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

FORM 10-Q

(Mark One)

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

For the quarterly period ended December 1, 2005

OR

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

For the transition period from to

Commission file number 1-10658

Micron Technology, Inc.
(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	**75-1618004** (IRS Employer Identification No.)
8000 S. Federal Way, Boise, Idaho (Address of principal executive offices)	**83716-9632** (Zip Code)
Registrant's telephone number, including area code	**(208) 368-4000**

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 o

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes ☒ No o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No ☒

The number of outstanding shares of the registrant's common stock as of January 5, 2006, was 618,802,878.

PART I. FINANCIAL INFORMATION

Item 1. *Financial Statements*

MICRON TECHNOLOGY, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(Amounts in millions except per share amounts)
(Unaudited)

	Quarter ended	
	December 1, 2005	December 2, 2004
Net sales	$ 1,361.8	$ 1,260.3
Cost of goods sold	1,050.7	837.3
Gross margin	311.1	423.0
Selling, general and administrative	95.3	86.8
Research and development	165.5	148.4
Other operating (income) expense, net	(12.1)	12.9
Operating income	62.4	174.9

Interest income	10.8	5.7
Interest expense	(10.5)	(10.2)
Other non-operating income (expense), net	0.1	(1.3)
Income before taxes	62.8	169.1
Income tax (provision)	(0.2)	(14.2)
Net income	$ 62.6	$ 154.9
Earnings per share:		
Basic	$ 0.10	$ 0.24
Diluted	0.09	0.23
Number of shares used in per share calculations:		
Basic	650.1	646.0
Diluted	707.1	700.5

See accompanying notes to consolidated financial statements.

MICRON TECHNOLOGY, INC.

CONSOLIDATED BALANCE SHEETS
(Dollars in millions except par value amounts)
(Unaudited)

As of	December 1, 2005	September 1, 2005
Assets		
Cash and equivalents	$ 661.1	$ 524.5
Short-term investments	716.3	765.9
Receivables	805.3	794.4
Inventories	682.3	771.5
Prepaid expenses	54.7	37.8
Deferred income taxes	22.2	31.5
Total current assets	2,941.9	2,925.6
Intangible assets, net	255.9	260.2
Property, plant and equipment, net	4,676.6	4,683.8
Deferred income taxes	35.7	29.9
Restricted cash	49.4	50.2
Other assets	50.0	56.7
Total assets	$ 8,009.5	$ 8,006.4
Liabilities and shareholders' equity		
Accounts payable and accrued expenses	$ 721.0	$ 752.5
Deferred income	31.6	30.3
Equipment purchase contracts	78.5	48.8
Current portion of long-term debt	146.2	147.0
Total current liabilities	977.3	978.6
Long-term debt	960.9	1,020.2
Deferred income taxes	31.0	35.2
Other liabilities	116.8	125.6
Total liabilities	2,086.0	2,159.6
Commitments and contingencies		
Common stock, $0.10 par value, authorized 3.0 billion shares, issued and outstanding 618.4 million and 616.2 million shares	61.8	61.6
Additional capital	4,721.9	4,707.4
Retained earnings	1,140.7	1,078.1
Accumulated other comprehensive loss	(0.5)	(0.3)
Treasury stock, at cost, 25,212 shares	(0.4)	—
Total shareholders' equity	5,923.5	5,846.8
Total liabilities and shareholders' equity	$ 8,009.5	$ 8,006.4

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(Amounts in millions)
(Unaudited)

Three months ended	December 1, 2005	December 2, 2004
Cash flows from operating activities		
Net income	$ 62.6	$ 154.9
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	303.4	313.7
Stock-based compensation	3.8	—
Noncash restructure and other charges (benefits)	—	(1.7)
Loss (gain) from write-down or disposition of equipment	(0.2)	5.2
Loss from write-down or disposition of investments	0.2	0.6
Change in operating assets and liabilities:		
Increase in receivables	(10.9)	(89.3)
(Increase) decrease in inventories	89.1	(127.2)
Increase in accounts payable and accrued expenses	16.0	26.6
Deferred income taxes	(4.3)	6.2
Other	(34.5)	2.4
Net cash provided by operating activities	425.2	291.4
Cash flows from investing activities		
Purchases of available-for-sale securities	(478.4)	(459.3)
Expenditures for property, plant and equipment	(268.7)	(359.4)
Proceeds from maturities of available-for-sale securities	530.3	463.4
Proceeds from sales of property, plant and equipment	5.4	3.8
(Increase) decrease in restricted cash	0.7	(0.1)
Proceeds from sales of available-for-sale securities	—	10.0
Other	(8.6)	(8.5)
Net cash used for investing activities	(219.3)	(350.1)
Cash flows from financing activities		
Repayments of debt	(49.5)	(46.8)
Payments on equipment purchase contracts	(30.7)	(93.8)
Proceeds from issuance of common stock	10.9	9.3
Proceeds from equipment sale-leaseback transactions	—	24.9
Other	—	(0.2)
Net cash used for financing activities	(69.3)	(106.6)
Net increase (decrease) in cash and equivalents	136.6	(165.3)
Cash and equivalents at beginning of period	524.5	486.1
Cash and equivalents at end of period	$ 661.1	$ 320.8
Supplemental disclosures		
Income taxes paid, net	$ (1.6)	$ (2.2)
Interest paid, net of amounts capitalized	(10.3)	(12.8)
Noncash investing and financing activities:		
Equipment acquisitions on contracts payable and capital leases	62.1	101.6

See accompanying notes to consolidated financial statements.

MICRON TECHNOLOGY, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(All tabular dollar amounts in millions except per share amounts)
(Unaudited)

Significant Accounting Policies

Basis of presentation: Micron Technology, Inc. and its subsidiaries (hereinafter referred to collectively as the "Company") manufacture and market DRAM, NAND Flash memory, CMOS image sensors and other semiconductor components. The Company has two reportable segments, Memory and Imaging. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and include the accounts of the Company and its consolidated subsidiaries. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments necessary to present fairly the consolidated financial position of the Company and its consolidated results of operations and cash flows.

The Company's fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. The Company's first quarter of fiscal 2006 and 2005 ended on December 1, 2005 and December 2, 2004, respectively. The Company's fiscal 2005 ended on September 1, 2005. All period references are to the Company's fiscal periods unless otherwise indicated. These interim financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company's Annual Report on Form 10-K for the year ended September 1, 2005.

Recently issued accounting standards: In May 2005, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 154, "Accounting Changes and Error Corrections." SFAS No. 154 replaces APB Opinion No. 20, "Accounting Changes," and SFAS No. 3, "Reporting Accounting Changes in Interim Financial Statements," and changes the requirements for the accounting for and reporting of a change in accounting principle. The Company is required to adopt SFAS No. 154 for accounting changes and error corrections that occur after the beginning of 2007. The Company's results of operations and financial condition will only be impacted following the adoption of SFAS No. 154 if it implements changes in accounting principle that are addressed by the standard or corrects accounting errors in future periods.

In March 2005, the FASB issued Interpretation No. 47, "Accounting for Conditional Asset Retirement Obligations," which clarifies that an entity is required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value can be reasonably estimated even though uncertainty exists about the timing and (or) method of settlement. The Company is required to adopt Interpretation No. 47 prior to the end of 2006. The Company does not expect the adoption of Interpretation No. 47 to have a significant impact on the Company's future results of operations or financial condition.

Stock-based compensation: Effective the beginning of 2006, the Company adopted SFAS No. 123(R), "Share-Based Payment," and elected to adopt the modified prospective application method. Accordingly, stock-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as expense over the requisite service period. For stock awards granted in 2006, expenses are amortized under the straight-line attribution method. For stock awards granted prior to 2006, expenses are amortized under the multiple option method prescribed by FASB Interpretation No. 28. Previously reported amounts have not been restated.

Supplemental Balance Sheet Information

Receivables	December 1, 2005	September 1, 2005
Trade receivables	$ 737.6	$ 719.7
TECH joint venture	25.2	24.0
Taxes other than income	9.5	24.0
Income taxes	8.2	8.6
Other	27.7	20.2
Allowance for doubtful accounts	(2.9)	(2.1)
	$ 805.3	$ 794.4

Inventories	December 1, 2005	September 1, 2005
Finished goods	$ 212.1	$ 271.1
Work in process	358.3	395.1
Raw materials and supplies	136.1	129.0
Allowance for obsolescence	(24.2)	(23.7)
	$ 682.3	$ 771.5

Intangible Assets	December 1, 2005 Gross Amount	December 1, 2005 Accumulated Amortization	September 1, 2005 Gross Amount	September 1, 2005 Accumulated Amortization
Product and process technology	$ 392.8	$ (187.1)	$ 384.6	$ (177.7)
TECH joint venture supply arrangement	105.0	(57.6)	105.0	(54.7)
Other	5.3	(2.5)	5.3	(2.3)
	$ 503.1	$ (247.2)	$ 494.9	$ (234.7)

During the first quarter of 2006 and 2005, the Company capitalized $8.7 million and $7.8 million, respectively, for product and process technology with weighted average useful lives of 10 years.

Amortization expense for intangible assets was $13.0 million and $12.5 million for the first quarter of 2006 and 2005, respectively. Annual amortization expense for intangible assets held as of December 1, 2005, is estimated to be $51.8 million for 2006, $50.1 million for 2007, $49.4 million for 2008, $38.4 million for 2009 and $29.9 million for 2010.

Property, Plant and Equipment	December 1, 2005	September 1, 2005
Land	$ 108.5	$ 108.5
Buildings	2,432.8	2,419.0
Equipment	8,256.5	8,045.5
Construction in progress	243.2	235.8
Software	229.4	220.3
	11,270.4	11,029.1
Accumulated depreciation	(6,593.8)	(6,345.3)
	$ 4,676.6	$ 4,683.8

Depreciation expense was $292.4 million and $299.6 million for the first quarter of 2006 and 2005, respectively.

The Company has a manufacturing facility in Utah that is only partially utilized. The Utah facility had a net book value of $671.9 million as of December 1, 2005. A portion of the Utah facility is being used for component test operations. The Company is depreciating substantially all assets at the

Utah facility other than $191.8 million

included in construction in progress as of December 1, 2005. As part of the transaction to form the IM Flash Technologies, LLC joint venture ("IMFT"), the Company will contribute certain land and its facility in Utah to IMFT in the second quarter of 2006. (See "Joint Ventures – IM Flash Technologies, LLC" note.)

Accounts Payable and Accrued Expenses	December 1, 2005	September 1, 2005
Accounts payable	$ 357.2	$ 393.6
Salaries, wages and benefits	153.7	167.3
TECH joint venture	69.6	51.4
Taxes other than income	20.2	17.1
Other	120.3	123.1
	$ 721.0	$ 752.5

Debt	December 1, 2005	September 1, 2005
Convertible subordinated notes payable, face amount of $632.5 million, net of fair value adjustments (as underlying on fair-value hedge) of $(1.1) million and $10.2 million, interest rate of 2.5%, due February 2010	$ 633.6	$ 622.3
Notes payable in periodic installments through June 2015, weighted average interest rate of 1.9%	286.9	347.5
Capital lease obligations payable in monthly installments through January 2009, weighted average imputed interest rate of 6.4%	186.6	197.4
	1,107.1	1,167.2
Less current portion	(146.2)	(147.0)
	$ 960.9	$ 1,020.2

As of December 1, 2005, notes payable in the above table include $245.2 million, denominated in Japanese yen, were at weighted average interest rates of 1.2%.

Interest Rate Swap: The Company entered into an interest rate swap agreement (the "Swap") that effectively converted, beginning August 29, 2003, the fixed interest rate on the Company's 2.5% Convertible Subordinated Notes (the "Notes") to a variable interest rate based on the 3-month London Interbank Offering Rate ("LIBOR") less 65 basis points (3.22% for the first quarter of 2006 and 1.49% since inception). The Swap qualifies as a fair-value hedge under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. The gain or loss from changes in the fair value of the Swap is expected to be highly effective at offsetting the gain or loss from changes in the fair value of the Notes attributable to changes in interest rates. The Company measures the effectiveness of the Swap using regression analysis. The Company recognizes changes in the fair value of the Swap and changes in the fair value of the Notes since inception of the Swap in the accompanying consolidated balance sheets. For the first quarter of 2006, the Company recognized a net gain of $0.1 million, which is included in other non-operating income, representing the difference between the change in the fair value of the Notes and the change in the fair value of the Swap. As of December 1, 2005, the Company had pledged $34.8 million as collateral for the Swap which is included in restricted cash in the accompanying consolidated balance sheet. The amount of collateral fluctuates based on the fair value of the Swap. The Swap will terminate if the closing price of the Company's common stock is at or exceeds $14.15 after February 6, 2006.

Contingencies

As is typical in the semiconductor and other high technology industries, from time to time, others have asserted, and may in the future assert, that the Company's products or manufacturing processes infringe their intellectual property rights. In this regard, the Company is engaged in litigation with Rambus, Inc. ("Rambus") relating to certain of Rambus' patents and certain of the Company's claims and defenses. Lawsuits between Rambus and the

Company are pending in the United States, Germany, France, the United Kingdom and Italy. The Company also is engaged in litigation with Tessera, Inc. ("Tessera") relating to certain of Tessera's patents and certain of the Company's patents in the U.S. District Court for the Eastern District of Texas. Among other things, the above lawsuits pertain to certain of the Company's SDRAM, DDR SDRAM, and DDR2 SDRAM products, which account for a significant portion of net sales. The Company is unable to predict the outcome of assertions of infringement made against the Company. A court determination that the Company's products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing could have a material adverse effect on the Company's business, results of operations or financial condition.

On June 17, 2002, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the "DOJ") into possible antitrust violations in the "Dynamic Random Access Memory" or "DRAM" industry. The Company is cooperating fully and actively with the DOJ in its investigation. The Company's cooperation is pursuant to the terms of the DOJ's Corporate Leniency Policy, which provides that in exchange for the Company's full, continuing and complete cooperation in the pending investigation, the Company will not be subject to prosecution, fines or other penalties from the DOJ. Subsequent to the commencement of the DOJ investigation, at least eighty-four (six of which have been voluntarily dismissed) purported class action lawsuits have been filed against the Company and other DRAM suppliers in various federal and state courts in the United States and in Puerto Rico by direct and indirect purchasers alleging price-fixing in violation of federal and state antitrust laws, violations of state unfair competition law, and/or unjust enrichment relating to the sale and pricing of DRAM products. The complaints seek treble damages for the alleged damages sustained by purported class members, in addition to restitution, costs and attorneys' fees, as well as an injunction against the allegedly unlawful conduct. Three purported class action lawsuits also have been filed in Canada, alleging violations of the Canadian Competition Act. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States and Puerto

Rico. The Company is unable to predict the outcome of these suits. Based upon the Company's analysis of the claims made and the nature of the DRAM industry, the Company believes that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs in the direct purchaser cases would be more appropriately resolved on a customer-by-customer basis. In addition, the Attorneys General of Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Mississippi, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin are investigating potential state and federal civil claims against the Company and other DRAM suppliers on behalf of state and governmental entities that were direct or indirect purchasers of DRAM and potentially on behalf of other indirect purchasers of DRAM. The Company has been served with civil investigative demands or subpoenas issued by five of the state Attorneys General and is responding to those requests. The Company is unable to predict the outcome of these lawsuits and investigations. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges various causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM ("RDRAM") and unfair competition. Tessera also has asserted certain antitrust and unfair competition claims relating to Tessera's packaging technology. These complaints seek treble damages, punitive damages, attorneys' fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaints. The Company is unable to predict the outcome of these suits. A court determination against the Company could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

The Company has accrued a liability and charged operations for the estimated costs of adjudication or settlement of various asserted and unasserted claims existing as of the balance sheet date. The Company is currently a party to other legal actions arising out of the normal course of business, none of which is expected to have a material adverse effect on the Company's business, results of operations or financial condition.

In the normal course of business, the Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party. It is not possible to predict the maximum potential amount of future payments under these types of agreements due to the conditional nature of the Company's obligations and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the

Company under these types of agreements have not had a material effect on the Company's business, results of operations or financial condition.

Stock Plans

As of December 1, 2005, the Company had an aggregate of 167.3 million shares of its common stock reserved for issuance under its various stock plans, of which 118.0 million shares were subject to outstanding options and 49.3 million shares were available for future grants of stock awards. Options are subject to terms and conditions as determined by the Company's Board of Directors.

Stock Options: Stock options granted after June 16, 1999, are generally exercisable in increments of 25% during each year of employment beginning one year from the date of grant. Stock options granted prior to June 16, 1999, are generally exercisable in increments of 20% during each year of employment beginning one year from the date of grant. Stock options issued prior to January 19, 1998, and after September 22, 2004, expire six years from the date of grant. All other options expire ten years from date of grant.

Option activity is summarized as follows:

	Number of shares (in millions)	Weighted average exercise price per share	Weighed average remaining contractual life (in years)	Aggregate intrinsic value
Outstanding at September 1,2005	119.1	$ 20.58		
Granted	0.5	13.25		
Exercised	(0.8)	12.21		
Cancelled or expired	(0.8)	23.21		
Outstanding at December 1, 2005	118.0	20.59	5.6	$ 105.4
Exercisable at December 1, 2005	114.2	$ 20.90	5.6	$ 93.9

The weighted average grant-date fair value of options granted during the first quarter of 2006 and 2005 was $5.66 and $5.11, respectively. The total intrinsic value of options exercised during the first quarter of 2006 and 2005 was $1.2 million and $0.1 million, respectively.

Changes in the Company's nonvested options for the first quarter of 2006 are summarized as follows:

	Number of shares (in millions)	Weighted average grant date fair value per share
Nonvested at September 1, 2005	3.4	$ 5.94
Granted	0.5	5.66
Vested	(0.1)	5.61
Cancelled	(0.0)	5.24
Nonvested at December 1, 2005	3.8	5.91

As of December 1, 2005, there was $10.6 million of total unrecognized compensation cost, related to nonvested stock options, which is expected to be recognized over a weighted-average period of 1.2 years.

The fair value of each option award is estimated on the date of grant using the Black-Scholes model. Expected volatilities are based on implied volatilities from traded options on the Company's stock and historical volatility. The expected term of options granted is based on analyses of historical

employee termination rates and option exercises. The risk-free rates are based on the U.S. Treasury yield in effect at the time of the grant. Assumptions used in the Black-Scholes model are presented below:

	Quarter ended	
	December 1, 2005	December 2, 2004
Stock plans:		
Average expected life in years	4.25	3.00
Expected volatility	48%	58%
Risk-free interest rate (zero coupon U.S. Treasury note)	3.9%	2.9%

The Black-Scholes option valuation model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable and requires the input of subjective assumptions, including the expected stock price volatility and estimated option life. For purposes of this valuation model, no dividends have been assumed.

Restricted Stock Awards: As of December 1, 2005, there were 1.6 million shares of restricted stock awards outstanding, of which 0.6 million shares were performance-based restricted stock awards. For service-based restricted awards, restrictions lapse in one-third increments during each year of employment after the grant date. For performance-based restricted stock awards, vesting is contingent upon meeting a certain performance goal.

Restricted stock award activity is summarized as follows:

	Number of shares (in millions)	Weighted average remaining contractual life (in years)	Aggregate value
Outstanding at September 1,2005	0.3		
Granted	1.4		
Exercised	(0.1)		
Cancelled or expired	(0.0)		
Outstanding at December 1, 2005	1.6	2.7	$ 22.2

The weighted average grant-date fair value of restricted stock awards granted during the first quarter of 2006 and 2005 was $12.21 and $12.17, respectively. The total value of awards for which restrictions lapsed during the first quarter of 2006 was $1.5 million.

As of December 1, 2005, there was $17.0 million of total unrecognized compensation cost, related to nonvested restricted stock awards, which is expected to be recognized over a weighted-average period of 1.4 years.

Stock-Based Compensation Expense: Total compensation cost for the Company's stock plans in the first quarter of 2006 was $3.8 million, of which $0.4 million was capitalized and remained in inventory at the end of the first quarter of 2006. Stock compensation costs in the first quarter of 2006 consisted of $2.2 million from stock options and $1.6 million from restricted stock awards. Cost of goods sold; selling, general and administrative expense; and research and development expense in the first quarter of 2006 include stock-based compensation of $0.6 million, $2.0 million and $0.8 million, respectively. As of December 1, 2005, $27.6 million of total unrecognized compensation costs related to non-vested awards is expected to be recognized over a weighted average period of 1.3 years.

Through 2005, the Company accounted for its stock plans using the intrinsic value method prescribed by APB Opinion No. 25, "Accounting for Stock Issued to Employees," and related Interpretations and provided the required pro forma disclosures of SFAS No. 123, "Accounting for Stock-Based Compensation." The following presents pro forma income and per share data as if a fair value based method had been used to account for stock-based compensation for the first quarter of 2005:

Quarter ended	December 2, 2004
Net income available to common shareholders	$ 154.9
Stock-based employee compensation expense included in reported net income, net of tax	0.1
Less total stock-based employee compensation expense determined under a fair value based method for all awards, net of tax	(43.9)
Pro forma net income available to common shareholders	$ 111.1
Earnings per share:	
Basic, as reported	$ 0.24
Basic, pro forma	0.17
Diluted, as reported	$ 0.23
Diluted, pro forma	0.16

Stock-based compensation expense in the above presentation does not reflect any significant income taxes, which is consistent with the Company's treatment of income or loss from its U.S. operations. (See "Income Taxes" note.)

Other Operating (Income) Expense, Net

Other operating income for the first quarter of 2006 includes net gains of $11.9 million from changes in currency exchange rates. Other operating expense for the first quarter of 2005 includes net losses of $19.6 million from changes in currency exchange rates and is net of $12.0 million in receipts from the U.S. government in connection with anti-dumping tariffs.

Income Taxes

Income taxes for 2006 and 2005 primarily reflect taxes on the Company's non-U.S. operations and U.S. alternative minimum tax. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The provision for taxes on U.S. operations in 2006 and 2005 was substantially offset by a reduction in the valuation allowance. Until such time as the Company utilizes its U.S. net operating loss carryforwards and unused tax credits, the provision for taxes on the Company's U.S. operations is expected to be substantially offset by a reduction in the valuation allowance. As of December 1, 2005, the Company had aggregate U.S. tax net operating loss carryforwards of $2.5 billion and unused U.S. tax credit carryforwards of $147.5 million. The Company also has unused state tax net operating loss carryforwards of $1.8 billion and unused state tax credits of $140.7 million. Substantially all of the net operating loss carryforwards expire in 2022 to 2025 and substantially all of the tax credit carryforwards expire in 2013 to 2026. The Company anticipates utilizing approximately $1.0 billion of its U.S. and state net operating loss carryforwards as a result of the IMFT transaction. (See "Joint Ventures" – IM Flash Technologies, LLC" note.)

Earnings Per Share

Basic earnings per share is computed based on the weighted average number of common shares and stock rights outstanding. Diluted earnings per share is computed based on the weighted average number of common shares outstanding plus the dilutive effects of stock options, warrants and convertible notes. Potential common shares that would increase earnings per share amounts or decrease loss per share amounts are antidilutive and are, therefore, excluded from earnings per share calculations. Antidilutive potential common shares that could dilute basic earnings per share in the future were 102.5 million for the first quarter of 2006 and 145.5 million for the first quarter of 2005.

	Quarter ended	
	December 1, 2005	December 2, 2004
Net income available to common shareholders – Basic	$ 62.6	$ 154.9
Net effect of assumed conversion of debt	3.6	3.4
Net income available to common shareholders – Diluted	66.2	158.3
Weighted average common shares outstanding – Basic	650.1	646.0
Net effect of dilutive stock options and assumed conversion of debt	57.0	54.5
Weighted average common shares outstanding – Diluted	707.1	700.5
Earnings per share:		
Basic	$ 0.10	$ 0.24
Diluted	0.09	0.23

Comprehensive Income

Comprehensive income for the first quarter of 2006 was $62.4 million and included $0.2 million net of tax of unrealized losses on investments. Comprehensive income for the first quarter 2005 was $154.7 million and included $0.2 million net of tax of unrealized losses on investments.

Joint Ventures

TECH Semiconductor Singapore Pte. Ltd. ("TECH"): Since 1998, the Company has participated in TECH, a semiconductor memory manufacturing joint venture in Singapore among the Company, the Singapore Economic Development Board, Canon Inc. and Hewlett-Packard Company. As of December 1, 2005, the Company had a 39.12% ownership interest in TECH. Significant financing, investment and operating decisions for TECH typically require approval from TECH's Board of Directors. The shareholders' agreement for the TECH joint venture expires in 2011.

TECH's semiconductor manufacturing facilities use the Company's product and process technology. Subject to specific terms and conditions, the Company has agreed to purchase all of the products manufactured by TECH. The Company generally purchases semiconductor memory products from TECH at prices determined quarterly, based on a discount from average selling prices realized by the Company for the preceding quarter. The Company performs assembly and test services on product manufactured by TECH. The Company also provides certain technology, engineering and training to support TECH. All of these transactions with TECH are recognized as part of the net cost of products purchased from TECH. The net cost of products purchased from TECH amounted to $139.9 million and $144.5 million for the first quarter of 2006 and 2005, respectively. Amortization expense resulting from the TECH supply arrangement, included in the cost of products purchased from TECH, was $2.9 million and $3.0 million for the first quarter of 2006 and 2005, respectively. Receivables from TECH were $25.2 million and payables to TECH were $69.6 million as of December 1, 2005. Receivables from TECH were $24.0 million and payables to TECH were $51.4 million as of September 1, 2005. TECH supplied approximately 20% of the total megabits of memory produced by the Company in the first quarter of 2006. As of December 1, 2005, the Company had intangible assets with a net book value of $47.4 million relating to the supply arrangement to purchase product from TECH.

Under FASB Interpretation No. 46, "Consolidation of Variable Interest Entities," TECH does not qualify for consolidation. In November 2005, TECH entered into a $400 million financing arrangement. A condition of drawing on the financing arrangement is that the partners in TECH contribute an aggregate of $250 million additional capital to TECH. The Company expects to contribute an additional $125 million to TECH in the third quarter of 2006. Depending on the capital contributions by the other partners in TECH, the Company's interest in TECH may increase such that TECH's financial results would be included in the consolidated financial statements of the Company.

IM Flash Technologies, LLC: On January 6, 2006, the Company and Intel Corporation ("Intel") closed the transaction related to IM Flash Technologies, LLC ("IMFT"), a joint venture limited liability company that will manufacture NAND Flash memory products. In connection therewith, the Company contributed assets valued at $995 million and will contribute $250 million in cash in the second quarter of 2006. Intel contributed $1,196 million in cash and notes to IMFT. As a result of these contributions, the Company will own 51% and Intel will own 49% of IMFT. Subject to certain conditions, the parties will make additional contributions of approximately $1.4 billion over the next three years and intend to make additional investments as appropriate to support the growth of the operation. The parties will share the output of IMFT generally in proportion to their investment in IMFT. Additionally, research and development costs for NAND Flash process development will initially be shared equally among the Company and Intel. IMFT's financial results will be included in the consolidated financial statements of the Company.

IMFT will manufacture NAND Flash memory products pursuant to Intel-owned NAND Flash designs developed by the Company and Intel and licensed to the Company. Initially, IMFT will obtain its sole supply of products from the Company pursuant to a wafer supply agreement with the Company in connection with the Company's operations located in Boise, Idaho. As a part of the Company's capital contributions described above, the Company contributed a lease of approximately 50% of its facility in Manassas, Virginia, and certain land and its facility in Lehi, Utah, to IMFT.

Simultaneously with the closing of the joint venture transaction, Micron sold to Intel its existing NAND Flash memory technology and designs for $270 million and acquired a perpetual, paid-up license to use and modify such designs.

Upon the closing of the joint venture transaction, the Company became obligated to provide certain NAND Flash memory products to Apple Computer Inc. ("Apple") until December 31, 2010. The Company agreed to supply Apple with a significant portion of the Company's share of IMFT's NAND Flash memory output for which Apple will make a prepayment to the Company of $250 million.

Segment Information

The Company has determined, based on the nature of its operations and products offered to customers, that its reportable segments are Memory and Imaging. The Memory segment's primary products are DRAM and NAND Flash and the Imaging segment's primary product is CMOS image sensors. Segment information reported below is consistent with how it is reviewed and evaluated by the Company's chief operating decision makers. The Company does not identify or report depreciation and amortization, capital expenditures or assets by segment. Prior to the first quarter of 2006, the Company had a single reportable segment. The information below represents the Company's reportable segments as of December 1, 2005.

	Quarter ended	
	December 1, 2005	December 2, 2004
Net sales:		
Memory	$ 1,208.0	$ 1,209.4
Imaging	153.8	50.9
Total consolidated net sales	$ 1,361.8	$ 1,260.3
Operating income:		
Memory	$ 21.1	$ 184.0
Imaging	41.3	(9.1)
Total consolidated operating income	$ 62.4	$ 174.9

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

The following discussion contains trend information and other forward-looking statements that involve a number of risks and uncertainties. Forward-looking statements include, but are not limited to, statements such as those made in "Overview" regarding growth for CMOS image sensor and NAND Flash markets and allocations of wafer starts to these products; in "IM Flash Technologies, LLC" regarding NAND Flash production in the second quarter of 2006; in "Net Sales" regarding increases in production of DDR2 and revenue from sales of Imaging products; in "Selling, General and Administrative" regarding increased SG&A expenses as a result of IMFT; in "Research and Development" regarding expected quarterly R&D costs for 2006; in "Stock-Based Compensation" regarding increases in future stock-based compensation costs; in "Income Taxes" regarding future provisions for income taxes and utilization of the Company's operating loss carryforwards as a result of the IMFT transaction; and in "Liquidity and Capital Resources" regarding capital spending in 2006 and future capital contributions to IMFT and TECH. The Company's actual results could differ materially from the Company's historical results and those discussed in the forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, those identified in "Certain Factors." This discussion should be read in conjunction with the Consolidated Financial Statements and accompanying notes and with the Company's Annual Report on Form 10-K for the year ended September 1, 2005. All period references are to the Company's fiscal periods unless otherwise indicated. All tabular dollar amounts are in millions. Unless otherwise stated, all production data reflects production of the Company and its TECH joint venture.

Overview

The Company is a global manufacturer of semiconductor devices, principally DRAM, NAND Flash, and CMOS image sensors. Its products are used in a broad range of electronic applications including personal computers, workstations, network servers, mobile phones and other consumer applications including flash memory cards, USB storage devices, digital still cameras and MP3 players. The Company's customers are principally original equipment manufacturers located around the world. The Company's success is largely dependent on the market acceptance of a diversified semiconductor product portfolio, efficient utilization of the Company's manufacturing infrastructure, successful ongoing development of advanced process technologies and generation of sufficient return on research and development efforts.

The Company has strategically diversified its business by expanding into semiconductor products such as specialty memory products (including SDRAM, PSRAM, mobile SDRAM and reduced latency DRAM), NAND Flash memory products and CMOS image sensors. These products are used in a

wider range of applications than the computing applications that use the Company's standardized DRAM products. The Company leverages its expertise in semiconductor memory manufacturing and product and process technology to provide these products that are differentiated from competitors' products based on performance characteristics. In the first quarter of 2006, specialty memory products, NAND Flash products and CMOS image sensors constituted approximately 45% of the Company's net sales. The Company expects that the markets for these products will grow more rapidly in the near term than the overall semiconductor market. The Company plans to allocate an increasing portion of its manufacturing capacity to support these products and expand its market position in 2006. The Company believes that the strategic diversification of its product portfolio will strengthen its ability to allocate manufacturing resources to obtain the highest rate of return.

The Company makes significant ongoing investments to implement its proprietary product and process technology in its manufacturing facilities in the United States, Europe and Asia to provide semiconductor products with increasing functionality and performance at lower costs. The Company introduces new generations of products that offer improved performance characteristics, such as higher data transfer rates, reduced package size, lower power consumption and increased megapixel count. The Company generally reduces the manufacturing cost of each generation of product through its advanced product and process technology such as its leading-edge line width process technology and innovative array architecture.

In order to maximize returns from investments in research and development ("R&D"), the Company develops process technology that effectively reduces production costs and leverages the Company's capital expenditures. To be successfully incorporated in customers' end products, the Company must offer qualified semiconductor solutions at a time when customers are developing their design specifications for their end products. This is especially true

for specialty memory products and CMOS image sensors, which are required to demonstrate advanced functionality and performance well ahead of a planned ramp of production to commercial volumes. In addition, DRAM and NAND Flash products often incorporate highly advanced design and process technologies that are difficult to manufacture. The Company must make significant investments in R&D to expand its product offering and develop its leading-edge product and process technologies.

IM Flash Technologies, LLC

On January 6, 2006, the Company and Intel Corporation ("Intel") closed the transaction related to IM Flash Technologies, LLC ("IMFT"), a joint venture limited liability company that will manufacture NAND Flash memory products. In connection therewith, the Company contributed assets valued at $995 million and will contribute $250 million in cash in the second quarter of 2006. Intel contributed $1,196 million in cash and notes to IMFT. As a result of these contributions, the Company will own 51% and Intel will own 49% of IMFT. Subject to certain conditions, the parties will make additional contributions of approximately $1.4 billion over the next three years and intend to make additional investments as appropriate to support the growth of the operation. The parties will share the output of IMFT generally in proportion to their investment in IMFT. Additionally, research and development costs for NAND Flash process development will initially be shared equally among the Company and Intel. IMFT's financial results will be included in the consolidated financial statements of the Company.

IMFT will manufacture Intel-owned NAND Flash memory products pursuant to NAND Flash designs developed by the Company and Intel and licensed to the Company. Initially, IMFT will obtain its sole supply of products from the Company pursuant to a wafer supply agreement with the Company in connection with the Company's operations located in Boise, Idaho. As a part of the Company's capital contributions described above, the Company contributed a lease of approximately 50% of its facility in Manassas, Virginia, and certain land and its facility in Lehi, Utah, to IMFT. The Company expects that its NAND Flash production growth will be limited until the second half of 2006 when additional capacity is brought online by IMFT.

Simultaneously with the closing of the joint venture transaction, Micron sold to Intel its existing NAND Flash memory technology and designs for $270 million and acquired a perpetual, paid-up license to use and modify such designs.

Upon the closing of the joint venture transaction, the Company became obligated to provide certain NAND Flash memory products to Apple Computer Inc. ("Apple") until December 31, 2010. The Company agreed to supply Apple with a significant portion of the Company's share of IMFT's NAND Flash memory output for which Apple will make a prepayment to the Company of $250 million.

Results of Operations

	First Quarter				Fourth Quarter	
	2006	% of net sales	2005	% of net sales	2005	% of net sales
Net sales:						
Memory	$ 1,208.0	88.7%	$ 1,209.4	96.0%	$ 1,144.3	91.0%
Imaging	153.8	11.3%	50.9	4.0%	113.5	9.0%
	$ 1,361.8	100.0%	$ 1,260.3	100.0%	$ 1,257.8	100.0%
Gross margin:						
Memory	$ 237.7	19.7%	$ 409.7	33.9%	$ 224.5	19.6%
Imaging	73.4	47.7%	13.3	26.1%	57.7	50.8%
	$ 311.1	22.8%	$ 423.0	33.6%	$ 282.2	22.4%
SG&A	$ 95.3	7.0%	$ 86.8	6.9%	$ 88.0	7.0%
R&D	165.5	12.2%	148.4	11.8%	150.5	12.0%
Net income	62.6	4.6%	154.9	12.3%	43.1	3.4%

The Company's two reportable segments are Memory and Imaging. The Memory segment's primary products are DRAM and NAND Flash memory and the Imaging segment's primary product is CMOS image sensors.

Net Sales

Total net sales for the first quarter of 2006 increased 8% as compared to the fourth quarter of 2005 due to a 5% increase in Memory sales and 36% increase in Imaging sales. The Company was able to achieve increases in sales for both segments despite declining average selling prices as a result of increases in sales volume facilitated by increases in production. Memory sales were 89% of total net sales in the first quarter of 2006 compared to 91% in the fourth quarter of 2005 and 96% in the first quarter of 2005. Imaging sales have grown rapidly in recent quarters and have represented an increasing portion of the Company's total net sales. Total net sales for the first quarter of 2006 increased 8% as compared to the first quarter of 2005 primarily due to an increase in Imaging sales.

Memory: Memory sales for the first quarter of 2006 increased by 5% as compared to the fourth quarter of 2005 primarily due to an 11% increase in megabits sold partially offset by a 5% decrease in the overall average selling price per megabit. Megabit production increased 7% in the first quarter of 2006 as compared to the fourth quarter of 2005 primarily due to production efficiencies resulting from improvements in product and process technologies. The increase in megabit production in the first quarter of 2006 was achieved despite an increase in wafer starts allocated to the Company's Imaging segment. Megabits in finished goods inventory decreased 13% in the first quarter of 2006 as megabit sales exceeded production.

The decline in per megabit average selling prices for the first quarter of 2006 reflects continued oversupply for certain DRAM products, particularly DDR2, as the transition in industry demand from DDR to DDR2 products has been slower than previously expected. DDR and DDR2 products were 32% and 21%, respectively, of total net sales in the first quarter of 2006. The decline in per megabit average selling prices for the first quarter of 2006 was partially mitigated by a continued shift in the Company's product mix to a higher concentration of specialty memory products, such as SDRAM, PSRAM and Mobile DRAM, that obtained significantly higher per megabit prices than DDR and DDR2 products. The Company expects to continue shifting production from DDR to DDR2 products in future periods as market demand transitions to DDR2 products.

Memory sales for the first quarter of 2006 increased slightly as compared to the first quarter of 2005 primarily due to an 88% increase in megabits sold, partially offset by a 46% decrease in the overall average selling price per megabit for the Company's Memory products. Megabit production increased 73% in the first quarter of 2006 as compared to the first quarter of 2005, primarily due to production efficiencies resulting from improvements in product and process technologies. The Company's shift in product mix to specialty memory products from DDR and DDR2 products partially mitigated the decline in average selling prices for DDR and DDR2 products. This benefit was partially offset by a shift from DDR to DDR2 products, as average selling prices per megabit for DDR2 products were significantly lower than for DDR products in the first quarter of 2006. DDR and DDR2 products were 47% and 10%, respectively, of the Company's total net sales in the first quarter of 2005.

Imaging: Imaging sales for the first quarter of 2006 increased by 36% as compared to the fourth quarter of 2005 primarily due to a 57% increase in unit sales partially offset by a 14% decrease in the average selling price per unit for the Company's Imaging products. The growth in unit sales for the first quarter of 2006 reflects increased production and strong demand for the Company's Imaging products. Production increased due to the allocation of more wafers to the manufacture of Imaging products as well as improvements in manufacturing efficiency. Imaging sales were 11% of the Company's total net sales in the first quarter of 2006. Imaging sales for the first quarter of 2006 increased by 202% as compared to the first quarter of 2005 primarily due to a 266% increase in unit sales partially offset by a 17% decrease in the average selling price per unit for the Company's Imaging products. Due to strong demand for the Company's products and the planned introduction of new products, the Company expects that revenue from Imaging products will continue to grow in future periods as additional manufacturing capacity is allocated to the production of these products.

Gross Margin

The Company's overall gross margin percentage for the first quarter of 2006 of 23% was slightly higher than the gross margin percentage for the fourth quarter of 2005. The Company was able to offset declines in average selling prices with reductions in product costs and, to a lesser extent, a shift in product mix to higher margin

products. The Company's overall gross margin percentage for the first quarter of 2006 declined from 34% for the first quarter of 2005 primarily due to significant declines in average selling prices for Memory products that were only partially offset by cost reductions and shifts in product mix to higher margin products.

Memory: The Company's gross margin for Memory products for the first quarter of 2006 of 20% was relatively stable as compared to the fourth quarter of 2005, as a 5% decrease in the average selling price per megabit was offset by a decrease in per megabit cost of goods sold. The Company's Memory gross margins benefited from an increase in sales of NAND Flash and specialty memory products, which had significantly higher margins than DDR and DDR2 products. The shift to NAND Flash and specialty memory products offset a decline in gross margins for the Company's DDR2 products, which experienced significant pricing pressure. The Company's overall cost of goods sold per megabit for the first quarter of 2006 declined from the fourth quarter of 2005 primarily due to manufacturing efficiencies achieved from improved product yields and an increase in production utilizing the Company's 110nm and 95nm process technology.

The Company's gross margin percentage for Memory products in the first quarter of 2006 declined as compared to 34% for the first quarter of 2005. This decline was primarily due to the 46% decrease in the Company's overall average selling price per megabit partially offset by a decrease in cost of goods sold per megabit and an increase in sales of specialty memory products.

The Company's TECH Semiconductor Singapore Pte. Ltd. ("TECH") joint venture supplied approximately 20%, 20% and 25% of the total megabits of memory produced by the Company in the first quarter of 2006, fourth quarter of 2005 and first quarter of 2005, respectively. In 2005 and 2006, TECH primarily produced DDR and DDR2 products. The Company generally purchases memory products from TECH at prices determined quarterly, based on a discount from average selling prices realized by the Company for the preceding quarter. Depending on market conditions, the gross margin from the sale of products manufactured by TECH may be higher or lower than the gross margin from the sale of products manufactured by the Company's wholly-owned operations. In the first quarter of 2006, the Company realized gross margin percentages on sales of TECH products that were higher than margins it realized on DDR and DDR2 products manufactured by its wholly-owned operations. In the fourth and first quarters of 2005, the Company realized lower gross margin percentages on sales of TECH products than for products manufactured by its wholly-owned operations.

Imaging: The Company's gross margin of 48% for Imaging products for the first quarter of 2006 was relatively stable as compared the fourth quarter of 2005. A 14% decrease in the overall average selling price per unit for Imaging products was offset by a decrease in the average cost of goods sold per unit. The Company's gross margin for Imaging products for the first quarter of 2006 increased significantly as compared to 26% for the first quarter of 2005. This increase was primarily due to a decrease in the average cost of goods sold per unit partially offset by a 17% decrease in the overall average selling price per unit for the Company's Imaging products.

Selling, General and Administrative

Selling, general and administrative ("SG&A") expenses for the first quarter of 2006 increased 8% from the fourth quarter of 2005 primarily due to higher compensation costs. SG&A expenses for the first quarter of 2006 were 10% higher than for the first quarter of 2005 primarily due to increased costs associated with outstanding legal matters and higher levels of compensation expense. The Company expects that SG&A expenses will increase in future periods due to the IMFT joint venture with Intel.

Research and Development

R&D expenses vary primarily with the number of development wafers processed, the cost of advanced equipment dedicated to new product and process development, and personnel costs. Because of the lead times necessary to manufacture its products, the Company typically begins to process wafers before completion of performance and reliability testing. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability. R&D expenses can vary significantly depending on the timing of product qualification.

R&D expenses for the first quarter of 2006 increased 10% from the fourth quarter of 2005 and 12% from first quarter of 2005, principally due to a higher level of compensation costs. In connection with the IMFT joint venture,

the Company and Intel will share equally the R&D costs for NAND Flash. The Company expects that its quarterly R&D costs will range from $150 million to $170 million for the remainder of 2006.

The Company's process technology R&D efforts are focused primarily on development of successively smaller line-width process technologies which are designed to facilitate the Company's transition to next generation DRAM, NAND and CMOS image sensing devices. Additional process technology R&D efforts focus on specialty memory products (including PSRAM, mobile SDRAM and reduced latency DRAM) and new manufacturing materials. Product design and development efforts are concentrated on the Company's 1 gigabit and 2 gigabit DDR, DDR2 and DDR3 products as well as high density and mobile NAND Flash memory, CMOS image sensors and specialty memory products.

Stock-Based Compensation

Through 2005, the Company accounted for its stock plans using the intrinsic value method. Effective the beginning of 2006, the Company adopted Statement of Financial Accounting Standards ("SFAS") No. 123(R), "Share-Based Payment," and elected to adopt the modified prospective application method. SFAS No. 123(R) requires the Company to use a fair-value based method to accounting for stock-based compensation. Accordingly, stock-based compensation cost is measured at the grant date, based on the fair value of the award, and is recognized as expense over the employees' requisite service period. Total compensation cost for the Company's stock plans in the first quarter of 2006 was $3.8 million, of which $0.4 million was capitalized and remained in inventory at the end of the first quarter of 2006. Cost of goods sold; selling, general and administrative expense; and research and development expense in the first quarter of 2006 include stock-based compensation of $0.6 million, $2.0 million and $0.8 million, respectively. In 2005, the Company accelerated the vesting of 97% of its unvested stock options outstanding under the Company's stock plans to reduce compensation costs recognized upon the adoption of SFAS 123(R). Because the Company's near-term, stock-based compensation costs were reduced by the acceleration of vesting in 2005, stock-based compensation costs would grow significantly in future periods if the Company continues to grant amounts of new stock-based compensation awards similar to recent periods.

Other Operating (Income) Expense, Net

Other operating income for the first quarter of 2006 includes net gains of $11.9 million from changes in currency exchange rates primarily as the result of a generally stronger U.S. dollar relative to the Japanese yen and euro. Other operating expense for the first quarter of 2005 includes net losses of $19.6 million from changes in currency exchange rates and is net of $12.0 million in receipts from the U.S. government in connection with anti-dumping tariffs. The Company estimates that, based on its assets and liabilities denominated in currencies other than U.S. dollar as of December 1, 2005, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately $0.9 million for the yen and $0.7 million for the euro.

Income Taxes

Income taxes for 2006 and 2005 primarily reflect U.S. taxes on the Company's non-U.S. operations and U.S. alternative minimum tax. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The provision for taxes on U.S. operations in 2006 and 2005 was substantially offset by a reduction in the valuation allowance. Until such time as the Company utilizes its U.S. net operating loss carryforwards and unused tax credits, the provision for taxes on the Company's U.S. operations is expected to be substantially offset by a reduction in the valuation allowance. As of December 1, 2005, the Company had aggregate U.S. tax net operating loss carryforwards of $2.5 billion and unused U.S. tax credit carryforwards of $147.5 million. The Company also has unused state tax net operating loss carryforwards of $1.8 billion and unused state tax credits of $140.7 million. Substantially all of the net operating loss carryforwards expire in 2022 to 2025 and substantially all of the tax credit carryforwards expire in 2013 to 2026. The Company anticipates utilizing approximately $1.0 billion of its U.S. and state net operating loss carryforwards as a result of the IMFT transaction. (See "IM Flash Technologies, LLC" note.)

Liquidity and Capital Resources

The Company's liquidity is highly dependent on average selling prices for its products and the timing of capital expenditures, both of which can vary significantly from period to period. As of December 1, 2005, the Company

had cash and marketable investment securities totaling $1,377.4 million compared to $1,290.4 million as of September 1, 2005.

Operating Activities: For the first quarter of 2006, net cash provided by operating activities was $425.2 million, which principally reflects the Company's $62.6 million of net income adjusted by $303.4 million for non-cash depreciation and amortization expense. Cash provided by operations included an $89.1 million reduction in inventories.

Investing Activities: For the first quarter of 2006, net cash used by investing activities was $219.3 million, which included cash expenditures for property, plant and equipment of $268.7 million. The Company believes that to develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, it must continue to invest in manufacturing technologies, facilities and capital equipment, research and development, and product and process technologies. The Company projects 2006 capital spending of approximately $2.0 billion, which includes $500 million for planned expenditures by the IMFT joint venture. The Company also expects to make significant IMFT related capital expenditures in 2007. As of December 1, 2005, the Company had commitments extending into 2007 of approximately $300 million for the acquisition of property, plant and equipment.

Financing Activities: For the first quarter of 2006, net cash used by financing activities was $69.3 million. Payments on debt and equipment purchase contracts aggregated $80.2 million for the first quarter of 2006.

Access to capital markets has historically been important to the Company. Depending on market conditions, the Company may issue registered or unregistered securities to raise capital to fund a portion of its operations.

As of December 1, 2005, the Company had $632.5 million of 2.5% Convertible Subordinated Notes (the "Notes") outstanding. Holders of the Notes may convert all or some of their Notes at any time prior to maturity, unless previously redeemed or repurchased, into the Company's common stock at a conversion rate of 84.8320 shares for each $1,000 principal amount of the Notes. This conversion rate is equivalent to a conversion price of approximately $11.79 per share. The Company may redeem the Notes at any time after February 6, 2006, at declining premiums to par.

IMFT: In connection with the closing of the joint venture transaction on January, 6, 2006, the Company will contribute $250 million in cash to IMFT in the second quarter of 2006. Cash and marketable investment securities held by IMFT are not available or anticipated to be available to finance operations or other expenditures of the Company's operations. Also, the Company received approximately $230 million from Intel for the sale of the Company's NAND Flash memory technology and designs, net of a payment to Intel for a perpetual, paid-up license to use and modify the design technology. The Company will receive $250 million from Apple as a prepayment for NAND Flash memory products in the second quarter of 2006. Subject to certain conditions, the Company expects to make additional contributions of approximately $1.4 billion over the next three years and additional investments as appropriate to support the growth of IMFT's operations.

TECH: In November 2005, the Company's TECH joint venture entered into a $400 million financing arrangement. A condition of drawing on the financing arrangement is that the partners in the TECH joint venture contribute an aggregate of $250 million of additional capital to TECH. The Company expects to contribute an additional $125 million to TECH in the third quarter of 2006. Depending on the capital contributions from the other partners in TECH, the Company's interest in TECH may increase such that TECH's financial results would be included in the consolidated financial statements of the Company.

Contractual Obligations: As of December 1, 2005, future maturities of notes payable, minimum lease payments under capital lease obligations and minimum commitments under operating leases were as follows:

	Total	Remainder of 2006	2007	2008	2009	2010	2011 and thereafter
Notes payable	$ 919.4	$ 50.6	$ 81.5	$ 61.7	$ 44.5	$ 676.5	$ 4.6
Capital lease obligations	207.6	50.5	49.2	50.1	57.8	—	—
Operating leases	51.1	8.3	9.0	6.8	2.7	2.3	22.0

Off-Balance Sheet Arrangements

As of December 1, 2005, the Company had the following off-balance sheet arrangements: convertible debt, call spread options, stock warrants and its interest in the TECH joint venture.

See "Liquidity and Capital Resources" above for a description of the Company's convertible debt.

Concurrent with the issuance of the Notes, the Company purchased call spread options (the "Call Spread Options") covering 53.7 million shares of the Company's common stock, which is the number of shares issuable upon conversion of the Notes in full. The Call Spread Options have a lower strike price of $11.79, a higher strike price of $18.19, may be settled at the Company's option either in cash or net shares and expire on January 29, 2008. Settlement of the Call Spread Options in cash on January 29, 2008, would result in the Company receiving an amount ranging from zero if the market price per share of the Company's common stock is at or below $11.79 to a maximum of $343.4 million if the market price per share of the Company's common stock is at or above $18.19.

In 2001, the Company received $480.2 million from the issuance of warrants to purchase 29.1 million shares of the Company's common stock. The warrants entitle the holders to exercise their warrants and purchase shares of Common Stock for $56.00 per share (the "Exercise Price") at any time through May 15, 2008 (the "Expiration Date"). Warrants exercised prior to the Expiration Date will be settled on a "net share" basis, wherein investors receive common stock equal to the difference between $56.00 and the average closing sale price for the common shares over the 30 trading days immediately preceding the Exercise Date. At expiration, the Company may elect to settle the warrants on a net share basis or for cash, provided certain conditions are satisfied. As of December 1, 2005, there had been no exercises of warrants and all warrants issued remained outstanding.

See “Item 1. Financial Statements and Supplementary Data – Notes to Consolidated Financial Statements – Joint Ventures – TECH Semiconductor Singapore Pte. Ltd.” for a description of the Company’s arrangement with its TECH joint venture.

Recently Issued Accounting Standards

In May 2005, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 154, “Accounting Changes and Error Corrections.” SFAS No. 154 replaces APB Opinion No. 20, “Accounting Changes,” and SFAS No. 3, “Reporting Accounting Changes in Interim Financial Statements,” and changes the requirements for the accounting for and reporting of a change in accounting principle. The Company is required to adopt SFAS No. 154 for accounting changes and error corrections that occur after the beginning of 2007. The Company’s results of operations and financial condition will only be impacted following the adoption of SFAS No. 154 if it implements changes in accounting principle that are addressed by the standard or corrects accounting errors in future periods.

In March 2005, the FASB issued Interpretation No. 47, “Accounting for Conditional Asset Retirement Obligations,” which clarifies that an entity is required to recognize a liability for the fair value of a conditional asset retirement obligation if the fair value can be reasonably estimated even though uncertainty exists about the timing and (or) method of settlement. The Company is required to adopt Interpretation No. 47 prior to the end of 2006. The Company does not expect the adoption of Interpretation No. 47 to have a significant impact on the Company’s future results of operations or financial condition.

Critical Accounting Estimates

The preparation of financial statements and related disclosures in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. Estimates and judgments are based on historical experience, forecasted future events and various other assumptions that the Company believes to be reasonable under the circumstances. Estimates and judgments may vary under different assumptions or conditions. The Company evaluates its estimates and judgments on an ongoing basis. Management believes the accounting policies below are critical in the portrayal of the Company’s financial condition and results of operations and require management’s most difficult, subjective or complex judgments.

Contingencies: The Company is subject to the possibility of losses from various contingencies. Considerable judgment is necessary to estimate the probability and amount of any loss from such contingencies. An accrual is made when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. The Company accrues a liability and charges operations for the estimated costs of adjudication or settlement of asserted and unasserted claims existing as of the balance sheet date.

Income taxes: The Company is required to estimate its provision for income taxes and amounts ultimately payable or recoverable in numerous tax jurisdictions around the world. Estimates involve interpretations of regulations and are inherently complex. Resolution of income tax treatments in individual jurisdictions may not be known for many years after completion of any fiscal year. The Company is also required to evaluate the realizability of its deferred tax assets on an ongoing basis in accordance with U.S. GAAP, which requires the assessment of the Company’s performance and other relevant factors when determining the need for a valuation allowance with respect to these deferred tax assets. Realization of deferred tax assets is dependent on the Company’s ability to generate future taxable income.

Inventories: Inventories are stated at the lower of average cost or market value. Cost includes labor, material and overhead costs, including product and process technology costs. Determining market value of inventories involves numerous judgments, including projecting average selling prices and sales volumes for future periods and costs to complete products in work in process inventories. To project average selling prices and sales volumes, the Company reviews recent sales volumes, existing customer orders, current contract prices, industry analysis of supply and demand, seasonal factors, general economic trends and other information. When these analyses reflect estimated market values below the Company’s manufacturing costs, the Company records a charge to cost of goods sold in advance of when the inventory is actually sold. Differences in forecasted average selling prices used in calculating lower of cost or market adjustments can result in significant changes in the estimated net realizable value of product inventories and accordingly the amount of write-down recorded. Due to the volatile nature of the semiconductor memory industry, actual selling prices and volumes often vary significantly from projected prices and volumes and, as a result, the timing of when product costs are charged to operations can vary significantly.

