

58-01



TO THE ASSISTANT COMMISSIONER F

101711386

ial documents or copy thereof.

1. Name of conveying party(ies): (If multiple assignors, list numerically)

Ambex Technologies, Inc.

Additional name(s) of conveying party(ies) attached?

() Yes (X) No

2. Name and address of receiving party(ies):

Name: Borg Adaptive Technologies, Inc.

Internal Address:

Street Address: 59 Beaver Way

City: Boulder State: CO ZIP: 80304

Additional name(s) of receiving party(ies) attached?

() Yes (X) No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other:

Execution Date: (If multiple assignors, list execution dates in numerical order corresponding to numbers indicated in 1 above) October 7, 1997

4. Application number(s) or Patent number(s):

Application(s) filed herewith Execution Date(s): *

Patent Application No.: Filing Date:

Patent No.: 5,875,456

Issue Date: 2/23/99

(Application No. 08/516,232; filed 8/17/95)

Additional numbers attached? () Yes (X) No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Lori Lee Yamato
KNOBBE, MARTENS, OLSON & BEAR, LLP
Customer No. 20,995

Internal Address: Sixteenth Floor
Street Address: 620 Newport Center Drive
City: Newport Beach State: CA ZIP: 92660
Attorney's Docket No.: QLOGICR.000GEN

7. Total fee (37 CFR 3.41): \$40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 11-1410

Please charge this account for any additional fees which may be required, or credit any overpayment to this account

6. Total number of applications and patents involved: 1

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct, and any attached copy is a true copy of the original document.

Lori Lee Yamato
Name of Person Signing

Signature

May 3, 2001
Date

40,881
Registration No.

Total number of pages including cover sheet, attachments and document: 19

Mail documents to be recorded with required cover sheet information to:

05/08/2001 DBYRNE 00000035 5875456

01 FC:581

40.00 DP

U.S. Patent and Trademark Office
Attn: Assignment Division
Crystal Gateway-4
1213 Jefferson Davis Highway, Suite 320
Arlington, VA 22202

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2001 MAY - 3 AM 8:52
ASSIGNMENT SERVICES DIVISION

ASSET PURCHASE AGREEMENT

By and Among

AMBEX TECHNOLOGIES, INC.

Seller,

BORG ADAPTIVE TECHNOLOGIES, INC.,

Purchaser,

and

RANDY K. HALL, GERALD HOHENSTEIN and DAVID STALLMO

Owners

October 1, 1997

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is made as of October 1, 1997 by and among AMBEX TECHNOLOGIES, INC., a California corporation ("Ambex" or "Seller"), and BORG ADAPTIVE TECHNOLOGIES, INC., a Colorado corporation ("Purchaser"), RANDY K. HALL, GERALD HOHENSTEIN and DAVID STALLMO (each, a member/owner of Purchaser and hereinafter collectively defined as the "Owners").

RECITALS:

A. Seller is in the business of developing, licensing and marketing software and hardware for RAID disk arrays (the "Business").

B. Seller desires to sell and Purchaser desires to purchase certain specified assets and assume certain specified liabilities of Seller.

NOW, THEREFORE, in consideration of the mutual agreements, representations and warranties contained in this Agreement, the parties agree as follows:

1. Sale and Purchase of Purchased Assets.

1.1 Purchase and Sale. Subject to the terms and conditions contained in this Agreement at the Closing (as defined below) Seller agrees to sell, assign, grant, transfer and convey to Purchaser, free and clear of any legal or equitable liens or security interests with the express exception of the license as set forth in Section 7.1 of this Agreement, and Purchaser agrees to purchase from Seller, all of Seller's rights, title and interest in the assets of Seller set forth below (collectively, the "Purchased Assets"), and Seller shall deliver good, clear and marketable title to the Purchased Assets, together with such bills of sale, assignments and other instruments of conveyance as may be reasonably requested by Purchaser to permit such delivery. The Purchased Assets shall include the following:

