proof of Claim No. 1047 shall be allowed as follows: (i) an allowed administrative expense claim pursuant to 11 U.S.C. § 503 in the amount of \$523,312.00 (the "**Administrative Claim**"), comprised as follows: (1) \$189,000.00 on account of Schedule 1; (2) \$292,060 on account of Schedule 9; and (3) \$42,252.00 on account of Schedule 17; and (ii) an allowed general unsecured claim in the amount of \$12,351,269.00 (the "**Allowed General Unsecured Claim**" and, together with the Administrative Claim, the "**Allowed Claim**"), comprised as follows: (1) \$651,000.00 on account of Schedule 1; (2) \$309,984.00 on account of Schedule 6; (3) \$2,304,027.00 on account of Schedule 9; (4) \$1,553,940.00 on account of Schedule 17; (5) \$650,151.00 on account of Schedule 25; and (6) \$6,882,167.00 on account of Schedule GES026, which shall be deemed to be an "Allowed Administrative Expense Claim" and an "Allowed Class 5B Claim", respectively, under the Debtors' Second Amended Joint Plan of Reorganization Dated December 16, 2009 (as may be amended from time to time, the "**Plan**") filed on December 17, 2009 [Docket No. 2032], and shall be treated as such in accordance with the terms of the Plan. The remainder of Proof of Claim No. 1047, if any, shall be disallowed and expunged in its entirety. By executing this Stipulation, the Parties agree and acknowledge that: (a) the Allowed Claim shall not be subject to any defense, counterclaim, right of setoff, reduction, avoidance, disallowance, recharacterization, or subordination; provided however, the Allowed General Unsecured Claim shall be deemed an "Allowed Class 5B Claim" under the Plan and Claimant

shall receive only its *pro rata* share or distribution provided for under the Plan; (b) the schedules, claims registers, and the Debtors' books and records shall be deemed to be amended to reflect the foregoing; and (c) no subsequent, different or further objection, motion or adversary proceeding shall be filed with respect to, or on account of, the Allowed Claim or otherwise against the Claimant.

2. **No Admission or Waiver.** The resolution of Proof of Claim No. 1047 as provided in this Stipulation is acknowledged to be a consensual resolution. Nothing contained herein shall be considered as an admission of liability or past or present wrongdoing by any party.

3. **Release by Claimant.** Claimant, on its own behalf and on behalf of its successors and assigns, hereby waives and releases any and all claims it has against the Debtors, the Reorganized Debtors and/or their estates, and their respective directors, officers, employees, successors, successors and assigns, and each and every one of them, with respect to the Rejected Equipment, other than the Allowed Claim, which is expressly reserved and preserved hereby, whether such claim was set forth in the Debtors' schedules or filed on a proof of claim form, and regardless of the administrative, secured or priority status of such claim.

4. **Authority.** Each of the Parties to this Stipulation represents and warrants that he, she or it has the capacity and authority to enter into this Stipulation.

5. **Binding Effect of this Stipulation.** This Stipulation shall be binding upon the Parties hereto and all of their respective successors and assigns from the date of its execution, including, without limitation, any chapter 7 or 11 trustee, but is expressly subject to and contingent upon Court approval. In addition, this Stipulation may not be abandoned, amended, supplemented, changed, or modified in any manner, orally or otherwise, except by an instrument

in writing of concurrent or subsequent date signed by a duly authorized representative of each of the Parties hereto.

6. **Representations.** Each of the Parties hereto represents and warrants that it has carefully read this Stipulation in its entirety; that it has had an adequate opportunity to consider it and to consult with any advisor of its choice about it; that it understands all of its terms; that it has consulted with independent counsel of its choice, who answered to its satisfaction all questions that it had regarding this Stipulation; that it is duly authorized to enter into this Stipulation; that it voluntarily assents to all the terms and conditions contained herein; and that by signing this Stipulation, it agrees to be bound by the terms and conditions contained herein.

7. **Warranties.** By executing this Stipulation, the Claimant represents and warrants that: (i) the Claimant is the sole owner and holder of Proof of Claim No. 1047; and (ii) the Claimant has not sold, assigned, or transferred Proof of Claim No. 1047.

8. **Entire Agreement.** This Stipulation contains and constitutes the entire understanding and agreement between the Parties hereto with respect to Proof of Claim No. 1047 and cancels all previous oral and written negotiations, agreements, commitments, and writings in connection therewith. This Stipulation is without prejudice to Claimant's rights with respect to other unexpired leases and executory contracts that have not been rejected by the Debtors, and the Claimant's rights to assert any claims in connection therewith (unless waived, limited or barred by the Bar Date Order or other order entered prior to the date of this Stipulation), including damage claims in the event that any such unexpired leases or executory contracts are rejected, are expressly reserved. Likewise, the Debtors reserve the right to object to such claims.

9. **Voluntary Assent.** The Parties affirm that no other promises or agreements of any kind have been made to them by any person or entity whatsoever to cause them to sign this

Stipulation, and that they fully understand the meaning and intent of this Stipulation.

10. **Attorneys' Fees.** The Parties agree that each of the Parties hereto shall bear its own attorneys' fees and costs in connection with the matters resolved hereby.

11. **Counterparts.** This Stipulation may be executed in counterparts and may be delivered by telecopy. Any copy so executed and delivered (including delivery by telecopy), when taken with another executed copy, shall be considered and deemed an original hereof.

12. **Retention of Jurisdiction.** The Court shall retain jurisdiction to hear any disputes among the Parties regarding this Stipulation and Order.

IT IS SO STIPULATED

Dated: February 1, 2010

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**GENERAL ELECTRIC CAPITAL
CORPORATION**

**DEBTORS AND DEBTORS IN
POSSESSION**

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