U.S. GAAP provides for products to be grouped into categories in order to compare costs to market values. The amount of any inventory write-down can vary significantly depending on the determination of inventory categories. The Company’s inventory has been categorized as semiconductor memory products or CMOS image sensors. The major characteristics the Company considers in determining inventory categories are product type and markets.

Product and process technology: Costs incurred to acquire product and process technology or to patent technology developed by the Company are capitalized and amortized on a straight-line basis over periods currently ranging up to 10 years. The Company capitalizes a portion of costs incurred based on its analysis of historical and projected patents issued as a percent of patents filed. Capitalized product and process technology costs are amortized over the shorter of (i) the estimated useful life of the technology, (ii) the patent term or (iii) the term of the technology agreement.

Property, plant and equipment: The Company reviews the carrying value of property, plant and equipment for impairment when events and circumstances indicate that the carrying value of an asset or group of assets may not be recoverable from the estimated future cash flows expected to result from its use and/or disposition. In cases where undiscounted expected future cash flows are less than the carrying value, an impairment loss is recognized equal to the amount by which the carrying value exceeds the estimated fair value of the assets. The estimation of future cash flows involves numerous assumptions which require judgment by the Company, including, but not

limited to, future use of the assets for Company operations versus sale or disposal of the assets, future selling prices for the Company’s products and future production and sales volumes. In addition, judgment is required by the Company in determining the groups of assets for which impairment tests are separately performed.

Research and development: Costs related to the conceptual formulation and design of products and processes are expensed as research and development when incurred. Determining when product development is complete requires judgment by the Company. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability.

Stock-based compensation: In 2006, the Company adopted SFAS No. 123(R) using the modified prospective application method and began accounting for its stock-based compensation using a fair-valued based recognition method. Under the provisions of SFAS No. 123(R), stock-based compensation cost is estimated at the grant date based on the fair-value of the award and is recognized as expense ratably over the requisite service period of the award. Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the grant date requires considerable judgment, including estimating stock price volatility, expected option life and forfeiture rates. The Company develops its estimates based on historical data and market information which can change significantly over time. A small change in the estimates used can have a relatively large change in the estimated valuation.

The Company uses the Black-Scholes option valuation model to value employee stock awards. The Company estimates stock price volatility based on an average of its historical volatility and the implied volatility derived from traded options on the Company's stock. Estimated option life and forfeiture rate assumptions are derived from historical data. For stock based compensation awards with graded vesting that were granted after 2005, the Company recognizes compensation expense using the straight-line amortization method.

Item 3. ***Quantitative and Qualitative Disclosures about Market Risk***

Interest Rate Risk

As of December 1, 2005, $1.0 billion of the Company's $1.1 billion in total debt was at fixed interest rates. As a result, the fair value of the debt fluctuates based on changes in market interest rates. The estimated fair market value of the Company's debt approximated $1.3 billion as of December 1, 2005 and September 1, 2005. The Company entered into an interest rate swap agreement (the "Swap") that effectively converted, beginning August 29, 2003, the 2.5% fixed interest rate on the Company's $632.5 million Convertible Subordinated Notes (the "Notes") to a variable interest rate based on the 3-month London Interbank Offering Rate ("LIBOR") less 65 basis points. The Swap qualifies as a fair-value hedge under SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended. The gain or loss from changes in the fair value of the Swap is expected to be highly effective at offsetting the gain or loss from changes in the fair value of the Notes attributable to changes in interest rates. The Company does not use derivative financial instruments for trading purposes.

Foreign Currency Exchange Rate Risk

The information in this section should be read in conjunction with the information related to changes in the exchange rates of foreign currency in "Part II. Other Information – Item 1A." Changes in foreign currency exchange rates could materially adversely affect the Company's results of operations or financial condition.

The functional currency for substantially all of the Company's operations is the U.S. dollar. The Company held aggregate cash and other assets in foreign currencies valued at U.S. $291.2 million as of December 1, 2005, and U.S. $344.4 million as of September 1, 2005 (including cash and equivalents denominated in yen valued at U.S. $181.2 million as of December 1, 2005, and U.S. $214.9 million as of September 1, 2005 and deferred income tax assets denominated in yen valued at U.S. $49.1 million as of December 1, 2005, and U.S. $50.5 million as of September 1, 2005). The Company also held aggregate foreign currency liabilities valued at U.S. $461.0 million as of December 1, 2005, and U.S. $575.3 million as of September 1, 2005 (including debt denominated in yen valued at U.S. $245.2 million as of December 1, 2005, and U.S. $298.9 million as of September 1, 2005). Foreign currency receivables and payables as of December 1, 2005, were comprised primarily of yen, euros, Singapore dollars and British pounds. The Company estimates that, based on its assets and liabilities denominated in currencies other than

U.S. dollar as of December 1, 2005, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately $0.9 million for the yen and $0.7 million for the euro.

Item 4. ***Controls and Procedures***

An evaluation was carried out under the supervision and with the participation of the Company's management, including its principal executive officer and principal financial officer, of the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, the principal executive officer and principal financial officer concluded that those disclosure controls and procedures were effective 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 Commission's rules and forms.

During the quarterly period covered by this report, there were no changes in the Company's internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

PART II. OTHER INFORMATION

Item 1. ***Legal Proceedings***

On August 28, 2000, the Company filed a complaint against Rambus, Inc. ("Rambus") in the U.S. District Court for the District of Delaware seeking monetary damages and declaratory and injunctive relief. Among other things, the Company's complaint (as amended) alleges violation of federal antitrust laws, breach of contract, fraud, deceptive trade practices, and negligent misrepresentation. The complaint also seeks a declaratory judgment (a) that certain Rambus patents are not infringed by the Company, are invalid, and/or are unenforceable, (b) that the Company has an implied license to those patents, and

(c) that Rambus is estopped from enforcing those patents against the Company. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that the Company is entitled to relief, alleging infringement of the eight Rambus patents named in the Company's declaratory judgment claim, and seeking monetary damages and injunctive relief. A number of other suits are currently pending in Europe alleging that certain of the Company's SDRAM and DDR SDRAM products infringe various of Rambus' country counterparts to its European patent 525 068, including: on September 1, 2000, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany; on September 13, 2000, Rambus filed suit against Micron Europe Limited in the High Court of Justice, Chancery Division in London, England; on September 22, 2000, Rambus filed a complaint against the Company and Reptronic (a distributor of the Company's products) in the Court of First Instance of Paris, France; on September 29, 2000, the Company filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, the Company filed suit against Rambus in the Civil Court of Avezzano, Italy, alleging invalidity and non-infringement of the Italian counterpart to European patent 1 004 956. Additionally, other suits are pending alleging that certain of our DDR SDRAM products infringe Rambus' country counterparts to its European patent 1 022 642, including: on August 10, 2001, Rambus filed suit against the Company and Assitec (an electronics retailer) in the Civil Court of Pavia, Italy; and on August 14, 2001, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany. In the European suits against the Company, Rambus is seeking monetary damages and injunctive relief. Subsequent to the filing of the various European suits, the European Patent Office declared Rambus' 525 068 and 1 004 956 European patents invalid and revoked the patents.

On March 1, 2005, Tessera, Inc. ("Tessera") filed suit against the Company in the U.S. District Court for the Eastern District of Texas alleging infringement of five Tessera patents. On June 22, 2005, the Company filed an answer and counterclaim denying Tessera's claims and alleging infringement of eight Company patents.

On June 2, 2005, Tadahiro Ohmi ("Ohmi") filed suit against the Company in the U.S. District Court for the Eastern District of Texas (amended on August 31, 2005) alleging infringement of a single Ohmi patent.

Among other things, the above lawsuits pertain to certain of the Company's SDRAM, DDR SDRAM, and DDR2 SDRAM products, which account for a significant portion of the Company's net sales. The Company is unable to predict the outcome of these suits.

A court determination that the Company's products or manufacturing processes infringe the product or process intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing results could have a material adverse effect on the Company's business, results of operations or financial condition.

On June 17, 2002, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the "DOJ") into possible antitrust violations in the "Dynamic Random Access Memory" or "DRAM" industry. The Company is cooperating fully and actively with the DOJ in its investigation. The Company's cooperation is pursuant to the terms of the DOJ's Corporate Leniency Policy, which provides that in exchange for our full, continuing and complete cooperation in the pending investigation, the Company will not be subject to prosecution, fines or other penalties from the DOJ.

Subsequent to the commencement of the DOJ investigation, a number of purported class action lawsuits have been filed against the Company and other DRAM suppliers. Eighteen cases have been filed in various federal district courts (one of which has been voluntarily dismissed) asserting claims on behalf of a purported class of

individuals and entities that purchased DRAM directly from the various DRAM suppliers during the period from April 1, 1999 through at least June 30, 2002. All of the cases have been transferred to the U.S. District Court for the Northern District of California for consolidated proceedings. The complaints allege price-fixing in violation of federal antitrust laws and seek treble monetary damages, costs, attorneys' fees, and an injunction against the allegedly unlawful conduct. Additionally, four cases have been filed in the U.S. District Court for the Northern District of California asserting claims on behalf of a purported class of individuals and entities that indirectly purchased DRAM and/or products containing DRAM from various DRAM suppliers during the time period from April 1, 1999 through at least June 30, 2002. The complaints allege price fixing in violation of federal antitrust laws and various state antitrust and unfair competition laws and seek treble monetary damages, restitution, costs, interest and attorneys' fees. In addition, at least sixty-two cases have been filed in various state courts (five of which have been voluntarily dismissed) asserting claims on behalf of a purported class of indirect purchasers of DRAM. Cases have been filed in the following states: Arkansas, Arizona, California, Florida, Hawaii, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, and West Virginia, and also in the District of Columbia and Puerto Rico. The complaints purport to be on behalf of a class of individuals and entities that indirectly purchased DRAM and/or products containing DRAM in the respective jurisdictions during various time periods ranging from 1999 through the filing date of the various complaints. The complaints allege violations of the various jurisdictions' antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest and attorneys' fees. A number of these cases have been removed to federal court and transferred to the U.S. District Court for the Northern District of California (San Francisco) for consolidated proceedings. Additionally, three cases have been filed in the following Canadian courts: Superior Court, District of Montreal, Province of Quebec; Ontario Superior Court of Justice, Ontario; and Supreme Court of British Columbia, Vancouver Registry, British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States. Based upon the Company's analysis of the claims made and the nature of the DRAM industry, the Company believes that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs in the direct purchaser cases would be more appropriately resolved on a customer-by-customer basis. In addition, the Attorneys General of Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Mississippi, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin are investigating potential state and federal civil claims against the Company and other DRAM suppliers on behalf of state and governmental entities that were direct or indirect purchasers of DRAM and potentially on behalf of other indirect purchasers of DRAM. The Company has been served with civil investigative demands or subpoenas issued by five of the state Attorneys General and is responding to those requests. The Company is unable to predict the outcome of these lawsuits and investigations. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges various causes of action under California state law including a conspiracy to restrict output and fix prices on Rambus DRAM ("RDRAM") and unfair competition. Tessera also has asserted certain antitrust and unfair competition claims relating to Tessera's packaging technology. These complaints seek treble damages, punitive damages, attorneys' fees, costs, and a permanent injunction enjoining the defendants from the

conduct alleged in the complaints. The Company is unable to predict the outcome of the suit. A court determination against the Company could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

(See "Item 1A. Risk Factors" below.)

Item 1A. ***Risk Factors***

In addition to the factors discussed elsewhere in this Form 10-Q, the following are important factors which could cause actual results or events to differ materially from those contained in any forward- looking statements made by or on behalf of the Company.

We have experienced dramatic declines in average selling prices for our memory products which have adversely affected our business.

Per megabit average selling prices decreased 5% in the first quarter of 2006 as compared to fourth quarter of 2005. In recent years, we have also experienced annual decreases in per megabit average selling prices for our semiconductor memory products including: 24% in 2005, 17% in 2003, 53% in 2002, 60% in 2001, 37% in 1999, 60% in 1998 and 75% in 1997. At times, average selling prices for our semiconductor products have been below our costs. If average selling prices for our memory products decrease faster than we can decrease per megabit costs, our business, results of operations or financial condition could be materially adversely affected.

Increased worldwide semiconductor memory production or lack of demand for semiconductor memory could lead to further declines in average selling prices.

The transitions to smaller line-width process technologies and 300mm wafers in the industry have resulted in significant increases in the worldwide supply of DRAM and could continue to lead to future increases. Increases in worldwide supply of DRAM also result from DRAM fab capacity expansions, either by way of new facilities, increased capacity utilization or reallocation of other semiconductor production to DRAM production. Several of our competitors have announced plans to increase production through construction of new facilities or expansion of existing facilities. Increases in worldwide supply of DRAM, if not accompanied with increases in demand, could lead to further declines in average selling prices for our products and could materially adversely affect our business, results of operations or financial condition.

As the computer industry matures and the growth rate of computers sold or growth rate of the amount of semiconductor memory included in each computer decreases, sales of our semiconductor products could decrease.

We are primarily dependent on the computing market as most of the semiconductor products we sell are used in computers, servers or peripheral products. Approximately 70% of our total net sales for the first quarter of 2006 were to the computing market. DRAMs are the primary semiconductor memory components in computers. Throughout most of the 1980s and 1990s, industry revenue for the DRAM market grew at a much faster rate than the overall economy, driven by both growth in sales of computers and the amount of memory included in each computer sold. However, as with any maturing market, it is unlikely that historic growth rates for this market will be sustained. In recent years, the DRAM market has grown at a significantly slower rate as the computer industry has continued to mature. The reduction in the growth rate of computers sold or growth rate of the amount of semiconductor memory included in each computer could reduce sales of our semiconductor products and our business, results of operations or financial condition could be materially adversely affected.

We may be unable to reduce our per megabit manufacturing costs at the same rate as we have in the past.

Historically, our gross margin has benefited from decreases in per unit manufacturing costs achieved through improvements in our manufacturing processes, including reducing the die size of our existing products. In future periods, we may be unable to reduce our per unit manufacturing costs or reduce costs at historical rates due to the ever increasing complexity of manufacturing processes, to changes in process technologies or products which inherently may require relatively larger die sizes, or to strategic product diversification decisions affecting product mix. Per unit manufacturing costs may also be affected by the relatively smaller production quantities and shorter product lifecycles of Imaging and certain specialty memory products.

Our formation of the IMFT joint venture with Intel Corporation and the resulting plans to significantly increase our NAND Flash memory production has numerous risks.

On January 6, 2006, we closed the transaction related to the IMFT joint venture with Intel and as a result we plan to significantly increase our NAND Flash production in future periods. The IMFT agreement and our NAND Flash strategy in general require substantial investment in capital expenditures for equipment and new facilities. It also requires significant investments in research and development as well as investments to grow and develop new operations at multiple sites. These investments involve numerous risks. We will be required to devote a significant portion of our existing semiconductor manufacturing capacity to the production of NAND Flash instead of the Company's other products. In conjunction with the IMFT agreement, we have entered into a contract with Apple Corporation to provide a significant portion of our NAND Flash output for an extended period of time at contractually determined prices. As of December 1, 2005 we had a relatively small share of the world-wide market for NAND Flash.

Our NAND Flash investments and commitments involve numerous risks, and may include the following:

- increasing our exposure to changes in average selling prices for NAND Flash,
- difficulties in establishing new production operations at multiple locations,
- increasing capital expenditures to increase production capacity and modify existing processes to produce NAND Flash,
- increasing debt to finance future investments,

- diverting management's attention from normal daily operations,
- managing larger operations and facilities and employees in separate geographic areas, and
- hiring and retaining key employees.

Our NAND Flash strategy may not be successful and could materially adversely affect our business, results of operations or financial condition.

The future success of our Imaging business will be dependent on continued market acceptance of our products and the development, introduction and marketing of new Imaging products.

Our imaging business has grown rapidly in the recent periods. Sales of imaging products tripled from the first quarter of 2005 to the first quarter of 2006 and represented 11% of our net sales in the first quarter of 2006. Our imaging products have much higher gross margins than the overall gross margins from our memory products. As we continue to expand our imaging business, there can be no assurance that we will be able to maintain these growth rates or gross margins. The continued success of our Imaging products will depend on a number of factors, including:

- development of products that maintain a technological advantage over the products of our competitors;
- accurate prediction of market requirements and evolving standards, including pixel resolution, output interface standards, power requirements, optical lens size, input standards and other requirements;
- timely completion and introduction of new Imaging products that satisfy customer requirements;
- timely achievement of design wins with prospective customers, as manufacturers may be reluctant to change their source of components due to the significant costs, time, effort and risk associated with qualifying a new supplier; and
- efficient, cost-effective manufacturing as we transition to new products and higher volumes.

We may not be able to generate sufficient cash flows to fund our operations and make adequate capital investments.

Our cash flows from operations depend primarily on the volume of semiconductor memory sold, average selling prices and per megabit manufacturing costs. To develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, facilities and capital equipment, research and development, and product and process technology. In addition to cash provided by operations, we have from time to time utilized external sources of financing. Depending on general market and economic conditions or other factors, we may not be able to generate sufficient cash flows to fund our operations and make adequate capital investments.

The semiconductor industry is highly competitive.

We face intense competition in the semiconductor memory market from a number of companies, including Elpida Memory, Inc., Hynix Semiconductor Inc., Infineon Technologies AG, Samsung Electronics Co., Ltd., SanDisk Corporation and Toshiba Corporation. Additionally, we face competition from emerging companies in Taiwan and China who have announced plans to significantly expand the scale of their operations. We face competition in the image sensor market from a number of suppliers of CMOS image sensors as well a large number of suppliers of CCD image sensors. Some of our competitors are large corporations or conglomerates that may have greater resources to withstand downturns in the semiconductor markets in which we compete, invest in technology and capitalize on growth opportunities. Our competitors seek to increase silicon capacity, improve yields, reduce die size and minimize mask levels in their product designs. These factors have significantly increased worldwide supply and put downward pressure on prices.

Changes in foreign currency exchange rates could materially adversely affect our business, results of operations or financial condition.

Our financial statements are prepared in accordance with U.S. GAAP and are reported in U.S. dollars. Across our multi-national operations, there are transactions and balances denominated in other currencies, primarily the yen and euro. The Company estimates that, based on its assets and liabilities denominated in currencies other than U.S. dollar as of December 1, 2005, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately $0.9 million for the yen and $0.7 million for the euro. In the event that the U.S. dollar weakens significantly compared to the yen or euro, our results of operations or financial condition will be adversely affected.

If our TECH joint venture experiences financial difficulty, or if our supply of semiconductor products from TECH is disrupted, our business, results of operations or financial condition could be materially adversely affected.

TECH supplied approximately 20% of our total megabits of memory produced in the first quarter of 2006. We have agreements to purchase all of the products manufactured by TECH subject to specific terms and conditions. In some periods, we have realized higher margins on products purchased from TECH than products manufactured by our wholly-owned facilities. Any reduction in supply could materially adversely affect our business, results of operations or financial condition. As of December 1, 2005, we had intangible assets with a net book value of $47.4 million relating to the supply arrangement to purchase product from TECH. In the event that our supply of semiconductor products from TECH is reduced or eliminated, we may be required to write off part or all of these assets and our revenues and results of operations would be adversely affected.

New product development may be unsuccessful.

We are developing new products that complement our traditional memory products or leverage their underlying design or process technology. We have made significant investments in product and process technologies and anticipate expending significant resources for new semiconductor product development over the next several years. The process to develop Imaging and certain specialty memory products requires us to demonstrate advanced functionality and

performance, many times well in advance of a planned ramp of production, in order to secure design wins with our customers. There can be no assurance that our product development efforts will be successful,

that we will be able to cost-effectively manufacture these new products, that we will be able to successfully market these products or that margins generated from sales of these products will recover costs of development efforts.

An adverse determination that our products or manufacturing processes infringe the intellectual property rights of others could materially adversely affect our business, results of operations or financial condition.

As is typical in the semiconductor and other high technology industries, from time to time, others have asserted, and may in the future assert, that our products or manufacturing processes infringe their intellectual property rights. In this regard, we are engaged in litigation with Rambus, Inc. ("Rambus") relating to certain of Rambus' patents and certain of our claims and defenses. On August 28, 2000, we filed a complaint (subsequently amended) against Rambus in the U.S. District Court for the District of Delaware seeking monetary damages and declaratory and injunctive relief. Among other things, our amended complaint alleges violation of federal antitrust laws, breach of contract, fraud, deceptive trade practices, and negligent misrepresentation. The complaint also seeks a declaratory judgment (a) that certain Rambus patents are not infringed by us, are invalid, and/or are unenforceable, (b) that we have an implied license to those patents, and (c) that Rambus is estopped from enforcing those patents against us. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that we are entitled to relief, alleging infringement of the eight Rambus patents named in our declaratory judgment claim, and seeking monetary damages and injunctive relief. A number of other suits are pending in Europe alleging that certain of our SDRAM and DDR SDRAM products infringe various of Rambus' country counterparts to its European patent 525 068, including: on September 1, 2000, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany; on September 13, 2000, Rambus filed suit against Micron Europe Limited in the High Court of Justice, Chancery Division in London, England; on September 22, 2000, Rambus filed a complaint against us and Reptronic (a distributor of our products) in the Court of First Instance of Paris, France; and on September 29, 2000, we filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, we filed suit against Rambus in the Civil Court of Avezzano, Italy, alleging invalidity and non-infringement of the Italian counterpart to European patent 1 004 956. Additionally, other suits are pending alleging that certain of our DDR SDRAM products infringe Rambus' country counterparts to its European patent 1 022 642, including: on August 10, 2001, Rambus filed suit against us and Assitec (an electronics retailer) in the Civil Court of Pavia, Italy; and on August 14, 2001, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany. In the European suits against us, Rambus is seeking monetary damages and injunctive relief. Subsequent to the filing of the various European suits, the European Patent Office declared Rambus' 525 068 and 1 004 956 European patents invalid and revoked the patents. We also are engaged in litigation with Tessera, Inc. ("Tessera") relating to certain of Tessera's patents and certain of our patents. On March 1, 2005, Tessera filed suit against us in the U.S. District Court for the Eastern District of Texas alleging infringement of five Tessera patents. On June 22, 2005, we filed an answer and counterclaim denying Tessera's claims and alleging infringement of eight of our patents. We also are engaged in litigation with Tadahiro Ohmi ("Ohmi"). On June 2, 2005, Ohmi filed suit against the Company in the U.S. District Court for the Eastern District of Texas (amended on August 31, 2005) alleging infringement of a single Ohmi patent.

Among other things, the above lawsuits pertain to certain of our SDRAM, DDR SDRAM, and DDR2 SDRAM products, which account for a significant portion of our net sales. A court determination that our products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. We are unable to predict the outcome of assertions of infringement made against the Company. Any of the foregoing could have a material adverse effect on our business, results of operations or financial condition.

We have a number of patent and intellectual property license agreements. Some of these license agreements require us to make one time or periodic payments. We may need to obtain additional patent licenses or renew existing license agreements in the future. We are unable to predict whether these license agreements can be obtained or renewed on acceptable terms.

Allegations of anticompetitive conduct.

On June 17, 2002, we received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the Antitrust Division of the Department of Justice (the "DOJ") into possible antitrust violations in the "Dynamic Random Access Memory" or "DRAM" industry. We are

cooperating fully and actively with the DOJ in its investigation of the DRAM industry. Our cooperation is pursuant to the terms of the DOJ's Corporate Leniency Policy, which provides that in exchange for our full, continuing and complete cooperation in the pending investigation, we will not be subject to prosecution, fines or other penalties from the DOJ.

Subsequent to the commencement of the DOJ investigation, a number of purported class action lawsuits have been filed against us and other DRAM suppliers. Eighteen cases have been filed in various federal district courts (one of which has been voluntarily dismissed) asserting claims on behalf of a purported class of individuals and entities that purchased DRAM directly from various DRAM suppliers during the period from April 1, 1999 through at least June 30, 2002. All of the cases have been transferred to the U.S. District Court for the Northern District of California for consolidated proceedings. The complaints allege price-fixing in violation of federal antitrust laws and seek treble monetary damages, costs, attorneys' fees, and an injunction against the allegedly unlawful conduct. Additionally, four cases have been filed in the U.S. District Court for the Northern District of California asserting claims on behalf of a purported class of individuals and entities that indirectly purchased DRAM and/or products containing DRAM from various DRAM suppliers during the time period from April 1, 1999 through at least June 30, 2002. The complaints allege price fixing in violation of federal antitrust laws and various state antitrust and unfair competition laws and seek treble monetary damages, restitution, costs, interest and attorneys' fees. In addition, at least sixty-two cases have been filed in various state and federal courts (five of which have been voluntarily dismissed) asserting claims on behalf of a purported class of indirect purchasers of DRAM. Cases have been filed in the following states: Arkansas, Arizona, California, Florida, Hawaii, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, and West Virginia, and also in the District of Columbia and Puerto Rico. The complaints purport to be on behalf of individuals and entities that indirectly purchased DRAM and/or products containing DRAM in the respective

jurisdictions during various time periods ranging from 1999 through the filing date of the various complaints. The complaints allege violations of various jurisdictions' antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest and attorneys' fees. A number of these cases have been removed to federal court and transferred to the U.S. District Court for the Northern District of California (San Francisco) for consolidated proceedings. Additionally, three cases have been filed in the following Canadian courts: Superior Court, District of Montreal, Province of Quebec; Ontario Superior Court of Justice, Ontario; and Supreme Court of British Columbia, Vancouver Registry, British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States. Based upon our analysis of the claims made and the nature of the DRAM industry, we believe that class treatment of these cases is not appropriate and that any purported injury alleged by plaintiffs in the direct purchaser cases would be more appropriately resolved on a customer-by-customer basis. In addition, the Attorneys General of Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maryland, Mississippi, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia and Wisconsin are investigating potential state and federal civil claims against us and other DRAM suppliers on behalf of state and governmental entities that were direct or indirect purchasers of DRAM and potentially on behalf of other indirect purchasers of DRAM. The Company has been served with civil investigative demands or subpoenas issued by five of the state Attorneys General and is responding to those requests. We are unable to predict the outcome of these lawsuits and investigations. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers. The complaint alleges various causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM ("RDRAM"), and unfair competition. Tessera also has asserted certain antitrust and unfair competition claims relating to Tessera's packaging technology. These complaints seek treble damages, punitive damages, attorneys' fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaints. We are unable to predict the outcome of the suit. A court determination against us could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

Current economic and political conditions may harm our business.

Global economic conditions and the effects of military or terrorist actions may cause significant disruptions to worldwide commerce. If these disruptions result in delays or cancellations of customer orders, a decrease in corporate spending on information technology or our inability to effectively market, manufacture or ship our products, our business, results of operations or financial condition could be materially adversely affected.

We face risks associated with our international sales and operations that could materially adversely affect our business, results of operations or financial condition.

Sales to customers outside the United States approximated 69% of our consolidated net sales for the first quarter of 2006. In addition, we have manufacturing operations in Italy, Japan, Puerto Rico, Scotland and Singapore. Our international sales and operations are subject to a variety of risks, including:

- currency exchange rate fluctuations,
- export and import duties, changes to import and export regulations, and restrictions on the transfer of funds,
- political and economic instability,
- problems with the transportation or delivery of our products,
- issues arising from cultural or language differences and labor unrest,
- longer payment cycles and greater difficulty in collecting accounts receivable, and
- compliance with trade and other laws in a variety of jurisdictions.

These factors may materially adversely affect our business, results of operations or financial condition.

If our manufacturing process is disrupted, our business, results of operations or financial condition could be materially adversely affected.

We manufacture products using highly complex processes that require technologically advanced equipment and continuous modification to improve yields and performance. Difficulties in the manufacturing process or the effects from a shift in product mix can reduce yields or disrupt production and may increase our per megabit manufacturing costs. From time to time, we have experienced minor disruptions in our manufacturing process as a result of power outages or equipment failures. If production at a fabrication facility is disrupted for any reason, manufacturing yields may be adversely affected or we may be unable to meet our customers' requirements and they may purchase products from other suppliers. This could result in a significant increase in manufacturing costs or loss of revenues or damage to customer relationships, which could materially adversely affect our business, results of operations or financial condition.

Disruptions in our supply of raw materials could materially adversely affect our business, results of operations or financial condition.

Our operations require raw materials that meet exacting standards. We generally have multiple sources of supply for our raw materials. However, only a limited number of suppliers are capable of delivering certain raw materials that meet our standards. Various factors could reduce the availability of raw materials such as silicon wafers, photomasks, chemicals, gases, lead frames and molding compound. Shortages may occur from time to time in the future. In addition, disruptions in transportation lines could delay our receipt of raw materials. Lead times for the supply of raw materials have been extended in the past. If our supply of raw materials is disrupted or our lead times extended, our business, results of operations or financial condition could be materially adversely affected.

Products that do not meet specifications or that contain, or are perceived by our customers to contain, defects or that are otherwise incompatible with end uses could impose significant costs on us or otherwise materially adversely affect our business, results of operations or financial condition.

Because the design and production process for semiconductor memory is highly complex, it is possible that we may produce products that do not comply with customer specifications, contain defects or are otherwise incompatible with end uses. If, despite design review, quality control and product qualification procedures, problems with nonconforming, defective or incompatible products occur after we have shipped such products, we could be adversely affected in several ways, including the following:

- we may replace product or otherwise compensate customers for costs incurred or damages caused by defective or incompatible product, and
- we may encounter adverse publicity, which could cause a decrease in sales of our products.

We expect to make future acquisitions where advisable, which involve numerous risks.

We expect to make future acquisitions where we believe it is advisable to enhance shareholder value. Acquisitions involve numerous risks, including:

- increasing our exposure to changes in average selling prices for semiconductor products,
- difficulties in integrating the operations, technologies and products of the acquired companies,
- increasing capital expenditures to upgrade and maintain facilities,
- increasing debt to finance any acquisition,
- diverting management's attention from normal daily operations,
- managing larger operations and facilities and employees in separate geographic areas, and
- hiring and retaining key employees.

Mergers and acquisitions of high-technology companies are inherently risky, and future acquisitions may not be successful and may materially adversely affect our business, results of operations or financial condition.

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

During November 2005, the Company acquired, as payment of withholding taxes in connection with the vesting of restricted stock awards, 25,212 shares of its common stock at an average price per share of $14.18.

Item 4. *Submission of Matters to a Vote of Shareholders*

The registrant's 2005 Annual Meeting of Shareholders was held on December 6, 2005. At the meeting, the following items were submitted to a vote of the shareholders:

(a) The following nominees for Directors were elected. Each person elected as a Director will serve until the next annual meeting of shareholders or until such person's successor is elected and qualified.

Name of Nominee	Votes Cast For	Votes Cast Against/Withheld
Steven R. Appleton	545,222,811	8,784,408
James W. Bagley	540,988,752	13,018,467
Mercedes Johnson	519,810,729	34,196,490
Robert A. Lothrop	478,487,293	75,519,926
Lawrence N. Mondry	476,180,926	77,826,293
Gordon C. Smith	545,061,733	8,945,486
William P. Weber	475,224,340	78,782,879

(b) The proposal by the Company to approve an amendment to the Company's 2004 Equity Incentive Plan increasing the number of shares of Common Stock reserved for issuance thereunder by 12,000,000 was approved with 315,413,627 votes in favor, 126,879,194 votes against, 5,713,443 abstentions and 106,000,955 broker non-votes.

(c) The ratification of the appointment of PricewaterhouseCoopers LLP as the independent Registered Public Accounting Firm of the Company for the fiscal year ending August 31, 2006, was approved with 545,969,041 votes in favor, 5,067,954 votes against and 2,970,224 abstentions.

Item 5. *Other Information*

On January 6, 2006, the Company and Intel Corporation ("Intel") closed the transaction related to IM Flash Technologies, LLC ("IMFT"), a joint venture limited liability company, and entered into certain agreements that govern the rights and obligations of each of the Company, Intel and IMFT, including the following: Limited Liability Company Operating Agreement, Manufacturing Services Agreement, Boise Supply Agreement, MTV Lease Agreement, Product Designs Assignment Agreement, Micron Supply Agreement and Intel Supply Agreement. A brief description of these agreements is contained in the Company's previously filed Current Report on Form 8-K dated November 18, 2005. In addition, these agreements are included as exhibits to this Quarterly Report on Form 10-Q.

Item 6. *Exhibits*

Exhibit Number	Description of Exhibit
10.60	2004 Equity Incentive Plan
10.155*	Master Agreement, dated as of November 18, 2005, between Micron Technology, Inc. and Intel Corporation
10.156*	Limited Liability Company Operating Agreement of IM Flash Technologies, LLC, dated as of January 6, 2006, between Micron Technology, Inc. and Intel Corporation
10.157*	Manufacturing Services Agreement, dated as of January 6, 2006, between Micron Technology, Inc. and IM Flash Technologies, LLC
10.158*	Boise Supply Agreement, dated as of January 6, 2006, between IM Flash Technologies, LLC and Micron Technology, Inc.
10.159*	MTV Lease Agreement, dated as of January 6, 2006, between Micron Technology, Inc. and IM Flash Technologies, LLC
10.160*	Product Designs Assignment Agreement, dated January 6, 2006, between Intel Corporation and Micron Technology, Inc.
10.161*	NAND Flash Supply Agreement, effective as of January 6, 2006, between Apple and Micron Technology, Inc.
10.162*	Supply Agreement, dated as of January 6, 2006, between Micron Technology, Inc. and IM Flash Technologies, LLC
10.163*	Supply Agreement, dated as of January 6, 2006, between Intel Corporation and IM Flash Technologies, LLC
31.1	Rule 13a-14(a) Certification of Chief Executive Officer
31.2	Rule 13a-14(a) Certification of Chief Financial Officer
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. 1350
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. 1350

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission.

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.

Micron Technology, Inc.
(Registrant)

Dated: January 9, 2006

/s/ W. G. Stover, Jr.
W. G. Stover, Jr., Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)

MICRON TECHNOLOGY, INC.
2004 EQUITY INCENTIVE PLAN

ARTICLE 1
PURPOSE

1.1. GENERAL. The purpose of the Micron Technology, Inc. 2004 Equity Incentive Plan (the "Plan") is to promote the success, and enhance the value, of Micron Technology, Inc. (the "Company"), by linking the personal interests of employees, officers, directors and consultants of the Company or any Affiliate (as defined below) to those of Company stockholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, directors and consultants of the Company and its Affiliates.

ARTICLE 2
DEFINITIONS

2.1. DEFINITIONS. When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

(a) "Affiliate" means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(b) "Award" means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Share, Dividend Equivalent Award, or Other Stock-Based Award granted to a Participant under the Plan.

(c) "Award Certificate" means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means and includes the occurrence of any one of the following events:

(i) individuals who, on the Effective Date, constitute the Board of Directors of the Company (the "Incumbent Directors") cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors ("Election Contest") or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board ("Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any person is or becomes a "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company ("Company Common Stock") or (B) securities of the Company representing 35% or more of the combined voting power of the Company's then outstanding securities eligible to vote for the election of directors (the "Company Voting Securities");

provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a "Reorganization"), or the sale or other disposition of all or substantially all of the Company's assets (a "Sale") or the acquisition of assets or stock of another corporation (an "Acquisition"), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets or stock either directly or through one or more subsidiaries, the "Surviving Corporation") in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any Subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board's approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-Qualifying Transaction"); or

(iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(f) "Code" means the Internal Revenue Code of 1986, as amended from time to time, and includes a reference to the underlying final regulations.

(g) "Committee" means the committee of the Board described in Article 4.

(h) "Company" means Micron Technology, Inc., a Delaware corporation, or any successor corporation.

(i) "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee, officer, consultant or director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall continue to the extent provided in a written severance or employment agreement during any period for which severance compensation payments are made to an employee, officer, consultant or director and shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company prior to its commencement; provided, however, that for purposes of Incentive Stock Options, no such leave may

exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(j) "Covered Employee" means a covered employee as defined in Code Section 162(m)(3).

(k) "Disability" or "Disabled" has the same meaning as provided in the long-term disability plan or policy maintained by the Company or if applicable, most recently maintained, by the Company or if applicable, an Affiliate, for the Participant, whether or not such Participant actually receives disability benefits under such plan or policy. If no long-term disability plan or policy was ever maintained on behalf of Participant or if the determination of Disability relates to an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, Disability means Permanent and Total Disability as defined in Section 22(e)(3) of the Code. In the event of a dispute, the determination whether a Participant is Disabled will be made by the Committee and may be supported by the advice of a physician competent in the area to which such Disability relates.

(l) "Deferred Stock Unit" means a right granted to a Participant under Article 11.

(m) "Dividend Equivalent" means a right granted to a Participant under Article 12.

(n) "Effective Date" has the meaning assigned such term in Section 3.1.

(o) "Eligible Participant" means an employee, officer, consultant or director of the Company or any Affiliate.

(p) "Exchange" means the New York Stock Exchange or any other national securities exchange or national market system on which the Stock may from time to time be listed or traded.

(q) "Fair Market Value" of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or the Exchange with the greatest volume of trading in the Stock) for the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined in good faith by the Committee.

(r) "Full Value Award" means an Award other than in the form of an Option or SAR, and which is settled by the issuance of Stock.

(s) "Grant Date" of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

(t) "Incentive Stock Option" means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(u) "Non-Employee Director" means a director of the Company who is not a common law employee of the Company or an Affiliate.

(v) "Nonstatutory Stock Option" means an Option that is not an Incentive Stock Option.

(w) "Option" means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(x) "Other Stock-Based Award" means a right, granted to a Participant under Article 13 that relates to or is valued by reference to Stock or other Awards relating to Stock.

(y) "Parent" means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.

(z) "Participant" means a person who, as an employee, officer, director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term "Participant" refers to a beneficiary designated pursuant to Section 14.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.

(aa) "Performance Share" means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.

(bb) "Person" means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

(cc) "Plan" means the Micron Technology, Inc. 2004 Equity Incentive Plan, as amended from time to time.

(dd) "Public Offering" shall occur on closing date of a public offering of any class or series of the Company's equity securities pursuant to a registration statement filed by the Company under the 1933 Act.

(ee) "Qualified Performance-Based Award" means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 14.10(b), or (ii) an Option or SAR.

(ff) "Qualified Business Criteria" means one or more of the Business Criteria listed in Section 14.10(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.

(gg) "Restricted Stock Award" means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.

(hh) "Restricted Stock Unit Award" means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.

(ii) "Section 162(m) Exemption" means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

(jj) "Shares" means shares of the Company's Stock. If there has been an adjustment or

substitution pursuant to Section 15.1, the term "Shares" shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.

(kk) "Stock" means the $.10 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 15.

(ll) "Stock Appreciation Right" or "SAR" means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the base price of the SAR, all as determined pursuant to Article 8.

(mm) "Subsidiary" means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

(nn) "1933 Act" means the Securities Act of 1933, as amended from time to time.

(oo) "1934 Act" means the Securities Exchange Act of 1934, as amended from time to time.

ARTICLE 3
EFFECTIVE TERM OF PLAN

3.1. EFFECTIVE DATE. The Plan shall be effective as of the date it is approved by both the Board and the stockholders of the Company (the "Effective Date").

3.2. TERMINATION OF PLAN. The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination.

ARTICLE 4
ADMINISTRATION

4.1. COMMITTEE. The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be "non-employee directors" (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and "outside directors" (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. ACTION AND INTERPRETATIONS BY THE COMMITTEE. For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final,

binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

4.3. AUTHORITY OF COMMITTEE. Except as provided below, the Committee has the exclusive power, authority and discretion to:

(a) Grant Awards;

(b) Designate Participants;

(c) Determine the type or types of Awards to be granted to each Participant;

(d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;

(e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, base price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;

(f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 14, based in each case on such considerations as the Committee in its sole discretion determines;

(g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;

(i) Decide all other matters that must be determined in connection with an Award;

(j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;

(k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;

(l) Amend the Plan or any Award Certificate as provided herein; and

(m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the foregoing, grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.

Notwithstanding the above, the Board or the Committee may, by resolution, expressly delegate to a special

committee, consisting of one or more directors who are also officers of the Company, the authority, within specified parameters, to (i) designate officers, employees and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such

Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the 1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to be become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

4.4. AWARD CERTIFICATES. Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

ARTICLE 5
SHARES SUBJECT TO THE PLAN

5.1. NUMBER OF SHARES. Subject to adjustment as provided in Sections 5.2 and 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 26,000,000; provided, however, that each Share issued under the Plan pursuant to a Full Value Award shall reduce the number of available Shares by two (2) shares. The maximum number of Shares that may be issued upon exercise of Incentive Stock Options granted under the Plan shall be 2,000,000.

5.2. SHARE COUNTING.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) If the exercise price of an Option is satisfied by delivering Shares to the Company (by either actual delivery or attestation), only the number of Shares issued in excess of the delivery or attestation (less any shares delivered by the optionee to satisfy an applicable tax withholding obligation) shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan.

(d) To the extent that the full number of Shares subject to an Option is not issued upon exercise of the Option for any reason, only the number of Shares issued and delivered upon exercise of the Option shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan. Nothing in this subsection shall imply that any particular type of cashless exercise of an Option is permitted under the Plan, that decision being reserved to the Committee or other provisions of the Plan.

5.3. STOCK DISTRIBUTED. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. LIMITATION ON AWARDS. Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1), the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one calendar year under the Plan to any one Participant shall be 2,000,000. The maximum aggregate grant with respect to Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards (other than Options or SARs) granted in any one calendar year to any one Participant shall be 2,000,000.

ARTICLE 6
ELIGIBILITY

6.1. GENERAL. Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code.

ARTICLE 7
STOCK OPTIONS

7.1. GENERAL. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) EXERCISE PRICE. The exercise price per Share under an Option shall be determined by the Committee; provided that the exercise price for any Option shall not be less than the Fair Market Value as of the Grant Date.

(b) TIME AND CONDITIONS OF EXERCISE. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(d). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested. The Committee may waive any exercise or vesting provisions at any time in whole or in part based upon factors as the Committee may determine in its sole discretion so that the Option becomes exercisable or vested at an earlier date. The Committee may permit an arrangement whereby receipt of Stock upon exercise of an Option is delayed until a specified future date.

(c) PAYMENT. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including "cashless exercise" arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants; provided, however, that if Shares are used to pay the exercise price of an Option, such Shares must have been held by the Participant for at least such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles as a result of the exercise of the Option.

(d) EXERCISE TERM. In no event may any Option be exercisable for more than ten years from the Grant Date.

(e) SUSPENSION. Any Participant who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective

contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

7.2. INCENTIVE STOCK OPTIONS. The terms of any Incentive Stock Options granted under the Plan must comply with the following additional rules:

(a) EXERCISE PRICE. The exercise price of an Incentive Stock Option shall not be less than the Fair Market Value as of the Grant Date.

(b) LAPSE OF OPTION. Subject to any earlier termination provision contained in the Award Certificate, an Incentive Stock Option shall lapse upon the earliest of the following circumstances; provided, however, that the Committee may, prior to the lapse of the Incentive Stock Option under the circumstances described in subsections (3), (4) or (5) below, provide in writing that the Option will extend until a later date, but if an Option is so extended and is exercised after the dates specified in subsections (3) and (4) below, it will automatically become a Nonstatutory Stock Option:

(1) The expiration date set forth in the Award Certificate.

(2) The tenth anniversary of the Grant Date.

(3) Three months after termination of the Participant's Continuous Status as a Participant for any reason other than the Participant's Disability or death.

(4) One year after the Participant's Continuous Status as a Participant by reason of the Participant's Disability.

(5) One year after the termination of the Participant's death if the Participant dies while employed, or during the three-month period described in paragraph (3) or during the one-year period described in paragraph (4) and before the Option otherwise lapses.

Unless the exercisability of the Incentive Stock Option is accelerated as provided in Article 14, if a Participant exercises an Option after termination of employment, the Option may be exercised only with respect to the Shares that were otherwise vested on the Participant's termination of employment. Upon the Participant's death, any exercisable Incentive Stock Options may be exercised by the Participant's beneficiary, determined in accordance with Section 14.5.

(c) INDIVIDUAL DOLLAR LIMITATION. The aggregate Fair Market Value (determined as of the Grant Date) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed $100,000.00.

(d) TEN PERCENT OWNERS. No Incentive Stock Option shall be granted to any individual who, at the Grant Date, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary unless the exercise price per share of such Option is at least 110% of the Fair Market Value per Share at the Grant Date and the Option expires no later than five years after the Grant Date.

(e) EXPIRATION OF AUTHORITY TO GRANT INCENTIVE STOCK OPTIONS. No Incentive Stock Option may be granted pursuant to the Plan after the day immediately prior to the tenth anniversary of the date the Plan was adopted by the Board, or the termination of the Plan, if earlier.

(f) RIGHT TO EXERCISE. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant or, in the case of the Participant's Disability, by the Participant's guardian or legal representative.

(g) ELIGIBLE GRANTEES. The Committee may not grant an Incentive Stock Option to a person who is not at the Grant Date an employee of the Company or a Parent or Subsidiary.

ARTICLE 8
STOCK APPRECIATION RIGHTS

8.1. GRANT OF STOCK APPRECIATION RIGHTS. The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

(a) RIGHT TO PAYMENT. Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:

(1) The Fair Market Value of one Share on the date of exercise; over

(2) The base price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date.

(b) OTHER TERMS. All awards of Stock Appreciation Rights shall be evidenced by an

Award Certificate. The terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the

Award Certificate.

ARTICLE 9
PERFORMANCE SHARES

9.1. GRANT OF PERFORMANCE SHARES. The Committee is authorized to grant Performance Shares to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Shares granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Shares as provided in Section 4.3. All Performance Shares shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Shares are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. PERFORMANCE GOALS. The Committee may establish performance goals for Performance Shares which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to an Award of Performance Shares that is intended to be a Qualified Performance-Based Award.

9.3. RIGHT TO PAYMENT. The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent value in cash or other property, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Shares in its discretion which, depending on the extent to which they are met, will determine the number of the Performance Shares that will be earned by the Participant.

9.4. OTHER TERMS. Performance Shares may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate.

ARTICLE 10
RESTRICTED STOCK AND RESTRICTED STOCK UNIT AWARDS

10.1. GRANT OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS. Subject to the terms and conditions of this Article 10, the Committee is authorized to make Awards of Restricted Stock or Restricted Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

10.2. ISSUANCE AND RESTRICTIONS. Restricted Stock or Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock); provided, however, at a minimum, all Restricted Stock and Restricted Stock Units shall be subject to the restrictions set forth in Section 14.4 for a period of no less than (a) one year from the date of award with respect to Restricted Stock or Restricted Stock Units subject to restrictions that lapse based upon satisfaction of performance goals, and (b) three years from the date of award with respect to Restricted Stock or Restricted Stock Units subject to time-

based restrictions that lapse based upon one's Continuous Status as a Participant. For avoidance of doubt, nothing in the foregoing shall preclude any applicable restriction, including those set forth in Section 14.4 hereof, from lapsing ratably, including, but not limited to, roughly annual increments over three years, with respect to the Restricted Stock or Restricted Stock Units referred to in Section 10.2(b). Moreover, nothing in the foregoing shall preclude or be interpreted to preclude Awards to Non-employee Directors from containing a period of restriction shorter than that set forth above. Finally, nothing in this Section 10.2 shall be deemed or interpreted to preclude the waiver, lapse or the acceleration of lapse, of any restrictions with respect to Restricted Stock or Restricted Stock Units in accordance with or as permitted by Sections 14.7 through Section 14.9, respectively, Article 15 or any other provision of the Plan. Subject to the remaining terms and conditions of the Plan, these restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a stockholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units.

10.3. FORFEITURE. Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate, subject to the terms and conditions of the Plan, that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, including, but not limited to, death, Disability, or for the convenience or in the best interests of the Company.

10.4. DELIVERY OF RESTRICTED STOCK. Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

ARTICLE 11

DEFERRED STOCK UNITS

11.1. GRANT OF DEFERRED STOCK UNITS. The Committee is authorized to grant Deferred Stock Units to Participants subject to such terms and conditions as may be selected by the Committee. Deferred Stock Units shall entitle the Participant to receive Shares of Stock (or the equivalent value in cash or other property if so determined by the Committee) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections. An Award of Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms and conditions applicable to the Award.

ARTICLE 12
DIVIDEND EQUIVALENTS

12.1. GRANT OF DIVIDEND EQUIVALENTS. The Committee is authorized to grant Dividend Equivalents to Participants subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional Shares, or otherwise reinvested.

ARTICLE 13
STOCK OR OTHER STOCK-BASED AWARDS

13.1. GRANT OF STOCK OR OTHER STOCK-BASED AWARDS. The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a "bonus" and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

ARTICLE 14
PROVISIONS APPLICABLE TO AWARDS

14.1. STAND-ALONE AND TANDEM AWARDS. Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Subject to Section 16.2, awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

14.2. TERM OF AWARD. The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option or a Stock Appreciation Right granted in tandem with the Incentive Stock Option exceed a period of ten years from its Grant Date (or, if Section 7.2(d) applies, five years from its Grant Date).

14.3. FORM OF PAYMENT FOR AWARDS. Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

14.4. LIMITS ON TRANSFER. No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.5. BENEFICIARIES. Notwithstanding Section 14.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the Participant's estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

14.6. STOCK CERTIFICATES. All Stock issuable under the Plan is subject to any stop-transfer orders

and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.7. ACCELERATION UPON A CHANGE IN CONTROL. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, all outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, and all time-based vesting restrictions on outstanding Awards shall lapse. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, the target payout opportunities attainable

under all outstanding performance-based Awards shall be deemed to have been fully earned as of the effective date of the Change in Control based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be prorata payout to Participants within thirty (30) days following the effective date of the Change in Control based upon the length of time within the performance period that has elapsed prior to the Change in Control.

14.8 ACCELERATION UPON DEATH OR DISABILITY. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the Participant's death or Disability during his or her Continuous Status as a Participant, (i) all of such Participant's outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting restrictions on the Participant's outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all of such Participant's outstanding performance-based Awards shall be deemed to have been fully earned as of the date of termination based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be a prorata payout to the Participant or his or her estate within thirty (30) days following the date of termination based upon the length of time within the performance period that has elapsed prior to the date of termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Awards Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.9. ACCELERATION FOR ANY OTHER REASON. Regardless of whether an event has occurred as described in Section 14.7 or 14.8 above, and subject to Section 14.11 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that all or a portion of a Participant's Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the time-based vesting restrictions on all or a portion of the outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare; provided, however, the Committee shall not exercise such discretion with respect to Full Value Awards comprised of Shares of Restricted Stock or Restricted Stock Units which, in the aggregate, exceed five percent (5%) of the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan; provided, further, that when calculating whether the five percent (5%) maximum has been reached, the Committee shall not count or consider any Shares of Restricted Stock or Restricted Stock Units granted to Non-Employee Directors or regarding which the Committee accelerated vesting rights, waived restrictions or determined performance-based criteria had been satisfied resulting from an event described in Section 14.7, 24.8. Article 15, a Participant's termination of employment or separation from service resulting from death, Disability or for the convenience or in the bests interests of the Company. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.9.

14.10. EFFECT OF ACCELERATION. If an Award is accelerated under Section 14.7, Section 14.8 or Section 14.9, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration

causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.11. QUALIFIED PERFORMANCE-BASED AWARDS.

(a) The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a unit, division, region, department or function within the Company or an Affiliate:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of Goods Sold and Gross Margin
- Costs and expenses, including Research & Development and Selling, General & Administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis
- Cash flows and share price
- Return on investment, capital, equity
- Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning
- Objective goals consistent with the Participant's specific officer duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in percentages, or in terms of growth from period to period or growth rates over time as well as measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

(c) Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, including the condition as to continued employment as set forth in subsection (g)

below, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, in its sole and absolute discretion, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon a Change in Control. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as ninety (90) days and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Written certification may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made. Except as specifically provided in subsection (c), no Qualified Performance-Based Award held by a Covered Employee or an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) Section 5.4 sets forth the maximum number of Shares or dollar value that may be granted in any one-year period to a Participant in designated forms of Qualified Performance-Based Awards.

(g) With respect to a Participant who is an officer of the Company, any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the officer having remained continuously employed by the Company or an Affiliate for the entire performance or measurement period, including, as well, through the date of determination and certification of the payment of any such Award pursuant to subsection (e) above (the "Certification Date"). For purposes of the Plan, with respect to any given performance or measurement period, an officer of the Company who (i) terminates employment (regardless of cause) or who otherwise ceases to be an officer, prior to the Certification Date and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in officer status, shall be deemed to have been employed by the Company as an officer through the Certification Date for purposes of payment eligibility.

14.12. TERMINATION OF EMPLOYMENT. Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be

an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.13. DEFERRAL. Subject to applicable law, the Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR, the lapse or waiver of restrictions with respect to Restricted Stock or Restricted Stock Units, or the satisfaction of any requirements or goals with respect to Performance Shares, and Other Stock-Based Awards. If any such deferral election is required or permitted, the Board shall, in its sole discretion, establish rules and procedures for such payment deferrals.

14.14. FORFEITURE EVENTS. The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for

cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

14.15. SUBSTITUTE AWARDS. The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

ARTICLE 15
CHANGES IN CAPITAL STRUCTURE

15.1. GENERAL. In the event of a corporate event or transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, combination or exchange of shares), the authorization limits under Section 5.1 and 5.4 shall be adjusted proportionately, and the Committee may adjust the Plan and Awards to preserve the benefits or potential benefits of the Awards. Action by the Committee may include: (i) adjustment of the number and kind of shares which may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. In addition, the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash or other property rather than Stock, (ii) that Awards will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that applicable performance targets and performance periods for Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

ARTICLE 16
AMENDMENT, MODIFICATION AND TERMINATION

16.1. AMENDMENT, MODIFICATION AND TERMINATION. The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the number of Shares available under the Plan, (ii) expand the types of awards under the Plan, (iii) materially expand the class of participants eligible to participate in the Plan, (iv) materially extend the term of the Plan, or (v) otherwise constitute a material change requiring stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to stockholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of stockholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) permit Awards made hereunder to be exempt from liability under Section 16(b) of the 1934 Act, (ii) to comply with the listing or other requirements of an Exchange, or (iii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. AWARDS PREVIOUSLY GRANTED. At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

(a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);

(b) The original term of an Option may not be extended without the prior approval of the stockholders of the Company;

(c) Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly, without the prior approval of the stockholders of the Company; and

(d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

ARTICLE 17
GENERAL PROVISIONS

17.1. NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS. No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. NO STOCKHOLDER RIGHTS. No Award gives a Participant any of the rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. WITHHOLDING. The Company or any Affiliate shall have the authority and the right to deduct

or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. If Shares are surrendered to the Company to satisfy withholding obligations in excess of the minimum withholding obligation, such Shares must have been held by the Participant as fully vested shares for such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles. The Company shall have the authority to require a Participant to remit cash to the Company in lieu of the surrender of Shares for tax withholding obligations if the surrender of Shares in satisfaction of such withholding obligations would result in the Company's recognition of expense under generally accepted accounting principles. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes.