(a) All intellectual property rights obtained by Seller from Borg Technologies, Inc. and Borg Development Partners as of November 29, 1996, or developed at the Boulder, Colorado facility of Seller and associated with the conduct of the Business, including, without limitation, patents, know-how, unpatented inventions, trade secrets, secret formulas, business and marketing plans, industrial property rights, copyrights, trademarks, service marks, unregistered trademarks and service marks, trade names, all names and slogans used by Seller in the conduct of the Business in Boulder, Colorado and all rights and licenses thereto and applications and registrations therefor listed on Schedule 1.1(a) (the "Intellectual Property Assets"), with the express exception of (i) the license reserved in said Intellectual Property Assets, as set forth in Section 7.1 of this Agreement and (ii) all trademarks and service marks (registered or unregistered), trade names and slogans incorporating the name "Ambex," and (iii) other intellectual property rights owned by Seller prior to November 29, 1996;

(b) All of Seller's right in and to that certain License and Development Agreement effective as of May 16, 1995 by and between Borg Technologies, Inc. and Borg Development Partners, L.L.C., on the one hand, and Seek Systems, Inc., a Washington corporation ("Seek"), on the other hand, as assigned to Seller effective as of November 29, 1996, and including that certain Letter Agreement between Seek and David Stallmo dated May 16, 1995 (collectively, as amended to date, the "Seek Contract");

(c) All computer software and hardware used in the conduct of the Business, and all other equipment and tangible personal property used in or relating to the conduct of the Business, in each case listed on Schedule 1.1(b) (the "Equipment").

1.2 Liabilities. Purchaser shall take title to the Intellectual Property Assets subject to any liabilities or obligations of any kind of Seller. Purchaser hereby agrees to assume, satisfy and perform when due all liabilities and obligations arising from the date of this Agreement in respect of the Seek Contract. Purchaser shall take title to the Equipment free and clear of any liabilities or obligations of Seller.

1.3 Closing and Closing Date. Unless otherwise agreed by the parties, the consummation of the transactions contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the offices of Pillsbury Madison & Sutro LLP, on October 6, 1997, or such other place, time or date as Seller and Purchaser shall mutually agree, such time and date being referred to herein as the "Closing Date."

1.4 Actions at the Closing. At the Closing, Seller, Purchaser and the Owners shall take such actions and execute and deliver such agreements, bills of sale and other instruments and documents as necessary or appropriate to effect the transactions contemplated by this Agreement in accordance with its terms, including without limitation the following:

(a) Bill of Sale. Seller shall deliver to Purchaser a general bill of sale substantially the form attached as Exhibit A (the "Bill of Sale") with respect to the Purchased Assets, duly executed by Seller, assigning to Purchaser all of Seller's right, title and interest in and to the Purchased Assets.

(b) Purchase Price. Purchaser shall deliver the Purchase Price in accordance with the provisions of Section 2.

(c) Transaction Agreements. Seller, Purchaser and Owners shall execute and deliver each of the other agreements contemplated by this Agreement and attached as Exhibit A through Exhibit G hereto (collectively, the "Transaction Agreements").

(d) David Stallmo's Resignation. Purchaser shall deliver to Seller David Stallmo's letter of resignation from the Board of Directors of Seller, duly executed by David Stallmo.

(e) Source Code and Tangible Materials. Seller shall either deliver to Purchaser or certify to Purchaser that it has destroyed all copies and originals in its possession of all source code comprising the Intellectual Property Assets and all other tangible items relating

to the Intellectual Property Assets, including all written material, compositions and the like made available or supplied to it by the Owners.