17.4. NO RIGHT TO CONTINUED SERVICE. Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise.

17.5. UNFUNDED STATUS OF AWARDS. The Plan is intended to be an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.

17.6. RELATIONSHIP TO OTHER BENEFITS. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

17.7. EXPENSES. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

17.8. TITLES AND HEADINGS. The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

17.9. GENDER AND NUMBER. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

17.10. FRACTIONAL SHARES. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

17.11. GOVERNMENT AND OTHER REGULATIONS.

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any

Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

17.12. GOVERNING LAW. To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.

17.13. ADDITIONAL PROVISIONS. Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.14. NO LIMITATIONS ON RIGHTS OF COMPANY. The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

17.15. INDEMNIFICATION. Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

MASTER AGREEMENT

BY AND BETWEEN

MICRON TECHNOLOGY, INC.

AND

INTEL CORPORATION

NOVEMBER 18, 2005

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MASTER AGREEMENT

This **MASTER AGREEMENT** (together with the Appendix hereto, this "**Agreement**"), dated as of the 18th day of November, 2005, is entered into by and between Intel Corporation, a Delaware corporation ("**Intel**"), and Micron Technology, Inc., a Delaware corporation ("**Micron**").

RECITALS

A. Micron currently designs, manufactures and produces NAND Flash Memory Products for use in various consumer electronics and other end applications.

B. The manufacture of NAND Flash Memory Products requires the investment of significant financial resources to acquire and maintain leading-edge technology, manufacturing equipment and facilities.

C. Micron desires to expand its portfolio of NAND Flash Memory Products by producing a greater variety of such products than it presently has the ability to offer and by increasing the volume of such products that it can offer.

D. Intel desires to enter the marketplace for NAND Flash Memory Products by obtaining rights to design, manufacture and sell NAND Flash Memory Products that are manufactured pursuant to designs owned by Intel.

E. To effectuate their desires, Intel and Micron (the "**Parties**") desire to combine certain resources by making contributions to the capital of IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), for the collaborative manufacture (including by subcontract to Micron) and sale to the Parties of leading-edge NAND Flash Memory Products.

F. The Parties desire to jointly invest in the Joint Venture Company to enable it to build and operate manufacturing facilities.

G. The Parties desire to enter into various agreements with the Joint Venture Company, and with each other, to set forth the ongoing governance and operating relationships among the Parties and the Joint Venture Company relating to the business of the Joint Venture Company, all as contemplated by this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows:

ARTICLE 1.
DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement shall have the respective meanings ascribed to such terms in Appendix A to this Agreement.

ARTICLE 2.
CONTRACTS PRIOR TO CLOSING; CONTRIBUTION OF ASSETS

2.1 Pre-Existing and Contemporaneously Executed Contracts Between the Parties. On or prior to the date of this Agreement, the Parties have entered into the agreements listed on Schedule 2.1 of the Master Agreement Disclosure Letter (the "**Pre-Existing and Contemporaneously Executed Agreements**").

2.2 Contracts to be Entered into by the Parties. At the Closing, the Parties will enter into the agreements listed on Schedule 2.2 of the Master Agreement Disclosure Letter (the "**Bilateral Agreements**").

2.3 Contracts to be Entered into by Intel and the Joint Venture Company. At the Closing, Intel will enter into, and the Parties will cause the Joint Venture Company to enter into, the agreements listed on Schedule 2.3 of the Master Agreement Disclosure Letter (the "**Intel Agreements**").

2.4 Contracts to be Entered into by Micron and the Joint Venture Company. At the Closing, Micron will enter into, and the Parties will cause the Joint Venture Company to enter into, the agreements listed on Schedule 2.4 of the Master Agreement Disclosure Letter (the "**Micron Agreements**").

2.5 Contracts to be Entered into by the Parties and the Joint Venture Company. At the Closing, the Parties will enter into, and will cause the Joint Venture Company to enter into, the agreements listed on Schedule 2.5 of the Master Agreement Disclosure Letter (the "**Trilateral Agreements**").

2.6 Contribution of Assets. At the Closing, upon the terms and subject to the conditions set forth in this Agreement, and in reliance upon the representations, warranties and agreements set forth herein:

(A) Intel Contribution. Intel shall contribute to the Joint Venture Company and the Joint Venture Company shall accept from Intel the Intel contribution specified in Appendix D to the Operating Agreement.

(B) Micron Contribution. Micron shall contribute to the Joint Venture Company the Micron contribution specified in Appendix D to the Operating Agreement, including the contribution of the assets (the "**Micron Contributed Assets**") identified in such Appendix D by conveyance, transfer, assignment and delivery to the Joint Venture Company of such Micron Contributed Assets, and the Joint Venture Company shall accept from Micron the Micron contribution specified in Appendix D to the Operating Agreement.

2.7 Assumption of Liabilities. The Joint Venture Company shall not assume any liabilities, debts, obligations or duties of either Party of any kind or nature whatsoever, except to the extent such liabilities, debts, obligations or duties are expressly assumed by the Joint Venture Company under this Agreement or another Joint Venture Document.

2.8 Certain Prorations.

(A) Micron shall, or shall (if applicable) cause its subsidiaries to, pay minimum or basic rent under the personal property, real property and other equipment leases being assigned to the Joint Venture Company by Micron that are included in the Micron Contributed Assets through the end of the calendar month in which the Closing Date occurs, and the Joint Venture Company shall reimburse Micron for such rent accrued commencing with the Closing Date through the end of such month as part of the post-Closing proration.

(B) On the Closing Date, or as promptly as practicable following the Closing Date, but in no event later than sixty (60) calendar days thereafter, the water, gas, electricity and other utilities, common area maintenance reimbursements to lessors, local business or other transferable license or permit fees and other similar periodic charges payable with respect to the Micron Contributed Assets shall be prorated between Micron and the Joint Venture Company, with Micron bearing such costs and expenses attributable to the period prior to and including the Closing Date, and the Joint Venture Company bearing such costs and expenses attributable to the period after the Closing Date.

ARTICLE 3.
REPRESENTATIONS AND WARRANTIES

3.1 Intel Representations. Intel represents and warrants to Micron as follows:

(A) Corporate Existence and Power. Intel is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Intel has the requisite corporate power and authority to own, lease and operate its properties that it currently owns, leases or operates and to carry on its business as now conducted. Intel is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is required, except where the failure to be so qualified or in good standing would not be reasonably expected to have a Material Adverse Effect.

(B) Authorization; Enforceability. Intel has the requisite corporate power and authority to enter into this Agreement and the Joint Venture Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by Intel of this Agreement and the Joint Venture Documents to which it is a party and the performance by Intel of its obligations contemplated hereby and thereby have been duly authorized by Intel and do not violate the terms of the certificate of incorporation or bylaws of Intel. This Agreement has been, and as of the Closing the Joint Venture Documents to which Intel is a party will have been, duly executed and delivered by Intel, and this Agreement constitutes, and as of the Closing each of the Joint Venture Documents to which Intel is a party will constitute, the valid and binding agreement of Intel, enforceable against Intel in accordance with their respective terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally.

(C) Governmental Authorization. Except as disclosed in Schedule 3.1(C) of the Master Agreement Disclosure Letter, the execution, delivery and performance by Intel of this

Agreement and the Joint Venture Documents to which it is a party will not require any action by or in respect of, or filing with, any Governmental Entity.

(D) Non-Contravention; Consents. Except as disclosed in Schedule 3.1(D) of the Master Agreement Disclosure Letter, the execution, delivery and performance by Intel of this Agreement and the Joint Venture Documents to which it is a party do not and will not (1) violate, in any material respect, any Applicable Law or Order, (2) require any filing with, or permit, consent or approval of, or the giving of any notice to (including under any right of first refusal or similar provision), any Person (including filings, consents or approvals required under any licenses or leases to which Intel or any of its subsidiaries is a party), (3) result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or give rise to any right of termination, cancellation or acceleration of any charter document of or any right or obligation of Intel or any of its subsidiaries or to a loss of any benefit to which Intel or any of its subsidiaries is entitled under, any agreement or other instrument binding upon Intel or any of its subsidiaries or that will be binding after the Closing on the Joint Venture Company, or (4) result in the creation or imposition of any Lien on any asset of Intel, any of its subsidiaries or the Joint Venture Company that, in the case of clauses (3) or (4), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(E) Litigation. Except as disclosed in Schedule 3.1(E) of the Master Agreement Disclosure Letter or as previously disclosed in Intel's public filings pursuant to the Exchange Act, there is no action, suit, arbitration or administrative or other proceeding or investigation pending or, to Intel's knowledge, threatened, against or affecting Intel or its subsidiaries or any of their respective properties that, if determined or resolved adversely to Intel or its subsidiaries, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(F) Brokerage. Intel has not dealt with any finder, broker, investment banker or financial advisor in connection with any of the transactions contemplated by this Agreement or the negotiations looking toward the consummation of such transactions, and no finder, broker, investment banker or financial advisor is entitled to any brokerage, finders' or other fees or commissions in connection with this Agreement or the negotiation looking toward the consummation of such transactions, based upon arrangements made by or on behalf of Intel.

3.2 Micron Representations. Micron represents and warrants to Intel as follows:

(A) Corporate Existence and Power. Micron is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Micron has the requisite corporate power and authority to own, lease and operate its properties that it currently owns, leases or operates and to carry on its business as now conducted. Micron is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is required, except where the failure to be so qualified or in good standing would not reasonably be expected to have a Material Adverse Effect.

(B) Authorization; Enforceability. Micron has the requisite corporate power and authority to enter into this Agreement and the Joint Venture Documents to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery by Micron of

this Agreement and the Joint Venture Documents to which it is a party and the performance by Micron of its obligations contemplated hereby and thereby have been duly authorized by Micron and do not violate the terms of the certificate of incorporation or bylaws of Micron. This Agreement has been, and as of the Closing the Joint Venture Documents to which Micron is a party will have been, duly executed and delivered by Micron, and this Agreement constitutes, and as of the Closing each of the Joint Venture Documents to which Micron is a party will constitute, the valid and binding agreement of Micron, enforceable against Micron in accordance with their respective terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting the enforcement of creditors' rights generally.

(C) Governmental Authorization. Except as disclosed in Schedule 3.2(C) of the Master Agreement Disclosure Letter, the execution, delivery and performance by Micron of this Agreement and the Joint Venture Documents to which it is a party will not require any action by or in respect of, or filing with, any Governmental Entity.

(D) Non-Contravention; Consents. Except as disclosed in Schedule 3.2(D) of the Master Agreement Disclosure Letter, the execution, delivery and performance by Micron of this Agreement and the Joint Venture Documents to which it is a party do not and will not (1) violate, in any material respect, any Applicable Law or Order, (2) require any filing with, or permit, consent or approval of, or the giving of any notice to (including under any right of first refusal or similar provision), any Person (including filings, consents or approvals required under any licenses or leases to which Micron or any of its subsidiaries is a party), (3) result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or give rise to any right of termination, cancellation or acceleration of any charter document of or any right or obligation of Micron or any of its subsidiaries or to a loss of any benefit to which Micron or any of its subsidiaries is entitled under, any agreement or other instrument binding upon Micron or any of its subsidiaries or that will be binding after the Closing on the Joint Venture Company, or (4) result in the creation or imposition of any Lien on any asset of Micron, any of its subsidiaries or the Joint Venture Company that, in the case of clauses (3) or (4) would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(E) Litigation. Except as disclosed in Schedule 3.2(E) of the Master Agreement Disclosure Letter or as previously disclosed in Micron's public filings pursuant to the Exchange Act, there is no action, suit, arbitration or administrative or other proceeding or investigation pending or, to Micron's knowledge, threatened, against or affecting (1) the Contributed Real Property or the Other Contributed Property; or (2) Micron or its subsidiaries or any of their respective properties that, if determined or resolved adversely to Micron or its subsidiaries, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(F) Real Property Contracts.

(1) Schedule 3.2(F)(1) of the Master Agreement Disclosure Letter lists each of the following contracts and agreements of Micron that are in effect, or that are claimed by Micron as being in effect, with respect to any of the Contributed Real Property at the date of this

Agreement (collectively, the "**Real Property Contracts**"): (a) each instrument creating a Lien on any of the Contributed Real Property; (b) each policy of fire, liability and other forms of insurance (excluding title insurance, errors and omissions insurance and directors and officers insurance) held by and/or covering the Lehi Site; and (c) all contracts and agreements with any Governmental Entity, to which Micron is a party, relating to the Lehi Site.

(2) Except as disclosed on Schedule 3.2(F)(2) of the Master Agreement Disclosure Letter, to Micron's knowledge, each Real Property Contract is in full force and effect according to its terms.

(3) Except as disclosed on Schedule 3.2(F)(3) of the Master Agreement Disclosure Letter, Micron is not in breach, or default under, any Real Property Contract. To Micron's knowledge, no other party to any Real Property Contract is in breach thereof or default thereunder. To Micron's knowledge, no event or condition has occurred or exists which with the giving of notice or passage of time or both may become a default under any of the Real Property Contracts.

(G) Real Property.

(1) Except as described in Schedule 3.2(G)(1) of the Master Agreement Disclosure Letter, there is no violation of any Applicable Law (including, without limitation, any building, planning or zoning law, but excluding any Environmental Law that is addressed in Section 3.2(J)) relating to any of the Contributed Real Property. Micron has received no written notice that any Governmental Entity has determined that such violations currently exist. In the event Micron receives, prior to the Closing, notice of any such violations affecting any of the Contributed Real Property prior to the Closing, Micron shall promptly notify Intel thereof.

(2) Micron has made available to Intel true and complete copies of the documents identified in Schedule 3.2(G)(2) of the Master Agreement Disclosure Letter, which include among others the Municipal Services Agreements, certain audits prepared for or by Micron, including Phase I and Phase II reports, and other specified documents listed in Schedule 3.2(G)(2) of the Master Agreement Disclosure Letter relating to the Contributed Real Property.

(3) Except for the Liens set forth on Schedule 3.2(G)(3) of the Master Agreement Disclosure Letter (collectively, the "**Permitted Liens**"), Micron is in peaceful and undisturbed possession of the Contributed Real Property and there are no contractual restrictions that preclude or restrict the use thereof for the purposes currently contemplated by the Joint Venture Company. Micron has received no notice of any pending or, to the knowledge of Micron, threatened or contemplated action by any Governmental Entity having the power of eminent domain, which reasonably should be expected to result in any part of the Contributed Real Property being taken by condemnation or conveyed in lieu thereof.

(4) There are no material adverse physical conditions affecting any of the Lehi Site, or any of the facilities, buildings, structures, erections, improvements, fixtures, fixed assets and personalty of a permanent nature annexed, affixed or attached to, located on or forming part of any of the Lehi Site that would cause the Lehi Site or such facilities, buildings,

structures, erections, improvements, fixtures, fixed assets and personalty to be unsuitable for its respective current uses.

(5) Micron owns fee simple title to the Contributed Real Property free and clear of all Liens other than Permitted Liens. Micron has not leased any parcel or any portion of any parcel of the Contributed Real Property to any third party. Micron has not agreed to encumber any portion of the Contributed Real Property. If Micron has granted a Lien in favor of any lender upon any portion of the MTV Site, then, within fifteen (15) days of the execution of this Agreement, Micron agrees to obtain a non-disturbance agreement from such lender containing terms and conditions reasonably acceptable to Intel. No prior options or rights of first refusal have been granted by Micron to any third parties to purchase or lease any interest in the Contributed Real Property, or any part thereof, which are effective as of the date hereof. Micron is not indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Lehi Site for which any person could claim a Lien against the Lehi Site, except as set forth on Schedule 3.2(G)(5) of the Master Agreement Disclosure Letter.

(6) Except as set forth on Schedule 3.2(G)(6) of the Master Agreement Disclosure Letter, Micron has received no written notice of any dispute involving or concerning the location of the boundary lines and corners of any of the Contributed Real Property, and, to the knowledge of Micron, there are no encroachments on any of the Contributed Real Property.

(7) All of the personal property listed on Schedule 3.2(G)(7) of the Master Agreement Disclosure Letter, which Schedule 3.2(G)(7) may be modified prior to Closing as mutually agreed to by the Parties, is, as of the date hereof, and will be on the Closing Date, owned by Micron, free and clear of all Liens, and located on the Contributed Real Property.

(8) Schedule 3.2(G)(8) of the Master Agreement Disclosure Letter accurately identifies the policies of title insurance, and riders and endorsements, issued effective upon Micron's acquisition of fee simple title to the Contributed Real Property (the "**Micron Title Insurance Policies**"). Micron has provided the Joint Venture Company with true and complete copies of the Micron Title Insurance Policies. To Micron's knowledge, each of the Micron Title Insurance Policies is, and as of the Closing will be, in full force and effect according to its terms.

(H) Approvals, Obligations, Permits and Licenses.

(1) Schedule 3.2(H) of the Master Agreement Disclosure Letter lists all material Governmental Entity approvals, permits, licenses or contractual obligations relating to the Lehi Site that will transfer to or be obtained by the Joint Venture Company.

(2) To the knowledge of Micron, it operates the Contributed Real Property with all required material Governmental Entity approvals, permits and licenses, excluding Environmental Permits (which are addressed by Section 3.2(J)), and, with respect to the Contributed Real Property, is in compliance with all material terms and has fulfilled, or is timely fulfilling, all material contractual obligations to any Governmental Entity or its designee.

(I) Warranties and Representations Respecting Water Rights and Water Supply System.

(1) Micron is the sole record and beneficial owner of the Water Rights and the Water System, which it owns free and clear of Liens.

(2) The Utah State Division of Water Rights has approved non-use of Water Rights 55-8976 and 55-8981 until August 31, 2008. The Utah Division of Water Rights has also granted an extension of time for Change Application a19136 to August 31, 2006 within which to submit proof of beneficial use or request a further extension of time. Water Right No. 55-9159 (A70333) is a pending unapproved application to appropriate 6 cfs or 2,000 acre feet of water for non-consumptive use. This application has been protested and is, as of the date of this Agreement, awaiting an administrative hearing before the Utah State Engineer.

(3) Micron has received no notice from any third Person of any Lien on the Water Rights or the Water Supply System.

(4) Since January 1, 1990, to the knowledge of Micron, the Water Rights have been either continuously, fully and beneficially used, or the subject of an application for non-use approved by the Utah State Engineer, and Micron has received no notices from any third party or Governmental Entity asserting any claim or position to the contrary.

(J) Environmental.

(1) Except as set forth on Schedule 3.2(J)(1) of the Master Agreement Disclosure Letter, there have not been, since the time Micron or any of its Affiliates have owned the respective Contributed Real Property, any unauthorized releases of Hazardous Substances on or from the Contributed Real Property that would constitute a Material Adverse Environmental Effect, regardless of whether such spills or releases were reported to any Governmental Entity.

(2) Except as set forth on Schedule 3.2(J)(2) of the Master Agreement Disclosure Letter, there have been no orders, judgments, injunctions, rulings, decrees, directives, notices of violation or other decisions of any Governmental Entity against or issued to Micron under or with respect to any Environmental Laws pertaining to the Contributed Real Property during the lesser of (a) the last five (5) years and (b) the time Micron or any of its Affiliates owned the respective Contributed Real Property that would cause a Material Adverse Environmental Effect; nor is there any pending or, to the knowledge of Micron, threatened action, suit or proceeding, or, to the knowledge of Micron, investigation, or inquiry by or before any Governmental Entity under any Environmental Laws relating to any of the Contributed Real Property that would cause a Material Adverse Environmental Effect nor, to the knowledge of Micron, are there any existing grounds on which any such action, suit, investigation, inquiry or proceeding could reasonably be commenced that would cause a Material Adverse Environmental Effect.

(3) Except as set forth on Schedule 3.2(J)(3) of the Master Agreement Disclosure Letter, all notices, permits, licenses or similar authorizations, if any, required to be obtained or filed by Micron under any Environmental Laws (collectively, "**Environmental Permits**") with respect to any portion of the Contributed Real Property, including without limitation, those relating to the treatment, storage, disposal or release of a Hazardous Substance or solid waste into the environment or construction of facilities, have been duly obtained or filed,

except where the failure to obtain or file would not cause a Material Adverse Environmental Effect. Micron is in material compliance with the terms and conditions of all Environmental Permits with respect to the Contributed Real Property, and all Environmental Permits with respect to the Contributed Real Property were issued, to the knowledge of Micron, by a Governmental Entity and have the force and effect of the laws under which they were issued.

(4) Micron is in compliance with all Environmental Laws with respect to the Contributed Real Property, except where such noncompliance would not have a Material Adverse Environmental Effect.

(5) Except as set forth in Schedule 3.2(J)(5) of the Master Agreement Disclosure Letter, Micron has not received any claim, order, notice, action, suit, arbitration, or proceeding under Environmental Laws related to Hazardous Substance generated at or from any of the Contributed Real Property that would cause a Material Adverse Environmental Effect.

(K) The Joint Venture Company. Prior to Closing, the Joint Venture Company will have been formed as a limited liability company, and immediately prior to closing, the Joint Venture Company will be validly existing and in good standing under the laws of the State of Delaware.

(L) Capitalization of the Joint Venture Company. The Joint Venture Company has not engaged in any operations, made any commitments or acquired any assets prior to the Closing, except that, immediately prior to Closing, Micron shall be the sole Member of, and shall hold all of the Interests in the Joint Venture Company. Except for the Interest held by Micron immediately prior to Closing, and the Interests to be held by Intel and Micron upon the Closing as contemplated by the Operating Agreement, at Closing there will be no other securities of the Joint Venture Company, including outstanding options, warrants, calls, subscriptions, commitments or plans by the Joint Venture Company to issue any additional Interests, to make any distributions to its Members or to purchase, redeem or retire any outstanding Interest, nor will there be outstanding any securities or obligations that are convertible into or exchangeable for any Interest or other securities of the Joint Venture Company. Upon the Closing, each of Intel and Micron will acquire good and valid title to its respective Interest in the Joint Venture Company, free and clear of all Liens.

(M) Assigned Contracts. The Assigned Contracts are listed on Schedule 3.2(M) of the Master Agreement Disclosure Letter, which Schedule 3.2(M) may be amended prior to Closing as agreed to by both Parties. True and correct copies of each Assigned Contract have been provided to Intel. Each Assigned Contract is a valid, binding and enforceable agreement of Micron and, to the knowledge of Micron, the other parties thereto. There has not occurred any default under any Assigned Contract (other than Real Property Contracts, under which there has been no default) on the part of Micron nor, to the knowledge of Micron, on the part of the other parties thereto that would reasonably be expected to have a Material Adverse Effect. No event has occurred which, with the giving of notice or the lapse of time, or both, would constitute any default under any Assigned Contract (other than Real Property

Contracts) on the part of Micron nor, to the knowledge of Micron, on the part of the other parties thereto that would reasonably be expected to have a Material Adverse Effect. Except as indicated on Schedule 3.2(M) of the Master Agreement Disclosure Letter, no consent of any party to any Assigned Contract is

required in order to (i) permit the execution, delivery or performance of this Agreement, (ii) consummate of the transactions contemplated hereby, or (iii) sell, transfer or deliver the Micron Contributed Assets. The execution, delivery and performance of this Agreement, the consummation of the transactions contemplated hereby, the sale, transfer and delivery of the Micron Contributed Assets and the assumption of the liabilities to be assumed by the Joint Venture Company will not result in a breach of any of the terms and provisions of, or constitute a default under, or conflict with, or result in a modification of, any Assigned Contract, where such breach, default, conflict or modification would reasonably be expected to have a Material Adverse Effect.

(N) Brokerage. Micron has not dealt with any finder, broker, investment banker or financial advisor in connection with any of the transactions contemplated by this Agreement or the negotiations looking toward the consummation of such transactions, and no finder, broker, investment banker or financial advisor is entitled to any brokerage, finders' or other fees or commissions in connection with this Agreement or the negotiation looking toward the consummation of such transactions, based upon arrangements made by or on behalf of Micron.

(O) Contractual and Governmental Obligations. As of the date immediately prior to Closing, Micron will be in compliance with all Contractual Obligations with any third party or Governmental Entity, and of any condition of any license, permit, consent or approval of a third party to the extent that failure to be in compliance would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(P) Infrastructure. Except as set forth on Schedule 3.2(P) of the Master Agreement Disclosure Letter, all natural gas, electricity and water delivery improvements, and all sewer and storm water facilities necessary to serve the improvements as they currently exist on the Contributed Real Property have been installed and are currently serving such improvements.

3.3 Reliance by the Joint Venture Company. The Parties hereby agree that, to the extent any of the representations and warranties of Intel and Micron set forth in Section 3.1 and Section 3.2, respectively, relates to any Joint Venture Document to which the Joint Venture Company is or shall be a party, such representations and warranties shall be deemed to have been made to the Joint Venture Company; *provided*, *however*, that (1) if the Joint Venture Company pursues any cause of action against Micron for an alleged breach of representation or warranty, and a court of final jurisdiction denies the claim made by the Joint Venture Company, Intel shall reimburse the Joint Venture Company for all costs associated with pursuing such action and (2) if the Joint Venture Company pursues any cause of action against Intel for an alleged breach of representation or warranty, and a court of final jurisdiction denies the claim made by the Joint Venture Company, Micron shall reimburse the Joint Venture Company for all costs associated with pursuing such action.

ARTICLE 4.
COVENANTS

4.1 Exclusive Dealing. During the period from the date of this Agreement to the earlier of the Closing or the termination of this Agreement in accordance with its terms, neither of the Parties will, nor will they permit any of their respective subsidiaries or any of their, or

their subsidiaries', respective officers, directors, employees or agents or other representatives (including financial advisors, attorneys and consultants), acting on behalf of such Party, to take any action to enter into any contract or agreement that would be prohibited under the terms of any of the Joint Venture Documents listed on Schedule 2.4 of the Master Agreement Disclosure Letter assuming for the purposes of this Section 4.1, such Joint Venture Documents were in full force and effect, but recognizing that the Joint Venture Company does not exist as of the date of this Agreement and does not have any capacity to manufacture NAND Flash Memory Products.

4.2 Reasonable Efforts. Each of Intel and Micron will cooperate and use its reasonable efforts to take, or cause to be taken, all appropriate actions (and to make, or cause to be made, all filings necessary, proper or advisable under Applicable Law) to consummate and make effective the transactions contemplated by this Agreement and the Joint Venture Documents, including its reasonable efforts to obtain, as promptly as practicable, all licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Entities and parties to contracts, as are necessary for the consummation of the transactions contemplated by this Agreement and the Joint Venture Documents and to fulfill the conditions in Article 5 of this Agreement.

4.3 Governmental Filings. Subject to Applicable Laws, prior to the making or submission of any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal by or on behalf of either Party in connection with proceedings under or relating to the HSR Act or any other applicable Competition Law, Intel and Micron will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, presentations, letters, white papers, memoranda, briefs, arguments, opinions or proposals. In this regard but without limitation, each Party hereto shall promptly inform the other of any material communication between such Party and the Federal Trade Commission, the Antitrust Division of the United States Department of Justice, or any other federal, foreign or state antitrust or competition Governmental Entity regarding the transactions contemplated by this Agreement. Nothing in the Agreement, however, shall require or be construed to require any Party hereto, in order to obtain the consent or successful termination of any review of any such Governmental Entity regarding the transactions contemplated by this Agreement, to (i) sell or hold separate, or agree to sell or hold separate, before or after the Closing Date, any assets, businesses or any interests in any assets or businesses, of such Party or any of its Affiliates (or to consent to any sale, or agreement to sell, any assets or businesses, or any interests in any assets or businesses), or any change in or restriction on the operation by such Party of any assets or businesses, or (ii) enter into any agreement or be bound by any obligation that, in such Party's good faith judgment, may have an adverse effect on the benefits to such Party of the transactions contemplated by this Agreement.

4.4 Access to Properties and Records. From the date of this Agreement through the Closing, Micron shall afford representatives of Intel reasonable access to the Lehi Site and the MTV Site, and books and records reasonably related to the contemplated operations of the Joint Venture Company, during normal business hours, so that Intel has a full opportunity to investigate the Micron Contributed Assets; *provided*, *however,* that such investigation shall be at reasonable times and upon reasonable notice and shall not unreasonably disrupt the personnel and operations of Micron.

4.5 Further Assurances. From time to time, as and when requested by any Party, the other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions, as the Parties may reasonably agree are necessary or desirable to consummate the transactions contemplated by this Agreement.

4.6 Transfer Taxes. Each of the Parties shall pay all of the costs and expenses of all transfer, documentary, sales, use, stamp, registration, value added and other similar Taxes and governmental filing and permit fees that are incurred by such Party or by the Joint Venture Company in connection with the transfer or conveyance of any property to the Joint Venture Company as contemplated by this Agreement and the Joint Venture Documents.

4.7 Confidentiality. The disclosure and exchange of Confidential Information (as defined in the CNDA) between the Parties is governed solely by the terms of the CNDA. At the Closing, the Parties and the Joint Venture Company will sign a confidentiality agreement governing their respective confidentiality obligations with respect to the Joint Venture Company and its transactions.

4.8 Press Releases. The Parties agree that, following the signing of this Agreement, the Parties shall issue a joint press release, the text of which shall have been pre-approved in writing by Micron and Intel. Prior to the issuance of such joint press release announcing the execution of this Agreement, neither Party shall make any public disclosure, announcement or statement with respect to this Agreement, the Joint Venture Documents or the Joint Venture Company or any of the transactions contemplated by this Agreement or the Joint Venture Documents. Following the issuance of such joint press release, and subject to the terms and conditions of the CNDA, each Party shall be free to reuse the information contained in the joint press release.

4.9 Legally Compelled Disclosures. In the event that a Party is requested or becomes legally compelled (including without limitation, pursuant to securities laws and regulations) to disclose any of the Joint Venture Documents where such disclosure would be in contravention of the provisions of this Agreement, the CNDA or the Confidentiality Agreement, the Party may make such disclosure but subject to the provisions of this Section 4.9. The Party required to make such disclosure shall provide the other Party with prompt written notice of the requirement to make such disclosure before making such disclosure and will use its reasonable efforts to cooperate fully with the other Party to seek a protective order, confidential treatment, or other appropriate remedy with respect to the disclosure. In such event, the disclosing Party shall furnish for disclosure only that portion of the information that is legally required to be disclosed and shall exercise its reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to such information to the extent reasonably requested by the other Party and to the maximum extent possible under Applicable Law. The disclosing Party agrees that it will provide the other Party with drafts of any documents or other filings in which it is required to disclose this Agreement, the other Joint Venture Documents or any other confidential information subject to the terms of this Agreement at least two (2) Business Days prior to the filing or disclosure thereof for any matter to be filed with the Commission on Form 8-K and at least five (5) Business Days prior to the filing or disclosure for any other matter required to be filed with the Commission or any other Governmental Entity, and that it will make any changes

to such materials as reasonably requested by the other Party to the extent permitted by law or any rules and regulations of the Commission or any other Governmental Entity, as applicable.

4.10 Ownership Interest. Prior to the Closing, Micron shall not transfer or agree to transfer any interest in the Joint Venture Company to any Person.

4.11 Continuity and Maintenance of Operations. Commencing with the date first above written and ending as of the date of Closing, each Party agrees to use reasonable efforts consistent with past practice and policies to (i) preserve intact in all material respects that portion of its present business operations expected to be made available (through services agreements or otherwise) or contributed to the Joint Venture Company at the time of Closing, (ii) maintain in all material respects the services of such Party's employees who are reasonably expected to render full-time service to the Joint Venture Company as seconded employees or who are otherwise expected to be an integral part of the services to be provided by such Party to the Joint Venture Company, and (iii) preserve in all material respects its relationships with suppliers, licensors, licensees, and others having material business relationships in connection with that portion of its business operations expected to be made available (through services agreements or otherwise) or contributed to the Joint Venture Company at the time of Closing.

4.12 Certain Deliveries and Notices. From the date of this Agreement until the Closing, each Party shall promptly inform in writing the other Party of (i) any event or occurrence that could be reasonably expected to have a Material Adverse Effect on its ability to perform its or their obligations under any of the Joint Venture Documents or in the reasonable opinion of the Party, the ability of the Joint Venture Company to conduct its business as contemplated in the Initial Business Plan, or (ii) any breach that cannot or will not be cured by the Closing or failure to satisfy any condition or covenant, if such failure cannot or will not be cured by the Closing, contained herein or in any other Joint Venture Document by such Party.

4.13 Non-solicitation of Employees.

(A) During the Joint Venture Company Non-Solicitation Period and subject to Section 4.13(D), neither Party shall, without the prior written consent of the other Party, directly or indirectly recruit or solicit any employee of the Joint Venture Company or any of its subsidiaries ("**Restricted Employees**" for purposes of this subsection (A) and subsection (G)) to leave his or her employment with the Joint Venture Company or such subsidiary.

(B) In addition to the foregoing, during the Facilities Company Employee Non-Solicitation Period and subject to Section 4.13(D), neither Party shall, without the prior written consent of the other Party, directly or indirectly recruit or solicit any employee of a Facilities Company ("**Restricted Employees**" for purposes of this subsection (B) and subsection (G)) to leave his or her employment with such Facilities Company.

(C) In addition to the foregoing, during the Facility Employee Non-Solicitation Period and subject to Section 4.13(D), neither Party shall, without the prior written consent of the other Party, directly or indirectly recruit or solicit any employee of a Facility ("**Restricted Employees**" for purposes of this subsection (C) and subsection (G)) to leave his or her employment with such Facility.

(D) If the entire Interest held by one Party is purchased by the other Party, or its designee, (1) the selling Party, for a period of [***] after the closing of such purchase, shall not, without the prior written consent of the other Party, directly or indirectly recruit or solicit any employee of the Joint Venture Company, any of its subsidiaries or any Facilities Company ("**Restricted Employees**" for purposes of this subsection (D) and subsection (G)) to leave his or her employment with the Joint Venture Company, such subsidiary or such Facilities Company and (2) the obligations of both Parties pursuant to Sections 4.13(A), 4.13(B) and 4.13(C) shall cease.

(E) Prior to the Closing and for [***] thereafter, neither Party may, without the prior written consent of the other Party, directly or indirectly recruit or solicit any employee of the other Party whose name appears on Schedule 4.13(E) of the Master Agreement Disclosure Letter ("**Restricted Employees**" for purposes of this subsection (E) and subsection (G)) to leave his or her employment with the other Party.

(F) Prior to the first to occur of (1) the termination of this Agreement without the Closing having occurred, (2) a Liquidating Event or (3) the purchase by one Party of the entire Interest held by the other Party, neither Party nor any of either Party's Affiliates may, without the prior written consent of the other Party, directly or indirectly recruit or solicit any [***] employed by the other Party or any of its Affiliates ("**Restricted Employees**" for purposes of this subsection (F) and subsection (G)) to leave his or her employment with the employing Party and join any group, team or other organization of the soliciting Party engaging in the [***], [***] or [***] or [***] of [***] (an "[***] **Group**"). Any Restricted Employee hired by the hiring Party to work in any of the hiring Party's group, team or other organization other than an [***] Group shall not be transferred to, or consulted with or included in any discussion involving, [***] or an [***] Group for a period of [***], except that consulting on the inclusion of [***] into or onto another product that is not a [***] product is not prohibited; *provided*, *however*, that the foregoing shall not relieve a Restricted Employee of any confidentiality obligations that he or she may owe to a Party. Notwithstanding the foregoing provisions of this Section 4.13(F), if the Product Designs Development Agreement is terminated, the obligations contained in this Section 4.13(F) will expire [***] after such termination and be of no further force and effect.

(G) Neither the placement of employment advertisements or other general solicitation for employees not specifically targeted to Restricted Employees by any means, including through the use of hiring agencies or through employees of each Party who are unaware of the prohibitions against the solicitation of the Restricted Employees shall be a recruitment or solicitation prohibited by this Section 4.13 *provided* that any such hiring agencies and employees are not instructed by persons who knew about the prohibition on the solicitation of the Restricted Employees to solicit for hire Restricted Employees. In addition, nothing herein shall prevent either Party from recruiting, offering to hire or hiring Restricted Employees who contact the Party on their own initiative, and in such event there shall be no restriction on where such Restricted Employee may work; *provided, however*, that the foregoing shall not relieve a Restricted Employee of any confidentiality obligations that he or she may owe to a Party. If a Party inadvertently violates the prohibition against the solicitation of Restricted Employees, such Party must, as soon as it is aware it has committed a violation of this section, either withdraw any

offer to the solicited individual or ensure that such person, if hired, is subject to the restrictions described in the second to last sentence of Section 4.13(F), in which event such inadvertent action shall not be deemed to be a breach of this Section 4.13 so long as there is no repetitive pattern of such actions.

4.14 Initial Business Plan. The Parties shall work in good faith to prepare a mutually acceptable Initial Business Plan prior to the Closing.

4.15 Title. Micron covenants that during the term of this Agreement, Micron, without cost to the Joint Venture Company, will diligently present and prosecute claims under the Micron Title Insurance Policies with respect to any claim, action, loss or damage that the Joint Venture Company may assert against Micron, to the extent the Joint Venture Company's claims against Micron are covered by the Micron Title Insurance Policies. Micron agrees to pay over to the Joint Venture Company any proceeds paid to Micron in respect of Micron's claims asserted under the Micron Title Insurance Policies; provided however, that notwithstanding anything herein to the contrary, the right granted to the Joint Venture Company under this Section 4.15 to receive such payment or the Joint Venture Company's receipt of such payment shall not in any manner limit any rights or remedies the Joint Venture Company may otherwise have against Micron with respect to claims to which right of payment or payment is attributable, except to the extent of any amounts actually received under the Micron Title Insurance Policies.

4.16 Water Rights.

(A) Change and Perfection. Micron agrees to publicly support, and shall not protest, any application for the change of the Water Rights for use in connection with the Lehi Land, and for the business of the Joint Venture Company thereon, to the extent the proposed change implements and is consistent with the terms and conditions of the Reciprocal Easement and License Agreement, and Micron and further agrees to cooperate with the Joint Venture Company in perfecting any such pending or future change application, including without limitation, Change Application No. a19136.

(B) Report of Water Right Conveyance. Upon occurrence of the Transfer, Micron agrees to cooperate with the Joint Venture Company in the preparation of a Report of Water Right Conveyance relating to the Water Rights and the processing thereof with the Utah Division of Water Rights.

4.17 Completion of Work. Commencing promptly after the date hereof, Micron shall use commercially reasonable efforts to cause to be prepared a survey in accordance with Section 5 of the reciprocal easement agreement that is attached to the Lehi Lease, and to complete the Subdivision Work (as defined in the Lehi Lease) in accordance with Section 1.2 of the Lehi Lease.

4.18 Tax Matters. The Parties shall cooperate in a good faith, commercially reasonable manner to maximize tax benefits or minimize tax costs of the Joint Venture Company (and any Facilities Company), and of the Parties or their Affiliates with respect to the activities of the Joint Venture Company (and any Facilities Company), consistent with the overall goals of the Joint Venture Documents. Such cooperation may include, but shall not be limited to, amending

one or more of the Joint Venture Documents or seeking a ruling from a taxing authority; *provided*, *however*, that neither of the Parties shall be required to consent to amend any of the Joint Venture Documents or take other action that such Party reasonably determines is not commercially reasonable, and; *provided*, *further*, that if one Party (and its Affiliates) is not likely (based on reasonable assumptions and projections) to benefit directly or indirectly from an action requested by the other Party pursuant to this Section 4.18, then the Parties shall use good faith commercially reasonable efforts to enter into an

agreement requiring the requesting Party to reimburse the other Party for the reasonable out-of-pocket costs incurred by that other Party to effect the change desired by the requesting Party, and the other Party shall not be required to incur such costs until such an agreement has been entered into.

4.19 Supply Agreements The Parties acknowledge that, at the Closing, they each will enter into Supply Agreements with the Joint Venture Company pursuant to which each such Member shall purchase from the Joint Venture Company, and the Joint Venture Company shall supply to each such Member, a percentage of the Joint Venture Company's output of Products equal to such Member's Sharing Interest. The Parties will work in good faith to promptly determine the specific methodology for the sharing of such Joint Venture Company output based upon such Sharing Interest, which, if determined before the Closing, will be implemented immediately following Closing.

ARTICLE 5.
CLOSING

5.1 Closing. The closing of the transactions contemplated by this Agreement (the "**Closing**") will take place at the offices of Gibson, Dunn & Crutcher LLP, 1881 Page Mill Road, Palo Alto, California 94304 or at such other place as the Parties may agree and shall occur on or before the third (3rd) Business Day after all of the conditions set forth in Sections 5.2, 5.3 and 5.4 are first satisfied or properly waived, except as mutually agreed by the Parties, including any such agreement made to facilitate Closing at the end of Micron's fiscal month.

5.2 Conditions to the Obligations of the Parties. The respective obligations of the Parties under this Agreement to consummate the transactions contemplated hereby will be subject to the satisfaction, at or prior to Closing, of the conditions that:

(A) there shall not have been entered a preliminary or permanent injunction, temporary restraining order or other judicial or administrative order or decree of any Governmental Entity (an "**Order**") the effect of which prohibits the Closing, and no litigation, arbitration, investigation or administrative proceeding seeking to enjoin, restrict or prevent the consummation of the transactions contemplated by this Agreement or any of the Joint Venture Agreements, or seeking to prohibit or limit the ability of the Joint Venture Company, Intel or Micron to conduct the business contemplated by the Joint Venture Agreements, shall be pending before any Governmental Entity;

(B) the Parties shall have caused the Joint Venture Company to obtain all property insurance and other insurance policies, effective as of the Closing, as set forth on Schedule 5.2(B) of the Master Agreement Disclosure Letter, which insurance coverage may be provided through one or more insurance policies of a Member;

(C) the Annexation and Development Agreement and the Economic Development Agreement each shall have been assigned to, and assumed by, the Joint Venture Company;

(D) all required waiting periods under the HSR Act shall have expired or been terminated, any filings or approvals required to be made or obtained under any foreign antitrust, competition or fair trade laws or regulations shall have been made or obtained, and any required waiting periods under any foreign antitrust, competition or fair trade laws or regulations shall have expired or been terminated; in each case without the imposition of any conditions;

(E) no statute, rule, regulation, executive order, decree, ruling or injunction shall have been enacted, entered, promulgated or enforced by any United States federal or state or foreign court or United States federal or state or foreign Governmental Entity that prohibits, restrains, enjoins or restricts the consummation of the transactions contemplated by this Agreement or the Joint Venture Documents; and

(F) the Parties shall have approved the Initial Business Plan, including the [***] Budget and the [***] Budget, of the Joint Venture Company through the first three (3) years of operation of the Joint Venture Company.

5.3 Conditions to the Obligations of Intel. The obligations of Intel under this Agreement to consummate the transactions contemplated hereby will be further subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing by Intel at its option:

(A) Accuracy of Representations and Warranties. The representations and warranties of Micron contained in this Agreement that are subject to qualifications and exceptions contained therein relating to materiality, Material Adverse Effect or Material Adverse Environmental Effect shall be true and correct, and all other representations and warranties of Micron contained in this Agreement shall be true and correct in all material respects, both on and as of the date of this Agreement and at and as of the Closing (with the same force and effect as if made anew at and as of the Closing), except to the extent that such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date. For the purposes of this Section 5.3(A) only, the term "Material Adverse Environmental Effect" as used in a qualification or exception to any representations and warranties contained in this Agreement shall be deemed to mean "Material Adverse Effect," as defined in this Agreement.

(B) Compliance with Covenants. All covenants of Micron contained in this Agreement and the Joint Venture Documents that are to be performed and complied with by Micron at or before the Closing shall have been performed and complied with in all material respects.

(C) Consents. Each of the governmental and other approvals, consents or waivers identified with an asterisk on Schedule 3.2(C) and Schedule 3.2(D) of the Master Agreement Disclosure Letter as being a condition of the Closing, shall have been obtained on terms and conditions that are reasonably satisfactory to Intel.

(D) Delivery of Agreements by or on Behalf of Micron. Micron shall have duly executed and delivered to the Joint Venture Company or Intel, as the case may be, each of the Joint Venture Documents to which Micron is a party, and each such Joint Venture Document shall be in full force and effect without any event having occurred or condition existing that constitutes, or with the giving of notice or the passage of time (or both) would constitute, a material default under or material breach of such Joint Venture Document by Micron.

(E) Initial Capital Contribution. Micron shall have made its initial Capital Contribution to the Joint Venture Company as contemplated in Section 2.1(B) of the Operating Agreement.

(F) Formation of Joint Venture Company. Micron shall have formed the Joint Venture Company as a limited liability company under the laws of the State of Delaware, and the Joint Venture Company shall be validly existing and in good standing as of the Closing.

(G) Approval of Intel Executive Officer. Micron shall have consented to the individual seconded by Intel to serve as the Joint Venture Company's initial Intel Executive Officer in accordance with Section 8.1 of the Operating Agreement.

(H) Bills of Conveyance. Micron shall have delivered to the bills of sale and conveyance listed on Schedule 5.3(H) of the Master Agreement Disclosure Letter, each duly executed by Micron.

5.4 Conditions to Obligations of Micron. The obligations of Micron under this Agreement to consummate the transactions contemplated hereby will be further subject to the satisfaction, at or prior to the Closing, of all of the following conditions, any one or more of which may be waived in writing by Micron at its option:

(A) Accuracy of Representations and Warranties. The representations and warranties of Intel contained in this Agreement that are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect shall be true and correct, and all other representations and warranties of Intel contained in this Agreement shall be true and correct in all material respects, both on and as of the date of this Agreement and at and as of the Closing (with the same force and effect as if made anew at and as of the Closing), except where such failure to be true and correct will not result in a Material Adverse Effect and except to the extent that such representations and warranties speak as of another date, in which case such representations and warranties shall be true and correct as of such other date.

(B) Compliance with Covenants. All covenants of Intel contained in this Agreement and the Joint Venture Documents that are to be performed and complied with by Intel at or before the Closing shall have been performed and complied with in all material respects.

(C) Consents. Each of the governmental and other approvals, consents or waivers identified with an asterisk on Schedule 3.1(D) of the Master Agreement Disclosure Letter as being a condition of the Closing, shall have been obtained on terms and conditions reasonably satisfactory to Micron.

(D) Delivery of Agreements by or on Behalf of Intel. Intel shall have duly executed and delivered to the Joint Venture Company or Micron, as the case may be, each of the Joint Venture Documents to which Intel is a party, and each such Joint Venture Document shall be in full force and effect without any event having occurred or condition existing that constitutes, or with the giving of notice or the passage of time (or both) would constitute, a material default under or material breach of such Joint Venture Document by Intel.

(E) Initial Capital Contribution. Intel shall have made its initial Capital Contribution to the Joint Venture Company as contemplated in Section 2.1(A) of the Operating Agreement.

(F) Approval of Micron Executive Officer. Intel shall have consented to the individual seconded by Micron to serve as the Joint Venture Company's initial Micron Executive Officer in accordance with Section 8.2 of the Operating Agreement.

5.5 Closing Deliverables of Micron. At the Closing, Micron shall deliver or cause to be delivered:

(A) to the Joint Venture Company or Intel, as the case may be, counterparts of each of the Joint Venture Documents to which Micron is a party, each duly executed by Micron;

(B) to Intel, a certificate of Micron, dated as of the Closing Date and signed by an authorized officer of Micron, certifying that the conditions set forth in Sections 5.3(A), (B) and (C) have been satisfied;

(C) to Intel, a certified copy of the certificate of formation of the Joint Venture Company filed in the office of the Delaware Secretary of State, in a form agreed to between the Parties; and

(D) to Intel, a certificate of good standing, dated as of the Closing Date, as to the good standing of the Joint Venture Company.

5.6 Closing Deliverables of Intel. At the Closing, Intel shall deliver or cause to be delivered:

(A) to the Joint Venture Company or Micron, as the case may be, each of the Joint Venture Documents to which Intel is a party, duly executed by Intel;

(B) to Micron, a certificate of Intel, dated as of the Closing Date and signed by an authorized officer of Intel, certifying that the conditions set forth in Sections 5.4(A), (B) and (C) have been satisfied; and

(C) to the Joint Venture Company, Intel's initial Capital Contribution to the Joint Venture Company as contemplated in Section 2.1(A) of the Operating Agreement.

ARTICLE 6.
INDEMNIFICATION

6.1 Survival.

(A) Survival of Covenants. The covenants and agreements of the Parties contained in this Agreement or in any certificates or other writing delivered pursuant hereto or thereto will, unless specifically stated otherwise in this Agreement or certificates or other writings, survive the Closing and the delivery of the Lehi Deed.

(B) Survival of Representations and Warranties. The certifications, representations and warranties made by the Parties to this Agreement (and in the certificates referred to in Section 5.5(B) and Section 5.6(B)) shall survive the Closing until the second anniversary of the Closing Date (except for the representations and warranties contained in Sections 3.2 (I) and (J), which shall survive the Closing and the Delivery of the Lehi Deed until the fourth anniversary of the Closing Date).

6.2 Indemnification.

(A) Intel will indemnify, defend and hold harmless Micron, Micron's subsidiaries and the Joint Venture Company and their officers, directors, employees and agents against any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses) (collectively, "**Losses**"), incurred or suffered by them as a result of (1) any failure to be true or correct of any representation or warranty made by Intel or any of its officers, directors, employees or agents in this Agreement or any of the certificates or other writings (other than the Joint Venture Documents) delivered at Closing pursuant to this Agreement (where representations and warranties qualified by references to materiality, Material Adverse Effect or Material Adverse Environmental Effect are to be interpreted as though they were not so qualified), *provided* a claim therefor is asserted no later than sixty (60) days after the end of the survival period therefor, (2) any failure to perform or comply with any covenant or agreement of Intel in this Agreement, or (3) any liabilities, debts, obligations or duties of Intel that are not expressly assumed by the Joint Venture Company under this Agreement or another Joint Venture Document and that are outside the scope of any representation or warranty of Intel that is the subject of the indemnification obligation set forth in Section 6.2(A)(1) ; *provided, however,* that (x) Intel shall not be liable under Section 6.2(A)(1) until aggregate Losses as a result of such failures exceed $[***], at which point Intel shall be liable only for the amount of such Losses in excess of $[***]; and (y) Intel's aggregate liability under Section 6.2(A)(1) for Losses that exceed $[***] shall not exceed $[***]. In addition, all of Intel's indemnification obligations under Section 6.2(A)(1) and 6.2(A)(3) will terminate on the [***] anniversary of the Closing Date.

(B) Micron will indemnify, defend and hold harmless Intel, Intel's subsidiaries and the Joint Venture Company and their officers, directors, employees and agents against any and all Losses incurred or suffered by them as a result of (1) any failure to be true or correct of any representation or warranty made by Micron or any of its officers, directors, employees or agents in this Agreement or any of the certificates or other writings (other than the Joint Venture Documents) delivered at Closing pursuant to this Agreement (where representations and

warranties qualified by references to materiality, Material Adverse Effect or Material Adverse Environmental Effect are to be interpreted as though they were not so qualified), provided a claim therefor is asserted no later than sixty (60) days after the end of the survival period therefor, (2) any failure to perform or comply with any covenant or agreement of Micron in this Agreement, (3) any violation of any Environmental Laws arising from or relating to conditions existing or events occurring on any of the Contributed Property or the Micron Retained Property prior to the Closing Date, or (4) any liabilities, debts, obligations or duties of Micron that are not expressly assumed by the Joint Venture Company under this Agreement or another Joint Venture Document and that are outside the scope of any representation or warranty of Micron that is the subject of the indemnification obligation set forth in Section 6.2(B)(1) and outside the scope of the environmental indemnity set forth in Section 6.2(B)(3); *provided, however,* that (x) Micron shall not be liable under Section 6.2(B)(1) or Section 6.2(B)(3) until aggregate Losses as a result of such failures exceed $[***], at which point Micron shall be liable only for the amount of such Losses in excess of $[***]; and (y) Micron's aggregate liability under Sections 6.2(B)(1) and Section 6.2(B)(3) for Losses that exceed $[***] shall not exceed $[***]. In addition, all of Micron's indemnification obligations under Section 6.2(B)(1), Section 6.2(B)(3) and Section 6.2(B)(4) will terminate on the [***] anniversary of the Closing Date.

6.3 Procedures.

(A) General. Promptly after the receipt by any Party who or which is entitled to seek indemnification under Section 6.2 (an "**Indemnified Party**") of a notice of any Third Party Claim that may be subject to indemnification under Section 6.2, such Indemnified Party shall give written notice of such Third Party Claim to the Party against whom indemnification is sought (the "**Indemnifying Party**"), stating in reasonable detail the nature and basis of each claim made in the Third Party Claim and the amount thereof, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced thereby. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to the Third Party Claim upon written notice to the Indemnified Party delivered within thirty (30) days after receipt of the particular notice from the Indemnified Party.

(B) So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified the Indemnified Party in writing thereof, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, it being understood that the Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim, (ii) the Indemnified Party shall not file any papers or, other than in connection with a settlement of the Third Party Claim, consent to the entry of any

judgment without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed). Whether or not the Indemnifying Party shall have assumed the defense of

the Indemnified Party for a Third Party Claim, such Indemnifying Party shall not be obligated to indemnify and hold harmless the Indemnified Party hereunder for any consent to the entry of judgment or settlement entered into with respect to such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(C) In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (*i.e.*, remedies involving the future activity and conduct of the Joint Venture Company), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; *provided*, *however*, that no Party shall be under any obligation to agree to any such settlement.

(D) Any Direct Claim by an Indemnified Party against an Indemnifying Party will be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of the facts giving rise to such Direct Claim. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced thereby. Such notice by the Indemnified Party will describe the Direct Claim in reasonable detail and will indicate the estimated amount, if reasonably practicable, of Losses that have been or may be sustained by the Indemnified Party. The Indemnifying Party will have a period of ten (10) Business Days within which to respond in writing to such Direct Claim. If the Indemnifying Party does not so respond within such ten (10) Business Day period, the Indemnifying Party will be deemed to have rejected such claim, in which event the Indemnified Party will be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

6.4 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Parties agree that any damages available under the indemnification provisions or at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate injunctive relief may be applied for an granted in connection therewith.

6.5 Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Article 6 shall be decreased by any amounts actually recovered by the Indemnified Party under third party insurance policies with respect to such Loss (net of any premiums paid by such Indemnified Party under the relevant insurance policy), each Party agreeing (i) to use all reasonable efforts to recover all available insurance proceeds and (ii) to the

extent that any indemnity payment under this Article 6 has been paid by the Indemnifying Party to the Indemnified Party prior to the recovery by the Indemnified Party of such insurance proceeds, such amounts actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

6.6 Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim for indemnity by the Indemnified Party and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claims that a common interest privilege agreement exists between them), including by (i) permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests, (ii) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim, (iii) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases relating to matters pertinent to the Third Party Claim and under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnified Party, (iv) notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other third party request for documents or interviews and testimony, and (v) providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other third party request for documents. In connection with any claims, except to the extent inconsistent with the Indemnified Party's obligations under Applicable Law and except to the extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, and unless ordered by a court to do otherwise, the Indemnified Party shall not produce documents to a third party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

6.7 Remedies. Prior to the Closing Date, specific performance shall be the Parties' sole and exclusive remedy under this Agreement, except for breaches of Section 4.7. From and after the Closing Date, specific performance and the indemnification remedies set forth in Section 6.2 shall be the Parties' sole and exclusive remedies under this Agreement, except for breaches of Section 4.7. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive.