2. Purchase Price; Terms of Payment.

2.1 Purchase Price. The purchase price to be paid for the Purchased Assets (the "Purchase Price") by Purchaser shall consist of the following:

(a) cash in the amount of Three Hundred Thousand Dollars (\$300,000), payable by note made pursuant to the terms as set forth in Exhibit B, and as secured by the Intellectual Property Assets set out in Section 1.1(a) and Purchaser's rights under the Seek Contract as set forth in the Security Agreement attached as Exhibit C;

(b) cash in the amount of Twenty Four Thousand Eight Hundred Twenty and Fifty-Five One-Hundredths Dollars (\$24,820.55), payable at the closing, which the parties agree is equal to the fair market value of the Equipment set forth in Schedule 1.1(b);

(c) the License as defined in Section 7.1;

(d) Twenty-Percent (20%) of the common stock to be issued by Purchaser as set forth in Section 6 of this Agreement;

(e) assumption of the Seek Contract as set forth in Exhibit D and each of the other Assumed Liabilities;

(f) execution and delivery of the Common Stock Purchase Agreement as defined in Section 6.1; and

(g) execution and delivery of the Co-Sale Agreement as defined in Section 6.2.

2.2 Taxes Arising from Transfer. Seller shall pay any sales, use, transfer, excise or other similar taxes, if any, arising out of the transfer of the Equipment to Purchaser.

3. Representations and Warranties of Seller. Seller makes no representations and warranties to Purchaser except those made in Sections 3.1 through 3.4 below:

3.1 Organization. Ambex is a corporation duly formed under the laws of the State of California and has the requisite power and authority to own, lease and operate its properties and to transact its business as it is now being conducted and to carry out this Agreement and the transactions contemplated herein.

3.2 "As Is" Clause. Seller has not, prior to the date hereof, sold, transferred, assigned, pledged or granted a security interest to any third party in any of the Purchased Assets. Except as set forth in the preceding sentence, the Purchased Assets are being purchased by the Purchaser "AS IS," and **SELLER DOES NOT WARRANT THAT THEY ARE OF MERCHANTABLE QUALITY OR THAT THEY CAN BE USED**

FOR ANY PARTICULAR PUK. JOE. Further, Purchaser acknowledges that Seller has made no additional warranties, either express or implied, with respect to the value, performance or freedom from liability or adverse claims of the assets transferred in accordance with this Agreement.

3.3 Due Authority; Valid and Binding Agreements. Seller has the power and authority to enter into and be bound by the terms and conditions of this Agreement and all of the Transaction Agreements, and to carry out its obligations pursuant hereto and thereto. The consummation by Seller of the transactions contemplated by this Agreement and by the Transaction Agreements has been duly authorized by all necessary action of Seller in accordance with the terms of Seller's articles of incorporation and bylaws, and no other act or proceeding on the part of or on behalf of Seller, or any of its Owners, is necessary to approve the execution of this Agreement and the Transaction Agreements. This Agreement and each of the Transaction Agreements is a legal, valid and binding obligation of Seller and enforceable against Seller in accordance with its terms, subject to limitations imposed by general principles of equity upon the availability of equitable remedies and the enforcement of such provisions.

3.4 Full Disclosure. Except for the notice of default with respect to the Seek Contract given by Seek to Seller on or about September 8, 1997 (the "Seek Notice"), Seller is not aware of any facts pertaining to the Purchased Assets (including but not limited to the Intellectual Property Assets) that it believes affects, or is likely in the future to affect, the Purchased Assets, or the Business conducted with the Purchased Assets or in a materially adverse manner.

4. Representations and Warranties of Purchaser. Purchaser and Owners, jointly and severally, hereby represent and warrant to Seller that:

4.1 Organization; Good Standing and Qualification. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Colorado and has all requisite corporate power and authority to carry on its business as now conducted.

4.2 Authorization. All corporate action on the part of Purchaser, its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement and the Transaction Agreements, the performance of all obligations of Purchaser hereunder and under the Transaction Agreements has been taken or will be taken prior to the Closing, and this Agreement and the Transaction Agreements constitute valid and legally binding obligations of Purchaser and Owners, enforceable against them in accordance with their terms, subject to limitations imposed by general principles of equity upon the availability of equitable remedies and the enforcement of such provisions.