ARTICLE 7.
TERMINATION

7.1 Termination.

(A) This Agreement may be terminated at any time prior to the Closing:

(1) by either Party if the Closing shall not have been occurred by February 28, 2006; *provided*, *however*, that neither Party may terminate this Agreement pursuant to this Section 7.1(A)(1) if the Closing shall not have occurred by such date by reason of the failure of

such Party or any of its Affiliates to perform in all material respects any of its or their respective covenants or agreements contained in this Agreement;

(2) by the mutual written consent of the Parties;

(3) by Intel, if there has been a breach by Micron of any covenant, representation or warranty contained in this Agreement that has resulted in a Material Adverse Effect or has prevented the satisfaction of any condition to the obligations of Intel, and such breach has not been waived by

Intel or cured by Micron, within thirty (30) days after written notice thereof from Intel (or such longer period as is necessary to effect a cure of the breach, so long as Micron diligently attempts to effect a cure throughout such period and such period does not extend beyond February 28, 2006); or

(4) by Micron, if there has been a breach by Intel of any covenant, representation or warranty contained in this Agreement that has resulted in a Material Adverse Effect or has prevented the satisfaction of any condition to the obligations of Micron, and such breach has not been waived by Micron or cured by Intel, within thirty (30) days after written notice thereof from Micron (or such longer period as is necessary to effect a cure of the breach, so long as Intel diligently attempts to effect a cure throughout such period and such period does not extend beyond February 28, 2006).

(B) If this Agreement is terminated pursuant to Section 7.1(A), all further obligations of the Parties under this Agreement (other than pursuant to Section 4.7 and Articles 6, and 8, which will continue in full force and effect) will terminate without further liability or obligation of either Party to the other Party hereunder; *provided*, *however*, that no Party will be released from liability hereunder if this Agreement is terminated and the transactions abandoned by reason of (1) failure of such Party to have performed its material obligations under this Agreement or (2) any material misrepresentation made by such Party of any matter set forth in this Agreement.

ARTICLE 8.
MISCELLANEOUS

8.1 Limitation of Liability. [***].

8.2 Exclusions and Mitigation. Sections 8.1 and 6.2 will not apply to either Party's breach of Section 4.7. Each Party shall have a duty to use reasonable efforts to mitigate damages for which the other Party is responsible. No Member shall be entitled to recover Losses for the diminution in value of its interest in the Joint Venture Company resulting from any event, circumstance or occurrence for which the Joint Venture Company is pursuing and is entitled to

indemnification hereunder for the full amount of its Losses arising from such event, circumstance or occurrence.

8.3 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon (A) transmitter's confirmation of a receipt of a facsimile transmission, (B) confirmed delivery by a standard overnight carrier or when delivered by hand, (C) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (D) delivery in person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

(A) if to Intel:

Intel Corporation
2200 Mission College Blvd.
Mailstop SC4-203
Santa Clara, CA 95054
Attention: General Counsel
Facsimile: (408) 653-8050

with a copy to:

Intel Corporation
2200 Mission College Blvd.
Mailstop RN6-46
Santa Clara, CA 95054
Attention: [***]
Facsimile: [***]

(B) if to Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-4537

8.4 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

8.5 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. Neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person,

including by operation of law or in connection with any acquisition, merger, or change of control of a Party, without the prior written consent of the nonassigning Party.

8.6 Third Party Rights.

(A) The Parties agree that the Joint Venture Company shall be a third party beneficiary to the agreements made hereunder by the Parties, and the Joint Venture Company shall have the right to enforce such agreements directly to the extent it deems such enforcement necessary or advisable to protect its rights hereunder.

(B) Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto and the Joint Venture Company, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

8.7 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

8.8 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a state or federal court located in Delaware and each of the Parties to this Agreement hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court

8.9 Dispute Resolution.

(A) All disputes between the Parties over a purported breach of this Agreement (each, a "**Dispute**"), shall be resolved as follows: the Parties shall first submit the matter to the chief executive officers (or other senior executives officers) of each of the Parties by providing notice of the Dispute to the Parties. The chief executive officers (or other senior executives officers) shall then make a good faith effort to resolve the Dispute. If they are unable to resolve the Dispute within ten (30) days of receiving notice of the Dispute (during which thirty-day period, the chief executive officers (or other senior executive officers) shall seek in good faith to hold at least three (3) meetings at which they shall make a good faith effort to resolve the Dispute), then a civil action with respect to the Dispute may be commenced, but only after the matter has been submitted to JAMS for mediation as contemplated by Section 8.9(B).

(B) If there is a Dispute, either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Party will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The Parties covenant that they will participate in the mediation in good faith, and that they will share equally

in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties, *provided* that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Member may commence a civil action with respect to a Dispute until after the completion of the initial mediation session, or 45 days after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the Parties so desire. The provisions of this Section may be enforced by any court of competent jurisdiction, and the Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Party against whom enforcement is ordered.

8.10 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

8.11 Entire Agreement. This Agreement, together with the Appendices and Schedules hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

8.12 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

8.13 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.14 Expenses. Whether or not the transactions contemplated by this Agreement are ultimately consummated, each Party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement and the Joint Venture Documents.

8.15 Certain Interpretive Matters.

(A) Unless the context requires otherwise, (1) all references to Sections, Articles or the Appendix are to Sections, Articles or the Appendix of or to this Agreement, (2) words in the singular include the plural and visa versa, (3) the term "**including**" means "including without

limitation," and (4) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. All references to "**$**" or dollar amounts will be to lawful currency of the United States of America. All references to "**$**" or dollar amounts shall be to precise amounts and not rounded up or down. All references to "**day**" or "**days**" will mean calendar days.

(B) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

INTEL CORPORATION

By: /s/ ARVIND SODHANI

Print Name: Arvind Sodhani

Title: Senior Vice President, Intel Corporation
President, Intel Capital

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON

Print Name: Steven R. Appleton

Title: Chief Executive Officer and President

THIS IS THE SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED INTO BY AND BETWEEN INTEL CORPORATION AND MICRON TECHNOLOGY, INC.

APPENDIX A

MASTER AGREEMENT

DEFINITIONS

"**Affiliate**" means, with respect to any specified Person, a Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Annexation and Development Agreement**" means the Annexation and Development Agreement, dated as of June 13, 1995, between Micron and Lehi City, and any amendments thereto.

"**Applicable Law**" means any laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Assigned Contracts**" means the contracts to be assigned by Micron to the Joint Venture Company under one or more assignment and assumption agreements duly executed by Micron, as referred to on Schedule 2.4 of the Master Agreement Disclosure Letter.

"**Bilateral Agreements**" shall have the meaning set forth in Section 2.2 of this Agreement.

"**Business Day**" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of New York are authorized or required by Applicable Law to be closed.

"**Capital Contribution**" shall have the meaning set forth in the Operating Agreement.

"**Closing**" shall have the meaning set forth in Section 5.1 of this Agreement.

"**Closing Date**" means the date on which the Closing occurs. For purposes of this Agreement and the other agreements and instruments referenced herein, the Closing shall be deemed to have occurred at 11:59 p.m. on such date.

"**CNDA**" means the Corporate Non-Disclosure Agreement No. [***], dated as of [***], between Micron and Intel.

"**Commission**" means the United States Securities and Exchange Commission.

"**Competition Law**" means the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other domestic or foreign Applicable Laws issued by a domestic or foreign Governmental Entity that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

"**Contractual Obligations**" means any promise, commitment or understanding between Micron and any Governmental Entity or any third party relating to the Contributed Real Property, the Micron Retained Property, or the Other Contributed Property.

"**Contributed Land**" means the Lehi Site.

"**Contributed Real Property**" means the Lehi Site and the MTV Site.

"**Direct Claim**" means any claim, demand, lawsuit, complaint, cross-complaint or counter-complaint, arbitration, opposition, cancellation proceeding, or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled brought by any Party, or their respective subsidiaries, officers, directors, employees or agents.

"**Dispute**" shall have the meaning set forth in Section 8.9(A) of this Agreement.

"**Economic Development Agreement**" means the Economic Development Agreement, dated as of May 16, 1997, between Micron and the Redevelopment Agency of Lehi City, and any amendments thereto.

"**Environmental Laws**" means any and all laws, statutes, ordinances, rules, regulations, orders or binding determinations of any Governmental Entity pertaining to the environment in any and all jurisdictions in which any of the Contributed Real Property is located, including without limitation, the Clean Air Act, as amended, the Comprehensive Environmental, Response, Compensation, and Liability Act of 1980, as amended, the Federal Water Pollution Control Act, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, the Hazardous & Solid Waste Amendments Act of 1984, as amended, the Superfund Amendments and Reauthorization Act of 1986, as amended, the Hazardous Materials Transportation Act, as amended, any state laws pertaining to the handling of wastes or the use, maintenance, and closure of pits and impoundments, and other environmental conservation or protection laws.

"**Environmental Permits**" shall have the meaning set forth in Section 3.2(J)(3) of this Agreement.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**[***] Budget**" shall have the meaning set forth in the Operating Agreement.

"**Facilities Company**" shall have the meaning set forth in the Operating Agreement.

"**Facilities Company Employee Non-Solicitation Period**" means the period commencing as of the Closing Date and ending: (a)(i) with respect to a Party electing to purchase a given Facilities Company pursuant to Article 13 of the Operating Agreement, on the date that such Party provides written notice of its election to acquire such Facilities Company pursuant to such Article 13, and (ii) with respect to the other Party, [***] following such date; or (b) if neither Party elects to purchase a given Facilities Company pursuant to Article 13 of the

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Operating Agreement, on the date that such Facilities Company is sold or the assets thereof disposed of pursuant to Section 13.11 of the Operating Agreement.

"**Facility Employee Non-Solicitation Period**" means the period commencing as of the Closing Date and ending: (a)(i) with respect to a Party electing to purchase a given Facility that is part of a Facilities Company that owns more than one Facility and its Associated Assets pursuant to Article 13 of the Operating Agreement, on the date that such Party provides written notice of its election to acquire such Facility pursuant to such Article 13, and (ii) with respect to the other Party, [***] following such date; or (b) if neither Party elects to purchase a given Facility pursuant to Article 13 of the Operating Agreement, on the date that such Facility is sold or the assets thereof disposed of pursuant to Section 13.11 of the Operating Agreement.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"**Hazardous Substances**" means any asbestos, any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste or substance, including any material defined or designated as a hazardous or toxic waste, material or substance, or other similar term, under any Environmental Laws in effect or that may be promulgated in the future.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indemnified Party**" shall have the meaning set forth in Section 6.3(A) of this Agreement.

"**Indemnifying Party**" shall have the meaning set forth in Section 6.3(A) of this Agreement.

"Initial Business Plan" shall have the meaning set forth in the Operating Agreement.

"**Intel**" shall have the meaning set forth in the preamble to this Agreement.

"**Intel Agreements**" shall have the meaning set forth in Section 2.3 of this Agreement.

"**Intel Executive Officer**" shall have the meaning set forth in the Operating Agreement.

"**Interest**" means a membership interest in the Joint Venture Company, including any and all benefits to which a member of the Joint Venture Company may be entitled under the Operating Agreement and the obligations of a member under the Operating Agreement.

"**JAMS**" means Judicial Arbitration and Mediation Services.

"**Joint Venture Company**" shall have the meaning set forth in the Recitals to this Agreement.

"**Joint Venture Company Non-Solicitation Period**" means the period commencing as of the Closing Date and ending upon the occurrence of a Liquidating Event.

"**Joint Venture Documents**" means any or all of this Agreement, the Pre-Existing and Contemporaneously Executed Agreements, the Bilateral Agreements, the Trilateral Agreements, the Intel Agreements and the Micron Agreements.

"**Lehi Deed**" means that certain Special Warranty Deed in the form attached to the Lehi Lease.

"**Lehi Land**" means the Lehi Property as that term is defined in the Lehi Lease.

"**Lehi Lease**" means that certain Lehi Pre-Subdivision Lease with Agreement to Deed between Micron, as lessor, and the Joint Venture Company, as lessee, referred to on Schedule 2.4 of the Master Agreement Disclosure Letter.

"**Lehi Site**" means the Lehi Contributed Property as that term is defined in the Lehi Lease.

"**Lien**" means any lien, mortgage, pledge, hypothecation, right of others, claim, security interest, encumbrance, lease, sublease, license, interest, option, charge or other restriction or limitation of any nature whatsoever.

"**Liquidating Event**" shall have the meaning set forth in the Operating Agreement.

"**Losses**" shall have the meaning set forth in Section 6.2(A) of this Agreement.

"**Master Agreement Disclosure Letter**" means the disclosure letter, as agreed to between the Parties as of the date hereof, containing the Schedules required by the provisions of this Agreement.

"**Material Adverse Effect**" means (i) a material adverse effect on the business, results of operations, financial condition or prospects of a Party and its subsidiaries, taken as a whole, or of the Joint Venture Company, or (ii) any change or effect that prevents or materially impedes or delays the consummation of the transactions contemplated by this Agreement and the Joint Venture Documents and the other transactions contemplated hereby and thereby, all taken as a whole; *provided*, that changes and effects attributable to changes in Applicable Law of general applicability or interpretations thereof by courts or Governmental Entities shall not be deemed, either alone or in combination, to constitute, and shall not be taken into account in determining whether there has been or will be, a Material Adverse Effect.

"**Material Adverse Environmental Effect**" means any environmental release, discharge, or contamination, or any injunction, cease and desist order, show cause order, or other administrative or judicial order issued under any Environmental Laws, which has resulted in, or is reasonably likely to result in, (1) a fine or penalty in excess of $[***], or (2) damages to the Joint Venture Company or to Micron in excess of $[***].

"**Member**" or "**Members**" means one or both members of the Joint Venture Company.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron Agreements**" shall have the meaning set forth in Section 2.4 of this Agreement.

"**Micron Contributed Assets**" shall have the meaning set forth in Section 2.6(B) of this Agreement.

"**Micron Executive Officer**" shall have the meaning set forth in the Operating Agreement.

"**Micron Retained Property**" means the Landlord's Retained Property, as that term is defined in the Lehi Lease.

"**MTV Lease**" means that certain MTV Lease Agreement between Micron, as lessor, and the Joint Venture Company, as lessee, referred to on Schedule 2.4 of the Master Agreement Disclosure Letter.

"**MTV Site**" means the Property as that term is defined in the MTV Lease.

"**Micron Title Insurance Policies**" shall have the meaning set forth in Section 3.2(G)(8).

"**Municipal Services Agreements**" shall have the meaning set forth in the Lehi Lease.

"**NAND Flash Memory Product**" shall have the meaning set forth in the Operating Agreement.

"**[***] Budget**" shall have the meaning set forth in the Operating Agreement.

"**[***] Group**" shall have the meaning set forth in Section 4.13(F) of this Agreement.

"**Operating Agreement**" means that certain Limited Liability Company Operating Agreement of IM Flash Technologies, LLC between Micron and Intel referred to on Schedule 2.2 of the Master Agreement Disclosure Letter.

"**Order**" shall have the meaning set forth in Section 5.2(A) of this Agreement.

"**Other Contributed Property**" means all tangible personal property identified to be transferred pursuant to a bill of conveyance, as referenced in Schedule 5.3(H) of the Master Agreement Disclosure Letter, conveying to the Joint Venture Company tangible personal property located at the Lehi Site.

"**Party**" means Intel or Micron individually and "**Parties**" means Intel and Micron collectively.

"**Permitted Liens**" shall have the meaning set forth in Section 3.2(G)(3) of this Agreement.

"**Person"** or **"Persons**" means any natural person and any corporation, firm, partnership, trust, estate, limited liability company or other entity resulting from any form of association.

"**Pre-Existing and Contemporaneously Executed Agreement**" shall have the meaning set forth in Section 2.1 of this Agreement.

"**Product Designs Development Agreement**" means that certain Product Designs Development Agreement between Intel, as owner, and Micron, as developer referred to on Schedule 2.2 of the Master Agreement Disclosure Letter.

"**Products**" shall have the meaning set forth in the Operating Agreement.

"**Real Property Contracts**" shall have the meaning set forth in Section 3.2(F)(1) of this Agreement.

"**Sharing Interest**" shall have the meaning set forth in the Operating Agreement.

"**Supply Agreements**" shall have the meaning set forth in the Operating Agreement.

"**Taxes**" means any federal, state, local or foreign net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, customs, duties or other type of fiscal levy and all other taxes, governmental fees, registration fees, assessments or charges of any kind whatsoever, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

"**Third Party Claim**" means any claim, demand, lawsuit, complaint, cross-complaint or counter-complaint, arbitration, opposition, cancellation proceeding, or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled brought by any Person, other than Intel or Micron or any of their subsidiaries or their officers, directors, employees or agents (in their capacities as such).

"**Transfer**" shall have the meaning set forth in the Lehi Lease.

"**Trilateral Agreements**" shall have the meaning set forth in Section 2.5 of this Agreement.

"**Water Rights**" means all of Micron's right, title and interest in and to Water Right Nos. 55-8976 (A31540) (a19136), 55-8981 (A32648) (a19136), and 55-9159 (A70333), all as reflected in the records of the Utah State Engineer, Division of Water Rights.

"**Water System**" means, all presently constructed wells, wellheads and well houses, tanks (including without limitation process and fire water tanks), reservoirs, fire protection and irrigation systems, metering and telemetry equipment, pumps, sumps, water lines, electric power supply equipment and all other associated equipment situated on, over or beneath the Lehi Land for use in connection with the diversion, carriage or delivery of the Water Rights, except such items as are owned by the City of Lehi.

Exhibit 10.156

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

THE INTERESTS EVIDENCED BY THIS DOCUMENT ARE SUBJECT TO RESTRICTIONS ON ASSIGNMENT AND TRANSFER SET FORTH HEREIN. IN ADDITION, THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAW AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED UNTIL REGISTERED OR UNTIL THE BOARD OF MANAGERS HAS RECEIVED AN OPINION OF LEGAL COUNSEL, OR OTHER ASSURANCES SATISFACTORY TO THAT BOARD, THAT AN INTEREST MAY LEGALLY BE SOLD OR OTHERWISE TRANSFERRED WITHOUT REGISTRATION, ALL AS PROVIDED IN THIS DOCUMENT.

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

IM FLASH TECHNOLOGIES, LLC

BY AND BETWEEN

MICRON TECHNOLOGY, INC. AND INTEL CORPORATION

January 6, 2006

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LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

IM FLASH TECHNOLOGIES, LLC

This **LIMITED LIABILITY COMPANY OPERATING AGREEMENT** (this "**Agreement**") of IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), is made and entered into as of this 6th day of January 2006 (the "**Effective Date**"), by and between Micron Technology, Inc., a Delaware corporation ("**Micron**"), and Intel Corporation, a Delaware corporation ("**Intel**") (Micron and Intel are each referred to individually as a "**Member**," and collectively as the "**Members**"). Capitalized terms used in this Agreement shall have the respective meanings ascribed to such terms in Appendix A to this Agreement.

RECITALS

A. Prior to the Effective Date, Micron formed the Joint Venture Company to engage in the activities set forth in Section 1.4 hereof, and, immediately prior to the execution and delivery of this Agreement, Micron was the sole member of the Joint Venture Company; and

B. Prior to or contemporaneously with the execution of this Agreement, the Joint Venture Company, Micron and Intel have each entered into the Joint Venture Documents to which they are a party, as described in the Master Agreement.

ARTICLE 1.
ORGANIZATIONAL MATTERS

1.1 The Joint Venture Company. The Joint Venture Company is a limited liability company organized under the Delaware Limited Liability Company Act (Del. Code Ann. tit. 6 §§ 18-101 et seq.), as amended from time to time (the "**Act**"), and governed by the terms and conditions set forth in this Agreement. The Joint Venture Company is a Delaware limited liability company as a result of the filing of a certificate of formation (the "**Certificate**") in the office of the Delaware Secretary of State in accordance with the Act.

1.2 Name. The name of the Joint Venture Company is "IM Flash Technologies, LLC."

1.3 Term. The initial term of the business of the Joint Venture Company shall continue until the earlier of the tenth anniversary of the Effective Date and the termination of the Joint Venture Company prior to such date in accordance with this Agreement (the "**Initial Term**"). Such Initial Term may be extended by mutual written agreement of the Members at least [***] prior to the expiration of the Initial Term or any Renewal Term (any such extensions to be on such terms and for such period as set forth in writing and agreed to by the Members) (each such extended term, a "**Renewal Term**," and together with the Initial Term, the "**Term**").

1.4 Purpose of the Joint Venture Company; Business. The purpose of the Joint Venture Company shall be (A) to engage in the business of manufacturing for the Members

NAND Flash Memory Products in various forms, including NAND Flash Memory Wafers, and such other forms of memory products as may be determined by the Board of Managers from time to time, and related memory product manufacturing development activities, (B) to enter into any other lawful business, purpose or activity in which a limited liability company may be engaged under Applicable Law (including the Act), as the Members may determine from time to time, subject to and in accordance with the terms and conditions of this Agreement, and (C) to enter into any lawful transaction and engage in any lawful activities in furtherance of the foregoing purposes and as may be necessary or incidental to, connected with or arising out of the foregoing purposes in accordance with the terms and conditions of this Agreement; *provided*, *however*, that a Member having an Economic Interest above [***] percent ([***]%) may, in its sole discretion, include the manufacture of other forms of memory products in the purpose of the Joint Venture Company (other than (i) [***] if such Member is Intel and (ii) Intel [***] if such Member is Micron), so long as the amount, delivery schedule, pricing and terms of the other Member's supply of Joint Venture Products remain as they existed immediately prior to the time at which the decision to include the manufacture of such other forms of memory products is made.

1.5 Principal Place of Business; Other Places of Business; Registered Office and Agent.

(A) The principal place of business and mailing address of the Joint Venture Company shall be IM Flash Technologies, LLC, 1550 East 3400 North, Lehi, Utah 84043, or such other address within or outside of the State of Delaware as the Board of Managers may from time to time designate. The Board of Managers may change the principal place of business of the Joint Venture Company to such other place or places within or outside the State of Delaware as the Board of Managers may from time to time determine, in its sole and absolute discretion and, if necessary, the Board of Managers shall cause the Certificate to be amended in accordance with the applicable requirements of the Act to effectuate the change in the principal place of business.

(B) Other places of business of the Joint Venture Company shall initially be in Boise, Idaho and Manassas, Virginia. The Joint Venture Company may maintain offices and places of business at such other place or places within or outside the State of Delaware as the Board of Managers may

deem to be advisable.

(C) The registered office of the Joint Venture Company in the State of Delaware shall be Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, and the initial registered agent for service of process at such registered office shall be The Corporation Trust Company. The registered office and the registered agent may be changed from time to time by the Board of Managers, by causing the prescribed form, accompanied by the requisite filing fee, to be filed with the Delaware Secretary of State in accordance with the Act.

1.6 Fictitious Business Name Statement; Other Certificates. The Authorized Officers, or the Chief Executive Officer, as applicable, shall, from time to time, cause the Joint Venture Company to be registered as a foreign limited liability company and to file fictitious or trade name statements or certificates in those jurisdictions and offices as the Board of Managers considers necessary or appropriate. The Joint Venture Company may engage in business activities under any fictitious business names selected by the Board of Managers. The Authorized Officers, or the Chief Executive Officer, as applicable, shall, from time to time, file

or cause to be filed certificates of amendment, certificates of cancellation, or other certificates as the Board of Managers reasonably considers necessary or appropriate under the Act or under the laws of any jurisdiction in which the Joint Venture Company is doing business to establish and continue the Joint Venture Company as a limited liability company or to protect the limited liability of the Members.

1.7 Admission of Members. Intel and Micron hereby confirm and agree to their status as Members of the Joint Venture Company upon the execution of this Agreement.

1.8 Supply Agreements. Contemporaneously with the execution of this Agreement, Intel and Micron have entered into the Supply Agreements with the Joint Venture Company pursuant to which, subject to the terms and conditions set forth in the applicable Supply Agreement, each Member shall purchase from the Joint Venture Company, and the Joint Venture Company shall supply to each Member, a percentage of the Joint Venture Company's output of Products equal to such Member's Sharing Interest.

ARTICLE 2.
CAPITALIZATION

2.1 Initial Capital Contributions of the Members.

(A) Intel Initial Capital Contribution. The Members acknowledge and agree that, contemporaneously herewith, Intel shall be deemed to have delivered to the Joint Venture Company all of the Intel Initial Contributed Assets, as identified on Appendix D. These transactions shall be treated by Intel and the Joint Venture Company as the Initial Capital Contribution by Intel of the Intel Initial Contributed Assets in the manner and with a value as set forth on Appendix D.

(B) Micron Initial Capital Contribution. The Members acknowledge and agree that, contemporaneously herewith, Micron shall be deemed to have delivered to the Joint Venture Company all of the Micron Initial Contributed Assets, as identified on Appendix D. These transactions shall be treated by Micron and the Joint Venture Company as the Initial Capital Contribution by Micron of the Micron Initial Contributed Assets in the manner and with a value as set forth on Appendix D.

2.2 Initial Capital Contribution Reserve. The Joint Venture Company shall use all funds contributed (either in cash or pursuant to a promissory note, in accordance with Appendix D) as Initial Capital Contributions before permitting any Additional Capital Contributions. Moreover, the Intel Additional Cash and the Micron Additional Cash shall be transferred to a reserve account promptly after such funds are delivered to the Joint Venture Company. Such monies shall be invested in such investment or investments as the Board of Managers may hereafter designate and shall not be expended by the Joint Venture Company until such time as all other funds contributed as Initial Capital Contributions of the Members have been expended. Such amounts shall be deemed to be necessary reserves for purposes of distributions under Section 5.1(A).

2.3 Additional Capital Contributions.

(A) [***] Capital Contributions. In addition to the Initial Capital Contributions, each Member shall make Capital Contributions to the Joint Venture Company

equal to its [***] Capital Contributions; *provided*, *however*, that in no event shall (1) Intel be obligated to make [***] Capital Contributions in the aggregate in excess of the Intel Maximum Incremental Capital Amount, or (2) Micron be obligated to make [***] Capital Contributions in the aggregate in excess of the Micron Maximum Incremental Capital Amount. Such [***] Capital Contributions shall be made in quarterly installments on the twenty-fifth (25^{th}) day of each Fiscal Quarter of the Joint Venture Company (or if such day is not a Business Day, then on the next Business Day after such day) in amounts equal to the sum of (a) the amounts required for the remainder of the Fiscal Quarter in which the [***] Capital Contributions are made and (b) the amounts required for the first twenty-five (25) days of the upcoming Fiscal Quarter (or if such day is not a Business Day, then through the next Business Day after such day), each as set forth in the Approved Business Plan in effect at the time of such contribution.

(B) [***] Capital Contributions. Except as mutually agreed in writing by both Members, each Member may, but shall not be required to, make Capital Contributions to the Joint Venture Company equal to its [***] Capital Contribution. Such [***] Capital Contributions shall be made in quarterly installments on the twenty-fifth (25^{th}) day of each Fiscal Quarter of the Joint Venture Company (or if such day is not a Business Day, then on the next Business Day after such day) in an amount equal to the sum of (a) the amounts of the [***] Capital Contributions scheduled for the remainder of the Fiscal Quarter in which the [***] Capital Contributions are made and (b) the amounts of the [***] Capital Contributions scheduled for the first twenty-five (25) days of the upcoming Fiscal Quarter (or if such day is not a Business Day, then through the next Business Day after such day), each as set forth in the Approved Business Plan in effect at the time of such contribution.

(C) Other Capital Contributions. Except as mutually agreed in writing by both Members, each Member may, but shall not be required to, make Capital Contributions (other than [***] Capital Contributions and [***] Capital Contributions) to the Joint Venture Company equal to its [***] as set forth in the Annual Budget included in the Approved Business Plan for the Fiscal Year in which the contributions are to be made. Any such Capital Contributions shall be made in quarterly installments on the twenty-fifth (25^{th}) day of each Fiscal Quarter of the Joint Venture Company (or if such day is not a Business Day, then on the next Business Day after such day) in an amount equal to the sum of (a) the amounts of such Capital Contributions scheduled for the remainder of the Fiscal Quarter in which such Capital Contributions are made and (b) the amounts of such Capital Contributions scheduled for the first twenty-five (25) days of the upcoming Fiscal Quarter (or if such day is not a Business Day, then through the next Business Day after such day), each as set forth in the Approved Business Plan in effect at the time of such contribution. Such contributed funds are hereinafter referred to as the "**Other Capital Contributions**" and, together with the [***] Capital Contributions and the [***] Capital Contributions, the "**Additional Capital Contributions**."

(D) No Other Contributions. Except as set forth in Sections 2.1 and 2.3(A), in the Joint Venture Documents and such other contributions as the Members may agree shall be required, no Member shall be required to make any Capital Contributions to the Joint Venture Company, and, except as contemplated by Section 2.3(B), 2.3(C) and 2.4, in the Joint Venture Documents and such other contributions as the Members may agree may be made (and except for Make-Up Contributions and any deemed contributions of amounts outstanding under Member Notes), no additional Capital Contribution to the Joint Venture Company shall be made by either Member without the consent of the other Member.

(E) Coordination. The Members shall coordinate with each other regarding, and provide each other with advance written notice of, the timing of their delivery of each Additional Capital Contribution.

(F) Partial Contributions. In the event that any Member determines to contribute less than its [***] of any Additional Capital Contribution, such Member shall provide notice of such determination specifying the amount of such Additional Capital Contribution it intends to make, if any. Such notice shall be provided to the Joint Venture Company and to the other Member as soon as practicable after such determination is made, but in any event not less than ten (10) Business Days prior to the date such Additional Capital Contribution is to be made. Any failure or delay in providing such notice shall not affect the right of any Member to refrain from providing such Additional Capital Contribution, nor shall it result in any liability for damages. Subject to Section 3.1, to the extent that a Member contributes less than its [***] of any Additional Capital Contribution for a given Fiscal Quarter, the other Member shall have the right to reduce its contribution proportionately. In the event that such other Member has already remitted any amount in respect of its Additional Capital Contribution, the Joint Venture Company shall, upon such other Member's request and at its option, return such amount or deem all or a portion of such contribution to be Member Debt Financing hereunder. Any amount so requested to be returned or refunded shall be remitted to the requesting Member immediately by wire transfer of immediately available funds. The amount contributed for such Fiscal Quarter by the non-contributing Member (and the other Member, if its contribution is proportionately reduced) shall be applied in the following order:

(1) *First*, to satisfy the obligation of such Member to contribute its [***] of any [***] Capital Contribution for such Fiscal Quarter;

(2) *Second*, the remainder, if any, to fulfill the Member's [***] of the amount, if any, of any Other Capital Contribution for such Fiscal Quarter relating to an Operational Fab;

(3) *Third*, the remainder, if any, to fulfill the Member's [***] of the amount, if any, of any Other Capital Contribution for such Fiscal Quarter relating to matters not addressed in the immediately preceding clause (2); and

(4) *Fourth*, the remainder, if any, to fulfill the Member's [***] of any amount of the [***] Capital Contribution for such Fiscal Quarter to be applied to a [***] under the [***] Budget, and if there is [***] such [***], each of such [***] in the order in which they appear on the [***] Schedule.

(G) Priority of Contributions. Each Member shall contribute its [***] of the cumulative aggregate [***] Capital Contributions theretofore due (and shall pay any interest accrued thereon at the rate provided in Section 2.4(A)(3) as a result of such Member's failure to make such contributions at the times and in the amounts required pursuant to Section 2.3(A)) other than any [***] Capital Contributions as to which the obligation to contribute has been terminated pursuant to Section 2.4(A)(2), before it may make any other Capital Contributions, including any [***] Capital Contributions (including by way of Make-Up Contributions), or any Other Capital Contribution or any Member Debt Financing; *provided*, *however*, that for purposes of this Section 2.3(G), a Member's [***] of an Additional Capital Contribution shall be deemed to exclude any shortfall of an [***] Capital Contribution (1) for which the Joint Venture

Company, or the other Member acting on its behalf, has not demanded payment or pursued any claim for payment and (2) any portion of which the Member is restricted from contributing, or the Joint Venture Company is restricted from paying, under Article 2 or Article 3.

(H) Interim Loan. Each remittance of funds in respect of a Member's [***] of an Additional Capital Contribution pursuant to this Section 2.3 shall, upon receipt by the Joint Venture Company of such funds, be deemed to be a loan (which shall bear no interest) to the Joint Venture Company of the entire amount so delivered until the other Member remits funds in respect of its [***] of such Additional Capital Contribution. At such time:

(1) if both Members have remitted amounts equal to their respective [***] of the Additional Capital Contribution in full, all such amounts shall be deemed Additional Capital Contributions (whereupon the respective amounts remitted by the Members shall no longer be deemed loans and shall be added to the Members' respective Capital Contribution Balances);

(2) if there is a Shortfall Amount, the amount actually remitted by the Non-Funding Member shall be deemed an Additional Capital Contribution by such Member (and such amount shall no longer be deemed a loan and shall be added to the Non-Funding Member's Capital Contribution Balance), and a portion of the amount actually remitted by the Funding Member equal to the product of (a) the Funding Member's [***] of such Additional Capital Contribution (whether or not contributed in full) *multiplied* by (b) a fraction, the numerator of which is the amount actually remitted by the Non-Funding Member and the denominator of which is the Non-Funding Member's [***] of the Additional Capital

Contribution shall be deemed an Additional Capital Contribution (and such amount shall be added to the Funding Member's Capital Contribution Balance). In such event, the remainder of the amount remitted by the Funding Member shall continue to be a loan to the Joint Venture Company until: (i) the return of all or a portion of such remaining funds upon the receipt by the Joint Venture Company of instructions from such Member to return all or a portion of such funds to the Member pursuant to Sections 2.3(F), 2.4(A)(1), 2.4(C) or 3.1(A); (ii) the Funding Member instructs the Joint Venture Company to deem all or a portion of such remaining funds an Additional Capital Contribution (whereupon all or such portion of such funds shall be added to the Member's Capital Contribution Balance); or (iii) the Funding Member instructs the Joint Venture Company to deem all or a portion of such funds to be Member Debt Financing; *provided* that if the Joint Venture Company has not received instructions pursuant to subparagraphs (i), (ii) or (iii) above within fifteen (15) days of the date the applicable Additional Capital Contribution was due, the Joint Venture Company shall contact such Member to request such instruction.

2.4 Shortfalls in Contributions.

(A) [***] Capital Contribution Shortfall.

(1) If a Member fails to remit in full its [***] Capital Contribution, at the time and in the amount required pursuant to Section 2.3(A), the other Member, if it has remitted its [***] of such [***] Capital Contribution, may, at its election, (a) require that the Joint Venture Company return the remitting Member's share of such [***] Capital Contribution to such remitting Member in part or in full, (b) make a Capital Contribution to the Joint Venture

Company of any or all of the shortfall or (c) provide Optional [***] Financing in accordance with Section 3.2.

(2) To the extent the other Member elects to contribute or loan the shortfall under Section 2.4(A)(1)(b) or (c) above, such other Member may elect, by written notice to the Joint Venture Company and the non-contributing Member, to terminate the right and obligation of the non-contributing Member to contribute any unpaid portion of such non-contributing Member's [***] of the [***] Capital Contribution that the non-contributing Member failed to pay.

(3) The other Member, if it has remitted its [***] of the [***] Capital Contribution, may direct the Joint Venture Company under Section 7.5 to (or may, on behalf of the Joint Venture Company) demand payment and pursue a claim against the non-contributing Member for payment. The non-contributing Member shall be obligated to pay interest (which interest shall not be treated as a Capital Contribution) on such uncontributed amount at [***] (as in effect on the date such contribution was scheduled to be made and adjusted every [***]), compounded [***], from the date such [***] Capital Contribution is due until the date it is paid. The Member that did not make an [***] Capital Contribution it was required to make under the terms of this Agreement shall pay to the Joint Venture Company and the other Member all costs, including attorneys' fees, incurred by the Joint Venture Company and the other Member, respectively, in pursuing such claim for payment (which payments shall not be treated as Capital Contributions). Such Member shall not be liable for any additional damages. If the Joint Venture Company recovers against the non-contributing Member, the funds collected from the non-contributing Member shall be applied first to the payment in full of costs theretofore incurred by the Joint Venture Company or the other Member in the pursuit of the claim for payment against the non-contributing Member (and such amount shall not be treated as a Capital Contribution), then to all accrued but unpaid interest on such payment (and such amount shall not be treated as a Capital Contribution) and then to the payment of the delinquent portion of the [***] Capital Contribution (and such amount shall be added to the Capital Contribution Balance of the non-contributing Member). In addition, upon such payment by the non-contributing Member, (a) if a related Optional [***] Shortfall Note is then outstanding, the provisions of Section 3.2(D) (subject to Section 3.2(E)) shall apply and (b) if no related Optional [***] Shortfall Note is then outstanding, but the other Member has remitted to the Joint Venture Company the amount that the non-contributing Member was required to make, then the Joint Venture Company shall immediately refund to the contributing Member an amount equal to the non-contributing Member's payment that was treated as a Capital Contribution, and the Capital Contribution Balance of the contributing Member shall be reduced by such amount.

(4) If, after a failure by a Member to timely make a Capital Contribution of its [***] of an [***] Capital Contribution that it was required to make under the terms of this Agreement, such Member wishes to make any payment with respect to such portion of the [***] Capital Contribution (and the ability to make such contribution has not been terminated pursuant to Section 2.4(A)(2)), the Joint Venture Company, with the consent of the other Member (which consent shall not be necessary if an action to collect such amount has been commenced by or at the direction of such other Member), shall accept such payment and apply it first to the payment in full of costs theretofore incurred by the Joint Venture Company or the other Member in the pursuit of a claim for payment against the non-contributing Member (and such amount shall not be treated as a Capital Contribution), then to all accrued but unpaid interest on such payment (and such amount shall not be treated as a Capital Contribution) and

then to the payment of the delinquent portion of the [***] Capital Contribution (and such amount shall be added to the Capital Contribution Balance of such Member). In addition, upon such payment by the non-contributing Member, (a) if a related Optional [***] Shortfall Note is then outstanding, the provisions of Section 3.2(D) (subject to Section 3.2(E)) shall apply and (b) if no related Optional [***] Shortfall Note is then outstanding, but the other Member has remitted to the Joint Venture Company the amount that the non-contributing Member was required to make, then the Joint Venture Company shall immediately refund to the contributing Member an amount equal to the non-contributing Member's payment that was treated as a Capital Contribution, and the Capital Contribution Balance of the contributing Member shall be reduced by such amount.

(5) Notwithstanding any provision hereof to the contrary, the failure by a Member to contribute in [***] of any [***] Capital Contribution shall not constitute a Liquidating Event.

(B) [***] Capital Contribution Shortfall. If a Member does not remit in [***] of any [***] Capital Contribution at the time and in the full amount permitted pursuant to Section 2.3(B), the provisions of Section 3.1 shall apply.

(C) Other Capital Contribution Shortfall. If a Member does not remit [***] of any Other Capital Contribution, at the time and in the full amount permitted pursuant to Section 2.3(C), the other Member, if it has remitted its [***] of such Other Capital Contribution may, at its election,

(1) require that the Joint Venture Company [***] of such Other Capital Contribution to the remitting Member in part or in full, (2) make a [***] to the Joint Venture Company of any or all of the shortfall or (3) provide Optional Other Financing in accordance with Section 3.3.

2.5 Miscellaneous Capital Provisions.

(A) Capital Contributions shall be credited to the Capital Account of the contributing Member to the extent provided in Article 4 of this Agreement.

(B) No interest shall be paid to a Member on Capital Contributions. A Member shall not be entitled to withdraw any of its Capital Contributions except as provided in Section 2.3(F), 2.4 or Section 3.1.

(C) Except as otherwise provided in Article 13, a Member receiving a return of all or any portion of its Capital Contribution shall have no right to receive a particular type of property or a particular asset.

(D) Any Capital Contributions to the Joint Venture Company to be made in cash shall be made by the Members by wire transfer of immediately available funds to the Joint Venture Company or its designated agent.

(E) Except as otherwise provided in Section 2.4 or Article 3 or for trade credit for services or goods provided by a Member to the Joint Venture Company under any Joint Venture Document or any other agreement that has been approved as required in this Agreement, no Member shall advance funds or make loans to the Joint Venture Company without the approval of the Board of Managers. Any such approved advances or loans by a Member shall not be Capital Contributions and shall not result in any increase in the amount of such Member's Capital Contribution Balance or entitle such Member to any increase in its Percentage Interest,

except as otherwise provided in Section 2.4 or Article 3. The amount of such advances or loans shall be a debt of the Joint Venture Company to such Member and (unless such loan is subject to a written guaranty or other written agreement governing the liability of another party with respect thereto) shall be payable or collectible only out of the assets of the Joint Venture Company.

(F) Except as provided in Section 5.2(C), the Joint Venture Company shall not make loans to, or guaranty any indebtedness of, any Member or any other Person other than a Wholly-Owned Subsidiary of the Joint Venture Company or a Foreign Facilities Company; *provided*, *however*, that the provisions of this Section 2.5(F) shall not prohibit the Joint Venture Company from providing payment terms to the Members for Joint Venture Products manufactured by the Joint Venture Company on behalf of the Members pursuant to any Joint Venture Document or any other agreement that has been approved as provided in this Agreement.

2.6 Contributions After a Change in Consolidating Member. Notwithstanding anything in this Article 2 to the contrary, following a Change in Consolidating Member:

(A) with respect to any Additional Capital Contribution, (1) the amount of the [***] Member's [***] that the [***] Member is required or permitted to make pursuant to this Article 2 shall be reduced to the amount that would not result in the occurrence of [***] Member or in the reduction of the [***] Economic Interest below the lesser of [***]% and the [***] Member's then-existing Economic Interest, and (2) the [***] Member shall become entitled to contribute the [***] Contribution Amount; *provided*, *however*, that if the [***] Member fails to make such Additional Capital Contribution (or provide Member Debt Financing, if applicable) in an amount equal to the full [***] Contribution Amount then the limitations set forth in this Section 2.6(A) shall not apply with respect to such Additional Capital Contribution; and

(B) any payment by the Joint Venture Company to such [***] Member shall not equal or exceed the amount that would result in the occurrence of [***] Member or in the reduction of the [***] Member's Economic Interest below the lesser of [***]% and the [***] Member's then-existing Economic Interest.

ARTICLE 3.
MEMBER DEBT FINANCING

3.1 Mandatory Member Debt Financing.

(A) This Section 3.1 shall apply if (1) there occurs a Shortfall Amount in respect of a [***] Capital Contribution pursuant to Section 2.4(B), (2) the Non-Funding Member has contributed its [***] of all previously required [***] Capital Contributions and (3) the other Member has become the "**Funding Member**" as a result of (a) such other Member's timely remittance of its [***] of such [***] Capital Contribution (after giving effect to the return of any amount so remitted which such Member requests or any increase in such amount contributed by such Member, up to its [***] of such [***] Capital Contribution, after receiving notice from the Joint Venture Company that the other Member has not timely delivered its [***] of the [***] Capital Contribution), or (b) if neither Member has timely remitted the amount of its [***] of such [***] Capital Contribution, such other Member's remittance of a greater percentage of its [***] of such [***] Capital Contribution than the other Member (after giving effect to the return of any amount so remitted which such Member requests or any increase in such amount

contributed by such Member, up to its [***] of such [***] Capital Contribution, after receiving notice from the Joint Venture Company that neither Member has timely delivered its [***] of the [***] Capital Contribution). In such event, the Funding Member shall (y) promptly provide Member Debt Financing to the Joint Venture Company in an amount equal to the Loan Amount and (z) the Funding Member Portion shall be deemed to have been provided as Member Debt Financing, rather than as a Capital Contribution, to the Joint Venture Company. However, if the Shortfall Amount is less than $[***], then the Funding Member may elect not to provide the Mandatory Member Debt Financing and, in such case, the Joint Venture Company shall return to each Member the portion of the [***] Capital Contribution actually remitted by such Member. Furthermore, a Funding Member shall not be required to provide Mandatory Member Debt Financing with respect to a [***] Capital Contribution under a [***] that is part of a Disputed Approved Business Plan proposed by the Non-

Funding Member. No Funding Member shall be obligated to provide more than $[***] of Mandatory Member Debt Financing outstanding at any time (not including any Mandatory Equalization Note) with respect to Shortfall Amounts caused by a given Non-Funding Member; *provided*, *however*, that in the event there is an Approved Business Plan that calls for [***] Capital Contributions for [***] that are reasonably expected to meet the conditions for Mandatory Member Debt Financing set forth in this Section 3.1(A), and if and only if the Funding Member's board of directors so approves, the Funding Member shall make available an additional $[***] of Mandatory Member Debt Financing (not including any Mandatory Equalization Note) for any related Shortfall Amounts, resulting in an aggregate of $[***] of Mandatory Member Debt Financing available to the Joint Venture Company at any time (not including any Mandatory Equalization Note) under this Section 3.1(A); *provided further, however*, that in no event shall a Member be obligated to provide more than an aggregate of $[***] of Mandatory Member Debt Financing outstanding at any given time (not including any Mandatory Equalization Note) with respect to any particular [***]. If such additional $[***] of Mandatory Member Debt Financing is not made available, then, unless the Members agree otherwise, no Early Start shall occur.

(B) In exchange for the Mandatory Member Debt Financing, the Joint Venture Company shall issue to the Funding Member two convertible notes, one having a principal balance equal to the Loan Amount (the "**Mandatory Shortfall Note**"), and the other having a principal balance equal to the Funding Member Portion (the "**Mandatory Equalization Note**" and, together with the related Mandatory Shortfall Note, the "**Mandatory Notes**"), in the form attached hereto as Exhibit A.

(C) Each Mandatory Note issued in accordance with this Section 3.1 shall have [***] term, subject to Section 3.1(E). For the first [***] of the term of a Mandatory Shortfall Note, such Mandatory Shortfall Note shall bear interest at [***] (as in effect on the issue date (the "**Issuance Date**") thereof and adjusted every [***], [***] ([***]) basis points per annum, compounded [***]. Thereafter, until the end of the [***] term, such Mandatory Shortfall Note shall bear interest at [***], adjusted every [***], compounded [***]. No Mandatory Equalization Note shall [***].

(D) (1) At any time after the Issuance Date of a Mandatory Shortfall Note in accordance with this Section 3.1 and prior to the expiration of the [***] term of such Mandatory Shortfall Note, the Non-Funding Member may, upon three (3) Business Days' notice to the Joint Venture Company and the Funding Member, make one or more Make-Up Contributions to the Joint Venture Company in an aggregate amount up to the outstanding principal balance of the Mandatory Shortfall Note. Each Make-Up Contribution shall be

accompanied by a payment equal to the accrued interest on the corresponding Mandatory Shortfall Note, which interest payment shall not be deemed to be a Capital Contribution. If the Make-Up Contribution is less than the entire amount of principal and accrued interest on a Mandatory Shortfall Note, the Make-Up Contribution shall be deemed to be a payment applied first to all accrued interest and then to principal on such Mandatory Shortfall Note (and the amount so treated as a payment with respect to accrued interest shall not be treated as a Capital Contribution). If a Member is the Non-Funding Member with respect to more than one Mandatory Shortfall Note outstanding at the time of such contribution, the Non-Funding Member shall specify the Mandatory Shortfall Note to which a Make-Up Contribution applies (or, if no such specification is made, the Make-Up Contribution will be used to repay the Mandatory Shortfall Note that is closest to its maturity date). Upon receipt of such funds, the Joint Venture Company shall immediately repay to the Funding Member the portion of the outstanding principal balance of and accrued interest on the Mandatory Shortfall Note in an amount equal to the Make-Up Contribution plus any accrued interest on the amount of such Make-Up Contribution. At such time, the following shall occur: (a) the amount of the Make-Up Contribution equal to the principal balance of the Mandatory Shortfall Note so repaid shall be deemed to be a Capital Contribution by the Non-Funding Member and such amount shall be added to the Capital Contribution Balance of the Non-Funding Member; and (b) a percentage of the outstanding principal balance of the related Mandatory Equalization Note equal to the percentage of the principal balance of the Mandatory Shortfall Note repaid shall convert into a Capital Contribution by the Funding Member, whereupon such amount shall be added to the Capital Contribution Balance of the Funding Member.

(2) To the extent excess cash is available in accordance with Section 5.1 at any time to make payments on any Mandatory Notes, if the Funding Member elects, by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the making of the distributions under Section 5.1, to receive such payments, the Joint Venture Company shall make payments on the outstanding principal of and accrued interest on the Mandatory Shortfall Notes (with any such payment being applied first to the payment in full of accrued interest and then, to the extent of any remaining amount of such payment, to the repayment of principal) and the outstanding principal of the Mandatory Equalization Notes; *provided*, *however*, that any payment by the Joint Venture Company on the unpaid principal of a Mandatory Shortfall Note must be accompanied by a payment by the Joint Venture Company of an equal percentage of the unpaid principal of the related Mandatory Equalization Note. Upon the Funding Member's receipt of funds from the Joint Venture Company to be applied to the repayment of principal on the Mandatory Notes, the principal portions of the Mandatory Notes that were so repaid by the Joint Venture Company shall no longer be outstanding.

(E) To the extent any amount of a Mandatory Shortfall Note remains outstanding upon its maturity for any reason, the Funding Member shall elect to do one of the following: (1) transfer to the Joint Venture Company as a Capital Contribution all or a portion of the obligations owing to the Funding Member for (a) the unpaid principal of and accrued interest on the Mandatory Shortfall Note and (b) the unpaid principal of the Mandatory Equalization Note, whereupon an amount equal to the sum of (a) and (b) shall be added to the Capital Contribution Balance of the Funding Member; or (2) permit the Mandatory Notes to become a continuing note that will remain outstanding, have a principal amount equal to the sum of (a) the principal of and accrued interest on the former Mandatory Shortfall Note and (b) the principal of the former Mandatory Equalization Note and be convertible at any time thereafter at the option

of the Funding Member (a "**Continuing Mandatory Note**"), which Continuing Mandatory Note shall bear no interest and shall mature on the Liquidation Date. In the event that the Funding Member fails to make an election, the Funding Member shall be deemed to have elected to permit the Mandatory Notes to become a Continuing Mandatory Note. Upon conversion of a Continuing Mandatory Note by the Funding Member, the amount of principal of such Continuing Mandatory Note shall be added to the Capital Contribution Balance of the Funding Member. To the extent excess cash is available in accordance with Section 5.1 at any time to make payments on any Continuing Mandatory Note, if the Funding Member elects to receive such payments, by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the making of the distributions under Section 5.1, the Joint Venture Company shall make such payments on the outstanding principal of the Continuing Mandatory Note. Upon the Funding Member's receipt of funds from the Joint Venture Company, the portion of the Continuing Mandatory Note that was paid by the Joint Venture Company shall no longer be outstanding.

3.2 Optional [***] Financing.

(A) In the event of a Shortfall Amount in respect of an [***] Capital Contribution, the Funding Member may, in its sole discretion, elect to extend Member Debt Financing to the Joint Venture Company (the "**Optional [***] Financing**") consisting of all or a portion of the Shortfall Amount and the related Funding Member Portion of such [***] Capital Contribution (the aggregate amount so loaned, the "**Optional [***] Loan Amount**").

(B) In exchange for the Optional [***] Financing, the Joint Venture Company shall issue to the Funding Member two convertible notes, one having a principal amount equal to the amount loaned by the Funding Member in respect of the Shortfall Amount (the "**Optional [***] Shortfall Note**") and the other having a principal amount equal to the Funding Member Portion (the "**Optional [***] Equalization Note**" and, together with the related Optional [***] Shortfall Note, the "**Optional [***] Notes**"), in the form attached hereto as Exhibit B.

(C) The Optional [***] Shortfall Notes issued in accordance with this Section 3.2 will mature on the [***] and shall bear interest at [***] (as in effect on the Issuance Date thereof and adjusted every [***]), compounded [***]. The Optional [***] Equalization Notes issued in accordance with this Section 3.2 shall bear [***] interest and will mature on the [***]. The Optional [***] Notes shall be convertible at any time. Upon conversion of the Optional [***] Notes by the Funding Member, the sum of (a) the unpaid principal of and accrued interest on the Optional [***] Shortfall Note and (b) the unpaid principal of the Optional [***] Equalization Note shall be added to the Capital Contribution Balance of the Funding Member.

(D) If the Joint Venture Company or the Funding Member, on the Joint Venture Company's behalf, demands payment and determines to pursue a collection action with respect to the Non-Funding Member's failure to deliver the Shortfall Amount relating to the [***] Capital Contribution and the Joint Venture Company recovers from the Non-Funding Member, the funds collected from the Non-Funding Member shall be applied first to the payment to the Joint Venture Company and the Funding Member, in full of the costs theretofore incurred by the Joint Venture Company or the Funding Member, respectively, in the pursuit of the claim for payment against the Non-Funding Member (and such amount shall not be treated as a Capital Contribution), then to all accrued but unpaid interest on such payment (and such amount shall not be treated as a Capital Contribution) and then to the payment of an Optional [***] Shortfall

Note to the extent funds are available. At such time, the following shall occur: (1) a portion of the Make-Up Contribution recovered from the Non-Funding Member equal to the principal balance of the Optional [***] Shortfall Note so repaid shall be deemed to be a Capital Contribution by the Non-Funding Member, and such amount shall be added to the Capital Contribution Balance of the Non-Funding Member and (2) a percentage of the outstanding principal balance of the related Optional [***] Equalization Note equal to the percentage of the principal balance of the Optional [***] Shortfall Note repaid shall convert into a Capital Contribution by the Funding Member, and such amount shall be added to the Capital Contribution Balance of the Funding Member.

(E) To the extent excess cash is available in accordance with Section 5.1 at any time to make payments on any Optional [***] Notes, if the Funding Member elects to receive such payments, by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the making of the distribution under Section 5.1, the Joint Venture Company shall make payments on the outstanding principal of and accrued interest on the Optional [***] Shortfall Notes (with any such payment being applied first to the payment in full of accrued interest and then, to the extent of any remaining amount of such payment, to the repayment of principal) and the outstanding principal of the Optional [***] Equalization Notes; *provided*, *however*, that any payment by the Joint Venture Company on the unpaid principal on an Optional [***] Shortfall Note must be accompanied by a payment by the Joint Venture Company of an equal percentage of the unpaid principal of the related Optional [***] Equalization Note. Upon the Funding Member's receipt of funds from the Joint Venture Company, the portion of the Optional [***] Shortfall Note and related Optional [***] Equalization Note that was paid by the Joint Venture Company shall no longer be outstanding.

3.3 Optional Other Member Debt Financing.

(A) In the event of a Shortfall Amount in respect of an Other Capital Contribution, the Funding Member may, in its sole discretion, elect to extend Member Debt Financing to the Joint Venture Company (the "**Optional Other Financing**"), consisting of all or a portion of the Shortfall Amount and the related Funding Member Portion of such Other Capital Contribution.

(B) In exchange for the Optional Other Financing, the Joint Venture Company shall issue to the Funding Member a convertible note (the "**Optional Other Shortfall Note**"), in the form attached hereto as Exhibit C. The Optional Other Shortfall Note shall bear [***] interest, shall mature on the [***] and shall be convertible at any time.

3.4 Change In Committed Capital. Each time there is a change in a Member's Committed Capital, as a result of the making of a Capital Contribution or a loan evidenced by a Member Note, a payment on a Member Note, or otherwise, each Member's respective Percentage Interest, Economic Interest and Sharing Interest shall be immediately recalculated in accordance with the definitions of such terms, taking into account any delay provided for in the definition of Sharing Interest; *provided*, *however*, that in accordance with Section 2.3(H) an adjustment to the Percentage Interests of the Members relating to any funds remitted in respect of an Additional Capital Contribution to be made pursuant to Article 2 shall be made when contemplated by Section 2.3(H).

3.5 Change in Consolidating Member. Following a Change in Consolidating Member (as a result of which the Non-Funding Member becomes the Former Consolidating Member), any (A) Make-Up Contribution made by the Non-Funding Member to the Joint Venture Company or (B) payment on a Member Note by the Joint Venture Company from excess funds available in accordance with Section 5.1 shall not equal or exceed the amount that would result in the occurrence of another Change in Consolidating Member or in the reduction of the Consolidating Member's Economic Interest below the lesser of [***]% and the Consolidating Member's then-existing Economic Interest.

3.6 Loans Through Subsidiary. Notwithstanding any provision of this Article 3, in lieu of providing any Member Debt Financing permitted or required of a Member, such Member may elect to provide such Member Debt Financing through a Wholly-Owned Subsidiary of such Member; *provided*, *however*, that the Member, rather than such Wholly-Owned Subsidiary of the Member, shall own the Economic Interest, Sharing Interest and Committed Capital related to such Member Debt Financing and shall have all rights against the Joint Venture Company related to such Member Debt Financing.

ARTICLE 4.
CAPITAL ACCOUNTS AND ALLOCATIONS

4.1 Capital Accounts. Each Member shall have a capital account maintained in accordance with the terms of Article 2 of Appendix B to this Agreement (a "**Capital Account**").

4.2 Allocations of Book Income and Loss. Book income and Book loss for any Fiscal Year shall be allocated to the Members in the manner provided in Article 3 of Appendix B.

4.3 Tax Allocations. All items of income, gain, loss, and deduction shall be allocated among the Members for federal income tax purposes in the manner provided in Article 4 of Appendix B.

4.4 Restoration of Negative Balances. No Member with a deficit balance in its Capital Account shall have any obligation to the Joint Venture Company, to any other Member or to any third party to restore or repay said deficit balance. This Section 4.4 shall not affect any of the other rights or obligations of the Members under this Agreement or any other agreement.

ARTICLE 5.
DISTRIBUTIONS

5.1 Distributions.

(A) Unless otherwise unanimously agreed by the Members, the Joint Venture Company shall not make any distributions until after the first anniversary of the Effective Date. Thereafter, subject to Articles 6, 7 and 13 and the provisions of the Act and after giving effect to all Capital Contributions or Member Debt Financing to be made on the same date under Article 2 and Article 3, respectively, the Joint Venture Company shall, subject to Section 5.1(C), make distributions of cash to the Members as set forth in this Section 5.1(A), on a [***] basis on the [***] day of each Fiscal [***] (or if such day is not a Business Day, then on the first Business Day after such day) to the extent that the Joint Venture Company's cash as of the end of the immediately preceding Fiscal [***] is in excess of the sum of (y) any amounts that have been contributed as a Capital Contribution or loaned to the Joint Venture Company as Member Debt

Financing and that are being held for the purpose of making capital or operating expenditures in the current Fiscal [***] or the first twenty-five (25) days of the immediately succeeding Fiscal [***] (or if such day is not a Business Day, then on the first Business Day after such day) and (z) all reserves that are considered reasonably necessary by the Board of Managers to pay other expenditures that are reasonably likely to be payable in the period described in clause (y) above, and in any event including the reserve established under Section 2.2 and amounts remaining in the Accumulated Distributions Accounts; *provided*, *however*, that the Board of Managers shall cause the Joint Venture Company to use any cash available for distribution as follows:

(1) *first*, to pay in full all amounts outstanding under any outstanding Mandatory Shortfall Notes and related Mandatory Equalization Notes (*provided* any holder thereof has requested such payment by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the distribution thereof under this Section 5.1) in order of their respective maturity dates;

(2) *second*, to pay any outstanding Continuing Mandatory Notes (*provided* any holder thereof has requested such payment by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the distribution thereof under this Section 5.1) in the order that the respective maturity dates of the related Mandatory Shortfall Notes and Mandatory Equalization Notes occurred;

(3) *third*, to pay in full all amounts outstanding under any other outstanding Member Notes (*provided* any holder thereof has requested such payment by written notice executed by its chief executive officer and delivered to the Joint Venture Company prior to the distribution thereof under this Section 5.1);

(4) *fourth*, to make a distribution to a Member whose aggregate, cumulative distributions (not including any payments made pursuant to Sections 5.1(A)(1), (2) and (3)) immediately prior to such distribution are less than the amount equal to the Member's Sharing Interest (as such Sharing Interest is determined immediately after any payments made under Sections 5.1(A)(1), (2) and (3)) multiplied by the aggregate, cumulative distributions (not including any payments made pursuant to Sections 5.1(A)(1), (2) and (3)) of the Joint Venture Company immediately prior to such distribution, until such Member's aggregate, cumulative distributions (not including payments made pursuant to Sections 5.1(A)(1), (2) and (3), but including such distribution pursuant to this Section 5.1(A)(4)) are equal to its Distribution Entitlement; and

(5) finally, to make distributions *pro rata* to the Members in accordance with their respective Sharing Interests (as such Sharing Interests are determined immediately after any payments made under Sections 5.1(A)(1), (2) and (3)).

(B) Distributions of cash are only to be made to the extent cash is available to the Joint Venture Company without requiring (1) the sale of Joint Venture Company assets (other than in the ordinary course of business) or the pledge of Joint Venture Company assets at a time or on terms that the Board of Managers believes are not in the best interests of the Joint Venture Company or (2) a reduction in reserves that the Board of Managers believes are reasonably necessary for Joint Venture Company purposes for the then-current Fiscal [***] and

the first twenty-five (25) days of the immediately succeeding Fiscal [***] (or if such day is not a Business Day, then through the first Business Day after such day).

(C) The Joint Venture Company shall maintain in its books of account for each Member a special purpose account (the "**Accumulated Distributions Accounts**") for purposes of recording amounts that would be distributed to such Member under Section 5.1(A) but for the application of this Section 5.1(C). Notwithstanding anything to the contrary in this Section 5.1, in lieu of actually making the cash distributions contemplated by this

Section 5.1, the Joint Venture Company shall (except to the extent a Member requests direct payment to the Member) increase each Member's Accumulated Distributions Account by the amount of such cash that was to have been distributed to such Member. Subsequently, when a Member is required to, or desires to, make a Capital Contribution required or permitted by this Agreement, in lieu of making such Capital Contribution such Member may instruct the Joint Venture Company to reduce such Member's Accumulated Distributions Account in an amount (not to exceed the amount in such Member's Accumulated Distributions Account) up to the amount of such Capital Contribution, which shall be treated for all purposes (including for purposes of the definition of Capital Contribution Balance) as if such Member had made such Capital Contribution at the time designated in such instruction. A Member may, at any time, demand payment of, and the Joint Venture Company shall immediately pay, the full amount of such Member's Accumulated Distributions Account, in which event the amount so paid shall reduce the Member's Accumulated Distributions Account.

5.2 Withholding Tax Payments and Obligations. In the event that withholding taxes are paid or required to be paid in respect of payments made to or by the Joint Venture Company, or allocations to a Member, such withholding shall be treated as follows:

(A) Payments to the Joint Venture Company. If the Joint Venture Company receives proceeds in respect of which a tax has been withheld, the Joint Venture Company shall be treated as having received cash in an amount equal to the amount of such withheld tax, and, for all purposes of this Agreement, each Member shall be treated as having received a distribution pursuant to Section 5.1 equal to the portion of the withholding tax allocable to such Member, as reasonably determined by the Board of Managers. Such amounts shall not be treated as Joint Venture Company expenses.

(B) Payments by the Joint Venture Company. The Joint Venture Company is authorized to withhold, and the Tax Matters Partner shall take any actions reasonably necessary to withhold, from any payment made to, or any distributive share of, a Member any taxes required by law to be withheld, and in such event, such taxes shall be treated as if an amount equal to such withheld taxes had been distributed to such Member pursuant to Section 5.1 (or, as provided in Section 5.2(C), loaned to such Member).

(C) Certain Withheld Taxes Treated as Demand Loans. Any taxes withheld pursuant to Sections 5.2(A) or 5.2(B) hereof shall be treated as if distributed to the relevant Member pursuant to Section 5.1 to the extent an amount equal to such withheld taxes would then be distributable to such Member, and, to the extent in excess of such distributable amounts, as a demand loan payable by the Member to the Joint Venture Company with interest at a rate equal to [***] (or, if less, the maximum rate allowed by law), compounded and adjusted [***], commencing five (5) days after written demand therefor on behalf of the Joint Venture Company is made by any other Member.

5.3 Distribution Limitations. Notwithstanding anything in this Agreement to the contrary, the Joint Venture Company shall not make any distribution of cash or other property to any Member if the distribution would violate any agreement to which the Joint Venture Company or any of its Subsidiaries is a party or by which it or any of them is bound.

ARTICLE 6.
MANAGEMENT; BOARD OF MANAGERS

6.1 Management Power. Except as specifically provided in Article 7, Article 8, and Sections 11.1, 11.2 and 11.3, all management powers over the business, property and affairs of the Joint Venture Company are exclusively vested in a board of Managers (the "**Board of Managers**"), and, except as provided in Article 7, Article 8 and Sections 11.1, 11.2 and 11.3, no Member shall have any right to participate in or exercise control or management power over the business and affairs of the Joint Venture Company or otherwise to bind, act or purport to act on behalf of the Joint Venture Company in any manner. Subject to the limitations set forth in this Agreement, the Board of Managers shall have all the rights and powers that may be possessed by a manager under the Act, including the power to incur indebtedness for trade payables and equipment leases, the power to enter into agreements and commitments of all kinds, the power to manage, acquire and dispose of Joint Venture Company assets, and all ancillary powers necessary or convenient as to the foregoing. No individual Manager, in his or her capacity as such, may act on behalf of the Board of Managers or bind the Joint Venture Company.

6.2 Number of Managers; Appointment of Managers.

(A) The Board of Managers shall consist of six (6) individuals (each such individual, a "**Manager**"). Subject to Section 6.2(B), one half of the Managers shall be appointed by Micron and one half of the Managers shall be appointed by Intel. The initial Managers appointed by Micron are listed on Appendix C, and the initial Managers appointed by Intel are listed on Appendix C. Each Member having the right to appoint a Manager or Managers in accordance with this Section shall also have the right, in its sole discretion, to remove such Manager or Managers at any time by delivery of written notice to the other Member(s) and the Joint Venture Company. Any vacancy in the office of a Manager for any reason other than pursuant to Section 6.2(B) (including as a result of such Manager's death, resignation, retirement or removal pursuant to this Section) shall be filled by the Member that appointed the relevant Manager. Unless a Manager resigns, dies, retires or is removed in accordance with this Section, each Manager shall hold office until a successor shall have been duly appointed by the appointing Member.

(B) Effect of Change in Percentage Interest on Managers. While a Member's Percentage Interest is below [***] percent ([***] %) but at least [***] percent ([***]%), the number of Managers such Member is entitled to appoint to the Board of Managers shall be reduced to [***] ([***]), and the number of Managers the other Member is entitled to appoint to the Board of Managers shall be increased to [***] ([***]). While a Member's Percentage Interest is below [***] percent ([***]%) but at least [***] percent ([***]%), the number of Managers such Member is entitled to appoint to the Board of Managers shall be reduced to [***] ([***]), and the number of Managers the other Member is entitled to appoint to the Board of Managers shall be increased to [***] ([***]). While a Member's Percentage Interest is below [***] percent ([***]%), the number of Managers such Member is entitled to appoint to the Board of Managers shall be reduced to [***] ([***]), and the other Member shall be entitled to appoint

[***] Managers to the Board of Managers; *provided*, *however*, that the Member with a Percentage Interest of less than [***] percent ([***]%) shall be entitled to designate, from time to time, an individual who shall not be a member of, and shall have no right to vote at any meeting of, the Board of Managers, but who shall have the right to receive notice of, attend, and act as an observer for such Member at, any meeting of the Board of Managers, and who shall receive all materials delivered to the Board of Managers in connection with any such meetings. If either Member's Percentage Interest should be below any of the

threshold levels set forth above and if such Member (the "**Appointing Member**") then has more designees serving on the Board of Managers than the number to which it is entitled, such Appointing Member shall immediately identify by written notice to the other Member the designee or designees on the Board of Managers that will cease serving on the Board of Managers and each such designee shall thereupon cease to be a Manager or member of the Board of Managers. If such Appointing Member fails to make such designation within five (5) Business Days after written demand by the other Member, the other Member may designate by written notice to the Appointing Member one or more (as appropriate) of the Appointing Member's designees on the Board of Managers that will cease serving on the Board of Managers and each such designee shall thereupon cease to be a Manager or member of the Board of Managers. The other Member who is entitled to appoint one or more additional Managers to serve on the Board of Managers may immediately appoint such additional Managers by written notice to the other Member designating such Managers. Similarly, if a Member whose Percentage Interest fell below any threshold level set forth in this Section 6.2(B) subsequently increases its Percentage Interest above any such level, the process shall be reversed.

(C) Chairman of the Board of Managers. Until the end of the Fiscal Year ending in 2007, Micron shall have the right to designate one of its designated Managers as chairman of the Board of Managers (the "**Chairman**"), and thereafter, for each subsequent Fiscal Year of the Joint Venture Company, the right to designate the Chairman (from among its designated Managers) shall alternate between Intel and Micron; *provided*, *however*, that while the Percentage Interest of a Member is below [***] percent ([***]%), the Chairman of the Board will be appointed by the other Member. The Chairman shall preside at all meetings of the Board of Managers and shall have such other duties and responsibilities as may be assigned to him or her by the Board of Managers. The Chairman may delegate to any Manager authority to chair any meeting, either on a temporary or a permanent basis. The Chairman must include any item submitted by a Member or Manager for consideration at a meeting of the Board of Managers, may not cut off debate on any matter being considered by the Board of Managers and shall call for a vote on any matter at the request of any Manager, including any matter described in Section 6.3(B).

(D) Presence of Certain Officers at Meetings of Board of Managers. Each of the Authorized Officers, or the Chief Executive Officer, as applicable, each of whom shall not be a member of the Board of Managers, may attend, but shall have no right to vote at, all meetings of the Board of Managers; *provided*, *however*, that the Board of Managers may exclude the Authorized Officers, or the Chief Executive Officer, as applicable, from such meetings or such portions of meetings at which the compensation or performance of, or any issue involving, either of the Authorized Officers, or the Chief Executive Officer, as applicable, is discussed as the Board of Managers, in its sole discretion, deems appropriate. If either Authorized Officer is excluded from any meeting or portion of a meeting of the Board of Managers, the other Authorized Officer shall also be excluded from such meeting or portion of such meeting.

6.3 Voting of Managers.

(A) Each Manager shall be entitled to one (1) vote, and Managers shall not be entitled to cast their votes through proxies (except as provided in Section 6.7). Subject to Sections 6.3(B) and 6.3(C), all actions, determinations or resolutions of the Board of Managers shall require the affirmative vote or consent of a majority of the Board of Managers present at any meeting at which a quorum is present (*i.e.*, the affirmative vote of four (4) Managers if the total number of Managers is six (6)), which majority must include at least [***] appointed by each Member at all times that each Member has at least [***] to the Board of Managers; *provided*, *however*, that any matter that is a Micron Matter, as specified on Schedule 4, shall be deemed approved upon the approval of a majority of the Managers appointed by Micron, and any matter that is an Intel Matter, as specified on Schedule 3, shall be deemed approved upon the approval of a majority of the Managers appointed by Intel. Except as specifically provided in Article 7, Article 8 and Sections 11.1, 11.2 and 11.3, the Board of Managers shall have the right, power and authority to take all actions of the Joint Venture Company, including the following, and in no event shall any of the following actions be taken without the approval of the Board of Managers (which approval may be obtained through the adoption of an Undisputed Approved Business Plan by the Board of Managers in accordance with Sections 11.1 and 11.2, *provided* that the relevant Undisputed Approved Business Plan sets forth such action in reasonable detail), by or with respect to the Joint Venture Company or any Subsidiary of the Joint Venture Company:

(1) entering into any agreement or making any modification or amendment to, or terminating, any agreement between (a) the Joint Venture Company or any Subsidiary of the Joint Venture Company and (b) any Member or an Affiliate of a Member;

(2) selecting attorneys, accountants, auditors and financial advisors for the Joint Venture Company or any of its Subsidiaries;

(3) adopting, or making any material modification, amendment or termination of, material accounting and tax policies, procedures and principles applicable to the Joint Venture Company or any of its Subsidiaries other than those made in accordance with Section 10.9 (*provided*, *however*, that the right, power and authority of the Board of Managers with respect to tax policies, procedures and principles granted under this Section 6.3 shall be subject to the provisions of Section 10.7 hereof);

(4) adopting or making any material changes to any employee benefit plan, including any incentive compensation plan;

(5) setting any distribution to the Members not required under Article 5;

(6) subject to Section 6.3(B)(1)(b), commencing or settling litigation, except routine employment litigation matters;

(7) making any material purchase, sale or lease (as lessor or lessee) of any real property (except for any such purchase or lease to effectuate an Intel Matter that is approved by a majority of the Intel Managers then in office or a Micron Matter that is approved by a majority of the Micron Managers then in office);

(8) acquiring securities or any equity ownership interest in any Person, other than a Wholly-Owned Subsidiary of the Joint Venture Company established to hold a Fab or assets of the Joint Venture Company or any of its Subsidiaries;

(9) making any public announcement by the Joint Venture Company or any Subsidiary of the Joint Venture Company of any material non-public information not previously approved for public announcement by the Board of Managers;

(10) entering into or amending any collective bargaining arrangements or waiving any material provision or requirement thereof;

(11) approving any Proposed Business Plan, or amending or modifying any Approved Business Plan (or any modification thereof), subject to Sections 11.1(C), 11.2(D) and 11.2(E);

(12) making any filing with, public comments to, or negotiation or discussion with, any Governmental Entity (excluding regular operating filings and other routine administrative matters and other than any such filing, public comments, or negotiation or discussion relating to an Intel Matter that is approved by a majority of the Intel Managers then in office or relating to a Micron Matter that is approved by a majority of the Micron Managers then in office); and

(13) establishing, overseeing and modifying the investment policies of the Joint Venture Company with respect to funds held by the Joint Venture Company, including funds reserved pursuant to Section 2.2 pending the use of such funds in accordance with any applicable Approved Business Plan.

(B) (1) Notwithstanding the foregoing, any action of the Board of Managers with respect to any of the following matters relating to a Member (the "**Interested Member**") shall be deemed approved by the Board of Managers if approved either by the affirmative vote at a meeting of the Board of Managers of a majority of the Managers appointed by the other Member (the "**Independent Member**") with respect to such action or by written consent of a majority of the Managers appointed by such Independent Member:

(a) any determination to grant indemnification to the Interested Member for any matter not contemplated by Section 14.2 hereof; or

(b) the pursuit of any remedy by the Joint Venture Company or a Subsidiary of the Joint Venture Company against the Interested Member or Affiliate of the Interested Member in accordance with Section 7.5; or

(c) any other matter (other than a matter provided for in Section 6.3(B)(2)) in which the interests of the Joint Venture Company or a Subsidiary of the Joint Venture Company and the Interested Member, or an officer, director, controlling stockholder or Affiliate of the Interested Member, are adverse.

(2) The entry into, modification of, amendment to, or termination by the Joint Venture Company of any agreement or other transaction between the Joint Venture Company or any Subsidiary of the Joint Venture Company, on the one hand, and the Interested

Member or an officer, director, controlling stockholder or Affiliate of the Interested Member, on the other hand, (an "**Interested Member Transaction**") shall be permitted only if:

(a) The material facts as to the relationship or interest of the Interested Member (and its officers, directors, controlling stockholders and Affiliates) as to the Interested Member Transaction are disclosed or are known to the Board of Managers and the Independent Member, and the Board of Managers in good faith authorizes the Interested Member Transaction by the affirmative votes of a majority of the Managers appointed by the Independent Member, even though the Managers appointed by the Independent Member may be less than a quorum; or

(b) The material facts as to the relationship or interest of the Interested Member (and its officers, directors, controlling stockholders and Affiliates) as to the Interested Member Transaction are disclosed or are known to the Independent Member, and the Interested Member Transaction is specifically approved in writing by the Independent Member; or

(c) The Interested Member Transaction is authorized, approved or ratified by the Board of Managers and is fair as to the Joint Venture Company or the applicable Subsidiary of the Joint Venture Company and the Independent Member as of the time it is so authorized, approved or ratified by the Board of Managers.

(3) Managers appointed by the Interested Member may be counted in determining the presence of a quorum at a meeting of the Board of Managers which authorizes the Interested Member Transaction.

(C) Notwithstanding anything in this Agreement to the contrary, if a Member has only [***] to the Board of Managers as a result of its Percentage Interest falling below the requisite threshold set forth in Section 6.2(B), the following actions will require the approval of a majority of the members of the Board of Managers, including the Manager appointed by such Member:

(1) any material modification, amendment or termination of material accounting and tax policies, procedures and principles applicable to the Joint Venture Company or any of its Subsidiaries, other than those made in accordance with Section 10.9 (*provided, however*, that the right, power and authority of the Board of Managers with respect to tax policies, procedures and principles granted under this Section 6.3 shall be subject to the provisions of Section 10.7 hereof); and

(2) except for any litigation matter subject to Section 6.3(B)(1)(b), any settlement of a litigation matter or a group of related litigation matters, other than routine litigation matters not involving current or former members of management, where the amount of damages payable by the Joint Venture Company or any of its Subsidiaries exceeds $[***] or that results in disparate treatment of the Members.

6.4 Meetings of the Board of Managers; Quorum. The Board of Managers shall hold meetings at least once per Fiscal Quarter. Subject to a Manager's right to appoint an alternate Manager in accordance with Section 6.7, the presence of at least a majority of the Managers

(four (4) while the number of Managers is six (6)), in person or by telephone conference or by other means of communications acceptable to the Board of Managers, shall be necessary and sufficient to constitute a quorum for the purpose of taking action by the Board of Managers at any meeting of the Board of Managers; *provided*, that such quorum shall consist of at least a majority of the Managers appointed by each Member that appoints an odd number of Managers greater than one, and at least half of the Managers appointed by each Member that appoints an even number of Managers. No action taken by the Board of Managers at any meeting shall be valid unless the requisite quorum is present.

6.5 Notice; Waiver. The regular quarterly meetings of the Board of Managers described in Section 6.4 shall be held upon not less than ten (10) days' written notice. Additional meetings of the Board of Managers shall be held (A) at such other times as may be determined by the Board of Managers, (B) at the request of at least two (2) Managers or either Authorized Officer, or the Chief Executive Officer, as applicable, upon not less than five (5) Business Days' written notice or (C) in accordance with Section 17.1, following a failure by the Board of Managers to adopt or reject a proposal for action presented to it. For purposes of this Section, notice may be provided via facsimile, email or any other manner provided in Section 18.1, or telephonic notice to each Manager (which notice shall be provided to the other Managers by the requesting Managers). The presence of any Manager at a meeting (including by means of telephone conference or other means of communications acceptable to the Board of Managers) shall constitute a waiver of notice of the meeting with respect to such Manager, unless such Manager declares at the meeting that such Manager objects to the notice as having been improperly given. The Board of Managers shall cause written minutes to be prepared of all actions taken by the Board of Managers and shall cause a copy thereof to be delivered to each Manager within fifteen (15) days of each meeting.

6.6 Action Without a Meeting; Meetings by Telecommunications.

(A) On any matter that is to be voted on, consented to or approved by the Board of Managers, the Board of Managers may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the Managers having not less than the minimum votes that would be necessary to authorize or take such action, in accordance with the terms of this Agreement, at a meeting at which all the Managers were present and voted.

(B) Unless the Act otherwise provides, members of the Board of Managers shall have the right to participate in all meetings of the Board of Managers by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

6.7 Alternate Managers. Each Manager shall have the right to designate an individual to attend and vote at meetings of the Board of Managers as the proxy of such regularly appointed Manager.

6.8 Compensation of Managers. The Managers, in their capacity as such, shall not receive compensation from the Joint Venture Company. Each Member shall bear the cost and expenses incurred by its appointed Managers in connection with the Joint Venture Company's business while such Managers are serving in such capacity.

ARTICLE 7.
MEMBERS

7.1 Rights of Members; Meetings.

(A) The Members shall be the members of the Joint Venture Company under the Act, and shall be entitled to the following: (1) receive financial reports and tax reporting information referenced in Sections 10.4 and 10.6; (2) receive (y) the then-current Approved Business Plans, as updated from time to time in accordance with Section 11.1 or Section 11.2 and any Proposed Business Plan and (z) the then-current Operating Plan; (3) receive such additional information of the Joint Venture Company or any of its Subsidiaries as may reasonably be requested by a Member; (4) copies of any third party audit findings from any audit of the Joint Venture Company or any Subsidiary of the Joint Venture Company, any subcontractor for the Joint Venture Company or any Subsidiary of the Joint Venture Company or any Person that provides services to the Joint Venture Company or any Subsidiary of the Joint Venture Company (including a Member in such capacity but only to the extent contemplated by the applicable service agreement with such Member); and (5) such additional rights as are elsewhere provided in this Agreement or by mandatory requirements of Applicable Law, including mandatory requirements of the Act.

(B) At any time, and from time to time, the Board of Managers may, but shall not be required to, call meetings of the Members.

(1) Special meetings of the Members for any proper purpose or purposes may be called at any time by either Member. Each meeting of the Members shall be conducted by the Authorized Officers, or the Chief Executive Officer, as applicable, or any mutually agreeable designee of the Authorized Officers or designee of the Chief Executive Officer, as applicable, and shall be held at the principal offices of the Joint Venture Company or at such other place as may be agreed upon from time to time by the Members. The Authorized Officers or their designee, or the Chief Executive Officer or his or her designee, as applicable, shall include any item submitted by a Member for consideration at a meeting of the Members, may not cut off debate on any matter being considered by the Members and shall call for a vote on any matter at the request of any Member. Meetings may be held by telephone if both Members so consent.

(2) Except as otherwise required by Applicable Law, written notice (which may be provided via facsimile or electronic mail with receipt confirmation) of each meeting of the Members of the Joint Venture Company shall be given not less than five (5) nor more than thirty-five (35) days before the date of such meeting.

(3) The presence, either in person or by proxy, of Members whose combined Percentage Interests equal one hundred percent (100%) is required to constitute a quorum at any meeting of the Members.

(4) Each Member may authorize any Person (*provided* such Person is an officer of the Member) to act for it or on its behalf on all matters in which the Member is entitled to participate. Each proxy must be signed by a duly authorized officer of the Member. All other provisions governing, or otherwise relating to, the holding of meetings of the Members shall be established from time to time as mutually agreed by the Members.

(5) The Members shall be entitled to vote on any matter submitted to a vote of the Members in proportion to their Percentage Interests. Members may vote either in person or by proxy at any meeting. Each Member shall be entitled to cast one (1) vote for each full percentage of the Percentage Interest held by such Member. Fractional votes shall be permitted.

(6) Any action permitted or required by the Act, the Certificate, or this Agreement to be taken at a meeting of Members may be taken without a meeting if a consent in writing, setting forth the action to be taken, is signed by the Member or Members whose vote or approval is required for the taking of such action under this Agreement. Such consent shall have the same force and effect as if such action was approved by vote at a meeting at which all the Members were present and voted and may be stated as such in any document or instrument filed with the Secretary of State of Delaware, and the execution of such consent shall constitute attendance or presence in person at a meeting of Members.

7.2 Limitations on the Rights of Members.

(A) Subject to any mandatory requirements of Applicable Law, including mandatory requirements under the Act, except as provided in this Agreement, no Member (in its capacity as a Member) has the right to take any part whatsoever in the management and control of the business of the Joint Venture Company, sign for or bind the Joint Venture Company or any of its Subsidiaries, compel a sale or appraisal of the Joint Venture Company's or any of its Subsidiaries' assets, or sell or assign its Interest in the Joint Venture Company or any of its Subsidiaries.

(B) No Member may, without the prior written consent of the other Member: (1) confess any judgment against the Joint Venture Company or any of its Subsidiaries; (2) act for, enter into any agreement on behalf of or otherwise purport to bind the other Member, the Joint Venture Company or any of its Subsidiaries; (3) do any acts in contravention of this Agreement or any of the Affiliate Agreements; (4) except as contemplated by the Affiliate Agreements, dispose of the goodwill or the business of the Joint Venture Company or any of its Subsidiaries; (5) Transfer its Interest in the Joint Venture Company (except as provided in Sections 12.2, 12.4 or 12.5); or (6) assign the property of the Joint Venture Company or any of its Subsidiaries in trust for creditors or on the assignee's promise to pay any indebtedness of the Joint Venture Company or any of its Subsidiaries.

7.3 Limited Liability of the Members. Except to the extent expressly set forth in Article 2 of this Agreement or otherwise in a written instrument executed by the Member against whom any liability is asserted in favor of the Person asserting such liability, the Members (solely in their capacity as Members) have no obligation to contribute to the Joint Venture Company or any of its Subsidiaries and shall not be liable for any debt, obligation or liability of the Joint Venture Company or any of its Subsidiaries. Any liability to return distributions made by the Joint Venture Company is limited to mandatory requirements of the Act or of any other Applicable Law.

7.4 Voting Rights of Members.

(A) Notwithstanding anything in this Agreement to the contrary, for so long as a Member's Percentage Interest is greater than [***] ([***]%) , the following actions shall require the unanimous approval of the Members:

(1) any amendment, restatement or revocation of the Certificate, except (a) as provided in Section 1.5(A) to effectuate a change in the principal place of business of the Joint Venture Company, (b) to change the name of the Joint Venture Company, (c) as required by Applicable Law, or (d) to accomplish any action that would be allowed under the terms and conditions of this Agreement where the only prohibition on the performance of such action is the terms of the Certificate;

(2) any material change in the business purpose of the Joint Venture Company or any of its Subsidiaries, other than a change in accordance with the proviso to Section 1.4;

(3) any Transfer of any Interest to any Person, except as expressly permitted by Sections 12.2, 12.4 or 12.5;

(4) any agreement with respect to all present or former Members to extend the period for assessing any tax which is attributable to any Joint Venture Company item or item of any of the Joint Venture Company's Subsidiaries;

(5) approving the inclusion within the business purpose of the Joint Venture Company or any of its Subsidiaries the manufacture of memory products other than NAND Flash Memory Products, subject to the proviso to Section 1.4;

(6) any approval or setting of any distribution to any Member (other than distributions of cash in accordance with Article 5); *provided*, *however*, that a Member's consent for the purposes of this Section 7.4(A)(6) shall not be unreasonably withheld; and

(7) the sale, license, assignment or other transfer of any intellectual property owned or in the possession of the Joint Venture Company or any Subsidiary of the Joint Venture Company (including any technology or know-how, whether or not patented, any trademark, trade name or service mark, any copyright or any software or other method or process) to any Person other than a Facilities Company or Wholly-Owned Subsidiary, except as provided in the Joint Venture Documents.

(B) Notwithstanding anything in this Agreement to the contrary, and in addition to the provisions of Section 7.4(A), for so long as a Member's Percentage Interest is at least [***] percent ([***]%), the following actions shall require the unanimous approval of the Members:

(1) the incurrence of any indebtedness for borrowed money, other than (i) as provided in Article 2 or Article 3 and (ii) any third-party equipment financing;

(2) any sale, lease, pledge (other than pledges of equipment under a permitted third-party equipment financing), assignment, transfer (other than transfers to a

Wholly-Owned Subsidiary of the Joint Venture Company) or other disposition of any asset of the Joint Venture Company or any of its Subsidiaries or group of assets in each case other than in the ordinary course, unless approved in an Undisputed Approved Business Plan or unless made in connection with a dissolution of the Joint Venture Company as contemplated by Article 13; *provided*, *however*, that unanimous approval will not be required if the aggregate amount of such sales, leases, pledges (other than pledges of equipment under a permitted third-party equipment financing), assignments, transfers (other than transfers to a Wholly-Owned Subsidiary of the Joint Venture Company) and other dispositions not in the ordinary course do not exceed the amount provided for in an Undisputed Approved Business Plan by more than $[***] in any Fiscal Year;

(3) any purchase, lease or other acquisition, in any single transaction or in a series of related transactions, of personal property or services or capital equipment inconsistent with an Approved Business Plan (after taking into account any general overrun provisions contained in such Approved Business Plan);

(4) any capital expenditures or series of related capital expenditures, that exceed the amount provided therefor in the most recently Approved Business Plan (after taking into account any general spending overrun provisions contained in such Approved Business Plan) or any commitment by the Joint Venture Company or any Subsidiary of the Joint Venture Company to make expenditures in any development project in an amount greater than the amount set forth in the most recently Approved Business Plan (after taking into account any general spending overrun provisions contained in such Approved Business Plan);

(5) any merger, consolidation or other business combination to which the Joint Venture Company or any Subsidiary of the Joint Venture Company is a party, or any other transaction to which the Joint Venture Company or any Subsidiary of the Joint Venture Company is a party (other than where the Joint Venture Company is merged or combined with or consolidated into a Wholly-Owned Subsidiary of the Joint Venture Company), resulting in a change of control of the Joint Venture Company or any Subsidiary of the Joint Venture Company, other than a change of control that may occur pursuant to Article 2 or Article 3;

(6) (a) the voluntary commencement or the failure to contest in a timely and appropriate manner any involuntary proceeding or the filing of any petition seeking relief under bankruptcy, insolvency, receivership or similar laws, (b) the application for or consent to the appointment of a receiver, trustee, custodian, conservator or similar official for the Joint Venture Company or any Subsidiary of the Joint Venture Company, or for a substantial part of their property or assets, (c) the filing of an answer admitting the material allegations of a petition filed against the Joint Venture Company or any Subsidiary of the Joint Venture Company in any proceeding described above, (d) the consent to any order for relief issued with respect to any proceeding described in this subsection (6), (e) the making of a general assignment for the benefit of creditors, or (f) the admission in writing of the Joint Venture Company's inability, or the failure of the Joint Venture Company or of any Subsidiary of the Joint Venture Company generally, to pay its debts as they become due or the taking of any action for the purpose of effecting any of the foregoing;

(7) the acquisition of any business or entry into any joint venture or partnership;

(8) the creation of any direct or indirect Subsidiary of the Joint Venture Company other than a Facilities Company or any Wholly-Owned Subsidiary; and

(9) negotiating external sources of additional wafer manufacturing capacity for Joint Venture Products.

In addition, such Member shall have the right to review and comment on any public announcement by the Joint Venture Company or any Subsidiary of the Joint Venture Company.

(C) Notwithstanding anything in this Agreement to the contrary, and in addition to the provisions of Sections 7.4(A) and 7.4(B), for so long as a Member's Percentage Interest is at least [***] percent ([***]%), the following actions shall require the unanimous approval of the Members:

(1) the purchase, license or other acquisition of rights to third party intellectual property other than routine software licenses in connection with the Joint Venture Company's or any of its Subsidiaries' ongoing operations.

7.5 Defaulting Member. Notwithstanding anything in this Agreement to the contrary, in no event shall the pursuit of any remedy by the Joint Venture Company or any of its Subsidiaries against a Defaulting Member pursuant to Section 17.7 require the consent of such Defaulting Member. The Non-Defaulting Member shall have the right to control the Joint Venture Company's pursuit of any such claim against the Defaulting Member.

7.6 Cooperation.

(A) Intel may take action on behalf of the Joint Venture Company as contemplated by Schedule 3 and shall cooperate with and keep Micron regularly informed with respect to any Intel Matter.

(B) Micron may take action on behalf of the Joint Venture Company as contemplated by Schedule 4 and shall cooperate with and keep Intel regularly informed with respect to any Micron Matter.

ARTICLE 8.
OFFICERS AND COMMITTEES

8.1 Intel Executive Officer.

(A) Until the [***] anniversary of the Effective Date (the "**Management Conversion Date**"), the Joint Venture Company shall have an executive officer appointed by Intel (the "**Intel Executive Officer**") who, together with the Micron Executive Officer, shall have responsibility for the day-to-

day management and control of the business and affairs of the Joint Venture Company and its Subsidiaries and overseeing the implementation of the strategic direction of the Joint Venture Company and its Subsidiaries. The Intel Executive Officer shall perform such duties and have such powers specifically delegated to the Intel Executive Officer

by the Board of Managers. The Intel Executive Officer shall be an employee of Intel seconded to the Joint Venture Company by Intel, subject to the consent of Micron, which consent shall not be unreasonably withheld or delayed. Intel shall have the right to remove the Intel Executive Officer at any time, with or without cause, *provided* that it provides at least ten (10) days written notice of such removal to Micron and the Joint Venture Company. Intel shall have the right to fill any vacancy in the position of Intel Executive Officer for any reason (including as a result of the Intel Executive Officer's death, resignation, retirement or removal pursuant to this Section), subject to the consent of Micron, which consent shall not be unreasonably withheld or delayed. The Intel Executive Officer shall report directly to the Board of Managers.

(B) The Board of Managers shall determine, from time to time, the incentive compensation for which the Intel Executive Officer may be eligible based upon the Joint Venture Company's operational success.

8.2 Micron Executive Officer.

(A) Until the Management Conversion Date, the Joint Venture Company shall have an executive officer appointed by Micron (the "**Micron Executive Officer**") who, together with the Intel Executive Officer, shall have responsibility for the general management and control of the day-to-day business and affairs of the Joint Venture Company and its Subsidiaries and overseeing the implementation of the strategic direction of the Joint Venture Company and its Subsidiaries. The Micron Executive Officer shall perform such duties and have such powers specifically delegated to the Micron Executive Officer by the Board of Managers. The Micron Executive Officer shall be an employee of Micron seconded to the Joint Venture Company by Micron, subject to the consent of Intel, which consent shall not be unreasonably withheld or delayed. Micron shall have the right to remove the Micron Executive Officer at any time, with or without cause, *provided* that it provides at least ten (10) days written notice of removal to Intel and the Joint Venture Company. Micron shall have the right to fill any vacancy in the position of Micron Executive Officer for any reason (including as a result of the Micron Executive Officer's death, resignation, retirement or removal pursuant to this Section), subject to the consent of Intel, which consent shall not be unreasonably withheld or delayed. The Micron Executive Officer shall report directly to the Board of Managers.

(B) The Board of Managers shall determine, from to time, the incentive compensation for which the Micron Executive Officer may be eligible based upon the Joint Venture Company's operational success.

8.3 Lead Controller/Chief Financial Officer.

(A) The Joint Venture Company shall have a financial manager (the "**Lead Controller**") who shall serve as the principal financial officer of the Joint Venture Company and shall have responsibility for and authority over the day-to-day financial matters of the Joint Venture Company and its Subsidiaries. The Lead Controller shall perform such duties and have such powers specifically delegated to the Lead Controller by the Board of Managers. The Lead Controller shall be an employee of Micron seconded to the Joint Venture by Micron, or another individual selected by Micron, subject to the consent of Intel, which consent shall not be unreasonably withheld or delayed. Micron shall have the right to remove the Lead Controller at any time, with or without cause, *provided* that it provides at least ten (10) days written notice of removal to Intel and the Joint Venture Company. Micron shall have the right to fill any vacancy

in the position of Lead Controller for any reason (including as a result of the Lead Controller's death, resignation, retirement or removal pursuant to this Section), subject to the consent of Intel, which consent shall not be unreasonably withheld or delayed. The Lead Controller shall report directly to the Board of Managers.

(B) The Board of Managers shall determine, from time to time, the incentive compensation for which the Lead Controller may be eligible based upon the Joint Venture Company's operational success.

(C) For so long as there is a Lead Controller who is seconded to the Joint Venture Company by a Member, the other Member shall be entitled to second to the Joint Venture Company a senior finance officer to assist the Lead Controller in the execution of his or her duties set forth in this Section 8.3. The Board of Managers shall determine, from time to time, the incentive compensation for which such officer may be eligible based upon the Joint Venture Company's operational success.

(D) Upon the Management Conversion Date, the position of the Lead Controller shall terminate and the Board of Managers shall appoint a Chief Financial Officer (the "**Chief Financial Officer**") who shall be an employee of the Joint Venture Company and shall report directly to the Chief Executive Officer. The Chief Financial Officer shall have the responsibilities specifically delegated to the Lead Controller by the Board of Managers, shall perform all other duties and shall have all powers that are delegated to him or her by the Board of Managers or the Chief Executive Officer, and shall be selected by the Board of Managers. For purposes of this Agreement, the Lead Controller and the Chief Financial Officer are referred to interchangeably as the "**Financial Officer**."

8.4 Chief Executive Officer. Upon the Management Conversion Date, the Board of Managers shall appoint a Chief Executive Officer (the "**Chief Executive Officer**"), who shall have responsibility for the day-to-day general management and control of the business and affairs of the Joint Venture Company and its Subsidiaries and overseeing the implementation of the strategic direction of the Joint Venture Company and its Subsidiaries. The Chief Executive Officer shall perform or oversee those duties that were specifically delegated to the Intel Executive Officer and Micron Executive Officer by the Board of Managers prior to the Management Conversion Date and shall perform all other duties and have all powers that are that are commonly incident to the office of chief executive officer or that are specifically delegated to him or her by the Board of Managers. The Chief Executive Officer shall be an employee of the Joint Venture Company, selected by the Board of Managers, subject to the consent of any Member whose Percentage Interest is at least [***] percent ([***]%), which consent shall not be unreasonably withheld or delayed. The Board of Managers shall have the right to remove any Chief Executive

Officer at any time, with or without cause, subject to the terms of any employment contract between the Joint Venture Company and the Chief Executive Officer.

8.5 General Provisions Regarding Officers.

(A) There shall be one or more site managers of the Joint Venture Company who shall serve as officers of the Joint Venture Company and shall have such authority and perform or oversee those duties that are delegated to such officers by the Board of Managers or the Authorized Officers or Chief Executive Officer, as applicable. The Board of Managers may, from time to time, designate other officers of the Joint Venture Company, delegate to such

officers such authority and duties as the Board of Managers may deem advisable and assign titles to any such officers. Except as otherwise provided in this Agreement, prior to the Management Conversion Date, officers may either be employees of the Joint Venture Company or Seconded Employees. Unless the Board of Managers otherwise determines or unless otherwise provided by this Agreement, if the title assigned to an officer of the Joint Venture Company is one commonly used for officers for businesses of comparable size in the same industry, then, subject to the terms of this Agreement, the assignment of such title shall constitute the delegation to such officer of the authority and duties that are customarily associated with such office for businesses of comparable size in the same industry. Except as otherwise provided in this Agreement, any number of titles may be held by the same individual.

(B) Subject to all rights, if any, under any contract of employment, any officer to whom a delegation is made pursuant to Section 8.5(A) shall serve in the capacity delegated unless and until such delegation is revoked by the Board of Managers for any reason or no reason whatsoever, with or without cause, or such officer resigns.

8.6 Manufacturing Committee. The Members shall, by mutual agreement, establish a manufacturing committee (the "**Manufacturing Committee**") to, among other things, consult with the Joint Venture Company and the Members regarding the output of Joint Venture Products to the Members. The membership, function, objectives and procedures of the Manufacturing Committee are set forth in Appendix E to this Agreement.

8.7 Waiver of Fiduciary Duties.

(A) In connection with the determination of any and all matters presented for action to the Members, the Board of Managers or the Manufacturing Committee, as applicable, the Members acknowledge and agree that each Member will be acting on its own behalf and each Representative serving on the Board of Managers or the Manufacturing Committee will be acting on behalf of the Member that appointed such Representative.

(B) Each Member may act, and, to the fullest extent permitted by Applicable Law, will be protected for acting, in its own interest (subject to the express terms of any contract entered into by such Member) without regard to the interest of the other Member or the Joint Venture Company or any of its Subsidiaries, and, subject to Section 8.7(D), each Representative may act, and, to the fullest extent permitted by Applicable Law, will be protected for acting at the direction or control of, or in a manner that such Representative believes is in the best interest of, the Member that appointed the Representative without regard to the interest of the other Member or the Joint Venture Company or any of its Subsidiaries. Further, each Member may, to the fullest extent permitted by Applicable Law (subject to the express terms of any contract entered into by such Member), make decisions and exercise direction and control over the decisions of the Representatives appointed by such Member without duty to or regard for the interests of the other Member or the Joint Venture Company or any of its Subsidiaries.

(C) The Joint Venture Company, on its own behalf and on behalf of each of its Subsidiaries, and each Member waives, to the fullest extent permitted by Applicable Law, (1) any claim or cause of action against any Member or Manager or member of the Manufacturing Committee appointed by a Member, based on the determination of any and all matters presented for action to the Members, the Board of Managers or the Manufacturing Committee, as applicable, (2) breach of fiduciary duty, duty of care, duty of loyalty or any other

duty or (3) breach of the Act; *provided*, *however*, the foregoing will not limit any Member's obligation under or liability for breach of the express terms of this Agreement or any other agreement that they have entered into with the Joint Venture Company or any of its Subsidiaries or the other Member; and *provided further*, *however*, that no Member shall negotiate or enter into or request or otherwise cause the Joint Venture Company to negotiate or enter into any agreement or transaction that would result in such Member or any of its Subsidiaries receiving any financial consideration or other tangible property incentive, payment or other form of financial consideration or other tangible property consideration from any Governmental Entity or Person based upon the Joint Venture Company's taking an action (including hiring any employees, undertaking any construction or purchasing any equipment) or entering into such agreement or transaction other than as a Member of the Joint Venture Company pursuant to this Agreement, and any Member who receives any such consideration or other tangible property incentive, payment or other form of financial consideration or other tangible property consideration from any Governmental Entity or Person in respect of the Joint Venture Company's activities, shall promptly convey such consideration or other tangible property incentive, payment or other form of financial consideration or other tangible property consideration from any Governmental Entity or Person to the Joint Venture Company without any adjustment in the Capital Contribution Balance of such Member.

(D) The term "**Representative**" shall mean, with respect to a Member, the Managers and members of the Manufacturing Committee appointed by such Member and the employees, agents and other representatives of such Member including the Seconded Employees of such Member, but not including, only for purposes of Section 8.7(C)(2), the Chief Executive Officer, the Intel Executive Officer, the Micron Executive Officer, the Lead Controller, the Chief Financial Officer or any other officer or site manager of the Joint Venture Company (and each such officer shall be bound by such fiduciary and other duties (including the duty of care and the duty of loyalty) as would apply to an officer having comparable authority and duties under the DGCL).

ARTICLE 9.
EMPLOYEE MATTERS

9.1 Joint Venture Company Employees; Seconded Employees. The Joint Venture Company shall employ its own personnel and shall be their exclusive employer. In addition, certain other persons who are employed by Micron or Intel may be assigned by Micron or Intel, respectively, to work for the

Joint Venture Company for a given period of time ("**Seconded Employees**") pursuant to the terms and conditions of the Micron Personnel Secondment Agreement or the Intel Personnel Secondment Agreement, respectively. Seconded Employees may be utilized to provide services to the Joint Venture Company until (1) the time specified in Article 8 for certain Seconded Employees acting as officers of the Joint Venture Company, (2) with respect to Seconded Employees employed by Micron, until the time determined under the terms of the Micron Personnel Secondment Agreement, or (3) with respect to Seconded Employees employed by Intel, until the time determined under the terms of the Intel Personnel Secondment Agreement. Notwithstanding the foregoing, no Seconded Employee will become employed by the Joint Venture Company or any of its Subsidiaries unless agreed among the Joint Venture Company and the Members.

9.2 Performance and Removal of Seconded Employees. The Intel Executive Officer and Micron Executive Officer shall consult with one another with respect to any Seconded

Employee, regardless of Member origin, who is not adequately performing or adequately adapting to the team environment of the Joint Venture Company, and discuss appropriate action. If a decision is made by the Intel Executive Officer, in the case of an Intel Seconded Employee, or the Micron Executive Officer, in the case of a Micron Seconded Employee, that such employee should be reassigned to duties other than with the Joint Venture Company, the Intel Executive Officer or the Micron Executive Officer, as the case may be, will make reasonably prompt efforts to request the seconding Member to reassign such employee to duties other than with the Joint Venture Company as such seconding Member shall determine in its sole discretion. In no event will the Intel Executive Officer or Micron Executive Officer have (i) the authority to reassign any Seconded Employee of the other Member (either within the Joint Venture Company or to any other assignment), or (ii) the ability to terminate the employee relationship between a Seconded Employee of the other Member and his or her Member employer. Intel and Micron shall each determine in its own sole discretion with regard to its own Seconded Employees whether or not, and if so under what conditions, the Intel Executive Officer (in the case of Intel) or the Micron Executive Officer (in the case of Micron) may either reassign the duties of (either within the Joint Venture Company or to any other assignment) or terminate the employment relationship with its own Seconded Employees.

For avoidance of doubt, this Section 9.2 shall not apply to the Intel Executive Officer, the Micron Executive Officer, or the Lead Controller whose performance shall be subject to review by the Board of Managers. Furthermore, the Board of Managers shall possess the authority to require that a Seconded Employee be reassigned by the seconding Member to duties other than with the Joint Venture Company. Subject to the terms of the Intel Personnel Secondment Agreement and the Micron Personnel Secondment Agreement, as the case may be, the Chief Executive Officer shall possess the authority to require that a Seconded Employee be reassigned by the seconding Member to duties other than with the Joint Venture Company.

9.3 Forms. (A) The Joint Venture Company and each of its Subsidiaries shall have policies applicable to, and ensure that all of its officers, employees and third-party independent contractors, third-party consultants, and other third-party service providers enter into appropriate agreements with respect to, (1) protection of confidential information of the Joint Venture Company and its Subsidiaries, (2) compliance with Applicable Laws, and (3) other matters related to the delivery of services to, or employment of such Person by, the Joint Venture Company or its Subsidiaries. The Joint Venture Company and each of its Subsidiaries shall have policies applicable to, and ensure that all of its officers and employees enter into appropriate agreements with respect to intellectual property assignment, including invention disclosures, pursuant to which ownership to any intellectual property created in the course of employment with the Joint Venture Company or any of its Subsidiaries shall be assigned to the Joint Venture Company. The Joint Venture Company and each of its Subsidiaries shall have policies applicable to, and ensure that all of its third-party independent contractors, third-party consultants, and other third-party service providers that create intellectual property in the course of performing services for the Joint Venture Company or any of its Subsidiaries, enter into appropriate agreements with the Joint Venture Company with respect to the Joint Venture Company's ownership of or the Joint Venture Company and its Subsidiaries' right to use such intellectual property. The forms referred to in this Section 9.3 are collectively referred to as the "**Service Provider Related Forms**."

(B) Notwithstanding any preceding provisions in this Section 9.3 or elsewhere, no Seconded Employee shall be required to sign any Service Provider Related Forms, except with

respect to acknowledgement of and agreement regarding policies of the Joint Venture Company addressing conduct while performing services at the premises of the Joint Venture Company, such as workplace safety, but excluding matters relating to protection of confidential information of the Joint Venture Company and its Subsidiaries and intellectual property assignment, which issues have been addressed in other documents. The Joint Venture Company shall be responsible for providing those appropriate Service Provider Related Forms, if any, prepared by the Joint Venture Company for Seconded Employees to the appropriate Seconded Employees, following up to make sure they are signed and for properly storing such forms; however Intel and Micron shall each require that their Seconded Employees sign the applicable Service Provider Related Forms when requested to do so by the Joint Venture Company.

9.4 Compensation and Benefits.

(A) The Joint Venture Company and its Subsidiaries shall have compensation and benefits programs for the employees of the Joint Venture Company and its Subsidiaries (excluding, for this purpose, Seconded Employees) at its locations consistent with local practices in each respective geographic area, as determined by the Intel Executive Officer and Micron Executive Officer, or the Chief Executive Officer, as applicable, and, to the extent required by law or this Agreement, approved by the Board of Managers, which may initially be modeled after Micron's local compensation and benefits programs if deemed to be appropriate and competitive by the Intel Executive Officer and the Micron Executive Officer (or the Chief Executive Officer, when applicable) and, if applicable, the Board of Managers. Incentive compensation programs for Joint Venture Company employees and the employees of any Subsidiary of the Joint Venture Company will be tied to the Joint Venture Company's operational success, as determined by the Intel Executive Officer and the Micron Executive Officer (or the Chief Executive Officer, when applicable) and approved by the Board of Managers.

(B) It is the intention of Micron to offer its employees who transfer to the Joint Venture Company the option to transfer up to [***] hours of their current accrued Time Off Plan ("**TOP**") hours balance to the comparable plan of the Joint Venture Company to be administered in accordance with the terms of such plan. If Micron allows such a transfer and if an employee so elects, the Joint Venture Company shall credit the employee's Joint Venture Company TOP (or similar time bank) account with the transferred hours and Micron shall pay the Joint Venture Company an amount equal to the person's base hourly rate (or a calculated base hourly rate in case of salaried employees) multiplied by the TOP hours transferred.

(C) It is the intention of Intel to offer its employees who transfer to the Joint Venture Company the option to transfer up to [***] hours of their current accrued vacation and personal absence hours balance to the comparable plan of the Joint Venture Company to be administered in accordance with the terms of such plan. If Intel allows such a transfer and if an employee so elects, the Joint Venture Company shall credit the employee's Joint Venture Company TOP (or similar time bank) account with the transferred hours and Intel shall pay the Joint Venture Company an amount equal to the person's base hourly rate (or a calculated base hourly rate in case of salaried employees) multiplied by the vacation and personal absence hours transferred.