4.3 Full Disclosure. Except for the Seek Notice, neither Purchaser nor any Owner is aware of any facts pertaining to the Purchased Assets (including but not limited to the Intellectual Property Assets) or any assets or properties of Seller not being sold to Purchaser hereunder that any of them believe affects in a materially adverse way, or is likely in the

future to affect in a materially adverse way, the business, operations or financial condition of Seller following the Closing of the transactions contemplated hereby.

4.4 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state, local or provincial governmental authority on the part of Purchaser or any Owner is required in connection with the consummation of the transactions contemplated by this Agreement.

4.5 No Prior Liens. None of the Owners has, prior to the date hereof, sold, transferred, assigned, pledged or granted a security interest to any third party, or caused Purchaser to sell, transfer, assign, pledge or grant a security interest to any third party, in any of the Purchased Assets.

5. Interim Covenants.

5.1 Access; Confidentiality. Seller covenants and agrees to make available all books, records, facilities, employees and information necessary for Purchaser to evaluate the Purchased Assets, and Purchaser and Owners agree to make available all books, records, facilities, employees and information of Purchaser necessary for Seller to evaluate Purchaser's performance under this Agreement. Except as provided in this Section 5.1 below, each party hereto shall keep confidential and shall not make use of any information treated by the other party as confidential (including, without limitation, the existence of this Agreement), obtained from the other party concerning the assets, properties, business or operations of the other party other than to legal counsel, auditors, board members, consultants, financial advisers, key employees, lenders and investment bankers where such disclosure is related to the performance of obligations under this Agreement or the consummation of the transactions contemplated under this Agreement (all of whom shall be similarly bound by the provisions of this Section 5.1), except as may be required to be disclosed by applicable law. Notwithstanding the foregoing, the foregoing confidentiality restrictions shall not apply to (a) information that was in the receiving party's possession prior to receipt from the disclosing party, (b) information that becomes generally available to the public other than as a result of the receiving party's fault or action, (c) information that becomes available to the receiving party from some source other than the disclosing party, provided that such source is under no non-disclosure obligation, or (d) information that is developed independently by the receiving party without reference to the disclosing party's information. In addition, the provisions of this Section 5.1 shall expire five (5) years from the date of this Agreement.

5.2 Public Announcements. Seller, Purchaser and each Owner covenants and agrees to cooperate in good faith and mutually consent to any press release or public statement with respect to the existence of this Agreement or the transactions contemplated hereby, and further agree not to issue any such press release or public statement prior to consultation with the other, except as may be required by law.

5.3 Cooperation of Purchaser and Owners. Purchaser and each Owner covenant to cooperate in good faith and mutually consent to assist in the winding down of the regular business affairs of Seller.

5.4 Resignation of Director David Stallmo. On the Closing Date, David Stallmo shall resign from the Board of Directors of Seller.

6. Common Stock Purchase Agreement. The parties hereto anticipate that, on or before the Closing Date, as additional consideration for the assignment of the Acquired Assets to Purchaser, Purchaser will enter into a Common Stock Purchase Agreement with Seller, in substantially the form attached as Exhibit F hereto, providing for the issuance by Purchaser to Ambex Venture Group LLC of twenty percent (20%) of the Common Stock of Purchaser (the "Stock Purchase Agreement").

7. Conditions to Obligations of Seller. Absent a waiver in writing, all obligations of Seller under this Agreement, except the obligations set forth in Sections 5 hereof, are subject to the satisfaction of the following conditions, to Seller's reasonable satisfaction, on or before the completion of the Closing on the Closing Date:

7.1 License Agreement. Purchaser shall have executed and delivered to Seller, on the date of the Closing, a nonexclusive, worldwide, irrevocable, and perpetual license to make, have made, use, create derivative works from, and sell or have sold products or services incorporating the Intellectual Property Assets in substantially the form attached as Exhibit G hereto.

7.2 Representations, Warranties and Performance. The representations and warranties of Purchaser shall be deemed to have been made again at and as of the Closing Date and shall then be true and correct with the same force and effect as if such representations and warranties had been made at and as of the Closing Date; Purchaser shall have performed and complied with all agreements, conditions and covenants required by this Agreement to be performed or complied with by it prior to or at the Closing Date, and Purchaser shall have furnished to Seller an officer's certificate dated the Closing Date, verifying, in such detail as Seller may reasonably request, to the fulfillment of the foregoing conditions.

7.3 Transaction Agreements. Purchaser shall have executed and delivered each of the Transaction Agreements to which it is a party.

7.4 Approvals. All consents, approvals and filings required under any applicable law, rule or regulation to be completed or obtained prior to the transactions contemplated by this Agreement and the Transaction Agreements shall have been so completed or obtained, as the case may be.

7.5 Corporate Approval. Purchaser and Owners shall have obtained the necessary Board of Director and shareholder approval of this Agreement.

7.6 No Injunctions. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Acquisition shall have been issued, nor shall any proceeding brought by a domestic administrative agency or commission or other domestic governmental entity, seeking the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Acquisition which makes the consummation of the Acquisition illegal.

7.7 Purchase Price. Purchaser shall have delivered the cash portion of the Purchase Price to Seller in accordance with Sections 2.1(a) and 2.1(b) above.

8. Termination. Anything contained herein to the contrary notwithstanding, this Agreement may not be terminated or canceled prior to the Closing Date, except:

- (a) By written consent of Purchaser and Seller; or
- (b) Upon the failure to satisfy one or more conditions to Close set forth herein.

9. Covenants Following Closing.

9.1 Indemnity.

(a) By Seller. Ambex shall indemnify, defend and hold harmless Purchaser and any of its respective directors, officers, employees, shareholders and agents (collectively, the "Purchaser Indemnitees") from and against and shall reimburse Purchaser Indemnitees against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, remedies and penalties, including interest and reasonable attorneys fees and expenses (collectively, "Losses") that Purchaser Indemnitees shall incur or suffer or which arise from or are attributable to, by reason of or in connection with any breach or inaccuracy of or any failure to perform or comply with the representations, warranties or other obligations and agreements of Seller contained in this Agreement (including any exhibit, schedule or certificate referred to herein).

(b) By Purchaser. Purchaser shall indemnify, defend and hold harmless Ambex and any of its respective owners, agents and assigns (collectively, the "Ambex Indemnitees") from and against and shall reimburse the Ambex Indemnitees against and in respect of any and all Losses that the Ambex Indemnitees shall incur or suffer which arise from or are attributable to, by reason of or in connection with any breach or inaccuracy of or any failure to perform or comply with the representations, warranties or other obligations or agreements of Purchaser and each Owner contained in this Agreement (including any exhibit, schedule or certificate referred to herein).

9.2 Arbitration. Any dispute arising between the parties with respect to this Agreement shall be settled by final and binding arbitration in accordance with the following procedures. Any arbitration proceeding commenced by or on behalf of Purchaser or any

Owner shall be conducted in San Francisco, California. Any arbitration proceeding commenced by or on behalf of Seller shall be conducted in Denver, Colorado. If any party wishes to commence an arbitration hereunder, it shall serve written notice to such effect on the other party and, within forty-five (45) days thereafter, the parties shall mutually select a single arbitrator to conduct such arbitration from among a list of retired federal and state trial court judges eligible to serve in such capacity furnished to the parties by the American Arbitration Association. If the parties are unable to select an arbitrator by mutual agreement within such period, the arbitrator shall be selected by the American Arbitration Association in accordance with its procedures. In conducting the arbitration, the arbitrator shall apply the Commercial Arbitration Rules of the American Arbitration Association as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to any extent authorized by the California Rules of Civil Procedure as interpreted by the California courts. Costs and expenses, including reasonable attorneys' fees incurred with respect to the arbitration, shall be borne by the losing party, unless otherwise determined by the arbitrator based on a showing of good cause to vary from the usual rule expressed in this sentence. The arbitrator's award shall be final and unappealable. A judgment upon the award may be entered in any court having jurisdiction of the parties.