ARTICLE 10.
RECORDS, ACCOUNTS AND REPORTS

10.1 Books and Records. The Authorized Officers, or the Chief Executive Officer, as applicable, shall keep or cause to be kept adequate books and records with respect to the Joint Venture Company's and each of its Subsidiaries' business, including the following:

(A) a current list of the full name and last known business address of each Member and its appointed Managers and all officers and Representatives;

(B) copies of records that would enable a Member to determine the relative Committed Capital, Percentage Interests, Sharing Interests, Economic Interests, Member Debt Financing, Capital Contribution Balances and Accumulated Distributions Accounts of the Members and to determine whether any Balance Sheet Metric Event or Operating Metric Event has occurred in any relevant period;

(C) a copy of the Certificate together with any amendments;

(D) copies of the Joint Venture Company's and each of its Subsidiaries' federal and state income tax returns and reports, if any, for the longer of (1) five (5) years from the time of filing or (2) with respect to any such tax return of the Joint Venture Company, until the expiration of the statute of limitations on the assessment of income tax liabilities for the taxable year of each Member in which the income required to be shown on such tax return of the Joint Venture Company is required to be included (and each Member shall promptly respond to requests from the officers of the Joint Venture Company in order to determine whether such statute of limitations has expired);

(E) a copy of this Agreement, together with any amendments;

(F) copies of any financial statements of the Joint Venture Company and its Subsidiaries for the greater of its seven (7) most recent years or all open taxable years;

(G) copies of all Proposed Business Plans, Approved Business Plans, Member Business Plans and Operating Plans;

(H) minutes of meetings of the Members, the Board of Managers, and any other committee appointed by the Board of Managers from time to time and all written consents in lieu of a meeting; and

(I) any other records required to be maintained by the Act.

10.2 Access to Information.

(A) To the extent not in violation of Applicable Law, each Member and its agents (which may include employees of the Member or the Member's independent certified accountants) shall have the right, at any reasonable time, to inspect, review, copy and audit (or cause to be audited) at the expense of the inspecting Member any and all properties, assets, books of account, corporate records, contracts, documentation and any other material of the Joint Venture Company or any of its Subsidiaries, at the request of the inspecting Member. Upon such request, the Joint Venture Company and each of its relevant Subsidiaries shall use reasonable

efforts to make available to such inspecting Member the Joint Venture Company's accountants and key employees for interviews to verify information furnished or to enable such Member to otherwise review the Joint Venture Company or any of its Subsidiaries and their operations. Such availability is conditioned upon the terms and conditions of the Confidentiality Agreement.

(B) The Members recognize that the Joint Venture Company may, from time to time, be in possession of Competitively Sensitive Information belonging to a Member, and in no event shall a Member be entitled to access any Competitively Sensitive Information of the other Member in the possession of the Joint Venture Company. The Joint Venture Company shall maintain procedures reasonably acceptable to both Members (including requiring that the Members use reasonable efforts to label or otherwise identify Competitively Sensitive Information as such) to ensure that the Joint Venture Company will not disclose or provide Competitively Sensitive Information of one Member to the other Member (other than to a Joint Venture Company employee or to a Seconded Employee of the other Member to the extent required for such employee or Seconded Employee to perform his or her duties for the Joint Venture Company) or any third party unless such disclosure is specifically requested by the Member providing such Competitively Sensitive Information. The Joint Venture Company shall not be liable for inadvertent disclosures of Competitively Sensitive Information that was not labeled or identified as such.

(C) Upon request, each Member agrees to use reasonable efforts to provide the other Member and the Joint Venture Company with reasonable access to those portions of its facilities and to those items of its equipment that are being used to provide services to the Joint Venture Company, and to those employees who are providing services to the Joint Venture Company, to verify information regarding such operations or enable such Member and the Joint Venture Company to otherwise review the services being provided to the Joint Venture Company.

10.3 Operations Reports. Subject to Section 10.2(B), the Joint Venture Company and each of its Subsidiaries shall provide both Members with all quarterly, monthly and weekly reporting packages containing such manufacturing and production reports as may be required to be delivered under any agreement with, or otherwise requested by, either Member.

10.4 Financial Reports. The Joint Venture Company and each of its Subsidiaries shall provide the Members the following:

(A) Monthly Reports.

(1) for each Fiscal Month, the Joint Venture Company, and if requested, each of its Subsidiaries, shall provide each Member with the following monthly reports prepared in accordance with Modified GAAP consistently applied, in each case within the time period specified below:

(a) Monthly Flash Report within eight (8) days after the end of each Fiscal Month;

(b) monthly cash flow report within fifteen (15) days after the end of each Fiscal Month;

(c) month-end balance sheet within fifteen (15) days after the end of each Fiscal Month;

(d) monthly profit and loss statement within fifteen (15) days after the end of each Fiscal Month;

(e) monthly operational spending summary within fifteen (15) days after the end of each Fiscal Month; and

(f) such other reports as may be required to be delivered under any agreement with, or otherwise reasonably requested by, either Member.

(2) With respect to each of the monthly reports set forth in Section 10.4(A)(1), each Member may provide a sample format for such monthly report as is necessary and appropriate.

(B) Quarterly Reports. (1) As soon as available, but not later than twenty (20) days after the end of each Fiscal Quarter (other than Fiscal Quarters ending on the last day of a Fiscal Year, *provided* that the information required by this Section 10.4(B) will be included in the reports delivered pursuant to Section 10.4(C) below for the Fiscal Year ending on such date), the Joint Venture Company shall provide to each Member a consolidated balance sheet of the Joint Venture Company as of the end of such period and consolidated statements of income, cash flows and changes in Members' equity, as applicable, for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding Fiscal Year, and including comparisons to the Approved Business Plan, each prepared in accordance with Modified GAAP. The Financial Officer shall discuss with the Members such quarterly financial data and the business outlook of the Joint Venture Company and its Subsidiaries and shall be available to respond to questions from the Members regarding such data and outlook.

(3) In addition, as soon as available, but not later than thirty (30) days after the end of each Fiscal Quarter, the Joint Venture Company shall provide to each Member a consolidated balance sheet of the Joint Venture Company as of the end of each Fiscal Quarter and consolidated statements of income and changes in Members' equity, as applicable, for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding Fiscal Year (to the extent such comparison is appropriate), each prepared in accordance with GAAP. The Joint Venture Company shall also provide a reconciliation that describes and quantifies the differences between the consolidated financial statements prepared in accordance with GAAP and the consolidated financial statements prepared in accordance with Modified GAAP. The non-Consolidating Member may reasonably request that the Consolidating Member use its reasonable efforts to engage the Consolidating Member's external auditor to perform certain agreed-upon procedures with respect to such reconciliation. Upon such request, the Consolidating Member shall not unreasonably deny or delay such request. The non-Consolidating Member shall promptly reimburse the Consolidating Member for the incremental costs incurred by the

Consolidating Member with respect to the performance of such agreed-upon procedures by the Consolidating Member's external auditor.

(C) Annual Audit. As soon as available, but not later than sixty (60) days after the end of each Fiscal Year of the Joint Venture Company commencing with the Fiscal Year ended August 31, 2006, audited consolidated financial statements of the Joint Venture Company and its Subsidiaries, which shall include statements of income, cash flows and changes in Members' equity, as applicable, for such Fiscal Year and a balance sheet as of the last day thereof, each prepared in accordance with GAAP, consistently applied, and accompanied by the report of a firm of independent certified public accountants selected from time to time by the Board of Managers (the "**Accountants**").

(D) Right to Audit. Either Member may conduct a separate audit of the Joint Venture Company's financial statements and internal controls over financing reporting at its own expense, and the Members agree to use all reasonable efforts to coordinate the timing of any separate audits that any Member elects to conduct.

10.5 Reportable Events.

(A) The Joint Venture Company shall provide notice to the Members of any Member Reportable Event as soon as possible and in any event no later than [***] ([***]) days following the occurrence of said event. The following events shall be "**Member Reportable Events**":

(1) any action by the Joint Venture Company or a Subsidiary of the Joint Venture Company that will result in recording an impairment of assets of the Joint Venture Company or any of its Subsidiaries, including without limitation, intangibles, goodwill, fixed assets, accounts receivable and inventory, that is expected to exceed $[***], individually or when aggregating other similar assets impaired at the same time;

(2) any decision to shutdown a business unit, close a facility, dispose of long-lived assets or terminate employees (in a FAS 146 plan of termination) whereby the Joint Venture Company or a Subsidiary of the Joint Venture Company may incur an accounting charge that would exceed $[***];

(3) entry by the Joint Venture Company or a Subsidiary of the Joint Venture Company into any off-balance sheet arrangement (unconsolidated transactions with a third party under which the entity retains or has a contingent interest in transferred assets or is obligated under derivative instruments classified in equity, or with a third party that constitutes a "variable interest entity" under FIN 46);

(4) the execution, amendment or termination of a contract that meets one of the following thresholds:

(a) patent, copyright or trademark license requiring payment of more than $[***];

(b) technology licenses requiring payment of more than $[***];

(c) contracts for supply of equipment or materials (i) from either a sole source (single qualified source or true sole source), a supplier with only one site, or a supplier located only in a "high risk" geographic area and (ii) where interruption of supply may cause a key Joint Venture Product to experience a launch delay or production interruption with revenue impact of more than $[***] in a ninety (90)-day period; and

(d) other contracts with a value in excess of $[***]; and

(5) entry into any short-term debt (payable within one year), long-term debt, capital lease, operating lease or guaranty in excess of $[***].

(B) The Joint Venture Company shall provide notice to the Members of any Joint Venture Reportable Event as soon as possible and in any event no later than [***] ([***]) days after the Joint Venture Company becomes aware of such Joint Venture Reportable Event. The following events shall be "**Joint Venture Reportable Events**":

(1) receipt by the Joint Venture Company or any of its Subsidiaries of an offer to buy an Interest in the Joint Venture Company or any of its Subsidiaries or a significant amount of its assets or to merge or consolidate with the Joint Venture Company or any of its Subsidiaries, or any indication of interest from any Person with respect to any such transaction;

(2) the commencement, or threat delivered in writing, of any lawsuit involving the Joint Venture Company or any of its Subsidiaries;

(3) the receipt by the Joint Venture Company or any of its Subsidiaries of a notice that the Joint Venture Company or any of its Subsidiaries is in default under any loan agreement to which the Joint Venture Company or any of its Subsidiaries is a party;

(4) any breach by the Joint Venture Company or any of its Subsidiaries or a Member or an Affiliate of a Member of any contract, agreement or understanding between the Joint Venture Company or any of its Subsidiaries and a Member or an Affiliate of a Member;

(5) any recall of, or other significant alleged product defects with respect to, any product manufactured by the Joint Venture Company or any of its Subsidiaries, whether or not as a result of a request or order by any Governmental Entity;

(6) any material adverse change with respect to the current status of any item of intellectual property rights owned by the Joint Venture Company or any of its Subsidiaries ("**Intellectual Property Rights**"), including receipt of any adverse notice from any Governmental Entity with respect to such item of Intellectual Property Rights and notice of any action taken or threatened by any third party that could affect the validity of any item of Intellectual Property Rights;

(7) the removal or resignation of the Accountants for the Joint Venture Company, or any adoption, or material modification, of any significant accounting policy or tax policy other than those required by GAAP; or

(8) any other event that has had, or could reasonably be expected to have, a material adverse effect on the business, results of operations, financial condition or assets of the Joint Venture Company or any of its Subsidiaries.

10.6 Tax Information.

(A) Estimated Tax Information. The Financial Officer shall deliver the following information to each Member, as provided below:

(1) on or prior to the date that is ninety (90) days following the end of each Joint Venture Company taxable year, an estimate of the United States federal and material state taxable income of the Joint Venture Company for such taxable year; and

(2) on or prior to the date that is thirty (30) days following the end of each Joint Venture Company taxable quarter, an estimate of the United States federal and material state taxable income of the Joint Venture Company for the taxable year of the Joint Venture Company as of the end of such taxable quarter.

(B) Tax Returns. The Financial Officer shall deliver to each Member, on or prior to the date that is one hundred twenty (120) days following the end of each Joint Venture Company taxable year, a draft of the United States federal and material state income tax returns (and related attachments including Schedule K-1) of the Joint Venture Company for such taxable year. Each Member shall have fifteen (15) days to review such tax returns and provide written comments thereon to the Joint Venture Company, and to the extent the Joint Venture Company does not intend to incorporate such comments into such tax returns the Joint Venture Company and the Members shall attempt to resolve any disagreements within fifteen (15) days after the delivery of such comments to the Joint Venture Company. If the Members and the Joint Venture Company are unable to resolve any disputes regarding the content of such tax returns within such fifteen (15)-day period, the issue or issues shall be referred for resolution to a partner at a "Big 4" accounting firm (or other nationally recognized accounting firm) reasonably acceptable to the Members and the Joint Venture Company, who shall be requested to resolve open issues, on the basis of the position most likely to be sustained if challenged in a court having initial jurisdiction over the matter (which for federal income tax issues shall be deemed to be the United States Tax Court), no later than one hundred eighty (180) days following the end of such taxable year. The decision of such accounting firm shall be final and binding on the Members and the Joint Venture Company, and the costs of such accounting firm shall be Joint Venture Company costs. The Joint Venture Company shall deliver final income tax returns (including related schedules) to the Members within two hundred twenty (220) days after the end of each taxable year of the Joint Venture Company, but not prior to the resolution of disputes among the Members and the Joint Venture Company with respect to such tax returns; *provided* that if such tax returns become due (taking into account extensions of time to file, which the Joint Venture Company shall seek as necessary to avoid the delinquent filing of its tax returns) they shall be filed as determined by the Joint Venture Company and shall be amended and re-filed as required by the outcome of the referral to the accounting firm as provided herein.

10.7 Tax Matters and Tax Matters Partner. The [***] at the end of a given taxable year (or, if there is no [***] at such time, the Member that served as the Tax Matters Partner for the prior year) shall serve as the "**Tax Matters Partner**" under the Code and in any similar capacity under state, local or foreign law for such year. The Tax

Matters Partner shall supply such information to the Internal Revenue Service as may be necessary to cause the other Member to be a "notice partner" as defined in Code Section 6231(a)(8). The Tax Matters Partner shall keep each Member informed of any administrative or judicial proceeding relative to any adjustment or proposed adjustment at the Joint Venture Company level of Joint Venture Company items, and shall provide the other Member with notice and an opportunity to participate in significant meetings or other proceedings (both in person and by telephone), preparation of correspondence and other significant events with respect to taxes pertaining to the Joint Venture Company. Without the prior written approval of all Members, the Tax Matters Partner shall not (a) enter into any settlement agreement with the Internal Revenue Service which purports to bind or otherwise could adversely affect Persons other than the Tax Matters Partner and any Members who agree in writing to be bound by such agreement, (b) file a petition as contemplated by Sections 6226(a) or 6228 of the Code, (c) intervene in any action as contemplated by Section 6226(b) of the Code, (d) file any request as contemplated by Section 6227(c) of the Code, (e) enter into an agreement extending the period of limitation as contemplated by Section 6229(b)(1)(B) of the Code, (f) take any actions comparable to those described in clauses (a) through (e) under state, local or foreign tax law or (g) take any other action in its capacity as Tax Matters Partner that could significantly affect the tax liability of the other Member.

10.8 Bank Accounts and Funds. Except as otherwise provided in Section 2.2, Joint Venture Company funds, including cash Capital Contributions, shall be deposited in an interest-bearing account or accounts in the name of the Joint Venture Company and shall not be commingled with the funds of any Member, Manager or any other Person. All checks, orders or withdrawals shall be signed by any one or more Persons as authorized by the Board of Managers and subject to the approval rights set forth in Section 10.9(E).

10.9 Internal Controls.

(A) The Joint Venture Company shall have in place a system of internal controls over financial reporting in accordance with the policies of the Consolidating Member as of the Effective Date, the design and operation of which shall be monitored and approved by the Board of Managers and the Financial Officer. Changes to the Joint Venture Company's system of internal controls over financial reporting shall be made at the request of either Member (and if requested by the Non-Consolidating Member, the Non-Consolidating Member shall reimburse the Joint Venture Company for its reasonable costs incurred in implementing the changes), subject to the other Member's approval, which approval shall not be unreasonably withheld, and, subject to the approval of the Board of Managers and the approval of the Financial Officer, which shall not be unreasonably withheld; *provided*, *however*, that in the event of a Change of Consolidating Member, the internal controls over financial reporting and accounting systems of the Joint Venture Company shall, at the Joint Venture Company's expense, be modified as necessary to satisfy the new Consolidating Member's requirements relating to internal controls over financial reporting, and such Member shall be entitled to receive the information and perform the testing that either it or such Member's auditors deem necessary or advisable to satisfy their responsibilities related thereto.

(B) Each Member shall be entitled, at its own expense, to have one or more internal auditors (not to exceed three (3) internal auditors at any single Facility) located on site at the offices and facilities of the Joint Venture Company with full access to all of the Joint Venture Company's financial and manufacturing records and reporting systems; *provided*, *however*, that

such internal auditors shall be required to abide by the procedures maintained by the Joint Venture Company pursuant to Section 10.2(B) for preventing the inappropriate sharing of such information.

(C) The Consolidating Member shall provide to the non-consolidating Member such information as the non-consolidating Member may reasonably request in connection with the assessment of whether a Change of Consolidating Member has occurred or may occur. The Consolidating Member, if it is the Non-Funding Member with respect to any outstanding Member Notes, shall promptly notify the non-consolidating Member if it has determined that it is reasonably likely to not contribute to the Joint Venture Company any amounts to be used to repay any such Member Notes in accordance with Article 3.

(D) The Consolidating Member shall make available to the non-Consolidating Member the findings of the external auditor of the Consolidating Member with respect to the Consolidating Member's annual audit and of its internal control over financial reporting to the extent such findings are applicable to the internal control over financial reporting of the Joint Venture Company. The non-Consolidating Member may reasonably request that the Consolidating Member use its reasonable efforts to engage the Consolidating Member's external auditor to perform certain agreed-upon procedures with

respect to such internal control over financial reporting of the Joint Venture Company. Upon such request, the Consolidating Member shall not unreasonably deny or delay such request. The non-Consolidating Member shall promptly reimburse the Consolidating Member for the incremental costs incurred by the Consolidating Member with respect to the performance of such agreed-upon procedures by the Consolidating Member's external auditor.

(E) The internal controls over financial reporting referenced in this Section 10.9 shall provide, among other things, that prior to the Management Conversion Date, Joint Venture Company expenditures greater than $[***] shall require approval of both Authorized Officers and shall thereafter require the approval of the Chief Executive Officer; *provided*, *however*, that a decision to approve or disapprove any such expenditure shall be made in a manner consistent with the [***] Budget and [***] Budget or Annual Budget, as applicable, included in the then-effective Approved Business Plan.

ARTICLE 11.
BUSINESS PLAN

11.1 Initial Business Plan; Initial Budgets.

(A) Initial Approved Business Plan. The Members have agreed upon an initial Approved Business Plan (the "**Initial Business Plan**") of the Joint Venture Company and its Subsidiaries covering the operations of the Joint Venture Company and its Subsidiaries from the Effective Date through [***] , which is the end of the Applicable Fiscal Quarter (the "**Initial Period**"). The Initial Business Plan shall be deemed to be an Undisputed Approved Business Plan.

(B) Initial Budgets. The Initial Business Plan includes an [***] budget (the "**[***] Budget**") in accordance with which the Joint Venture Company's and each of its Subsidiaries' operating and capital expenditures relating to matters not covered by the [***] Budget shall be made during the Initial Period and the Capital Contributions that will be needed from the Members during each Fiscal Quarter of the Initial Period to fund the [***] Budget.

Such operating and capital expenditures will be funded by the Members' Initial Capital Contributions and by [***] Capital Contributions, which [***] Capital Contributions shall not, in the aggregate, exceed the Maximum Incremental Capital Amount. The Initial Business Plan also includes a budget (the "**[***] Budget**") in accordance with which the Joint Venture Company's and each of its Subsidiaries' operating and capital expenditures for [***] shall be made during the Initial Period and the Capital Contributions that will be needed from the Members during each Fiscal Quarter of the Initial Period to fund [***] Budget.

(C) Modification of Initial Business Plan. Except as otherwise provided in this Section 11.1(C), the Initial Business Plan shall not be amended, updated, modified or superseded without the unanimous written consent of the Members.

(1) Annual Review of Initial Business Plan. At least ninety (90) days prior to the beginning of each of the [***] and [***] Fiscal [***] of the Initial Period and the Applicable Fiscal Quarter, the Board of Managers shall (in consultation with the Authorized Officers or the Chief Executive Officer, as applicable, and with the Financial Officer) review the Initial Business Plan and determine whether any amendment thereto is necessary. Subject to Section 6.3(A)(11), upon a determination by the Board of Managers that an amendment to the Initial Business Plan is necessary or appropriate, the Board of Managers may approve such amendment (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan) and the Authorized Officers, or the Chief Executive Officer, as applicable, shall thereupon implement such amendment to the Initial Business Plan as promptly as commercially practicable; *provided*, *however*, that any failure of the Board of Managers to approve any amendment to the Initial Business Plan shall result in the continuation of the Initial Business Plan, subject to (a) any prior amendment approved by the Board of Managers and (b) Section 11.1(C)(2).

(2) Member Modification of Initial Business Plan. In addition to any amendment to the Initial Business Plan that may be approved by the Board of Managers pursuant to Section 11.1(C)(1), during the Initial Period:

(a) (i) Each Member shall have the right from time to time to request that the Board of Managers review the Initial Business Plan to consider whether the [***] Budget should be amended to, among other things, adjust the Capital Contribution schedule set forth in the [***] Budget. No such amendment shall cause the [***] Capital Contributions to be made by Micron in accordance with the [***] Budget, as amended, to exceed the Micron Maximum Incremental Capital Amount, nor shall such amendment cause the [***] Capital Contributions to be made by Intel in accordance with the [***] Budget, as amended, to exceed, in the aggregate, the Intel Maximum Incremental Capital Amount. Upon such request, the Board of Managers shall, at the next scheduled meeting of the Board of Managers, or at a special meeting called for such purpose, review the Initial Business Plan and determine whether such amendment to the [***] Budget is necessary or appropriate. If the Board of Managers approves such amendment to the [***] Budget in accordance with Section 6.3(A)(11), such amended [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable,

shall implement the amended Initial Business Plan as promptly as commercially practicable. Subject to clause (ii) of this Section 11.1(C)(2)(a), any failure of the Board of Managers to approve any amendment to the [***] Budget shall result in the continuation of the Initial Business Plan without the proposed amendment.

(ii) If the Board of Managers fails to approve such amendment to the [***] Budget requested by a Member, then such Member may submit a proposed amendment to the Initial Business Plan to adjust the Capital Contribution schedule for the [***] Budget (a "**Member [***] Budget**") to the Board of Managers (with a copy delivered to the other Member) for approval. The other Member may, within twenty (20) days thereof, submit an alternate Member [***] Budget to the Board of Managers for approval. In no event shall a Member [***] Budget call for aggregate [***] Capital Contributions to be made by Micron in excess of the Micron Maximum Incremental Capital Amount or by Intel in excess of the Intel Maximum Incremental Capital Amount. If, within twenty (20) days after such

twenty (20)-day period, the Board of Managers approves any Member [***] Budget, such Member [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable. If the Board of Managers fails to approve a Member [***] Budget within such twenty (20)-day period, then the matter shall be referred to the Members' Authorized Representatives for resolution. If such referral results in an agreement on a Member [***] Budget, such Member [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable. If such referral does not result in an agreement on a Member [***] Budget within ten (10) days of such referral, then the [***] shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be a Disputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable.

(b) (i) Each Member shall have the right from time to time to request that the Board of Managers review the Initial Business Plan to consider whether the [***] Budget should be amended to, among other things, adjust the [***] Budget and the Capital Contribution schedule set forth therein. Upon such request, the Board of Managers shall, at the next scheduled meeting of the Board of Managers, or at a special meeting called for such purpose, review the Initial Business Plan and determine whether such amendment to the [***] Budget is necessary or appropriate. If the Board of Managers approves such amendment to the [***] Budget in accordance with Section 6.3(A)(11), such amended [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially

practicable. Subject to clause (ii) of this Section 11.1(C)(2)(b), any failure of the Board of Managers to approve any amendment to the [***] Budget shall result in the continuation of the Initial Business Plan without the proposed amendment.

(ii) If the Board of Managers fails to approve such amendment to the [***] Budget requested by a Member, then either Member may submit a proposed amendment to the Initial Business Plan to adjust the [***] Budget and the Capital Contribution schedule contained therein (a "**Member [***] Budget**") to the Board of Managers (with a copy delivered to the other Member) for approval. If a Member submits a Member [***] Budget, the other Member shall have twenty (20) days to present an alternate Member [***] Budget to the Board of Managers for approval. If, within thirty (30) days after such twenty (20)-day period, the Board of Managers approves any Member [***] Budget, such Member [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable. If the Board of Managers fails to approve a Member [***] Budget within such thirty (30)-day period, then the matter shall be referred to the Members' Authorized Representatives for resolution. If such referral results in an agreement on a Member [***] Budget, such Member [***] Budget shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable. If such referral does not result in an agreement on a Member [***] Budget within ten (10) days of such referral, then the [***] shall become an approved amendment to the Initial Business Plan (and the Initial Business Plan as so amended shall be a Disputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Initial Business Plan as promptly as commercially practicable.

11.2 Subsequent Business Plans. This Section 11.2 shall apply with respect to any Fiscal Year or Fiscal Quarter ending after the Initial Period (except that to the extent a Proposed Business Plan covers the Applicable Fiscal Quarter, the portion of the Proposed Business Plan covering the [***] Budget for such Applicable Fiscal Quarter shall be governed by Section 11.1).

(A) Proposed Business Plan. For each Fiscal Year ending after the end of the Initial Period, the Authorized Officers, or the Chief Executive Officer, as applicable, and the Financial Officer shall prepare a proposed three-year business plan (the "**Proposed Business Plan**") at least ninety (90) days prior to the beginning of the applicable Fiscal Year, which shall address, for the Proposed Business Plan period, [***].

(B) Annual Budgets. Each Proposed Business Plan shall include a fixed budget (the "**Annual Budget**") in accordance with [***], subject to the Proposed Business Plan becoming an Approved Business Plan in accordance with Section 11.2(D). The Annual Budget may include [***], each as necessary to effectuate the applicable Proposed Business Plan. Any Proposed Business Plan approved in accordance with Section 11.2(D) (as may be amended pursuant to Section 11.2(E)) [***].

(C) Participation in the Development of the Proposed Business Plan. In preparing the Proposed Business Plan, the Authorized Officers, or the Chief Executive Officer, as applicable, and the Financial Officer shall be advised by the Manufacturing Committee.

(D) Submission of Proposed Business Plan for Approval by Board of Managers. The Authorized Officers, or the Chief Executive Officer, as applicable, and the Financial Officer shall submit the Proposed Business Plan to the Board of Managers [***]. The Board of Managers shall review the Proposed Business Plan, including the Annual Budget included in such Proposed Business Plan.

(1) If the Proposed Business Plan receives the approval of the Board of Managers, such Proposed Business Plan shall be approved (the "**Undisputed Approved Business Plan**"); *provided*, *however*, that the most recently adopted Undisputed Approved Business Plan may be amended from time to time in accordance with Section 11.2(E).

(2) If the Board of Managers fails to approve the Proposed Business Plan within thirty (30) days of the submission of such Proposed Business Plan to the Board of Managers, then each Member may, within twenty (20) days after the earlier of the end of such thirty (30)-day period or the date on which the Board of Managers rejects the Proposed Business Plan, submit its own proposed business plan (a "**Member Business**

Plan") to the Board of Managers for approval. If, within twenty (20) days after the submission of a Member Business Plan, the Board of Managers approves any Member Business Plan or any other Proposed Business Plan, such Member Business Plan or other Proposed Business Plan shall become an Undisputed Approved Business Plan. If the Board of Managers fails to approve any Member Business Plan or other Proposed Business Plan within such twenty (20)-day period, then the matter shall be referred to the Members' Authorized Representatives for resolution. If such referral results in an agreement on a Member Business Plan or any other Proposed Business Plan, such Member Business Plan or other Proposed Business Plan, as applicable, shall be an Undisputed Approved Business Plan. Subject to compliance with the limitations set forth

in paragraph (3) below, if such referral does not result in an agreement on a Member Business Plan or any other Proposed Business Plan within ten (10) days of such referral, then the [***], if any, shall be deemed to be the then-adopted Approved Business Plan (such Approved Business Plan, a "**Disputed Approved Business Plan**"); *provided* that, except as contemplated by paragraph (3) below, such Annual Budget set forth in any Disputed Approved Business Plan shall not be inconsistent with the [***] Schedule; and *provided further* that the most recently adopted Disputed Approved Business Plan may be amended from time to time in accordance with Section 11.2(E).

(3) The [***] Schedule, which sets forth the [***] timing for the [***], is attached hereto as Schedule 1. The [***] Schedule shall not be amended or modified without the unanimous written consent of the Members; *provided*, *however*, that, if a Member's Economic Interest is at least [***] percent ([***]%), such Member may submit a Member Business Plan that includes an Annual Budget providing for capital expenditures relating to the [***] and [***] with [***] for a [***] that deviates from the [***] Schedule.

(E) Modification of Approved Business Plan.

(1) Each Member, the Authorized Officers, or the Chief Executive Officer, as applicable, or the Financial Officer shall have the right from time to time to request that the Board of Managers review the Joint Venture Company's and its Subsidiaries' operating results and business prospects, the progress to date of the Joint Venture Company's and its Subsidiaries' [***] capital projects, any changes in the requirements for such projects, and the then-current market conditions for the Joint Venture Products, to consider whether the then-effective Approved Business Plan should be amended.

(2) In the event that any material milestone set forth in, or any other material provision of, the Approved Business Plan is not achieved or is achieved earlier than contemplated under the Approved Business Plan, or the occurrence of any event having a material effect on the assets, business, operations, earnings, prospects, properties or condition (financial or otherwise) of the Joint Venture Company or its Subsidiaries, each Member, the Authorized Officers, or the Chief Executive Officer, as applicable, or the Financial Officer shall have the right to require that the then-effective Approved Business Plan be reviewed by the Board of Managers to consider whether the then-effective Approved Business Plan should be amended.

(3) Upon such request or requirement pursuant to Sections 11.2(E)(1) or (2), the Board of Managers shall, at the next scheduled meeting of the Board of Managers, or at a special meeting called for such purpose, review the then-effective Approved Business Plan and determine whether such amendment is necessary or appropriate. If the Board of Managers approves such amendment to the Approved Business Plan in accordance with Section 6.3(A)(11), such amendment shall become an approved amendment to the Approved Business Plan (and the Approved Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement the amended Approved Business Plan as promptly as commercially practicable; *provided*, *however*, that any failure of the Board of Managers to approve any amendment to the Approved Business Plan shall, subject to Section 11.2(E)(4), result in the continuation of such Approved Business Plan without the proposed amendment.

(4) In the event a Member wishes to propose amendments to the Approved Business Plan for any reason or the Board of Managers fails to approve an amendment to an Approved Business Plan under Section 11.2(E)(3), either Member may submit a proposed amendment to the Approved Business Plan (a "**Member Plan Amendment**") to the Board of Managers (with a copy delivered to the other Member) for approval. If a Member submits a Member Plan Amendment, the other Member shall have twenty (20) days to present an alternative Member Plan Amendment. If, within thirty (30) days after such twenty (20)-day period, the Board of Managers approves any Member Plan Amendment, such Member Plan Amendment shall become an approved amendment to the Approved Business Plan (and the Approved Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement such amendment to the Approved Business Plan as promptly as commercially practicable. If the Board of Managers fails to approve a Member Plan Amendment within such thirty (30)-day period, then the matter shall be referred to the Members' Authorized Representatives for resolution. If such referral results in an agreement on a Member Plan Amendment, such Member Plan Amendment shall become an approved amendment to the Approved Business Plan (and the Approved Business Plan as so amended shall be an Undisputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement such amendment to the Approved Business Plan as promptly as commercially practicable. If such referral does not result in an agreement on a Member Plan Amendment within ten (10) days of such referral, then the [***] for the remainder of the then-current Fiscal Year (or the Member Plan Amendment, if there is only one) shall be deemed to be an approved amendment to the Approved Business Plan (and the Approved Business Plan as so amended shall be a Disputed Approved Business Plan), and the Authorized Officers, or the Chief Executive Officer, as applicable, shall implement such amendment to the Approved Business Plan as promptly as commercially practicable. Except as contemplated by Section 11.2(D)(3), the Annual Budget (or portion thereof for the remainder of the then-current Fiscal Year) shall not be inconsistent with the [***] Schedule.

11.3 Expenditures. All operating expenditures and all capital expenditures of the Joint Venture Company and its Subsidiaries shall be made in accordance with the [***] Budget, the [***] Budget or the Annual Budget, as applicable, set forth in the applicable Approved Business Plan (each as may be modified or updated in accordance with this Article 11) for the Fiscal Year in which such expenditures are made.

11.4 Fab Criteria. Notwithstanding anything to the contrary in this Agreement, no Approved Business Plan may, without the unanimous consent of the Members, [***].

11.5 Quarterly Business Plan. At least fifteen (15) days prior to the end of each Fiscal Quarter, a quarterly business plan addressing at least the next six (6) full Fiscal Quarters on a rolling basis (which shall be consistent in all material respects with the then-effective Approved Business Plan) shall be

prepared by the officers of the Joint Venture Company in a manner consistent with the Joint Venture Company's financial statements and Modified GAAP and reviewed and approved by the Authorized Officers, or the Chief Executive Officer, as applicable, and the Financial Officer.

11.6 Operating Plan.

(A) The Members shall cause the Manufacturing Committee to approve for submission to the Board of Managers an operating plan (the "**Operating Plan**"), which shall be prepared and updated by the Joint Venture Company, and reviewed by the Manufacturing Committee on a monthly basis. The Operating Plan shall [***].

(1) [***].

(2) [***].

(3) [***].

(4) The Members shall cause the Manufacturing Committee, in reviewing the Operating Plan, to strive to optimize the operating efficiency and output of the Joint Venture Company and its Subsidiaries. The Members shall cause the Manufacturing Committee to review, on a monthly basis, a report prepared by the Joint Venture Company, which includes information on the operations of the Joint Venture Company, its Subsidiaries and its subcontractors in respect of the topics addressed in the Operating Plan (the "**Monthly Operating Report**"), with a quarterly review of the Monthly Operating Report **("Quarterly Operating Review")**.

(B) Participation in the Development of the Operating Plan. In preparing the Operating Plan, the Manufacturing Committee shall be advised by the Members, the Authorized Officers, or the Chief Executive Officer, as applicable, the Financial Officer and the Technology Committees. The Operating Plan, unless otherwise determined by the Board of Managers, shall incorporate Micron's Process of Record and Model of Record, as amended from time to time by Micron.

11.7 Use of Member Names. Except as may be expressly provided in the Joint Venture Documents, nothing in this Agreement shall be construed as conferring on the Joint Venture Company, any Subsidiary of the Joint Venture Company or either Member the right to use in advertising, publicity, marketing or other promotional activities any name, trade name, trademark, servicemark or other designation, or any derivation thereof, of the Members (in the case of a Member, the other Member).

11.8 Insurance. The Joint Venture Company shall at all times be covered by insurance of the types and in the amounts set forth on Schedule 2 hereto. Such insurance coverage may be provided through the coverage under one or more insurance policies maintained by either Member.

ARTICLE 12.
TRANSFER RESTRICTIONS; PURCHASE OPTIONS

12.1 Restrictions on Transfer. No Member may, directly or indirectly, by operation of law or otherwise, sell, assign or transfer or otherwise encumber (whether by pledge or otherwise), or create a class of tracking stock or other derivative security in respect of (each of the foregoing, a "**Transfer**") all or any portion of its Interest in the Joint Venture Company or any of its Subsidiaries or any Member Note, or any interest therein, and the Joint Venture Company and its Subsidiaries shall not recognize any Transfer of a Member's Interest in the

Joint Venture Company or any of its Subsidiaries or any Member Note, other than a Transfer permitted in accordance with Sections 12.2, 12.4 and 12.5. Neither (A) a Transfer of securities issued by a Member nor (B) a Member Change of Control shall constitute a Transfer prohibited by this Section 12.1; *provided*, *however*, that in the event of a Member Change of Control, the provisions of Section 13.1(A)(7)(ii) shall apply.

12.2 Permitted Transfers. Notwithstanding the restrictions on Transfer set forth in Section 12.1, a Member may Transfer all, but not less than all, of its Interest in the Joint Venture Company and any Member Note (including the right to receive any accrued interest thereon) to a Wholly-Owned Subsidiary of such Member, *provided* that, (i) while such Wholly-Owned Subsidiary holds such Interest or any Member Note it remains a Wholly-Owned Subsidiary of the original Member, (ii) such transferring Member shall remain liable for its Subsidiary's failure to perform the obligations associated with such transferred Interest (including the obligations set forth in this Agreement), and (iii) prior to the effectiveness of any permitted Transfer, the transferring Member shall deliver to the Board of Managers and all of the other Members of the Joint Venture Company the following:

(A) a certificate of the transferring Member that the Transfer will not, and could not reasonably be expected to, cause an adverse effect on the Joint Venture Company or any of its Subsidiaries or the non-transferring Member, including any adverse effect on, or resulting loss of, any of the Intellectual Property Rights of the Joint Venture Company or any of its Subsidiaries;

(B) evidence reasonably satisfactory to the other Member that all of the following conditions have been satisfied:

(1) the transferring Member and its Affiliates are not in material breach of any provision of this Agreement or any agreement with the Joint Venture Company or any of its Subsidiaries (collectively, the "**Affiliate Agreements**");

(2) the transferee of the Member's Interest or any Member Note is financially capable of carrying out the obligations and paying any liabilities of the transferring Member pursuant to this Agreement and the Affiliate Agreements;

(3) notwithstanding the continuing liability of the transferring Member described above, the transferee has agreed in writing to assume all of the obligations of the transferring Member relating to the transferred Interest or any Member Note, including the obligations set forth in this Agreement and any Affiliate Agreement it properly assumes;

(4) the transferee executes and becomes a party to the Confidentiality Agreement;

(5) the Transfer will not result in material adverse tax consequences to the Joint Venture Company or to the other Member (unless the Member engaging in such Transfer reimburses the other Member or the Joint Venture Company, as the case may be, for such tax consequences, which reimbursement and payment shall not affect the Capital Contributions of the Members); and

(6) the Transfer will not result in a Liquidating Event, or in an event or condition that with the giving of notice or the passage of time or both would constitute a breach or default, by either the transferring Member or the transferee, under this Agreement or any of the Affiliate Agreements.

12.3 Additional Members. No Person shall be admitted to the Joint Venture Company as a Member other than Intel, Micron or any substitute Member for Intel or Micron (as provided in Section 12.2).

12.4 Purchase of Additional Interest. During the period commencing on the two (2) year anniversary of the Effective Date and at any time that Intel is a Member and its Economic Interest (without taking into account in the Committed Capital of such Member or in the aggregate Committed Capital of all Members, the outstanding amount under any Mandatory Note payable to Intel) is less than 51% but at least 49%, Intel shall have the right to purchase from Micron, and upon the exercise of such right Micron shall sell to Intel, an Interest representing a percentage (the "**Option Percent**") of the Members' aggregate Interests necessary to bring Intel's Economic Interest to 51% (computed by shifting from the Capital Contribution Balance (and Committed Capital) of Micron to the Capital Contribution Balance (and Committed Capital) of Intel the minimum sum necessary to raise the Economic Interest of Intel to 51%). The purchase price to be paid by Intel for such Interest shall be an amount in cash equal to the [***] value to Micron of the right to purchase under the terms of the Supply Agreement – Micron the output of the Joint Venture Product that will be shifted from Micron to Intel as a result of the adjustment in the Sharing Interests of the Members following the exercise of the purchase right (and the resulting shift in the Members' Capital Contribution Balances) provided for in this Section, such [***] value to be determined by a nationally recognized investment bank that is mutually agreeable to the Members (the "**Purchase Value**"); *provided*, *however*, that the purchase price shall in no event be (i) lower than an amount equal to the Option Percent [***] by the [***] of the [***] of the Joint Venture Company and its Subsidiaries (the "**Floor Amount**"), or (ii) greater than the product of [***], multiplied by the Floor Amount (the "**Cap Amount**"). If the Purchase Value is determined to be lower than the Floor Amount, or greater than the Cap Amount, then the purchase price shall be an amount equal to the Floor Amount or the Cap Amount, respectively. Intel may exercise this purchase right by delivering a written notice of its intent to exercise to the Joint Venture Company and Micron. The closing of the purchase and sale shall take place on a date agreed to by the Joint Venture Company, Micron and Intel, but in no event later than thirty (30) days following the date the notice is delivered. Such closing shall take place at the principal office of the Joint Venture Company, or at such other location as the Joint Venture Company, Micron and Intel may mutually determine. At the closing, the Joint Venture Company shall record in its books and records the contemplated shift in the Members' Capital Contribution Balances, and the appropriate changes to the Capital Accounts of the Members, and Intel shall pay to Micron the purchase price for such Option Percent by wire transfer of immediately available funds.

12.5 Purchase of Remaining Interest.

(A) If the Economic Interest of a Member (the "**Minority Member**") drops to ten percent (10%) or less and remains at or below ten percent (10%) for more than six (6) consecutive months, the other Member or a Subsidiary thereof (such other Member or Affiliated Company thereof, the "**Majority Member**") shall have the option, exercisable at any time prior to the day that is six (6) months prior to the end of the Initial Term, to purchase all of the

remaining Interest of, and outstanding Member Notes payable to, the Minority Member at a cash purchase price equal to the Option Price, subject to the terms and conditions set forth in Section 12.5(C). The Majority Member may exercise this purchase option by delivering a written notice of its intent to exercise to the Minority Member. The closing of the purchase and sale of the Minority Member's remaining Interest and any outstanding Member Notes held by the Minority Member (the "**Minority Closing**") shall take place as of the last day of the Fiscal Month in which the notice is delivered (unless such notice is delivered within the last ten (10) days of the end of a Fiscal Month, in which case the Minority Closing shall take place on the last day of the first full Fiscal Month thereafter). Such Minority Closing shall take place at the principal office of the Joint Venture Company, or at such other location as the Majority Member and the Minority Member may mutually determine. At the Minority Closing, (i) the Minority Member shall transfer its remaining Interest in the Joint Venture Company and outstanding Member Notes held by the Minority Member to the Majority Member, free and clear of any liens or encumbrances, (ii) the Majority Member shall pay the Minority Member the Minority Closing Price by wire transfer of immediately available funds and (iii) the Minority Member shall deliver to the Majority Member such instrument of conveyance as the Majority Member reasonably requests.

(B) Upon the Minority Closing, the Majority Member shall pay to the Minority Member a sum (the "**Minority Closing Price**") equal to the [***] of (i) the [***] of (a) the [***] of the [***] of the Joint Venture Company and its Subsidiaries as of the last day of the Fiscal Month immediately prior to the Minority Closing, [***] (b) the [***] of all liabilities of the Joint Venture Company and its Subsidiaries as of the last day of the Fiscal Month immediately prior to the Minority Closing (excluding, however, any liabilities with respect to Member Notes), and (ii) the Economic Interest of the Minority Member at the time the option provided for in Section 12.5(A) is exercised. Within five (5) Business Days after the month-end balance sheet (prepared in accordance with Modified GAAP consistently applied) as of the date of the Minority Closing becomes available, the Minority Closing Price shall be recalculated using the [***] of the [***] of the Joint Venture Company and its Subsidiaries as of such date and the [***] of the liabilities of the Joint Venture Company and its Subsidiaries as of such date (excluding any liabilities with respect to Member Notes) (such recalculated sum, the "**Option Price**"). If the Option Price is greater than the Minority Closing Price, the Majority Member shall deliver the difference to the Minority Member by wire transfer of immediately available funds within three (3) Business Days of such recalculation. If the Option Price is less than the Minority Closing Price, the Minority Member shall refund the difference to the Majority Member by wire transfer of immediately available funds within three (3) Business Days of such recalculation.

(C) Upon an election of the Majority Member to purchase the Minority Member's remaining Interest and the outstanding Member Notes held by such Minority Member pursuant to Section 12.5(A), if the Minority Member is Micron, then the following shall apply:

(1) Micron shall, at its option, exercisable by written notice to Intel not more than five (5) days after the exercise of the option contemplated by Section 12.5(A), purchase either (i) the [***] or (ii) all of the equity interest in any Facilities Company that owns or leases only the [***]. The purchase price shall be the [***] of the [***] or of such Facilities Company, as applicable (excluding, for purposes of this determination, any [***] attributable to the [***]). The closing of the purchase and sale provided for in this Section 12.5(C)(1) (the "**Micron Minority Closing**") shall take place on the same

date, at the same time and at the same location as the Minority Closing. At the Micron Minority Closing, (x) the Joint Venture Company shall transfer the purchased assets, rights and equity interest to Micron, free and clear of any liens or encumbrances other than liens securing indebtedness exclusively associated with the Fab located at the [***], (y) Micron shall pay the Joint Venture Company the purchase price determined in accordance with this Section 12.5(C)(1) by wire transfer of immediately available funds and (z) the Joint Venture Company shall deliver to Micron such instrument(s) of conveyance as Micron reasonably requests.

(2) Micron shall pay to the Joint Venture Company an amount equal to the [***].

(3) The [***] shall terminate at the time of the Micron Minority Closing with no payment obligation, other than as contemplated by Section 12.5(C)(2), thereunder by Micron; *provided*, *however*, that in the event that Micron fails to acquire the [***] under Section 12.5(C)(1), the [***] shall continue for a reasonable period of time to allow the Joint Venture Company to remove the [***] from the Premises, and Micron shall permit the Joint Venture Company to have reasonable access to the Premises, for a reasonable period and on a reasonable basis, in order to remove such [***] from the Premises.

(4) The Boise Supply Agreement shall continue for the remainder of its term, if any, but shall be modified such that a percentage of the products to be sold thereunder equal to the Sharing Interest of Micron at the time of the exercise of the option under Section 12.5(A) shall be retained by Micron and the remaining portion shall be sold to the Joint Venture Company (which may then assign its rights and obligations thereunder to Intel).

(5) Micron may, at its option, cause to continue in effect any existing supply agreements it has with the Joint Venture Company or any Subsidiary of the Joint Venture Company for [***] from the Minority Closing with the same amounts and at the same delivery schedule, pricing and terms as are in effect on the date of the Minority Closing; *provided, however,* that the quantity of Products Micron shall be entitled to purchase thereunder, measured in 300 millimeter equivalents, shall be the [***] between (i) the quantity (determined based on the three (3)-month period immediately preceding the Minority Closing) of Products Micron would have been permitted to purchase had the option provided for in Section 12.5(A) not been exercised, and (ii) the [***] of (a) the quantity of Products that the assets acquired by Micron in accordance with Section 12.5(C)(1) have been producing in the ordinary course as determined based on the three (3)-month period immediately preceding the Minority Closing and (b) the quantity of Products that is retained by Micron under Section 12.5(C)(4). Such quantity will be [***] for the first year and then will [***] of such fixed quantity per Fiscal Quarter to [***] over the next [***] Fiscal Quarters. The Members will work together in good faith so that such supply arrangements minimize disruption to the business of the Joint Venture Company and the Members and to maintain, subject to such decline in amount, substantially the same supply of custom Products and substantially the same composition of types of Products as Micron had obtained from the Joint Venture Company immediately prior to the Minority Closing.

ARTICLE 13.
DISSOLUTION AND LIQUIDATION

13.1 Dissolution.

(A) Upon the occurrence of any of the following events (each, a "**Liquidating Event**"), the Joint Venture Company shall dissolve and commence winding up and liquidation activities in accordance with this Article 13, whether or not the event would cause a dissolution under the Act:

(1) the expiration of the Term in accordance with Section 1.3;

(2) the unanimous agreement of the Members to dissolve the Joint Venture Company;

(3) the election by a Member with a Percentage Interest of at least [***]% to dissolve and wind up the affairs of the Joint Venture Company (which election shall not require the consent of the other Member), upon delivery of written notice of such election to the Joint Venture Company and the other Member;

(4) the election of Intel to dissolve the Joint Venture Company in the event of one or more breaches by Micron of either or both of (i) the [***] Agreement, dated as of the Effective Date, between the Joint Venture Company and Micron or (ii) with respect to any obligations of Micron to [***] or [***] that are [***] at [***], the [***] and [***] Services Agreement, dated as of the Effective Date, between the Joint Venture Company and Micron that remain uncured after any applicable cure period set forth in such agreement, *provided* that all such breaches described in clauses (i) and (ii) from the Effective Date to the date of such election result in [***] damages to the Joint Venture Company of [***] (that would be recoverable [***] under such agreements) (without taking into account the effect of the dissolution, winding up and liquidation of the Joint Venture Company under this Article 13);

(5) the occurrence of any other event that, under the Act, makes it unlawful, impossible or impractical to carry on the business of the Joint Venture Company;

(6) the election by either Member to dissolve and wind up the affairs of the Joint Venture Company upon (i) the occurrence of a Bankruptcy of the Joint Venture Company of the type described in clause (iv) of the definition of the term "Bankruptcy," *provided* that the Member

making such election is not in default of any payment obligation to the Joint Venture Company or (ii) the Bankruptcy (as hereinafter defined), dissolution or liquidation of a Member, and *further provided* that, in either event, such election shall be made only after entry by the court presiding over the Bankruptcy of an order granting relief from the automatic stay to make such election to the Member making such election;

(7) the election by either Member to dissolve and wind up the affairs of the Joint Venture Company, if (i) the Joint Venture Company ceases operations for more than [***] or (ii) the other Member undergoes a Member Change of Control; or

(8) the election of a Member by written notice to the Joint Venture Company and the other Member upon the occurrence of a Balance Sheet Metric Event on or prior to the Transition Date; *provided*, *however*, that such notice shall be given not more than thirty (30) days after the receipt by the notifying Member from the Joint Venture Company of financial reports indicating that such Balance Sheet Metric Event has occurred;

(9) the first day on which each of the following conditions is satisfied:

(a) an Initial Operating Metric Event has occurred on or prior to the Transition Date;

(b) either Member provides a written notice (the "**Election Notice**") to the Joint Venture Company and the other Member of its election to dissolve the Joint Venture Company unless there is a Subsequent Operating Metric Cure; *provided*, *however*, that:

(i) the Election Notice shall be given only after completion of [***] Fiscal Quarters after the Initial Operating Metric Event and only if a Subsequent Operating Metric Cure has not occurred by the end of such [***] Fiscal Quarters;

(ii) such Election Notice shall be given not more than [***] after the later of (A) receipt by the notifying Member from the Joint Venture Company of financial reports for the [***]Fiscal Quarter after the Initial Operating Metric Event and (B) the receipt by such Member of notice from the Joint Venture Company or the other Member that the Transition Date has occurred; and

(iii) a Member who has not remitted in full its [***] of any [***] Capital Contribution in accordance with Section 2.3(A) shall not be eligible to submit an Election Notice unless the other Member failed to contribute in full its [***] of that or any earlier [***] Capital Contribution under Section 2.3(A);

(c) not less than Fiscal Quarters after the Initial Operating Metric Event have been completed;

(d) there shall not have been a Subsequent Operating Metric Cure in any period of [***] Fiscal Quarters completed prior to the end of the Fiscal Quarter most recently completed prior to the date the Election Notice is given; *provided*, *however*, that if the Election Notice is given in the [***] Fiscal Quarter after the Initial Operating Metric Event, there shall not have been a Subsequent Operating Metric Cure in any period of [***] Fiscal Quarters completed prior to the end of, and including, such [***] Fiscal Quarter; and

(e) [***] shall have expired from the date the Election Notice was given; or

(10) the election of a Member by written notice to the Joint Venture Company and the other Member upon the occurrence of a Critical Deadlock, provided such notice is given not more than thirty (30) days after the later of the end of the [***] period described in subsection (B) of the definition of Critical Deadlock and the receipt by the electing Member from the Joint Venture Company of financial reports indicating that no Subsequent Operating Metric Cure has occurred in the period of [***] Fiscal Quarters described in subsection (C) of the definition of Critical Deadlock.

(B) For the purposes of this Section 13.1, the term "**Bankruptcy**" shall mean (i) the entry of a decree or order for relief of the Person by a court of competent jurisdiction in any involuntary case involving the Person under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for the Person or for any substantial part of the Person's assets or property; (iii) the ordering of the winding up or liquidation of the Person's affairs; (iv) the filing with respect to the Person of a petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of sixty (60) days or which is dismissed or suspended pursuant to Section 305 of the U.S. Bankruptcy Code (or any corresponding provision of any future U.S. bankruptcy law); (v) the commencement by the Person of a voluntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect; (vi) the consent by the Person to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Person or for any substantial part of the Person's assets or property; (vii) the making by the Person of any general assignment for the benefit of creditors; or (viii) the failure by the Person generally to pay its debts as such debts become due.

13.2 Determination of [***] Value. Upon the occurrence of a Liquidating Event, the Members shall promptly proceed to determine the [***] Value of each Facility or Facilities Company and the [***] (the date of receipt of the last such determination, the "**Buyout Determination Date**"). The Members and the Joint Venture Company shall use reasonable efforts to cause the determination to be made as promptly as practicable, but not later than [***] after the Liquidating Event or, in the case of a Liquidating Event under Section 13.1(A)(1), not later than such Liquidating Event.

13.3 No Withdrawal. No Member shall have any right to withdraw from the Joint Venture Company. No event that would constitute a withdrawal of a Member under the Act shall in any way be deemed to be a withdrawal under this Agreement or cause a dissolution of the Joint Venture Company.

13.4 Micron [***] Reimbursement; [***] True-Up Payment.

(A) If a Liquidating Event occurs before the [***] becomes an Operational Fab, Micron shall not be obligated to reimburse the Joint Venture Company for any unused portion of the pre-paid rent under the [***] transferred to the Joint Venture Company by Micron as described in Section 2.1(B). If a Liquidating Event occurs after the [***] becomes an Operational Fab, Micron shall reimburse the Joint Venture Company for any unused portion of the prepaid rent under the [***] transferred to the Joint Venture Company determined as of the day of closing of the Micron [***] Purchase Option, if exercised, or following the sale of the last Facility to be sold if such option is not exercised and based on the assumption that, for the [***], such prepaid rent was being amortized on a straight line basis over a ten (10)-year

period. Such reimbursement shall be paid by Micron to the Joint Venture Company no later than the Liquidation Date and, if not so paid, shall be deducted from the amount to be distributed to Micron under this Article 13.

(B) If a Liquidating Event occurs pursuant to Section 13.1(A)(1), Micron shall, on the Liquidation Date, make a one-time true-up payment to the Joint Venture Company in an amount equal to the [***] as of the date of the termination of the [***]. A real estate appraiser mutually selected by the Members shall determine such [***] on a final and conclusive basis. Such appraiser shall be instructed to consider all factors that in his or her professional opinion may affect the [***].

13.5 Micron Purchase Option on [***]. Within thirty (30) days after the [***] Determination Date, Micron may elect to purchase all, but not less than all, of either (i) the [***] or (ii) the equity interest in the U.S. Facilities Company that owns or leases only the [***]. Micron's election to purchase (the "**Micron [***] Purchase Option**") shall be exercised by delivering a written notice (the "**Micron [***] Exercise Notice**") of such election to the other Member and the Joint Venture Company. The purchase price for, as applicable, either (x) the [***] or (y) the equity interest, purchased pursuant to the Micron [***] Purchase Option shall be the [***] Value of such [***] or the equity interest in the applicable U.S. Facilities Company, respectively (excluding, for purposes of this determination, any value attributable to the [***]).

13.6 Intel Purchase Option.

(A) If a Liquidating Event occurs before [***] is an Operational Fab, then within thirty (30) days after the Buyout Determination Date, Intel may, subject to Section 13.8(C), elect to purchase all, but not less than all, of either (i) the [***] and its Associated Assets or (ii) the equity interest in the U.S. Facilities Company that owns or leases only the [***] and its Associated Assets, irrespective of whether the [***] is then not an Operational Fab and irrespective of whether any additional [***].

(B) If the Liquidating Event occurs after [***] is an Operational Fab but before [***] is an Operational Fab (a "**Later Liquidating Event**"), then within thirty (30) days after the Buyout Determination Date, Intel may, subject to Section 13.8(C), elect to purchase under this Section 13.6(B) all, but not less than all, of either (i) [***] and its Associated Assets or (ii) the equity interest in the Facilities Company that owns or leases only [***] and its Associated Assets.

(C) Intel shall exercise the purchase option contained in Sections 13.6(A) or 13.6(B) (in either case, an "**Intel Purchase Option**") by delivering a written notice (the "**Intel Exercise Notice**") of such election to the Joint Venture Company and Micron. The purchase price for, as applicable, either (i) (a) the [***] and its Associated Assets or (b) [***] and its Associated Assets or (ii) the equity interest in (a) the U.S. Facilities Company that owns or leases only the [***] and its Associated Assets or (b) the Facilities Company that owns or leases only [***] and its Associated Assets, purchased pursuant to the Intel Purchase Option shall be the [***] Value of such assets or equity, respectively.

13.7 Additional Micron Option.

(A) If a Later Liquidating Event occurs, then within thirty (30) days after the Buyout Determination Date, Micron may, subject to Section 13.8(C), elect to purchase under this

Section 13.7(A) all, but not less than all, of either (i) the [***] and its Associated Assets or (ii) the equity interest in the U.S. Facilities Company that owns or leases only the [***] and its Associated Assets.

(B) Micron shall exercise the purchase option contained in Section 13.7(A) (the "**Micron Purchase Option**") by delivering a written notice (the "**Micron Exercise Notice**") of such election to the Joint Venture Company and Intel. The purchase price for, as applicable, either (i) the [***] and its Associated Assets or (ii) the equity interest in the U.S. Facilities Company that owns or leases only the [***] and its Associated Assets, purchased pursuant to the Micron Purchase Option shall be the [***] Value of such assets or equity, respectively.

13.8 Remaining Facilities Draft.

(A) Within fifteen (15) days (the "**Fab Draft Period**") after the expiration of the last to expire of the options set forth in Sections 13.5, 13.6 and 13.7 (to the extent such options are applicable), any Facility or the equity of any Facilities Company that owns or leases only a single Facility that is not the subject of a Micron [***] Exercise Notice, an Intel Exercise Notice or a Micron Exercise Notice (each such Facility, a "**Remaining Facility**") shall be offered to the Members for purchase at their respective [***] Values in a draft (the "**Draft**") to be conducted under the following procedure; *provided*, *however*, that in the event there is only one Remaining Facility, such Remaining Facility shall be offered to the Members under Section 13.9, and the provisions of this Section 13.8 shall not apply to such Remaining Facility.

(B) Within fifteen (15) days after the commencement of the Fab Draft Period, the Members will appoint an independent third party to administer the Draft (the "**Draft Administrator**"). If the Members fail to mutually agree on the Draft Administrator within fifteen (15) days, Deloitte & Touche shall be appointed the Draft Administrator by written request of either Member. Within fifteen (15) days after the appointment of the Draft Administrator, each of the Members may submit a written bid to the Draft Administrator for the right to select the first Facility to be acquired in the Draft under this Section 13.8, unless the right to select the first Facility has been designated pursuant to Section 13.8(C) or either of the last two sentences of this paragraph (B). Such bid shall be a binding, irrevocable offer to pay in cash to the Joint Venture Company a sum specified by the bidding Member in the bid

for the right to select the first Facility in the Draft. The Draft Administrator shall hold such bids in confidence until the earlier of receipt of bids from both Members and the end of such fifteen (15)-day period, whereupon the Draft Administrator shall announce to the Members which Member submitted the highest bid on a timely basis in accordance with the provisions hereof (the "**First Drafter**"). Such Member shall pay to the Joint Venture Company the amount of its bid within ten (10) days thereafter by wire transfer of immediately available funds. If no bids are timely submitted in accordance with the provisions hereof, the Draft Administrator shall designate the First Drafter by lot. Notwithstanding the foregoing, in the event of a Liquidating Event described in Section 13.1(A)(10) after the fifth anniversary of the Effective Date, the Member who did not elect for the Critical Deadlock to be a Liquidating Event shall be the First Drafter without any requirement to bid therefor. Notwithstanding the foregoing, if at the time of a Liquidating Event, a Member's Economic Interest is above [***] percent ([***]%), that Member will be the First Drafter without any requirement to bid therefor and will also get [***], with the other Member having the [***] and, notwithstanding anything to the contrary in Section 13.8(D), [***] between the Members [***] (for the Member whose Economic Interest is above [***] percent

([***]%)) [***] (for the Member whose Economic Interest is below [***] percent ([***]%)) basis (except that, if there are only [***] Remaining Facilities after a [***], the ratio in that [***] will be [***] to [***]).

(C) Notwithstanding anything to the contrary in Sections 13.6 and 13.7 and this Section 13.8, in the event of a Liquidating Event described in Section 13.1(A)(7)(ii), the Member electing under such Section to dissolve and wind up the Joint Venture Company on the occurrence of the Member Change of Control shall be the First Drafter without any requirement to bid therefor, Sections 13.6 and 13.7 shall not be effective, and the [***] and its Associated Assets and [***] (if it is an Operational Fab) and its Associated Assets shall be deemed to be included in the Remaining Facilities for purposes of the draft contemplated by this Section 13.8.

(D) Within fifteen (15) days after the date (the "**Draft Commencement Date**") on which the Draft Administrator announces the identity of the First Drafter, the First Drafter may (but shall not be obligated to) select for purchase a [***] or the equity of a Facilities Company that owns or leases [***] by written notice to the Joint Venture Company and the other Member (the "**Second Drafter**"). After such [***] ([***])-day period expires, but within [***] ([***]) days after the Draft Commencement Date, the Second Drafter may (but shall not be obligated to) select for purchase a [***] or the equity of a Facilities Company that owns or leases [***] (other than that selected previously by the First Drafter) by written notice to the Joint Venture Company and the other Member. If there are [***] after the [***] selections by the First Drafter and the Second Drafter, then after such [***] ([***])-day period expires, but within [***] ([***]) days after the Draft Commencement Date, the First Drafter may (but shall not be obligated to) select for purchase a [***] or the equity of a Facilities Company that owns or leases [***] in the Draft. After such [***] ([***])-day period expires, but within [***] ([***]) days after the Draft Commencement Date, the Second Drafter may (but shall not be obligated to) select for purchase a [***] or the equity of a Facilities Company that owns or leases [***] in the Draft. After the foregoing [***], the Draft shall [***] in the foregoing manner until (1) [***] in the Draft, (2) there [***], or (3) neither Member wishes to [***].

13.9 Auction of Single Remaining Facility. If (1) there is only a single Remaining Facility (and therefore no Draft has occurred) or (2) after the final round of picks in the Draft under Section 13.8(D) there remains without a pick only a single Remaining Facility, each Member may submit an irrevocable, binding written offer (a "**Remaining Facility Purchase Offer**") to purchase the Remaining Facility or the equity of the Facilities Company that owns or leases only such Remaining Facility. Such offer shall be submitted to the Draft Administrator within thirty (30) days after the Draft Commencement Date (in the case of an auction under clause (1) above) or thirty (30) days after the last pick was permitted to be submitted in the Draft (in the case of an auction under clause (2) above). Immediately after the end of such thirty (30) day period, the Draft Administrator shall announce the winning bid.

13.10 Closing of Purchases. The closing of any purchase to be made under a Purchase Option shall each take place as soon as reasonably practicable (but in no event later than one-hundred twenty (120) calendar days) following the last to occur of the expiration of any of the Micron [***] Purchase Option, the Intel Purchase Option, the Micron Purchase Option or a Remaining Facility Purchase Offer, the completion of the Draft and the expiration of the thirty (30) day period contemplated by Section 13.9. Such closing shall take place at the principal office of the Joint Venture Company, or at such other time and location as the Members may mutually determine. At the closing of the Purchase Options, the applicable assets, rights or equity interest, as applicable, shall be conveyed, assigned or otherwise transferred to the Member

purchasing such assets, rights or equity, free and clear of any liens and encumbrances other than liens securing indebtedness exclusively associated with the applicable Fab, and each Member shall pay the Joint Venture Company the purchase price for the assets, rights or equity it is purchasing by wire transfer of immediately available funds and the Joint Venture Company shall deliver to each Member such instrument(s) of conveyance as the purchasing Member reasonably requests. For purposes hereof, the term "**Purchase Options**" shall mean any purchase made under Section 13.8 and the Micron [***] Purchase Option, the Intel Purchase Option, the Micron Purchase Option and any Remaining Facility Purchase Offer.

13.11 Auction of Remaining Assets. As soon as reasonably practicable following the closing of the Purchase Options pursuant to Section 13.10 (or if any Purchase Options are not exercised, the expiration of all Purchase Options), but not later than [***] ([***]) days after the Buyout Determination Date, the Board of Managers shall cause the Joint Venture Company and its Subsidiaries to sell, in an auction process reasonably designed to maximize the price, all of the assets, other than cash, remaining in the Joint Venture Company and its Subsidiaries that were not sold to the Members in accordance with the Purchase Options (the "**Remaining Assets**"). Each of the Members shall be entitled to participate as a bidder in the auction. The Remaining Assets shall be sold to the Person providing the best bid.

13.12 Winding Up. Following the conclusion of any sale conducted in accordance with Section 13.11, the Joint Venture Company shall continue solely for the purposes of winding up its affairs in an orderly manner, liquidating its assets, and satisfying the claims of its creditors and Members. To the extent not inconsistent with the foregoing, all covenants and obligations in this Agreement shall continue in full force and effect until such time as the Joint Venture Company's property has been distributed pursuant to this Section 13.12 and Section 13.13 and the Joint Venture Company has been dissolved in accordance with the Act.

13.13 Liquidation. (A) Upon the occurrence of a Liquidating Event and following the completion of (i) the consummation of any sale under any of the Purchase Options and (ii) the auction of assets contemplated by Section 13.11 (the date on which all such events have been completed, the "**Liquidation Date**"), the Board of Managers shall act as the liquidating committee of the Joint Venture Company. The liquidating committee shall liquidate

the Joint Venture Company's remaining assets and terminate its business in accordance with this Section 13.13. The liquidating committee shall promptly prepare or cause to be prepared, at the expense of the Joint Venture Company, a statement setting forth the assets and liabilities of the Joint Venture Company as of the date of dissolution and shall furnish that statement to all Members. The liquidating committee shall proceed to liquidate any assets of the Joint Venture Company that remain unsold after the auction contemplated by Section 13.11 and to terminate the Joint Venture Company's business as promptly as practicable but shall be allowed a reasonable time for the orderly liquidation of Joint Venture Company assets and the discharge of liabilities to creditors (including Members who are creditors) in order to minimize losses normally incident to a liquidation. The liquidating committee shall have full power and authority to operate Joint Venture Company properties in the ordinary course of business for the account of the Joint Venture Company.

(B) At least ten (10) days prior to the first distribution of assets or other proceeds of the liquidation under Section 13.13(C) (which distribution shall occur no earlier than the Liquidation Date), the liquidating committee shall deliver written notice of such pending first liquidating distribution to both Members. Prior to the time of such first liquidating distribution,

(i) any Member that is the Funding Member with respect to any Member Note outstanding at such time may, by delivering written notice to the Joint Venture Company, convert the outstanding principal balance of and accrued interest on such Member Note into a Capital Contribution and (ii) any Member that is the Non-Funding Member with respect to any Member Note outstanding at such time may, by delivering written notice to the Joint Venture Company, cause the Joint Venture Company to convert the outstanding principal balance of and accrued interest on any such Member Note into a Capital Contribution. Any conversion of a Member Note made pursuant to this Section 13.13(B) shall be effective prior to the commencement of the first liquidating distribution pursuant to Section 13.13(C).

(C) The assets and other proceeds of the liquidation, as and when available, shall be applied and distributed in the following order and priority:

(1) *first*, to the payment of all debts and liabilities of the Joint Venture Company, excluding debts and liabilities to Members and former Members;

(2) *second*, to the setting up of reserves that the liquidating committee deems reasonably necessary for contingent, unmatured or unforeseen liabilities or obligations of the Joint Venture Company;

(3) *third*, to the payment of all debts and liabilities to Members and any former Members; and

(4) *fourth*, to the Members in accordance with Section 5.1.

(D) In the event that, at the time of a liquidating distribution in accordance with Section 13.13(C), there exists any outstanding obligation of a Member to the Joint Venture Company (including, but not limited to, any amounts owed by such Member to the Joint Venture Company under any Purchase Option that remains unpaid), all amounts to be distributed to such Member under Section 13.13(C) shall be subject to offset, and no distribution shall be made to such Member until after all such obligations have been satisfied in full.

(E) In the event that Micron does not exercise the Micron [***] Purchase Option, or does not otherwise acquire the [***] pursuant to this Article 13, then Micron shall permit the Joint Venture Company, or the purchaser of any such [***] in an auction contemplated by Section 13.11, as applicable, to have reasonable access to the Premises, for a reasonable period and on a reasonable basis, in order to remove such [***] from the Premises.

13.14 Supply Agreements. Notwithstanding the occurrence of a Liquidating Event, the Boise Supply Agreement shall remain in effect for the remainder of its term, if any, but shall be modified as described in Section 12.5(C)(4) based on the Members' respective Sharing Interests at the time of such Liquidating Event, and the Products to be sold thereunder to, and purchased by, the Joint Venture Company instead shall be sold to, and purchased by, Intel. If a Liquidating Event has occurred, then, from and after the consummation of a sale under a Purchase Option, each Member shall enter into a supply agreement with the other Member, on substantially the same terms (including amount, delivery schedule, pricing terms and other terms) as the Supply Agreement that the Member is entering into with the Joint Venture Company on the date of this Agreement, under which each Member agrees to provide the other Member with its Sharing Interest on the date of the Liquidating Event of the output of each type of Product from each of the Facilities purchased by that Member in accordance with the provisions of this Article 13.

The quantity (determined based on the three (3)-month period immediately preceding the effectiveness of the contemplated Supply Agreement) of Product, measured in 300 millimeter diameter equivalents (excluding Product provided to either Member under the Boise Supply Agreement) that a Member shall be obligated to provide from each Facility under that Member's supply agreement will be fixed for the first year after the consummation of a sale under a Purchase Option and then will decline by [***] ([***]) of such fixed quantity per Fiscal Quarter to [***] ([***]) over the next [***] ([***]) Fiscal Quarters. The Members will work together in good faith so that such supply agreements minimize disruption to the business of the Members and to maintain, subject to such decline in amount, substantially the same supply of custom Products and substantially the same composition of types of Products as the Members had obtained from the Joint Venture Company immediately prior to the date of the Liquidating Event.

13.15 Employees. Each Member shall be free to offer employment to or continue the employment of any or all of the Joint Venture Company employees whose primary place of business is at a Fab owned or leased by the Joint Venture Company or by a Facilities Company if such Fab or the equity of such Facilities Company is purchased by that Member in accordance with the provisions of this Article 13.

ARTICLE 14.
EXCULPATION AND INDEMNIFICATION

14.1 Exculpation. No Manager (or alternate Manager) shall be liable to the Joint Venture Company, any Subsidiary of the Joint Venture Company or the Members (in their capacities as members of the Joint Venture Company) for monetary damages for breach of fiduciary duty as a Manager or otherwise liable, responsible or accountable to the Joint Venture Company, any Subsidiary of the Joint Venture Company or the Members (in their capacities as members of the Joint Venture Company) for monetary damages or otherwise for any acts performed, or for any failure to act, except that this provision

shall not eliminate or limit the liability of a Manager (or alternate Manager) (i) for acts or omissions that involve willful or intentional misconduct or gross negligence or (ii) for any transaction from which the Manager (or alternate Manager) received any improper personal benefit.

14.2 Indemnification.

(A) The Joint Venture Company shall, to the fullest extent permitted by Applicable Law, indemnify, defend and hold harmless (1) each Manager and alternate Manager and (2) the Chief Executive Officer, the Intel Executive Officer, the Micron Executive Officer, the Financial Officer and any other officer or site manager of the Joint Venture Company (each, an "**Executive Indemnified Party**" and collectively with the Managers, the "**Indemnified Party**"), against any losses, claims, damages or liabilities to which such Indemnified Party may become subject in connection with any matter arising out of or incidental to any act performed or omitted to be performed by any such Indemnified Party in connection with this Agreement or the Joint Venture Company's or any of its Subsidiaries' business or affairs; *provided*, *however*, that in the case of an Executive Indemnified Party, such act or omission was taken in good faith and was reasonably believed by the Executive Indemnified Party, as applicable, to be within the scope of authority granted to such Executive Indemnified Party; and *provided further*, *however*, that in the case of any Indemnified Party such act or omission was not attributable in whole or in part to the fraud, bad faith, willful misconduct or gross negligence of such Indemnified Party. If

an Indemnified Party becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with this Agreement or the Joint Venture Company's or any of its Subsidiaries' business or affairs, the Joint Venture Company shall reimburse such Indemnified Party for its reasonable legal and other reasonable out-of-pocket expenses (including the cost of any investigation and preparation) as they are incurred in connection therewith, *provided* that such Indemnified Party shall promptly repay to the Joint Venture Company the amount of any such reimbursed expenses paid to it if it shall ultimately be determined that such Indemnified Party was not entitled to be indemnified by the Joint Venture Company in connection with such action, proceeding or investigation. If for any reason (other than the fraud, bad faith, willful misconduct or gross negligence of such Indemnified Party) the foregoing indemnification is unavailable to such Indemnified Party, or insufficient to hold it harmless, then the Joint Venture Company shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage, liability or expense in such proportion as is appropriate to reflect the relative benefits received by the Joint Venture Company on the one hand and such Indemnified Party on the other hand or, if such allocation is not permitted by Applicable Law, to reflect not only the relative benefits referred to above but also any other relevant equitable considerations. Any indemnity under this Section 14.2(A) shall be paid solely out of and to the extent of the Joint Venture Company's and its Subsidiaries' assets and shall not be a personal obligation of any Member and in no event will any Member be required or permitted, without the consent of the other Member, to contribute additional capital under Article 2 to enable the Joint Venture Company to satisfy any obligation under this Section 14.2.

(B) The provisions of this Section 14.2 shall survive for a period of two (2) years from the date of dissolution of the Joint Venture Company, *provided* that (1) if at the end of such period there are any actions, proceedings or investigations then pending, an Indemnified Party may so notify the Joint Venture Company and the Members at such time (which notice shall include a brief description of each such action, proceeding or investigation and the liabilities asserted therein) and the provisions of this Section 14.2 shall survive with respect to each such action, proceeding or investigation set forth in such notice (or any related action, proceeding or investigation based upon the same or similar claim) until such date that such action, proceeding or investigation is finally resolved and (2) the obligations of the Joint Venture Company under this Section 14.2 shall be satisfied solely out of Joint Venture Company assets, including the assets of any Subsidiary of the Joint Venture Company.

ARTICLE 15.
GOVERNMENTAL APPROVALS

15.1 Governmental Approvals. In the event that either Member takes any action contemplated by this Agreement that could reasonably be expected to result in an event or transaction, including without limitation (i) the purchase by either Member of an Interest pursuant to Sections 12.4 or 12.5, (ii) the exercise by either Member of a Purchase Option or the purchase of a Facility or Facilities Company pursuant to Sections 13.5, 13.6, 13.7, 13.8 or 13.9, (iii) a Change of Consolidating Member, (iv) the making of a Capital Contribution, (v) the conversion of a Member Note or (vi) the creation or acquisition of interests in a Facilities Company, which event or transaction, as to each of the foregoing, would require either Member to make a filing, notification or any other required or requested submission under the HSR Act or any other applicable Competition Law (any such event or transaction, a "**Filing Event**" and any such filing, notification, or any such other required or requested submission, a "**Filing**"), then:

(A) the Member taking such action, in addition to complying with any other applicable notice provisions under this Agreement, shall promptly notify the other Member of such Filing Event, which notification shall include an indication that Filings under the HSR Act or any other applicable Competition Law will be required;

(B) notwithstanding any provision to the contrary in this Agreement, a Filing Event may not occur or close until after any applicable waiting period (including any extension thereof) under the HSR Act or any other Competition Law, as applicable to such Filing Event, shall have expired or been terminated, and all approvals under antitrust regulatory Filings in any jurisdiction that shall be necessary for such Filing Event to occur or close shall have been obtained, and any applicable deadline for the occurrence or closing of such Filing Event contained in this Agreement shall be delayed, so long as both Members are proceeding diligently in accordance with this Section 15.1 to seek any such expiration, termination or approval, and so long as there are no other outstanding conditions preventing the occurrence or closing of the Filing Event;

(C) the Members shall, and shall cause any of their relevant Affiliates to:

(1) as promptly as practicable, make their respective Filings under the HSR Act or any other applicable Competition Law,

(2) promptly respond to any requests for additional information from the Federal Trade Commission, the Department of Justice or any other Governmental Entity,

(3) subject to Applicable Laws, use commercially reasonable efforts to cooperate with each other in the preparation of, and coordinate, such Filings (including the exchange of drafts between each party's outside counsel) so as to reduce the length of any review

periods

(4) subject to Applicable Laws, cooperate and use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under Applicable Laws in connection with such Filing Event, including using commercially reasonable efforts to provide information, obtain necessary exemptions, rulings, consents, clearances, authorizations, approvals and waivers, and effect necessary registrations and filings;

(5) subject to Applicable Laws, use their commercially reasonable efforts to (a) take actions that are necessary to prevent the Federal Trade Commission, the Antitrust Division of the Department of Justice, or any other Governmental Entity, as the case may be, from filing an action with a court or Governmental Entity that, if the Governmental Entity prevailed, would restrict, enjoin, prohibit or otherwise prevent or materially delay the consummation of the Filing Event, including an action by any such Governmental Entity seeking a requirement to (i) sell, license or otherwise dispose of, or hold separate and agree to sell or otherwise dispose of, assets, categories of assets or businesses of either Member, the Joint Venture Company, or its respective Subsidiaries; (ii) terminate existing relationships and contractual rights and obligations of either Member, the Joint Venture Company or its respective Subsidiaries; (iii) terminate any relevant

venture or other arrangement; or (iv) effectuate any other change or restructuring of either Member or the Joint Venture Company (as to each of the foregoing, a "**Divestiture Action**"), and (b) contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any order that restricts, enjoins, prohibits or otherwise prevents or materially delays the occurrence or closing of such Filing Event; and

(6) subject to Applicable Laws, prior to the making or submission of any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal by or on behalf of either Member in connection with proceedings under or relating to the HSR Act or any other applicable Competition Law, consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals, and will provide one another with copies of all material communications from and filings with, any Governmental Entities in connection with any Filing Event;

(D) notwithstanding anything to the contrary in this Section 15.1, nothing in this Section 15.1 shall require either Member or its respective Affiliates, or the Joint Venture Company, to take any Divestiture Action; and

(E) if the Filing Event is prevented from occurring or closing as a result of any applicable Competition Laws, after exhausting all efforts permitted under this Section 15.1 to obtain the necessary approval of any applicable Governmental Entity, then the Members shall negotiate in good faith to agree upon an alternative event or transaction that would be permissible under applicable Competition Laws, and would approximate, as closely as possible, the intent and contemplated effect of the original Filing Event.

ARTICLE 16.
FORMATION OF ADDITIONAL ENTITIES

16.1 Formation of U.S. Subsidiaries. The Members agree that certain of the Facilities located in the United States may be held through a Wholly-Owned Subsidiary of the Joint Venture Company (each, a "**U.S. Facilities Company**"). Unless the Members agree otherwise, each U.S. Facilities Company shall be owned directly or indirectly by the Joint Venture Company. Each U.S. Facilities Company shall elect to be treated as a disregarded entity or a partnership for U.S. federal income tax purposes, as appropriate. The Members agree that the charter and other organizational documents of each U.S. Facilities Company and all contractual and other arrangements between the Joint Venture Company and such U.S. Facilities Company, and between the Members and the U.S. Facilities Company, shall have such terms and conditions as shall be necessary to achieve the purposes of the Members in entering into this Agreement and the Joint Venture Documents and to achieve as closely as practicable the same beneficial results (including with respect to Joint Venture Products produced by such U.S. Facilities Company and the pricing thereof; tax matters, financial accounting matters, assets to be distributed, and rights provided, on dissolution and liquidation; profits; losses; distributions; governance; control and the like) for the Members as would be achieved if the Facility held by such U.S. Facilities Company were held directly by the Joint Venture Company.

16.2 Formation of Foreign Facilities Company. Notwithstanding any provision hereof to the contrary, the Members anticipate that each Facility with respect to which this Agreement applies (or would apply but for the ownership of such Facility outside of the Joint Venture Company as provided herein) and which is located outside the United States will be held in a separate entity (each, a "**Foreign Facilities Company**") as the Members shall mutually determine in good faith (which entity may be owned directly or indirectly by the Joint Venture Company or by the Members or their Affiliates outside the Joint Venture Company, as provided herein). If the Members fail to agree as to the type of entity that will act as a Foreign Facilities Company with respect to a Facility or whether such Foreign Facilities Company shall be owned directly or indirectly by the Joint Venture Company or by the Members or their Affiliates outside the Joint Venture Company, then such Foreign Facilities Company shall be organized as an entity (1) that is formed under the laws of the jurisdiction in which the Facility is located, (2) that, to the extent permitted under the laws of such jurisdiction, shall be an "eligible entity" as defined in United States Treasury Regulation 301.7701-3(a), (3) that elects to be treated as a partnership for United States federal income tax purposes, (4) in which each Member's direct interest in such Foreign Facilities Company is owned by a direct or indirect Wholly-Owned Subsidiary of such Member (the "**Foreign Facilities Company Member**") formed in the jurisdiction in which the Foreign Facilities Company is formed (unless both Members consent to have such direct interest owned by an entity formed in another jurisdiction), and (5) that will sell Joint Venture Product to the Foreign Facilities Company Members using pricing methodology and terms comparable to the pricing methodology and terms applicable to sales of Joint Venture Product by the Joint Venture Company to the Members. If the immediately preceding sentence applies to a Foreign Facilities Company, further transfers of Joint Venture Product between each Foreign Facilities Company Member and its Affiliates shall be structured in a manner that both Members reasonably and in good faith agree will maximize in a commercially reasonable manner and without undue tax risk (including tax risks unrelated to the Foreign Facilities Company) the benefits of owning the applicable Facility in the jurisdiction in which the Foreign Facilities Company is formed. [***]; *provided*, *however*, that at the option of Intel, Intel may, contribute additional funds to the capital of such Foreign Facilities Company so that Intel shall own [***]% and Micron [***]% of the shares or other ownership interests of such Foreign Facilities Company.

ARTICLE 17.
DEADLOCK; OTHER DISPUTE RESOLUTION; EVENT OF DEFAULT

17.1 Deadlock. "**Deadlock**" shall occur with respect to any matter for which an affirmative vote by at least one Manager appointed by each Member is required for approval, and such matter is not approved as a result of a vote in which a majority of the Managers appointed by one Member (or the sole Manager appointed by a Member, if there is only one) have voted against the matter and a majority of the Managers appointed by the other Member (or the sole Manager appointed by the other Member, if there is only one) have voted for the matter other than an Intel Matter or a Micron Matter (a "**Tie Vote**") on a matter submitted to it at a meeting or in the form of a proposed written consent, and during the [***] period following this Tie Vote, the Board of Managers is unable or fails to break the Tie Vote (if the matter is presented in the form of a proposed written consent, the [***] period shall commence on the date that the Manager who was last to receive the proposal received it). During this [***] period, the Board of Managers shall seek in good faith to hold at least [***] ([***]) additional meetings at which it shall make a good faith effort to break the Deadlock. To the extent practicable, the Board of Managers shall seek to resolve the matter in a manner consistent with the Joint Venture

Company's then-current Approved Business Plan. The additional meetings shall be held at the time and place agreed to by the Managers, or if the Managers are unable to agree, at a time and place determined by the Authorized Officers, or the Chief Executive Officer, as applicable, on at least two (2) days' written notice.

17.2 Resolution of Deadlock. If a Deadlock occurs, (i) if the matter is an Intel Matter, the matter shall be resolved in the manner specified by the general manager of Intel's memory products group, whose decision shall be final and binding on the Joint Venture Company and its Subsidiaries, (ii) if the matter is a Micron Matter, the matter shall be resolved in the manner specified by the general manager of Micron's memory products group, whose decision shall be final and binding on the Joint Venture Company and its Subsidiaries, and (iii) if the matter is neither an Intel Matter nor a Micron Matter, the Joint Venture Company shall (a) first submit the matter that was the subject of the Deadlock to the general manager of Intel's memory products group and to the general manager of Micron's memory products group by providing notice of the Deadlock to the Members, and the general manager of Intel's memory products group and the general manager of Micron's memory products group shall then make a good faith effort to resolve the dispute and break the Deadlock within [***] of the Members' receiving notice of the Deadlock and (b) next, if the Deadlock is still not resolved, submit the matter to the principal executive officer for each of the Members (each, an "**Authorized Representative**"), who shall then make a good faith effort to resolve the Deadlock within [***] of submission to the Authorized Representatives. If the matter remains unresolved, then the Members shall submit the Deadlock to non-binding mediation. Either Member may initiate the non-binding meditation by providing to JAMS and the other Member a written request for mediation, setting forth the subject of the Deadlock. The Members will cooperate with JAMS and with one another in selecting a retired judge from JAMS panel of neutrals, and in scheduling the mediation proceedings. The Members covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. The provisions of this Section 17.2 may be enforced by any court of competent jurisdiction, and the Member seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Member against whom enforcement is ordered.

17.3 Definition of "Intel Matters." For purposes of this Agreement, any matter described on Schedule 3 is an "**Intel Matter**."

17.4 Definition of "Micron Matters." For purposes of this Agreement, any matter described on Schedule 4 is a "**Micron Matter**."

17.5 Other Dispute Resolution. In the event of any other dispute over a purported breach of this Agreement (a "**Dispute**"), the Members shall endeavor to settle, through their respective designees to the Board of Managers, the Dispute. All Disputes arising under this Agreement that are not resolved by the Board of Managers shall be resolved as follows: the Joint Venture Company shall first submit the matter to the general manager of the memory products group for each of the Members by providing notice of the Dispute to the Members. The general managers of the memory products groups shall then make a good faith effort to resolve the Dispute. If they are unable to resolve the Dispute within [***] of receiving notice of the Dispute, the matter shall then be submitted to the Authorized Representative for each of the Members, who shall then make a good faith effort to resolve the Dispute. If the Dispute cannot be resolved within [***] of submission of the matter to the Authorized Representatives, then a

civil action with respect to the Dispute may be commenced, but only after the matter has been submitted to JAMS for mediation as contemplated by Section 17.6.

17.6 Mediation. If there is a Dispute, either Member may commence mediation by providing to JAMS and the other Member a written request for mediation, setting forth the subject of the Dispute and the relief requested. The Members will cooperate with JAMS and with one another in selecting a mediator from JAMS panel of neutrals, and in scheduling the mediation proceedings. The Members covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Members, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the Members, *provided* that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either Member may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. Except for such an action to obtain equitable relief, neither Member may commence a civil action with respect to a Dispute until after the completion of the initial mediation session, or [***] after the date of filing the written request for mediation, whichever occurs first. Mediation may continue after the commencement of a civil action, if the Members so desire. The provisions of this Section may be enforced by any court of competent jurisdiction, and the Member seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the Member against whom enforcement is ordered.

17.7 Event of Default.

(A) An "**Event of Default**" shall occur if a Member (the "**Defaulting Member**") fails to perform any material obligation under this Agreement or any of the Joint Venture Documents to which it is a party.

(B) Upon the occurrence of an Event of Default, the Joint Venture Company and the other Member (the "**Non-Defaulting Member**") shall each have the right to deliver to the Defaulting Member notice (a "**Notice of Default**"). The Notice of Default shall set forth the nature of the

obligations that the Defaulting Member has failed to perform. If the Defaulting Member fails to cure the Event of Default within the Cure Period, the Non-Defaulting Member may take any of the actions set forth in Section 17.7(C). For purposes hereof, "**Cure Period**" means a period commencing on the date that the Notice of Default is provided by the Non-Defaulting Member or the Joint Venture Company and ending (i) thirty (30) days after Notice of Default is so provided, or (ii) in the case of any obligation (other than an obligation to pay money) which cannot reasonably be cured within such thirty (30) day period, such longer period not to exceed one hundred twenty (120) days after the Notice of Default as is necessary to effect a cure of the Event of Default, so long as the Defaulting Member diligently attempts to effect a cure throughout such period.

(C) Upon the occurrence of an Event of Default and the expiration of the Cure Period set forth in Section 17.7(B), the Non-Defaulting Member may request the Joint Venture Company to pursue all legal and equitable rights and remedies against the Defaulting Member available to it (subject to any limitations in the agreement containing the obligation that was not performed) or may pursue its own legal and equitable rights and remedies against the Defaulting

Member (subject to any limitations in the agreement containing the obligation that was not performed); *provided*, *however*, that the Non-Defaulting Member may seek dissolution of the Joint Venture Company under such circumstances only if expressly permitted pursuant to Section 13.1(A)(4). The Defaulting Member shall pay all costs, including attorneys' fees, incurred by the Joint Venture Company and the other Member in pursuing such legal remedies.

17.8 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate preliminary or permanent injunctive relief may be applied for and granted in connection therewith. Except as otherwise limited by this Agreement, such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that a party may have under this Agreement; *provided*, *however*, that in no event shall the dissolution of the Joint Venture Company be permitted unless it is expressly permitted by Section 13.1(A).

17.9 Tax Matters. Notwithstanding anything in this Article 17 to the contrary, the resolution of disputes concerning tax matters governed by Section 10.6(B) shall be governed by Section 10.6(B) of this Agreement.

ARTICLE 18.
MISCELLANEOUS PROVISIONS

18.1 Notices. All notices to the Joint Venture Company shall be sent addressed to the Authorized Officers, or the Chief Executive Officer, as applicable, at the Joint Venture Company's principal place of business. All notices to a Member shall be sent addressed to such Member at the address as may be specified by the Member from time to time in a notice to the Joint Venture Company, *provided* that the initial notice address for each Member is as follows:

(A) if to Intel:

Intel Corporation
2200 Mission College Blvd.
Mailstop SC4-203
Santa Clara, CA 95054
Attention: General Counsel
Facsimile: (408) 653-8050

with a copy to:

Intel Corporation
2200 Mission College Blvd.
Mailstop RN6-46
Santa Clara, CA 95054
Attention: [***]
Facsimile: [***]

(B) if to Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-4537

All notices to a Manager shall be sent addressed to such Manager at the address as may be specified by the Manager from time to time in a notice to the Joint Venture Company. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

18.2 Waiver. The failure at any time of a Member to require performance by any other Member of any responsibility or obligation required by this Agreement shall in no way affect a Member's right to require such performance at any time thereafter, nor shall the waiver by a Member of a breach of

any provision of this Agreement by any other Member constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

18.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each party hereto. Except as otherwise specifically provided in this Agreement, neither this Agreement nor any right or obligation hereunder may be assigned or delegated in whole or in part to any other Person.

18.4 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person other than the Joint Venture Company and the Members any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

18.5 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without giving effect to the principles of conflict of laws thereof.

18.6 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

18.7 Entire Agreement. This Agreement, together with the Appendices, Exhibits and Schedules hereto and the agreements (including the Confidentiality Agreement) and instruments expressly provided for herein, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof.

18.8 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all

other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Law or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

18.9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18.10 Further Assurances. Each Member shall execute such deeds, assignments, endorsements, evidences of transfer and other instruments and documents and shall give such further assurances as shall be necessary to perform such Member's obligations hereunder. The obligations of the Members set forth in this Section 18.10 shall survive the termination of this Agreement.

18.11 Consequential Damages. No party shall be liable to any other party under any legal theory for indirect, special, incidental, consequential or punitive damages, or any damages for loss of profits, revenue or business, even if such party has been advised of the possibility of such damages.

18.12 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a state or federal court located in Delaware and each of the parties to this Agreement hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court.

18.13 Confidential Information.

(A) The Members shall abide by the terms of that certain Mutual Confidentiality Agreement between Micron, Intel and the Joint Venture Company of even date herewith, and as may be amended or replaced from time to time (the "**Confidentiality Agreement**"), which agreement is incorporated herein by reference with respect to the Joint Venture Company, its Subsidiaries and the Facilities Companies and the activities of the Joint Venture Company, its Subsidiaries and the Facilities Companies. The Members agree that the Confidentiality Agreement shall govern the confidentiality and non-disclosure obligations between the Members respecting the information provided or disclosed pursuant to this Agreement as such information relates to the Joint Venture Company, its Subsidiaries and the Facilities Companies and their activities.

(B) If the Confidentiality Agreement is terminated or expires and is not replaced, such Confidentiality Agreement shall continue with respect to confidential information provided in connection with this Agreement, notwithstanding such expiration or termination, for the duration of the term of this Agreement or until a new Confidentiality Agreement is entered

into between the Members. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

(C) The terms and conditions of this Agreement shall be considered "**Confidential Information**" under the Confidentiality Agreement for which each of Micron and Intel is considered a "Receiving Party" under such Confidentiality Agreement.

18.14 Certain Interpretive Matters.

(A) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each of the Schedules will apply only to the corresponding Section or subsection of this Agreement, (3) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, except as modified by the definition of "Modified GAAP, " (4) words in the singular include the plural and visa versa, (5) the term "**including**" means "including without limitation," and (6) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. All references to "**$**" or dollar amounts will be to lawful currency of the United States of America. All references to "**$**" or dollar amounts, or "**%**" or percent or percentages, shall be to precise amounts and not rounded up or down. All references to "**day**" or "**days**" will mean calendar days.

(B) No provision of this Agreement will be interpreted in favor of, or against, any of the parties by reason of the extent to which any such party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned being all of the Members of IM Flash Technologies, LLC organized under the Act, have executed this Agreement as of the date and year first above written.

INTEL CORPORATION

By: /s/ ARVIND SODHANI
Print Name: Arvind Sodhani
Title: Senior Vice President, Intel Corporation
President, Intel Capital

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON
Print Name: Steven R. Appleton
Title: Chief Executive Officer and President

**THIS IS THE SIGNATURE PAGE FOR THE
LIMITED LIABILITY COMPANY OPERATING AGREEMENT OF
IM FLASH TECHNOLOGIES, LLC ENTERED INTO BY AND BETWEEN
INTEL CORPORATION AND MICRON TECHNOLOGY, INC.**

APPENDIX A

IM FLASH TECHNOLOGIES, LLC

DEFINITIONS

"[***] **Fab**" means a Fab that has [***] construction, Tool Install and equipment and process qualification, including all related facilities necessary to commence production of semiconductor devices and such production output has reached a minimum level of [***]% of its intended high volume output level (as measured in Wafer Starts per week).

"**Accountants**" shall have the meaning set forth in Section 10.4(C) of this Agreement.

"**Act**" shall have the meaning set forth in Section 1.1 of this Agreement.

"**Accumulated Distributions Account**" shall have the meaning set forth in Section 5.1(C) of this Agreement.

"**Actual Performance Projection**" shall mean, [***].

"**Additional Capital Contributions**" shall have the meaning set forth in Section 2.3(C) of this Agreement.

"**Adjusted Contribution Amount**" means, after a Change in Consolidating Member, an amount equal to the sum of (i) the Consolidating Member's *Pro Rata* Share of a given Additional Capital Contribution and (ii) the portion of the Former Consolidating Member's *Pro Rata* Share of such Additional Capital Contribution that such Former Consolidating Member is not [***].

"**Affiliate**" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"**Affiliate Agreements**" shall have the meaning set forth in Section 12.2(B)(1) of this Agreement.

"**Agreement**" shall have the meaning set forth in the preamble of this Agreement.

"**Annual Budget**" shall have the meaning set forth in Section 11.2(B) of this Agreement.

"**Applicable Law**" means any laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Applicable Percentage**" shall be [***]% with respect to any Fiscal Quarter ending on or prior to the Transition Date and [***]% for the remainder of the Term.

"**Applicable Fiscal Quarter**" means Micron's first fiscal quarter in its [***] fiscal year.

"**Applicable Projection**" with respect to any Fiscal Quarter means:

(A) if the Approved Business Plan for such Fiscal Quarter is an Undisputed Approved Business Plan, the projection set forth in such Undisputed Approved Business Plan; and

(B) if the Approved Business Plan for such Fiscal Quarter is a Disputed Approved Business Plan, the projection determined as follows:

[***].

"**Appointing Member**" shall have the meaning set forth in Section 6.2(B) of this Agreement.

"**Appraiser**" means two nationally recognized investment banking firms (one to be selected by each Member) and a manufacturing equipment reseller (mutually agreed upon by the two investment banking firms).

"**Approved Business Plan**" means either an Undisputed Approved Business Plan or a Disputed Approved Business Plan, as in effect from time to time.

"**Assembly Plan**" means an assembly plan set forth in the Operating Plan, as more particularly described in Section 11.6(A)(2) of this Agreement.

"**Associated Assets**" means, with respect to any Fab, the Joint Venture Equipment, inventory and other tangible personal property owned by the Joint Venture Company or any of its Subsidiaries and located at that Fab on the date of the Liquidating Event or thereafter and all rights and obligations pursuant to contracts, permits and governmental approvals associated with such Fab, Joint Venture Equipment, inventory or other tangible personal property, including all liabilities exclusively associated with such Fab, except for assets sold or disposed of in any of the following transactions that occurs after the Liquidating Event: (a) the sale of inventory in the ordinary course; (b) the sale or other disposition of obsolete or surplus equipment or other assets to third parties in the ordinary course in arm's-length transactions; and (c) the sale of any other asset with the approval of the Board of Managers. Any transfer of Associated Assets under this Agreement shall include the assumption by the transferee of the liabilities exclusively associated with such Fab.

"**Authorized Officers**" means both the Intel Executive Officer and the Micron Executive Officer.

"**Authorized Representative**" shall have the meaning set forth in Section 17.2 of this Agreement.

"**Balance Sheet Metric Event**" means, with respect to any given Fiscal Quarter, the occurrence of either of the following:

[***].

"**Bankruptcy**" shall have the meaning set forth in Section 13.1(B) of this Agreement.

"**Board of Managers**" shall have the meaning set forth in Section 6.1 of this Agreement.

"**Boise Supply Agreement**" means that certain agreement, of even date herewith, between Micron and the Joint Venture Company to supply products to the Joint Venture Company.

"**Book**" shall have the meaning set forth in Appendix B to this Agreement.

"**Business Day**" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of New York are authorized or required by Applicable Law to be closed.

"**Buyout Determination Date**" shall have the meaning set forth in Section 13.2 of this Agreement.

"**[***] Value**" means either (a) or (b) below, determined as follows: each Member shall select its own Appraiser and the two Appraisers shall mutually select a third Appraiser. Each Appraiser shall conduct its own independent appraisal to determine the [***] Value, and the average of the two (2) determinations that are the closest in value shall be the [***] Value.

[***].

"**Cap Amount**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Capital Account**" shall have the meaning set forth in Section 4.1 of this Agreement.

"**Capital Contribution**" means, for each Member, any amount contributed or deemed to be contributed to the Joint Venture Company as a capital contribution, including (without duplication of any capital contribution in clauses (i) – (v)):

(i) the Initial Capital Contribution made by such Member;

(ii) any Additional Capital Contributions (including any contributions made under Section 2.4) made by such Member;

(iii) any portion of a Make-Up Contribution made by such Member equal to the amount of the principal balance of the Member Note repaid with the Make-Up Contribution;

(iv) any other capital contributions made by such Member to the Joint Venture Company as the Members may agree or as provided in the Joint Venture Documents; and

(v) any capital contribution deemed made by such Member upon conversion, contribution or transfer to the Joint Venture Company of a Member Note.

"**Capital Contribution Balance**" means, for each Member, the sum of all Capital Contributions made to the Joint Venture Company by such Member, minus the sum of any capital contributions returned or refunded to such Member pursuant to Article 2 or Article 3. As of the Effective Date, each Member shall, for purposes of determining its Capital Contribution Balance, receive full credit for its Initial Capital Contribution.

"**Certificate**" shall have the meaning set forth in Section 1.1 of this Agreement.

"**Chairman**" shall have the meaning set forth in Section 6.2(C) of this Agreement.

"**Change in Consolidating Member**" means a change in the Member that is required under GAAP to consolidate the financial results of the Joint Venture Company with its financial results.

"**Chief Executive Officer**" shall have the meaning set forth in Section 8.4 of this Agreement.

"**Chief Financial Officer**" shall have the meaning set forth in Section 8.3(D) of this Agreement.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Committed Capital**" means, for a Member, on a given date, the sum of (1) the Capital Contribution Balance of such Member through such date and (2) the principal and accrued interest (*provided*, that for purposes of this definition, accrued interest shall be accrued only on the first day of each Fiscal Month) owed to such Member under any Member Debt Financing outstanding on such date.

"**Competition Laws**" means the Sherman Antitrust Act of 1890, as amended, the Clayton Act of 1914, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other domestic or foreign Applicable Laws issued by a domestic or foreign Governmental Entity that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

"**Competitively Sensitive Information**" means any information, in whatever form, that has not been made publicly available relating to products and services that a Member sells in competition with the other Member at the execution of this Agreement or thereafter during the Term including, without limitation, NAND Flash Memory Product, to the extent such information of the Member selling such products and services includes price or any element of price, customer terms or conditions of sale, Member-specific costs, volume of sales, output (but not including the Joint Venture Company's output), or bid terms of the foregoing type and such similar information as is specifically identified electronically or in writing to the Joint Venture Company by a Member as competitively sensitive information.

"**Completion,**" with respect to a Fab, means the time at which the Fab has successfully completed Process Qualification/Certification and is capable of manufacturing completed semiconductor devices.

"**Confidentiality Agreement**" shall have the meaning set forth in Section 18.13 of this Agreement.

"**Conforming Wafer**" means a NAND Flash Memory Wafer with greater than [***] percent ([***]%) functional die, or that is otherwise accepted by a Member.

"**Consolidating Member**" means the Member that is required to consolidate the financial results of the Joint Venture Company with its financial results under GAAP.

"**Continuing Mandatory Notes**" shall have the meaning set forth in Section 3.1(E) of this Agreement.

"**Critical Deadlock**" means a Deadlock between the Members about how to address the circumstances giving rise to an Initial Operating Metric Event or a Balance Sheet Metric Event, provided that:

(A) such Deadlock (1) is not with respect to a Micron Matter or an Intel Matter, (2) is not with respect to a matter within the scope of the provisions of any of subsections (1) - (13) of Section 6.3(A), Section 6.3(B), Section 6.3(C) or Section 7.4, and (3) does not relate to a proposal to require any Capital Contributions or Member Debt Financing;

(B) the Deadlock about how to address the circumstances giving rise to such Initial Operating Metric Event or Balance Sheet Metric Event, as applicable, has not been resolved within [***] of the occurrence of such Deadlock; and

(C) with respect to a Deadlock about how to address the circumstances giving rise to an Initial Operating Metric Event, there has not been a Subsequent Operating Metric Cure within the following [***] Fiscal Quarters after such Initial Operating Metric Event.

"**Cure Period**" shall have the meaning set forth in Section 17.7(B) of this Agreement.

"**Deadlock**" shall have the meaning set forth in Section 17.1 of this Agreement.

"**Defaulting Member**" shall have the meaning set forth in Section 17.7(A) of this Agreement.

"**DGCL**" means the Delaware General Corporation Law (Del. Code Ann. tit. 8 §§101 et seq.).

"**Dispute**" shall have the meaning set forth in Section 17.5 of this Agreement.

"**Disputed Approved Business Plan**" shall have the meaning set forth in Section 11.2(D)(2) of this Agreement.

"**Dissolving Member Event**" shall mean any event, circumstance or occurrence, the proximate cause of which is an action taken by the Member who has sent a notice pursuant to Section 13.1(A)(8) or (10) electing to dissolve the Joint Venture Company which is sent after the occurrence of a Balance Sheet Metric Event. A Member shall not be deemed to have taken any action solely as a result of (a) the voting of the Managers appointed by such Member to the Board of Managers or the members of any committee appointed by such Member or (b) actions of any Seconded Employee, employee or officer of the Joint Venture Company (other than an action taken by any Seconded Employee at the specific direction of the Member that employs him or her).

"**Distribution Entitlement**" means with respect to any proposed distribution under Section 5.1(A)(4) to a Member, the amount, if any, equal to the Member's Sharing Interest (as such Sharing Interest is determined immediately after any payments made under Sections 5.1(A)(1), (2) and (3)) multiplied by the aggregate, cumulative distributions (not including any payments made pursuant to Sections 5.1(A)(1), (2) and (3) but including the amount to be distributed to such Member in such proposed distribution under Section 5.1(A)(4)).

"**Draft**" shall have the meaning set forth in Section 13.8(A) of this Agreement.

"**Draft Administrator**" shall have the meaning set forth in Section 13.8(B) of this Agreement.

"**Draft Commencement Date**" shall have the meaning set forth in Section 13.8(D) of this Agreement.

"**DRAM**" has the meaning set forth in that certain [***] Agreement, dated [***], between Intel and Micron.

"**Early Start**" means the [***].

"**Economic Interest**" means, for each Member, a percentage determined from time to time by dividing the Committed Capital of such Member at the time of determination by the aggregate Committed Capital of all Members at the time of determination.

"**Effective Date**" shall have the meaning set forth in the preamble of this Agreement.

"**Event of Default**" shall have the meaning set forth in Section 17.7(A) of this Agreement.

"**Executive Indemnified Party**" shall have the meaning set forth in Section 14.2(A) of this Agreement.

"**[***] Budget**" shall have the meaning set forth in Section 11.1(B) of this Agreement.

"**[***] Capital Contribution**" shall mean an Additional Capital Contribution of funds required by the Joint Venture Company as set forth in the [***] Budget of the Initial Business Plan, as it may be modified in accordance with Section 11.1(C)(2).

"**Fab**" means a manufacturing facility for manufacturing NAND Flash Memory Wafers and shall include the related automated material handling system (AMHS), process tools, and support tools/fixtures used for manufacturing NAND Flash Memory Wafers in the cleanroom, sub fab and all related laboratories. It also includes all non-clean support equipment and gas and chemical delivery systems required to support the production tools in the Fab.

"**Fab Criteria**" means a Fab capable of producing a minimum of [***] and a maximum of [***] Wafer Starts per week.

"**Fab Draft Period**" shall have the meaning set forth in Section 13.8(A) of this Agreement.

"**Facility**" means a Fab that is owned or leased by the Joint Venture Company or any of its Subsidiaries or any Facilities Company and the Associated Assets of such Fab.

"**Facilities Company**" means a U.S. Facilities Company or a Foreign Facilities Company.

"**Filing**" shall have the meaning set forth in Section 15.1 of this Agreement.

"**Filing Event**" shall have the meaning set forth in Section 15.1 of this Agreement.

"**Financial Officer**" shall have the meaning set forth in Section 8.3(D) of this Agreement.

"**First Drafter**" shall have the meaning set forth in Section 13.8(B) of this Agreement.

"**Fiscal Month**" means the fiscal month of the Joint Venture Company as determined by the Board of Managers from time to time, and, initially, the period commensurate with Micron's fiscal month; *provided* that, if the Member with whom the Joint Venture Company's financial statements are consolidated changes prior to the end of any Fiscal Month, the Fiscal Month shall, at such Member's discretion, change to be commensurate with the Fiscal Month of such Member at such time as such Member may thereafter specify.

"**Fiscal Quarter**" means the fiscal quarter of the Joint Venture Company as determined by the Board of Managers from time to time, and, initially, the period commensurate with Micron's fiscal quarter; *provided* that, if the Member with whom the Joint Venture Company's financial statements are consolidated changes prior to the end of any Fiscal Quarter, the Fiscal Year shall, at such Member's discretion, change to be commensurate with the Fiscal Quarter of such Member at such time as such Member may thereafter specify.

"**Fiscal Year**" means the fiscal year of the Joint Venture Company as determined by the Board of Managers from time to time, and corresponding to the fiscal year of the Member having the greater Percentage Interest, initially, the period commencing as of the Effective Date and ending August 31, 2006 and thereafter a fifty-two (52) or fifty-three (53) week period ending on the Thursday closest to August 31 of each year; *provided* that, if the Member with whom the Joint Venture Company's financial statements are consolidated changes prior to the end of any Fiscal Year, the Fiscal Year shall, at such Member's discretion, change to be commensurate with the Fiscal Year of such Member at such time as such Member may thereafter specify.

"**Flash Memory Integrated Circuit**" means a non-volatile memory integrated circuit that contains memory cells that are electrically programmable and electrically erasable whereby the memory cells consist of one or more transistors that have a floating gate, charge-trapping regions or any other functionally equivalent structure utilizing one or more different charge levels (including binary or multi-level cell structures) with or without any on-chip control, I/O and other support circuitry.

"**Floor Amount**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Foreign Facilities Company**" shall have the meaning set forth in Section 16.2 of this Agreement.

"**Foreign Facilities Company Member**" shall have the meaning set forth in Section 16.2 of this Agreement.

"**Former Consolidating Member**" means the Member that was required to consolidate the financial results of the Joint Venture Company with its financial results under GAAP immediately prior to a Change in Consolidating Member.

"**Funding Member**" shall have the meaning set forth in Section 3.1(A) of this Agreement.

"**Funding Member Portion**" means that portion of the amount of a Funding Member's Additional Capital Contribution that is deemed to be a loan (rather than a Capital Contribution) as part of a Member Debt Financing, which amount is determined by [***] the Funding Member's [***] of such Additional Capital Contribution (whether or not contributed in full) [***] is the amount actually loaned to the Joint Venture Company by the Funding Member in respect of the Shortfall Amount and the [***] is the Non-Funding Member's [***] of the Additional Capital Contribution.

"**GAAP**" means United States generally accepted accounting principles as in effect from time to time.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indemnified Party**" shall have the meaning set forth in Section 14.2(A) of this Agreement.

"**Independent Member**" shall have the meaning set forth in Section 6.3(B)(1) of this Agreement.

"**Initial Business Plan**" shall have the meaning set forth in Section 11.1(A) of this Agreement.