9.3 Seller's Rights to Purchaser's Financial Information. Purchaser covenants to deliver to Seller and Seller's assigns periodic financial information, which shall include Purchaser's annual audited financial statements (balance sheet and profit and loss statement, statement of stockholders' equity and statement of cash flows, including notes thereto), and Purchaser's quarterly unaudited financial statements (balance sheet and profit and loss statement, statement of stockholders' equity and statement of cash flows, but not including notes thereto), at Seller's or Seller's assign's place of designation no later than three (3) calendar days after Seller or its assign provides notice of demand for said financial information to Purchaser at Purchaser's regular place of business. Purchaser further covenants that the Financial Statements will be prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated and with each other, and that the Financial Statements will fairly present the financial condition and operating results of Purchaser as of the dates of said Financial Statements.

9.4 Fees and Expenses. Each of the parties hereto shall bear its own fees and expenses, including fees of counsel and accountants, incurred in connection with the negotiation of this Agreement and the Transaction Agreements and the consummation of the transactions contemplated hereby and thereby or otherwise arising out of, or by reason of, this Agreement or any Transaction Agreement, whether or not the Acquisition is consummated.

9.5 Entire Agreement: Third Party Beneficiaries. This Agreement and the Transaction Agreements (including the exhibits and schedules hereto and thereto) constitute the entire agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties with respect thereto, including any purported oral understandings, express or implied, in

connection with the execution of any term sheet drafted by Purchaser or Seller. The parties hereto acknowledge and agree that no third party (including any employee of Purchaser) is intended to be a third-party beneficiary of this Agreement or any Transaction Agreement.

9.6 Amendments. No amendment, modification or rescission of this Agreement or any Transaction Agreement shall be effective unless set forth in writing executed by the party sought to be bound thereby.

9.7 Notices. Any notice given hereunder or under any Transaction Agreement (except as otherwise provided therein) shall be in writing and shall be deemed effective upon the earlier of personal delivery (including personal delivery by telex or other means), the day of delivery by commercial courier to a responsible individual or the third day after mailing by certified or registered mail, postage prepaid, as follows:

(a) If to Seller:

Ambex Technologies, Inc.
1245 Oakmead Parkway, Suite 200
Sunnyvale, CA 94086
Telephone: (408) 523-6000
Fax: (408) 523-6060

With a copy to:

Jorge del Calvo
Pillsbury Madison & Sutro LLP
2700 Sand Hill Road
Menlo Park, CA 94025
Telephone: (415) 233-4537
Fax: (415) 233-4545

(b) If to Purchaser:

Borg Adaptive Technologies, Inc.
59 Beaver Way
Boulder, CO 80304
Telephone: (303) 444-3950
Fax: (303) 604-1925

With a copy to:

Walter J. Kennedy
Hensley & Kennedy, P.C.
1877 Broadway, Suite 702
Boulder, CO 80302
Telephone: (303) 447-0157
Fax: (303) 440-7255

(c) If to Mr. Hall:

Randy K. Hall
400 Oneida
Boulder, CO 80303
Telephone: (303) 494-5911
Fax: (303) 604-1925

(d) If to Mr. Hohenstein:

Gerald Hohenstein
5656 College Place
Boulder, CO 80303
Telephone: (303) 494-3574
Fax: (303) 604-1925

(e) If to Mr. Stallmo:

David Stallmo
59 Beaver Way
Boulder, CO 80304
Telephone: (303) 444-3950
Fax: (303) 604-1925

or to such other address as any party may have furnished in writing to the other party in the manner provided above.

9.8 Incorporation by Reference. All Schedules and Exhibits referred to in this Agreement are by this reference incorporated herein as an integral part hereof.

9.9 Governing Law. This Agreement and the Transaction Agreements and the respective rights and obligations of the parties hereto and thereto shall be construed under and by the laws of the State of California, without reference to conflicts of laws principles.

9.10 Captions. The title to the Sections and subsections of this Agreement and the Transaction Agreements are included herein solely for convenience, are not a part of this

Agreement or any Transaction Agreement and do not in any way limit or amplify the terms of this Agreement or any Transaction Agreement.

9.11 Attorneys' Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement or any Transaction Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in connection with such action or proceeding in addition to all other relief to which such party may be entitled.

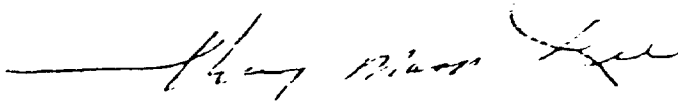
9.12 No Waiver. It is understood and agreed that no failure or delay by any party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege be deemed to operate as a waiver of any other right, power or privilege hereunder.

9.13 Counterparts. This Agreement and any Transaction Agreement may be executed in any number of counterparts, each of which shall be considered to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned Seller, Purchaser and Owners have duly executed this Agreement as of the date first set forth above.

SELLER

AMBEX TECHNOLOGIES, INC.,
a California corporation


By _____

Title President

PURCHASER

BORG ADAPTIVE TECHNOLOGIES, INC., a
Colorado corporation

By _____

Title _____

Agreement or any Transaction Agreement and do not in any way limit or amplify the terms of this Agreement or any Transaction Agreement.

9.11 Attorneys' Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement or any Transaction Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs in connection with such action or proceeding in addition to all other relief to which such party may be entitled.

9.12 No Waiver. It is understood and agreed that no failure or delay by any party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege be deemed to operate as a waiver of any other right, power or privilege hereunder.

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IN WITNESS WHEREOF, the undersigned Seller, Purchaser and Owners have duly executed this Agreement as of the date first set forth above.

SELLER

AMBEX TECHNOLOGIES, INC.,
a California corporation

By _____

Title _____

PURCHASER

BORG ADAPTIVE TECHNOLOGIES, INC., a
Colorado corporation

By D. J. Hill 10/7/97

Title President

OWNERS

Randy K. Hall 10/7/97
Randy K. Hall

Gerald Hohenstein 10/7/97
Gerald Hohenstein

David Stallmo 10/7/97
David Stallmo

SCHEDULE 1.1(a)

I. Intellectual Property Assets

Method and Apparatus for Improving Performance in a Redundant Array of Independent Disks with patent application BTI-102 with application Serial Number 08/516,293 and has been recorded in the records of the US Patent and Trademark Office on microfilm reel 7659, frame 0533. The recording date is 10/02/95. This patent has also been filed with the European Patent office (includes Austria, Belgium, Switzerland, Liechtenstein, Germany, Denmark, Spain, France, United Kingdom, Greece, Ireland, Italy, Luxembourg, Monaco, Netherlands, Portugal, Sweden and any other State which is a Contracting State of the European Patent Convention and of the PCT) as well as the Canadian Patent Office with the designation BTI-102-PCT on 9/15/96.

Method and Apparatus for Organizing Data in a Redundant Array of Independent Disks with patent application BTI-101 with application Serial Number 08/16,232 and has been recorded in the records of the US Patents and Trademark Office on microfilm reel 7659, frame 0260. The recording date is 10/02/95. This patent has also been filed with the European Patent office (includes Austria, Belgium, Switzerland, Liechtenstein, Germany, Denmark, Spain, France, United Kingdom, Greece, Ireland, Ital, Luxembourg, Monaco, Netherlands, Portugal, Sweden and any other State which is a Contracting State of the European Patent Convention and of the PCT) as well as the Canadian Patent Office with the designation BTI-101-PCT on 9/15/96.

1.1(a)

12611147

RECORDED: 12/05/1997

PATENT
REEL: 011763 FRAME: 0446

PATENT APPLICATION ASSIGNMENT

The Purpose of this ASSIGNMENT is to amend the ASSET PURCHASE AGREEMENT between AMBEX TECHNOLOGIES, INC. AND BORG ADAPTIVE TECHNOLOGIES, INC. AND OWNERS Randy K. Hall, Gerald Hohenstein and David C. Stallmo dated October 1, 1997 to correct the assignment of U.S. Patent Application 08/516,232 entitled Method and Apparatus for Organizing Data in a Redundant Array of Independent Disks, of David C. Stallmo and Randy K. Hall, filed August 17, 1995, also known as file BTI101 (hereinafter referred to as the BTI101 Application) contained in the ASSET PURCHASE AGREEMENT.

This ASSIGNMENT, effective as of October 1, 1997, is between AMBEX TECHNOLOGIES, INC. (hereinafter referred to as ASSIGNOR), a corporation of the State of California, and BORG ADAPTIVE TECHNOLOGIES, INC. (hereinafter referred to as ASSIGNEE), a corporation of the State of Colorado and OWNERS Randy K. Hall, Gerald Hohenstein and David C. Stallmo.

WITNESSETH THAT;

WHEREAS, ASSIGNOR has assigned all right, title and interest to the BTI101 Application in the ASSET PURCHASE AGREEMENT, which was recorded in the U.S. Patent and Trademark Office at Reel 8842, Frames 0940 through 0954;

WHEREAS, a typographical error appears in the ASSET PURCHASE AGREEMENT in Schedule 1.1(a), line 13 (recorded at Reel 8842, frame 0954) wherein the application Serial Number of the BTI101 Application is incorrectly shown as 08/16,232; and

WHEREAS, ASSIGNEE and ASSIGNOR desire to correct this error.

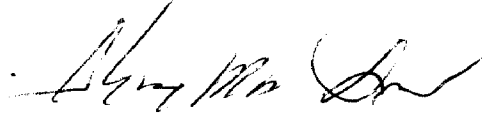
NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

For \$10.00 and other good and valuable consideration, receipt of which is hereby acknowledged, ASSIGNOR hereby sells and assigns to said ASSIGNEE and said OWNERS all right, title and interest in and to the inventions or improvements set forth in the BTI101 Application, including the rights to file and obtain United States and corresponding foreign patents, inventor's certificates and utility models, and all divisions, reissues, substitutions and continuations thereof, subject only to the License Agreement defined in Section 7.1 of the ASSET PURCHASE AGREEMENT.

ASSIGNOR and ASSIGNEE further agree that the ASSET PURCHASE AGREEMENT, Schedule 1.1 (a), line 13 is hereby amended to change the application Serial Number from 08/16,232 to 08/516,232.

IN WITNESS WHEREOF, ASSIGNOR, ASSIGNEE and OWNERS have caused this agreement to be executed on the date or dates shown below.

AMBEX TECHNOLOGIES, INC.
a California Corporation, ASSIGNEE



Date: _____

Typed Name: Chong-Moon Lee
Title: Chief Executive Officer

BORG ADAPTIVE TECHNOLOGIES, INC.
a Colorado Corporation, ASSIGNOR

Date: _____

David C. Stallmo
President

OWNERS:

Date: _____

Randy K. Hall

Date: _____

Gerald Hohenstein

Date: _____

David C. Stallmo

ASSIGNOR and ASSIGNEE further agree that the ASSET PURCHASE AGREEMENT, Schedule 1.1(a), line 13 is hereby amended to change the application Serial Number from 08/16,232 to 08/516,232.

IN WITNESS WHEREOF, ASSIGNOR, ASSIGNEE and OWNERS have caused this agreement to be executed on the date or dates shown below.

AMBEX TECHNOLOGIES, INC.
a California Corporation, ASSIGNEE

Date: _____

Typed Name:
Title:

BORG ADAPTIVE TECHNOLOGIES, INC.
a Colorado Corporation, ASSIGNOR

Date: 12/30/99

David C. Stallmo
David C. Stallmo
President

OWNERS:

Date: 12/30/99

Randy K. Hall
Randy K. Hall

Date: 12/30/99

Gerald Hohenstein
Gerald Hohenstein

Date: 12/30/99

David C. Stallmo
David C. Stallmo