"**Initial Capital Contribution**" means the total amount of money or other property initially contributed or agreed to be contributed to the Joint Venture Company by a Member pursuant to Section 2.1, as set forth on Appendix D.

"Initial Operating Metric Event" means the [***].

"**Initial Period**" shall have the meaning set forth in Section 11.1(A) of this Agreement.

"**Initial Term**" shall have the meaning set forth in Section 1.3 of this Agreement.

"**Intel**" shall have the meaning set forth in the preamble of this Agreement.

"**Intel Additional Cash**" shall have the meaning set forth on Appendix D.

"**Intel Executive Officer**" shall have the meaning set forth in Section 8.1(A) of this Agreement.

"**Intel Exercise Notice**" shall have the meaning set forth in Section 13.6(C) of this Agreement.

"**Intel Initial Contributed Assets**" means the total amount of money or other property contributed or agreed to be contributed to the Joint Venture Company by Intel as of the Effective Date, as described on Appendix D.

"**Intel Matter**" shall have the meaning set forth in Section 17.3 of this Agreement.

"**Intel Maximum Incremental Capital Amount**" means **$**[***]. Such amount does not include any funds contributed as part of Intel's Initial Capital Contribution.

"**Intel Personnel Secondment Agreement**" means that certain Intel Personnel Secondment Agreement, of even date herewith, by and between the Joint Venture Company and Intel, as amended.

"**Intel [***]**" has the meaning set forth in that certain [***] Agreement, dated [***], between Intel and Micron.

"**Intel Purchase Option**" shall have the meaning set forth in Section 13.6(C) of this Agreement.

"**Intellectual Property Rights**" shall have the meaning set forth in Section 10.5(B)(6) of this Agreement.

"**Interest**" means the ownership interest of a Member in the Joint Venture Company, including any and all benefits to which a Member may be entitled under this Agreement and the obligations of a Member under this Agreement, including, without limitation, the right to vote or to participate in the management of the Joint Venture Company, and the right to information concerning the business and affairs of the Joint Venture Company and its Subsidiaries.

"**Interested Member**" shall have the meaning set forth in Section 6.3(B)(1) of this Agreement.

"**Interested Member Transaction**" shall have the meaning set forth in Section 6.3(B)(2) of this Agreement.

"**Issuance Date**" shall have the meaning set forth in Section 3.1(C) of this Agreement.

"**JAMS**" means Judicial Arbitration and Mediation Services.

"**Joint Development Committee**" shall have the meaning ascribed to such term in the Joint Development Program Agreement, of even date herewith, between Micron and Intel.

"**Joint Venture Company**" shall have the meaning set forth in preamble of this Agreement.

"**Joint Venture Documents**" shall have the meaning ascribed to such term in the Master Agreement.

"**Joint Venture Equipment**" means all of the personal property, equipment and tangible assets owned by the Joint Venture Company or any of its Subsidiaries.

"**Joint Venture Products**" means all NAND Flash Memory Products and any other memory products that the Joint Venture Company and its Subsidiaries or any Facilities Company shall produce.

"**Joint Venture Reportable Event**" shall have the meaning set forth in Section 10.5(B) of this Agreement.

"**Later Liquidating Event**" shall have the meaning set forth in Section 13.6(B) of this Agreement.

"**Lead Controller**" shall have the meaning set forth in Section 8.3(A) of this Agreement.

"**Lehi Fab**" means the Fab to be built out by the Joint Venture Company or one of its Subsidiaries at Lehi, Utah.

"**Lehi Lease**" shall have the meaning ascribed to such term in the Master Agreement.

"**Lehi Property**" means the Lehi Contributed Property (as defined in the Lehi Lease) and all personal property, equipment and other tangible assets that are conveyed to the Joint Venture Company pursuant to the Lehi Bill of Conveyance.

"**[***]**" means the [***] in effect from time to time (as reported in the [***]).

"**Liquidating Event**" shall have the meaning set forth in Section 13.1(A) of this Agreement.

"**Liquidation Date**" shall have the meaning set forth in Section 13.13(A) of this Agreement.

"**Loan Amount**" means the [***] (1) the [***] of (a) the Non-Funding Member's full *Pro Rata Share* of an Additional Capital Contribution, [***] (b) a [***] is the amount of the Additional Capital Contribution actually contributed by the Funding Member and the [***] is the Funding Member's [***] of such Additional Capital Contribution and (2) the amount of such Additional Capital Contribution actually contributed by the Non-Funding Member.

"**Majority Member**" shall have the meaning sent forth in Section 12.5(A) of this Agreement.

"**Make-Up Contribution**" means a Capital Contribution made by a Non-Funding Member in respect of a Shortfall Amount (but not including any interest thereon).

"**Mandatory Equalization Note**" shall have the meaning set forth in Section 3.1(B) of this Agreement.

"**Mandatory Member Debt Financing**" means Member Debt Financing made in accordance with Section 3.1 of this Agreement.

"**Mandatory Notes**" shall have the meaning set forth in Section 3.1(B) of this Agreement.

"**Mandatory Shortfall Note**" shall have the meaning set forth in Section 3.1(B) of this Agreement.

"**Management Conversion Date**" shall have the meaning set forth in Section 8.1(A) of this Agreement.

"**Manager**" shall have the meaning set forth in Section 6.2(A) of this Agreement.

"**Manufacturing Committee**" shall have the meaning set forth in Section 8.6 of this Agreement.

"**Manufacturing Plan**" means a manufacturing plan set forth in the Operating Plan, as described more particularly in Section 11.6(A)(1) of this Agreement.

"**Master Agreement**" means that certain Master Agreement, by and between Intel and Micron, dated as of November 18, 2005.

"**Maximum Incremental Capital Amount**" means **$**[***]. Such amount does not include any funds contributed as Initial Capital Contributions.

"**Member**" or "**Members**" shall have the meaning set forth in the preamble of this Agreement.

"**Member Business Plan**" shall have the meaning set forth in Section 11.2(D)(2) of this Agreement.

"**Member Change of Control**" means (i) any consolidation, merger, recapitalization, liquidation or other extraordinary transaction involving a Member pursuant to which such Member's stockholders immediately prior to such consolidation, merger, recapitalization, liquidation or other extraordinary transaction own, immediately after such consolidation, merger, recapitalization, liquidation or other extraordinary transaction securities representing less than 50% of the combined voting power of all voting securities of the surviving entity; (ii) any transaction or series of related transactions as a result of which securities representing 50% or more of the combined voting power of all voting securities of such Member are sold, conveyed, transferred, assigned or pledged, either directly or indirectly, to persons other than such Member's stockholders immediately prior to such transaction or series of transactions; or (iii) the sale, conveyance, transfer or assignment, either directly or indirectly, of all or substantially all of the assets of such Member, in one transaction or a series of related transactions, to a person that does not control, is not controlled by and is not under common control with such Member.

"**Member Debt Financing**" as of any date shall mean all loans to the Joint Venture Company under Article 3 of this Agreement.

"**Member [***] Budget**" shall have the meaning set forth in Section 11.1(C)(2)(a)(ii) of this Agreement.

"**Member [***] Budget**" shall have the meaning set forth in Section 11.1(C)(2)(b)(ii) of this Agreement.

"**Member Notes**" means any promissory notes issued under Article 3 of this Agreement, including a Mandatory Shortfall Note, Mandatory Equalization Note, Continuing Mandatory Note, Optional [***] Shortfall Note, Optional [***] Equalization Note or Optional Other Shortfall Note outstanding pursuant to the terms of this Agreement.

"**Member Plan Amendment**" shall have the meaning set forth in Section 11.2(E)(4) of this Agreement.

"**Member Reportable Events**" shall have the meaning set forth in Section 10.5(A) of this Agreement.

"**Micron**" shall have the meaning set forth in the preamble of this Agreement.

"**Micron Additional Cash**" shall have the meaning set forth on Appendix D.

"**Micron Executive Officer**" shall have the meaning set forth in Section 8.2(A) of this Agreement.

"**Micron Exercise Notice**" shall have the meaning set forth in Section 13.7(B) of this Agreement.

"**Micron Initial Contributed Assets**" means the total amount of money or other property contributed or agreed to be contributed to the Joint Venture Company by Micron as of the Effective Date, as described on Appendix D.

"**Micron Matter**" shall have the meaning set forth in Section 17.4 of this Agreement.

"**Micron Maximum Incremental Capital Amount**" means **$**[***]. Such amount does not include any funds contributed as part of Micron's Initial Capital Contribution.

"**Micron Minority Closing**" shall have the meaning set forth in Section 12.5(C)(1) of this Agreement.

"**Micron [***] Exercise Notice**" shall have the meaning set forth in Section 13.5 of this Agreement.

"**Micron [***] Purchase Option**" shall have the meaning set forth in Section 13.5 of this Agreement.

"**Micron Personnel Secondment Agreement**" means that certain Micron Personnel Secondment Agreement, of even date herewith, by and between the Joint Venture Company and Micron, as amended.

"**Micron Purchase Option**" shall have the meaning set forth in Section 13.7(B) of this Agreement.

"**Minority Closing**" shall have the meaning set forth in Section 12.5(A) of this Agreement.

"**Minority Closing Price**" shall have the meaning set forth in Section 12.5(B) of this Agreement.

"**Minority Member**" shall have the meaning sent forth in Section 12.5(A) of this Agreement.

"**Model of Record**" or "**MOR**" means a representation of the POR and TOR for use in determining the number of tools required to produce a specific number of semiconductor wafers. The MOR includes assumptions used to model overall tool throughput and productivity as well as assumptions on process yield.

"Modified GAAP" means United States generally accepted accounting principles as in effect from time to time, except that the value of any asset contributed or otherwise transferred to the Joint Venture Company from a Member shall be the value as agreed upon by the Members at the time of the contribution or transfer, as applicable, and, if such asset is to be depreciated or amortized under GAAP, the useful life and method of depreciation or amortization for such assets shall be determined by applying the accounting policies used by the Joint Venture Company for like assets. The value of the Boise Supply Agreement, the MTV Lease and the Lehi Property shall be the value specified with respect to such items in Appendix D.

"**Monthly Flash Report**" means operating performance metrics reasonably acceptable to each Member for the most recent month.

"**Monthly Operating Report**" shall have the meaning set forth in Section 11.6(A)(4) of this Agreement.

"**MTV Assets**" means the Associated Assets at the Fab located at the [***].

"**MTV Lease**" shall have the meaning ascribed to such term in the Master Agreement.

"**NAND Flash Memory Die**" means a discrete integrated circuit die, wherein such die includes at least one NAND Flash Memory Integrated Circuit and such die is designed, developed, marketed and used primarily as a non-volatile memory die.

"**NAND Flash Memory Die Package**" means a discrete integrated circuit package for a NAND Flash Memory Die, including TSOP, COB, BOC, BGA and FBGA or other type package, wherein such package contains only one or more NAND Flash Memory Die but no other die.

"**NAND Flash Memory Integrated Circuit**" means a Flash Memory Integrated Circuit wherein the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"**NAND Flash Memory Product**" means any NAND Flash Memory Wafer, NAND Flash Memory Die or NAND Flash Memory Die Package.

"**NAND Flash Memory Wafer**" means a prime wafer that has been processed to the point of containing multiple NAND Flash Memory Die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor die.

"**Net Book Value**" means, with respect to (i) any assets, the value thereof, net of accumulated depreciation, amortization and other adjustments, as would be included in a consolidated balance sheet of the entity owning such assets prepared in accordance with Modified GAAP, (ii) any liabilities, the amount thereof as would be included in a consolidated balance sheet of the entity having the liabilities prepared in accordance with Modified GAAP and (iii) any equity security of a Facilities Company or other entity, (a) the value of the assets of such entity, net of accumulated depreciation, amortization or other adjustments, as would be included in a consolidated balance sheet of the entity prepared in accordance with Modified GAAP, minus the amount of the liabilities of such entity, as would be included in a consolidated balance sheet of such entity prepared in accordance with Modified GAAP, multiplied by (b) a percentage equal to the percentage of the equity of such entity represented by such equity security.

"**[***]**" means any Fab that is, or is to be, owned or leased by the Joint Venture Company, any of its Subsidiaries or any Facilities Company other than the [***].

"**[***] Budget**" shall have the meaning set forth in Section 11.1(B).

"**[***] Capital Contribution**" shall mean (i) any Additional Capital Contribution to be made by the Members, as contemplated by an Approved Business Plan, to make [***] an

Operational Fab or (ii) any Additional Capital Contribution to be made by the Members, as contemplated by an Approved Business Plan, to make [***] an Operational Fab, but only in the event that the [***] for [***] is reasonably expected to begin before [***].

"**[***]**" means the first Fab that is, [***], owned or leased by the Joint Venture Company, any of its Subsidiaries or any Facilities Company other than the [***].

"**[***]**" means the first Fab that is, [***], owned or leased by the Joint Venture Company, any of its Subsidiaries or any Facilities Company other than [***].

"**Non-Defaulting Member**" shall have the meaning set forth in Section 17.7 of this Agreement.

"**Non-Funding Member**" shall be the Member that is determined not to be the Funding Member in accordance with Section 3.1(A) of this Agreement.

"**Notice of Default**" shall have the meaning set forth in Section 17.7(B) of this Agreement.

"**Operating Metric Event**" means, with respect to any Fiscal Quarter, the occurrence of either of the following:

[***].

"**Operating Plan**" shall have the meaning set forth in Section 11.6(A) of this Agreement

"**Operational Fab**" means a Fab that has completed construction, Tool Install and equipment and process qualification, including all related facilities necessary to commence production of semiconductor devices and such production output has reached a minimum level of [***]% of its intended high volume output level (as measured in [***]).

"**Option Percent**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Option Price**" shall have the meaning set forth in Section 12.5(B) of this Agreement.

"**Optional [***] Equalization Note**" shall have the meaning set forth in Section 3.2(B) of this Agreement.

"**Optional [***] Financing**" shall have the meaning set forth in Section 3.2(A) of this Agreement.

"**Optional [***] Notes**" shall have the meaning set forth in Section 3.2(B) of this Agreement.

"**Optional [***] Shortfall Note**" shall have the meaning set forth in Section 3.2(B) of this Agreement.

"**Optional Other Financing**" shall have the meaning set forth in Section 3.3(A) of this Agreement.

"**Optional Other Shortfall Note**" shall have the meaning set forth in Section 3.3(B) of this Agreement.

"**Other Capital Contributions**" shall have the meaning set forth in Section 2.3(C) of this Agreement.

"**Percentage Interest**" means, at any time of determination, with respect to any Member, a percentage determined by dividing such Member's Capital Contribution Balance at the time of determination by the aggregate Capital Contribution Balances of all Members at the time of determination.

"**Person**" or "**Persons**" means any natural person and any corporation, firm, partnership, trust, estate, limited liability company, or other entity resulting from any form of association.

"**Premises**" shall have the meaning ascribed to such term in the [***].

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die.

"**Process of Record**" or "**POR**" means documents and/or systems that specify a series of operations that a semiconductor wafer must process through. The POR includes the process recipes and parameters at each operation for the specified Tool of Record.

"**Product**" shall have the meaning set forth in the Supply Agreements.

"**Product Design Committee**" shall have the meaning set forth in the Product Design Committee Agreement.

Product Design Committee Agreement" shall have the meaning set forth in the Product Design Committee Agreement, of even date herewith, between Micron and Intel.

"**Product Design Roadmap**" shall have the meaning set forth in the Product Design Committee Agreement.

"**Proposed Business Plan**" shall have the meaning set forth in Section 11.2(A) of this Agreement.

"***Pro Rata* Share**" means the *pro rata* share of a Member determined in accordance with the Members' respective Percentage Interests at the time of the determination.

"**Purchase Options**" shall have the meaning set forth in Section 13.10 of this Agreement.

"**Purchase Value**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Quarterly Operating Review**" shall have the meaning set forth in Section 11.(6)(A)(4) of this Agreement.

"**Remaining Assets**" shall have the meaning set forth in Section 13.11 of this Agreement.

"**Remaining Facility**" shall have the meaning set forth in Section 13.8(A) of this Agreement.

"**Remaining Facility Purchase Offer**" shall have the meaning set forth in Section 13.9 of this Agreement.

"**Renewal Term**" shall have the meaning set forth in Section 1.3 of this Agreement.

"**Representative**" shall have the meaning set forth in Section 8.7(D) of this Agreement.

"**Second Drafter**" shall have the meaning set forth in Section 13.8(D) of this Agreement.

"**Seconded Employees**" shall have the meaning set forth in Section 9.1 of this Agreement.

"**Service Provider Related Forms**" shall have the meaning set forth in Section 9.3(A) of this Agreement.

"**Sharing Interest**" means, with respect to any Member, the percentage determined by dividing (1) such Member's Committed Capital at the time of determination, by (2) the aggregate Committed Capital of all Members at the time of determination; *provided, however*, that, for purposes of this definition only, Committed Capital shall be adjusted as follows:

(a) [***]% of any [***] Capital Contribution that has been made by such Member, but that was not timely made, shall be deducted from that Member's Committed Capital and added to the other Member's Committed Capital;

(b) any [***] Capital Contribution made, and any loans made or deemed made that are represented by Mandatory Notes, within the twelve months prior to the time of determination shall be deducted from Committed Capital; and

(c) any Other Capital Contributions made, and any loans made or deemed made that are represented by Optional Other Shortfall Notes shall be deducted from Committed Capital, but the exclusion under this subparagraph (c) shall apply only to such Capital Contributions and such loans made within (i) the [***] prior to the time of determination if the Capital Contribution or loan related to [***] Fab, other than the [***], that was not a [***] Fab at the time the contribution was due or (ii) the [***] prior to the time of determination if the Other Capital Contribution made, or loan made or deemed made that is represented by an Optional Other Shortfall Notes relates to any operating expenditure, capital expenditure or other expenditure not subject to the [***] period in the immediately preceding clause (i) and *provided, further, however*, that a Make-Up Contribution shall be deemed made on the date on which the related Shortfall Amount first arose, so that the applicable [***] and [***] periods shall apply from the date the Shortfall Amount occurred. Notwithstanding the foregoing, subparagraphs (b) and (c) of this definition shall not apply with respect to any use of the term "Sharing Interests" in connection with a distribution under Section 13.13(C)(4) of this Agreement.

"**Shortfall Amount**" means any uncontributed dollar amount of any Member's [***] of an Additional Capital Contribution.

"**Subsequent Operating Metric Cure**" means, with respect to any Initial Operating Metric Event, the [***].

"**Subsidiary**" means as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person.

"**Supply Agreement - Intel**" means that certain Supply Agreement of even date herewith, by and between the Joint Venture Company and Intel, as amended.

"**Supply Agreement - Micron**" means that certain Supply Agreement of even date herewith, by and between the Joint Venture Company and Micron, as amended.

"**Supply Agreements**" means the Supply Agreement – Intel and the Supply Agreement – Micron.

"**Tax Matters Partner**" shall have the meaning set forth in Section 10.7 of this Agreement.

"**Technology Committees**" means the Product Design Committee and the Joint Development Committee.

"**Term**" shall have the meaning set forth in Section 1.3 of this Agreement.

"**Testing Plan**" means a testing plan set forth in the Operating Plan, as more particularly described in Section 11.6(A)(3) of this Agreement.

"**Tie Vote**" shall have the meaning set forth in Section 17.1 of this Agreement.

"**Tool Install**" means the installation of the automated material handling system (AMHS), process tools, and support tools/fixtures used for semiconductor manufacturing (including sort) in the cleanroom and in all related laboratories in the Fab.

"**Tool of Record**" or "**TOR**" means the specified tool required to modify, handle, or otherwise fulfill its intended purpose in the manufacture of a semiconductor process pursuant to the POR. The TOR encompasses the tool purchase price, configuration and associated documentation required to procure, conduct acceptance testing and administer service contracts.

"**TOP**" shall have the meaning set forth in Section 9.4(B) of this Agreement.

"**Transfer**" shall have the meaning set forth in Section 12.1 of this Agreement.

"Transition Date" means the earlier of the [***] anniversary of the Effective Date and the date on which the [***] becomes an Operational Fab producing not less than [***] Wafer Starts per week.

"**Treasury Regulation**" shall have the meaning set forth in Section 1.1 of Appendix B to this Agreement.

"**Unamortized MTV Lease Value**" means for [***].

"**Undisputed Approved Business Plan**" shall have the meaning set forth in Section 11.2(D)(1) of this Agreement. The Initial Business Plan approved by the Members shall be deemed to be an Undisputed Approved Business Plan.

"**U.S. Facilities Company**" shall have the meaning set forth in Section 16.1 of this Agreement.

"**Wafer**" means a silicon wafer.

"**Wafer Start**" means the initial Wafer introduction to a process flow. When the context requires reference to a quantity of "Wafer Starts," such term shall be expressed in 300 millimeter diameter equivalents.

"**Wholly-Owned Subsidiary**" of a Person means a Subsidiary, all of the shares of stock or other ownership interests of which are owned, directly or indirectly through one or more intermediaries, by such Person, other than a nominal number of shares or a nominal amount of other ownership interests issued in order to comply with requirements that such shares or interests be held by one or more other Persons, including requirements for directors' qualifying shares or interests, requirements to have or maintain two or more stockholders or equity owners or other similar requirements.

APPENDIX B

IM FLASH TECHNOLOGIES, LLC

TAX MATTERS

This Appendix B is attached to and is a part of the LIMITED LIABILITY COMPANY OPERATING AGREEMENT (the "**Agreement**") of IM FLASH TECHNOLOGIES, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), dated as of 6th day of January, 2006. The parties to the Agreement intend that the Joint Venture Company be classified as a partnership for federal income tax purposes pursuant to section 7701(a)(2) of the Code and the regulations thereunder. The provisions of this Appendix are intended to effect an allocation of tax items of the Joint Venture Company that are in accordance with the Members' "interests in the partnership" (i.e., the Joint Venture Company) within the meaning of Treas. Reg. § 1.704-1(b)(3) by utilizing the principles of allocation contained in Treas. Reg. § 1.704-1(b)(2)(iv) and Treas. Reg. § 1.704-2 with respect to maintenance of capital accounts and allocations, and shall be interpreted and applied accordingly. For purposes of applying the provisions of this Appendix, it shall be assumed that the Joint Venture Company satisfies the requirements of Treas. Reg. § 1.704-1(b)(2)(ii)(b)(2) and (3), notwithstanding that the Joint Venture Company does not satisfy such requirements.

ARTICLE 1
DEFINITIONS

1.1 **Definitions**. For purposes of this Appendix, the capitalized terms listed below shall have the meanings indicated. Capitalized terms not listed below and not otherwise defined in this Appendix shall have the meanings specified in the Agreement.

"**Account Reduction Item**" means (i) any adjustment described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4); (ii) any allocation described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(5), other than a Nonrecourse Deduction or a Member Nonrecourse Deduction; or (iii) any distribution described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(6).

"**Adjusted Capital Account Balance**" means, as of any date, a Member's Capital Account balance as of such date (and if such date is other than the last day of the taxable year of the Joint Venture Company, determined as if the taxable year of the Joint Venture Company ended on such date), taking into account all contributions made by such Member and distributions made to such Member during such taxable year and any special allocations or other adjustments required by Sections 3.2, 3.3, 3.4(A), (B), and (D), 3.5, 3.6 and 3.7, and 5.2(B) and 5.9 of this Appendix, and increased by the sum of (i) such

Member's share of Joint Venture Company Minimum Gain and (ii) such Member's share of Member Nonrecourse Debt Minimum Gain, both determined after taking into account any such special allocations and other adjustments.

"**Adjusted Fair Market Value**" of an item of Joint Venture Company property means the greater of (i) the fair market value of such property as reasonably determined by the Board of Managers (provided, that in the case of any sale of Joint Venture Company property, such amount shall be presumed to be the sales price realized by the Joint Venture Company on such sale) or (ii) the amount of any nonrecourse indebtedness to which such property is subject within the meaning of section 7701(g) of the Code.

"**Book**" means the method of accounting prescribed for compliance with the capital account maintenance rules set forth in Treas. Reg. § 1.704-1(b)(2)(iv) as reflected in Articles 1 and 2 of this Appendix, as distinguished from any accounting method which the Joint Venture Company may adopt for other purposes such as financial reporting.

"**Book Value**" means, with respect to any item of Joint Venture Company property, the book value of such property within the meaning of Treas. Reg. § 1.704-1(b)(2)(iv)(g)(3); *provided, however*, that if the Joint Venture Company adopts the remedial allocation method described in Treas. Reg. § 1.704-3(d) with respect to any item of Joint Venture Company property, the Book Value of such property shall be its book basis determined in accordance with Treas. Reg. § 1.704-3(d)(2).

"**Deemed Liquidation**" means a liquidation of the Joint Venture Company that is deemed to occur pursuant to Treas. Reg. § 1.708-1(b)(1)(iv) in the event of a termination of the Joint Venture Company pursuant to section 708(b)(1)(B) of the Code.

"**Excess Deficit Balance**" means the amount, if any, by which the balance in a Member's Capital Account as of the end of the relevant taxable year is more negative than the amount, if any, of such negative balance that such Member is treated as obligated to restore to the Joint Venture Company pursuant to Treas. Reg. § 1.704-1(b)(2)(ii)(c), Treas. Reg. § 1.704-1(b)(2)(ii)(h), Treas. Reg. § 1.704-2(g)(1), and Treas. Reg. § 1.704-2(i)(5). Solely for purposes of computing a Member's Excess Deficit Balance, such Member's Capital Account shall be reduced by the amount of any Account Reduction Items that are reasonably expected as of the end of such taxable year.

"**Excess Nonrecourse Liabilities**" means excess nonrecourse liabilities within the meaning of Treas. Reg. § 1.752-3(a)(3).

"**Joint Venture Company Minimum Gain**" means partnership minimum gain determined pursuant to Treas. Reg. § 1.704-2(d) and Section 5.3 of this Appendix.

"**Member Nonrecourse Debt**" means any "partner nonrecourse debt" as such term is defined in Treas. Reg. § 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" means minimum gain attributable to Member Nonrecourse Debt pursuant to Treas. Reg. § 1.704-2(i)(3).

"**Member Nonrecourse Deduction**" means any item of Book loss or deduction that is a partner nonrecourse deduction within the meaning of Treas. Reg. § 1.704-2(i)(1) and (2).

"**Member Nonrecourse Distribution**" means a distribution to a Member that is allocable to a net increase in such Member's share of Member Nonrecourse Debt Minimum Gain pursuant to Treas. Reg. § 1.704-2(i)(6).

"**Nonrecourse Deduction**" means a nonrecourse deduction determined pursuant to Treas. Reg. § 1.704-2(b)(1) and Treas. Reg. § 1.704-2(c).

"**Nonrecourse Distribution**" means a distribution to a Member that is allocable to a net increase in Joint Venture Company Minimum Gain pursuant to Treas. Reg. § 1.704-2(h)(1).

"**Regulatory Allocation**" means any allocation made pursuant to Section 3.2, 3.3, 3.4 or 3.5 of this Appendix.

"**Related Person**" means, with respect to a Member, a Person that is related to such Member pursuant to Treas. Reg. § 1.752-4(b).

"**Revaluation Event**" means (i) a liquidation of the Joint Venture Company (within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g) but not including a Deemed Liquidation); (ii) a contribution of more than a de minimis amount of money or other property to the Joint Venture Company by a Member or a distribution of more than a de minimis amount of money or other property to a retiring or continuing Member where such contribution or distribution alters the Sharing Interest of any Member; or (iii) the grant of an interest in the Joint Venture Company as consideration for the provision of services to or for the benefit of the Joint Venture Company.

"**Section 705(a)(2)(B) Expenditures**" means nondeductible expenditures of the Joint Venture Company that are described in section 705(a)(2)(B) of the Code, and organization and syndication expenditures and disallowed losses to the extent that such expenditures or losses are treated as expenditures described in section 705(a)(2)(B) of the Code pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(i).

"**Section 751 Property**" means unrealized receivables and substantially appreciated inventory items within the meaning of Treas. Reg. § 1.751-1(a)(1).

"**Target Balance**" means, for any Member as of any date, the amount that would be distributable to such Member on such date pursuant to Section 5.1 of the Agreement if (i) all the assets of the Company were sold for cash equal to their respective Book Values as of such date, (ii) all liabilities of the Company (other than any liabilities under outstanding Member Notes) were paid in full (except that in the case of a nonrecourse liability, such payment

would be limited to the Book Value of the asset or assets securing such liability), and (iii) all remaining cash were distributed to the Members pursuant to Section 5.1 (assuming, for this purpose, that the holders of any Member Notes have converted such Member Notes immediately prior to such distribution).

"**Tax Basis**" means, with respect to any item of Joint Venture Company property, the adjusted basis of such property as determined in accordance with the Code.

"**Treasury Regulation**" or "**Treas. Reg.**" means the temporary or final regulation(s) promulgated pursuant to the Code by the U.S. Department of the Treasury, as amended, and any successor regulation(s).

ARTICLE 2
CAPITAL ACCOUNTS

2.1 **Maintenance**.

(A) A single Capital Account shall be maintained for each Member in accordance with this Article 2.

(B) Each Member's Capital Account shall from time to time be increased by:

(i) the amount of money contributed by such Member to the Joint Venture Company in accordance with the Agreement (including the amount of any Joint Venture Company liabilities which the Member is deemed to assume as provided in Treas. Reg. § 1.704-1(b)(2)(iv)(c), and including the principal amount paid for any Member Notes, but excluding liabilities assumed in connection with the distribution of Joint Venture Company property and excluding increases in such Member's share of Joint Venture Company liabilities pursuant to section 752 of the Code);

(ii) the fair market value of property, as reasonably determined by the Board of Managers, contributed by such Member to the Joint Venture Company (net of any liabilities secured by such property that the Joint Venture Company is considered to assume or take subject to pursuant to section 752 of the Code); *provided*, that for this purpose the fair market value of (A) the Lehi Property contributed by Micron (net of liabilities) is equal to the value set forth with respect thereto on Appendix D (it being understood that the [***] shall not be treated as property for purposes of this clause (ii)), and (B) the amount credited to the Capital Account of a Member with respect to any Capital Contribution taking the form of a contribution of a promissory note shall equal the principal payments made by such Member with respect to such promissory note; and, *provided, further,* that nothing in this Appendix B shall be deemed to increase or limit the amount treated as a Capital Contribution for purposes other than this Appendix B;

(iii) the amount recognized as gross income by Micron with respect to the [***] as described in Section 5.10 of this Appendix; and

(iv) allocations to such Member of Joint Venture Company Book income and gain (or the amount of any item or items of income or gain included therein).

(C) Each Member's Capital Account shall from time to time be reduced by:

(i) the amount of money distributed to such Member by the Joint Venture Company (including the amount of such Member's individual liabilities which the Joint Venture Company is deemed to assume as provided in Treas. Reg. § 1.704-1(b)(2)(iv)(c)), including the amount of any amount paid or accrued on any Member Note that is not treated as a guaranteed payment pursuant to Section 5.2 of this Appendix B;

(ii) the fair market value, as reasonably determined by the Board of Managers, of property distributed to such Member by the Joint Venture Company (net of any liabilities secured by such property that such Member is considered to assume or take subject to pursuant to section 752 of the Code); and

(iii) allocations to such Member of Joint Venture Company Book loss and deduction (or items thereof);

(D) The Joint Venture Company shall make such other adjustments to the Capital Accounts of the Members as are necessary to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(iv).

2.2 **Revaluation of Joint Venture Company Property**.

(A) Upon the occurrence of a Revaluation Event, the Board of Managers may revalue all Joint Venture Company property (whether tangible or intangible) for Book purposes to reflect the Adjusted Fair Market Value of Joint Venture Company property immediately prior to the Revaluation Event. In the event that Joint Venture Company property is so revalued, the Capital Accounts of the Members shall be adjusted in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(f) as provided in Section 3.1 of this Appendix.

(B) Upon the distribution of Joint Venture Company property to a Member, the property to be distributed shall be revalued for Book purposes to reflect the Adjusted Fair Market Value of such property immediately prior to such distribution, and the Capital Accounts of all Members shall be adjusted in accordance with Treas. Reg. § 1.704-1(b)(2)(iv)(e).

2.3 **Transfers of Interests**. Upon the transfer of a Member's entire interest in the Joint Venture Company in accordance with Section 12.2 of the Agreement, the Capital Account of such Member shall carry over to the transferee.

ARTICLE 3
ALLOCATION OF BOOK INCOME AND LOSS

3.1 **Book Income And Loss**.

(A) The Book income or loss of the Joint Venture Company for purposes of determining allocations to the Capital Accounts of the Members shall be determined in the same manner as the determination of the Joint Venture Company's taxable income, except that (i) items that are required by section 703(a)(1) of the Code to be separately stated shall be included; (ii)

items of income that are exempt from inclusion in gross income for federal income tax purposes shall be treated as Book income; (iii) Section 705(a)(2)(B) Expenditures shall be treated as deductions; (iv) items of gain, loss, depreciation, amortization, or depletion that would be computed for federal income tax purposes by reference to the Tax Basis of an item of Joint Venture Company property shall be determined by reference to the Book Value of such item of property in accordance with Section 3.1(B) hereof; and (v) the effects of upward and downward revaluations of Joint Venture Company property pursuant to Section 2.2 of this Appendix shall be treated as Book gain or loss respectively from the sale of such property.

(B) In the event that the Book Value of any item of Joint Venture Company property differs from its Tax Basis, the amount of Book depreciation, depletion, or amortization for a period with respect to such property shall be computed so as to bear the same relationship to the Book Value of such property as the depreciation, depletion, or amortization computed for tax purposes with respect to such property for such period bears to the Tax Basis of such property. If the Tax Basis of such property is zero, the Book depreciation, depletion, or amortization with respect to such property shall be computed by using a method consistent with the method that would be used for tax purposes if the Tax Basis of such property were greater than zero and the property were placed in service on the date it is acquired by the Joint Venture Company.

(C) The Book income and loss of the Joint Venture Company for any taxable year shall be allocated in such a manner as to cause the Adjusted Capital Account Balances of the Members as nearly as possible to equal their respective Target Balances as of the end of such taxable year.

3.2 **Allocation of Nonrecourse Deductions**. Notwithstanding any other provisions of the Agreement, Nonrecourse Deductions shall be allocated among the Members in proportion to their respective Sharing Interests as of the end of the taxable year in which such deductions arise.

3.3 **Allocation of Member Nonrecourse Deductions**. Notwithstanding any other provisions of the Agreement, any item of Member Nonrecourse Deduction with respect to a Member Nonrecourse Debt shall be allocated to the Member or Members who bear the economic risk loss for such Member Nonrecourse Debt in accordance with Treas. Reg. § 1.704-2(i).

3.4 **Chargebacks of Income And Gain**. Notwithstanding any other provisions of the Agreement:

(A) Joint Venture Company Minimum Gain. In the event that there is a net decrease in Joint Venture Company Minimum Gain for a taxable year of the Joint Venture Company, then before any other allocations are made for such taxable year, each Member shall be allocated items of Book income and gain for such year (and, if necessary, for subsequent years) to the extent provided by Treas. Reg. § 1.704-2(f).

(B) Member Nonrecourse Debt Minimum Gain. In the event that there is a net decrease in Member Nonrecourse Debt Minimum Gain for a taxable year of the Joint Venture Company, then after taking into account allocations pursuant to paragraph (a) immediately preceding, but before any other allocations are made for such taxable year, each Member with a

share of Member Nonrecourse Debt Minimum Gain at the beginning of such year shall be allocated items of Book income and gain for such year (and, if necessary, for subsequent years) to the extent provided by Treas. Reg. § 1.704-2(i)(4).

(C) [Reserved.]

(D) Qualified Income Offset. In the event that any Member unexpectedly receives any Account Reduction Item that results in an Excess Deficit Balance at the end of any taxable year after taking into account all other allocations and adjustments under this Agreement, then items of Book income and gain for such year (and, if necessary, for subsequent years) will be reallocated to each such Member in the amount and in the proportions needed to eliminate such Excess Deficit Balance as quickly as possible.

3.5 **Reallocation To Avoid Excess Deficit Balances**. Notwithstanding any other provisions of the Agreement, no Book loss or deduction shall be allocated to any Member to the extent that such allocation would cause or increase an Excess Deficit Balance in the Capital Account of such Member. Such Book loss or deduction shall be reallocated away from such Member and to the other Members in accordance with the Agreement, but only to the extent that such reallocation would not cause or increase Excess Deficit Balances in the Capital Accounts of such other Members.

3.6 **Corrective Allocation**. Subject to the provisions of Sections 3.2, 3.3, 3.4, and 3.5 of this Appendix, but notwithstanding any other provision of the Agreement, in the event that any Regulatory Allocation is made pursuant to this Appendix for any taxable year, then remaining Book items for such year (and, if necessary, Book items for subsequent years) shall be allocated or reallocated in such amounts and proportions as are appropriate to restore the Adjusted Capital Account Balances of the Members to the position in which such Adjusted Capital Account Balances would have been if such Regulatory Allocation had not been made. Adjustments pursuant to this Section 3.6 shall only be made if such Regulatory Allocations are not reasonably expected to be reversed with offsetting allocations in subsequent taxable years. The Members intend that the allocations of Book income and loss pursuant to this Appendix shall result in Adjusted Capital Account Balances of the Members, as of the end of each taxable year of the Joint Venture Company and after all allocations pursuant to this Appendix have been made, equaling their Target Balances. This Appendix shall be interpreted in a manner consistent with such intent.

3.7 **Other Allocations**.

(A) If during any taxable year of the Joint Venture Company there is a change in any Member's interest in the Joint Venture Company, allocations of Book income or loss for such taxable year shall take into account the varying interests of the Members in the Joint Venture Company in a manner consistent with the requirements of Section 706 of the Code and Section 5.2(B) hereof.

(B) If and to the extent that any distribution of Section 751 Property to a Member in exchange for the distributee Member's interest in property other than Section 751 Property is treated as a sale or exchange of such Section 751 Property by the Joint Venture Company pursuant

to Treas. Reg. § 1.751-1(b)(2), any Book gain or loss attributable to such deemed sale or exchange shall be allocated only to Members other than the distributee Member in a manner consistent with such Treasury Regulation.

(C) If and to the extent that any distribution of property other than Section 751 Property to a Member in exchange for the distributee Member's interest in Section 751 Property is treated as a sale or exchange of such other property by the Joint Venture Company pursuant to Treas. Reg. § 1.751-1(b)(3), any Book gain or loss attributable to such deemed sale or exchange shall be allocated only to Members other than the distributee Member in a manner consistent with such Treasury Regulation.

ARTICLE 4
ALLOCATION OF TAX ITEMS

4.1 **In General**. Except as otherwise provided in this Article 4, all items of income, gain, loss, and deduction shall be allocated among the Members for federal income tax purposes in the same manner as the corresponding allocation for Book purposes.

4.2 **Section 704(c) Allocations**.

(A) In the event that the Book Value of an item of Joint Venture Company property differs from its Tax Basis, allocations of depreciation, depletion, amortization, gain, and loss with respect to such property will be made for federal income tax purposes in a manner that takes account of the variation between the Tax Basis and Book Value of such property in accordance with section 704(c)(1)(A) of the Code and Treas. Reg. § 1.704-1(b)(4)(i). The Board of Managers may select as the method for making such allocations, either the method described in Treas. Reg. § 1.704-3(c) or (d); *provided, however,* that the method selected for any asset shall be one that minimizes the effect of the "ceiling rule" on allocations to the Member that did not contribute such asset.

(B) For purposes of complying with Section 263A of the Code, depreciation, amortization and cost recovery deductions of the Joint Venture Company that are included in the capitalized cost of the Joint Venture Company's inventory shall be determined based on the Book Values of the Joint Venture Company's assets, and any difference between such amounts and the corresponding amounts as computed for U.S. federal income tax purposes shall be allocated separately to the Members pursuant to Section 704(c) of the Code.

4.3 **Tax Credits**. Tax credits shall be allocated among the Members in accordance with Treas. Reg. § 1.704-1(b)(4)(ii).

ARTICLE 5
OTHER TAX MATTERS

5.1 **Excess Nonrecourse Liabilities**. For the purpose of determining the Members' shares of the Joint Venture Company's Excess Nonrecourse Liabilities pursuant to Treas. Reg. §§ 1.752-3(a)(3) and 1.707-5(a)(2)(ii), and solely for such purpose, the Members' interests in profits are hereby specified to be their respective Sharing Interests.

5.2 **Treatment of Loan Transactions.**

(A) The Members agree that amounts outstanding under Member Notes (which for purposes of this Appendix B includes amounts outstanding under loans made pursuant to Section 2.3(H) of the Agreement) shall be treated for federal and applicable state income tax purposes as equity and not as debt for U.S. federal income tax purposes. To the extent a Non-Funding Member makes a Make-Up Contribution together with accrued interest, such interest (solely for purposes of this Appendix B) shall be treated as a capital contribution, the payment of such interest to the Funding Member on the related Member Note shall be treated as a guaranteed payment pursuant to Section 707(c) of the Code, and the deduction of the Joint Venture Company in respect of such guaranteed payment shall be specially allocated to the Non-Funding Member. To the extent accrued interest on a Member Note has not been paid as of the end of a taxable year of the Joint Venture Company, the Members shall consult with each other to determine the appropriate income tax treatment of such accrued interest, and if they are unable to agree on such treatment the dispute resolution provisions of Section 10.6(B) shall apply.

(B) Upon a change in the Members' Sharing Interests, the Members agree that the Capital Accounts of the Members shall be adjusted so that to the greatest extent possible, but consistent with the goal of minimizing the adverse tax consequences to the Member whose interest increased (as reasonably determined by such Member)(other than adverse consequences resulting solely from receiving allocations of income or loss in accordance with its revised Sharing Interest), the Adjusted Capital Account Balances of the Members will equal their Target Balances immediately following the conversion.

5.3 **Treatment of Certain Distributions**. (A) In the event that (i) the Joint Venture Company makes a distribution that would (but for this Subsection (A)) be treated as a Nonrecourse Distribution; and (ii) such distribution does not cause or increase a deficit balance in the Capital Account of the Member receiving such distribution as of the end of the Joint Venture Company's taxable year in which such distribution occurs; then the Board of Managers may treat such distribution as not constituting a Nonrecourse Distribution to the extent permitted by Treas. Reg. § 1.704-2(h)(3).

(B) In the event that (i) the Joint Venture Company makes a distribution that would (but for this Subsection (B)) be treated as a Member Nonrecourse Distribution; and (ii) such distribution does not cause or increase a deficit balance in the Capital Account of the Member receiving such

distribution as of the end of the Joint Venture Company's taxable year in which such distribution occurs; then the Board of Managers may treat such distribution as not constituting a Member Nonrecourse Distribution to the extent permitted by Treas. Reg. § 1.704-2(i)(6).

5.4 **Reduction of Basis**. In the event that a Member's interest in the Joint Venture Company may be treated in whole or in part as depreciable property for purposes of reducing such Member's basis in such interest pursuant to section 1017(b)(3)(C) of the Code, the Board of Managers may, upon the request of such Member, make a corresponding reduction in the basis of its depreciable property with respect to such Member. Such request shall be submitted to the Joint Venture Company in writing, and shall include such information as may be reasonably required in order to effect such reduction in basis. The costs of the Joint Venture Company in

making and implementing any such adjustments shall be borne by the Member making such request.

5.5 **Entity Classification**. Neither the Joint Venture Company nor any Member shall file or cause to be filed any election, the effect of which would be to cause the Joint Venture Company to be classified as other than a partnership for federal income tax purposes, without the prior written consent of all Members.

5.6 **Unified Audit Election**. The Joint Venture Company will elect, pursuant to section 6231(a)(1)(B)(ii) of the Code, to be subject to the unified audit rules of sections 6221-6234 of the Code, and all Members agree to sign such election.

5.7 **Application of Section 707(b) of the Code**. For purposes of determining the Members' respective interests in capital or profits of the Joint Venture Company under Section 707(b) of the Code, the Members agree that, unless otherwise agreed in writing, such interests shall be computed as of each date of determination as follows: (a) the Joint Venture Company shall be deemed to have a hypothetical taxable year that began with the beginning of its actual taxable year including such date of determination and ended as of such date of determination, with a closing of the Joint Venture Company's books as of such date (provided that deductions such as depreciation, amortization and the like that are computed on an annual basis shall be prorated on a daily basis so as to take into account only the portion attributable to the period up to that date), (b) the interests in profits of each Member as of such date shall equal the percentage of Book income or loss (excluding amounts, if any, required to be disregarded for purposes of applying Section 707(b) of the Code) that would have been allocated to each Member for such hypothetical taxable year, and (c) the capital interests of the Members as of such date shall equal the percentage of the total Capital Accounts of each Member as of such date, after adjustment to reflect the items described in Section 2.1(B), (C) and (D) of this Appendix B treated as occurring during such hypothetical taxable year.

5.8 **Section 754 Election**. The Joint Venture Company shall make or seek the revocation of, as applicable, an election under Section 754 of the Code with respect to the Joint Venture Company upon request of any Member whose Percentage Interest as of the end of any taxable year of the Joint Venture Company exceeds its Percentage Interest as of the Effective Date.

5.9 **Imputed Income**. If a Member is deemed for applicable income tax purposes to have received income from the Joint Venture Company as a result of one or more transactions that were not treated by the Joint Venture Company as giving rise to income to such Member, the Joint Venture Company shall make such adjustments to its allocations as are necessary so that, as closely as possible, such Member is placed in the same tax position as if such income was not deemed to have been recognized, provided that such adjustments shall not result in consequences to the other Member that are significantly more adverse to such other Member than if the position originally taken by the Joint Venture Company were upheld.

5.10 **Treatment of [***]**

(A) The Members agree that the issuance of Joint Venture Company interests to Micron in exchange for the [***].

(B) The Members further agree that if the treatment described in subsection (A) above ultimately is determined not to be the proper treatment for either of such items, the Members shall make such adjustments to the determination and allocation of the Joint Venture Company's items of income, gain, loss or deduction as are necessary (to the extent possible) to place the Members in the same tax position as if such treatment were respected.

5.11 **Tax Accounting Methods**. To the extent permitted by applicable law, the Joint Venture Company shall implement such tax elections that to the greatest extent possible result in the Joint Venture Company's cost of goods sold for purposes of determining the Joint Venture Company's Book income or loss equaling the sum of (a) "Cost" as such term is defined in the Supply Agreements, plus (b) any additional amounts included in the "amount realized" by the Joint Venture Company upon the sale of products to Intel and Micron, respectively.

5.12 **No Indemnity for Tax Consequences**. Neither of the Members nor the Joint Venture Company shall be responsible for the income tax consequences to the other Members resulting from this Appendix or the Agreement; *provided*, however, that the Members shall reasonably cooperate as requested in order to effectuate the intent of this Appendix, although such cooperation shall not require either Member to incur significant additional costs that are not reimbursed by the requesting Member.

5.13 **Precedent Agreements**. Amounts paid to Micron pursuant to the Precedent Agreement to Joint Venture, dated September 27, 2005, and the Second Precedent Agreement to Joint Venture, dated November 18, 2005, in each case by and between Micron and Intel, shall be treated as reimbursements to Micron of preformation expenditures as provided in Treas. Reg. § 1.707-4(d).

5.14 **Conflicts with Agreement**. In the event of any conflict between the terms of this Appendix B and any provision of the Agreement, the terms of this Appendix B shall govern.

APPENDIX C

IM FLASH TECHNOLOGIES, LLC

INITIAL MANAGERS

The initial Managers appointed by Intel will be:

Leslie S. Culbertson
Thomas R. Franz
Brian L. Harrison

The initial Managers appointed by Micron will be:

D. Mark Durcan
Brian J. Shields
W. G. Stover, Jr.

APPENDIX D

IM FLASH TECHNOLOGIES, LLC

INITIAL CAPITAL CONTRIBUTIONS

Intel Initial Capital Contribution

The Initial Capital Contribution of Intel is $1,196,176,471, payable as follows:

Intel Initial Contributed Assets:

Cash (to be delivered [***])	$	[***]
Cash (to be delivered [***]) (the "**Intel Additional Cash**")	$	[***]
Promissory Note substantially in the form attached hereto as Attachment D-1 in the amount of $[***] (representing funds to be delivered [***] the Joint Venture Company).	$	[***]
Cash in the amount of $[***] (to be delivered to the Joint Venture Company upon certification from Micron (and Micron shall make reasonable efforts to provide at least ten (10) Business Days' notice of such pending certification), not contested by the Joint Venture Company after reasonable review and within 10 Business Days of the Joint Venture Company's receipt of Micron's certification, that construction is complete and the [***] Fab is ready for [***]).	$	[***]
Total Intel Initial Capital Contribution (deemed to be contributed to the Joint Venture Company in full as of the Effective Date)	$	1,196,176,471

If a Liquidating Event occurs prior to the delivery in full of such Initial Capital Contribution, all undelivered cash and amounts represented by Promissory Notes shall be delivered promptly after the occurrence of such Liquidating Event; provided, however, that if the construction and readiness for [***] at the [***] Fab referred to in the provisions of this Appendix D of the Micron Initial Capital Contribution is not complete at the time of such Liquidating Event, only a portion of the $[***] described above shall be delivered, which portion shall be proportionate to the percentage of completion of such construction as determined by the Members in good faith.

Micron Initial Capital Contribution

The Initial Capital Contribution of Micron is $[***], payable as follows:

Micron Initial Contributed Assets:

Cash (to be delivered [***]) (the "**Micron Additional Cash**")	$	250,000,000
Lehi Property (pursuant to entry into the Lehi Lease (which is treated as a transfer of property for federal income tax purposes as described in the Lehi Lease) and delivery of the Lehi Bill of Conveyance and all rights of Micron under express or implied warranties or indemnities from third parties with respect to the Lehi Property		Value $[***]
Prepaid Rent on [***], as follows:		
On the Effective Date		Value $[***]
Upon certification from Micron (and Micron shall make reasonable efforts to provide at least ten (10) Business Days'		Value $[***]

notice of such pending certification), not contested by the Joint Venture Company after reasonable review and within 10 Business Days of the Joint Venture Company's receipt of Micron's certification, that construction is complete and the [***] Fab is ready for [***]

Boise Supply Agreement Prepay Value $[***]

Total Micron Initial Capital Contribution (deemed to be contributed to the Joint Venture Company in full as of the Effective Date) Value $[***]

If a Liquidating Event occurs prior to the delivery in full of such Initial Capital Contribution, (a) all undelivered cash and amounts shall be delivered promptly after the occurrence of such Liquidating Event and (b) if the construction and readiness for [***] at the [***] Fab referred to in the provisions of this Appendix D of the Micron Initial Capital Contribution is not complete at the time of such Liquidating Event, a portion of the $[***] described above shall be deemed contributed, which portion shall be proportionate to the percentage of completion of such construction as determined by the Members in good faith.

ATTACHMENT D-1

FORM OF INITIAL CONTRIBUTION NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THIS NOTE HAS BEEN ISSUED IN RELIANCE UPON THE REPRESENTATION OF THE HOLDER THAT IT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARDS THE RESALE OR OTHER DISTRIBUTION THEREOF. THIS NOTE MAY NOT BE TRANSFERRED OR RESOLD.

INTEL CORPORATION

PROMISSORY NOTE

No.: [ ]
Principal Amount: $[ ] Location: [ ]
Date of Issuance: [ ]

FOR VALUE RECEIVED, Intel Corporation, a Delaware corporation ("**Intel**"), promises to pay to IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), the principal sum of [ ] Dollars ($[ ]) in accordance with Section 2 of this Promissory Note (this "**Note**").

This Note is delivered as a Capital Contribution to the Joint Venture Company pursuant to Section 2.1(A) of the Limited Liability Company Operating Agreement dated January 6th, 2006, of the Joint Venture Company (the "**Operating Agreement**") and is issued under and subject to the terms, provisions and conditions of the Operating Agreement. Capitalized terms used in this Note and not defined shall have the meanings set forth in the Operating Agreement.

1. TERM.

(a) This Note shall remain outstanding until the payment of the entire principal balance of this Note (such unpaid principal balance at any given time is referred to a the "**Outstanding Balance**").

2. PAYMENTS.

Payments of the Outstanding Balance shall become due and payable by Intel to the Joint Venture Company (a) in whole or in part on the tenth Business Day following written notice by the Lead Controller of the Joint Venture Company sent to Intel that such amounts are necessary for the operation of the Joint Venture Company in accordance with the then-effective Approved Business Plan; and (b) in whole upon the liquidation of the Joint Venture Company in accordance with Article 13 of the Operating Agreement.

3. MISCELLANEOUS.

3.1 This Note shall be construed and enforced in accordance with and governed by the laws of the State of Delaware without giving effect to the principles of conflict of laws thereof.

3.2 The titles, captions and headings of this Note are provided for convenience of reference only and shall not be deemed to constitute a part of this Note. Unless otherwise specifically stated, all references herein to "sections" and "appendices" will mean "sections" and "appendices" to this Note.

3.3 All notices to the Joint Venture Company shall be sent addressed to the Authorized Officers, or the Chief Executive Officer, as applicable, of the Joint Venture Company at the Joint Venture Company's principal place of business. All notices to Intel shall be addressed to Intel at the address as may be specified by Intel from time to time in a notice to the Joint Venture Company. Notwithstanding the foregoing, the initial notice addresses for the Joint Venture Company and Intel are set forth below. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

To the Joint Venture Company: To Intel:

IM Flash Technologies, LLC
1550 East 3400 North
Lehi, Utah 84043

Fax Number: (801) 767-5370

2200 Mission College Blvd.
Mailstop SC4-203
Santa Clara, CA 95054

Fax Number: (408) 653-8050

3.4 This Note may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

3.5 Should any provision of this Note be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Note shall remain in full force in all other respects and the parties hereto shall negotiate in good faith appropriate modifications to this Note that most nearly effects the parties' intent in entering into this Note.

3.6 Intel hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, release of any or all of any security given from time to time for this Note, or other cause of release or discharge other than actual payment in full hereof.

3.7 It is expressly agreed that if this Note is referred to an attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred upon the Joint Venture Company by this Note or any other document evidencing this Note, then Intel promises and agrees to pay all costs, including attorneys' fees, incurred by the Joint Venture Company.

3.8 In the event of any conflict between the provisions of the Operating Agreement and this Note, the provisions of the Operating Agreement shall control.

IN WITNESS WHEREOF, Intel has executed this Note as of the date first above written.

INTEL CORPORATION

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

IM FLASH TECHNOLOGIES, LLC

By: _____

Name: _____

Title: _____

SIGNATURE PAGE TO
PROMISSORY NOTE
ISSUED BY INTEL CORPORATION
TO IM FLASH TECHNOLOGIES, LLC

APPENDIX E

IM FLASH TECHNOLOGIES, LLC

MANUFACTURING COMMITTEE

Manufacturing Committee Charter

The Manufacturing Committee is formed by the Members to perform certain functions in relation to the LLC Operating Agreement, the Supply Agreements between the Members and the Joint Venture Company and the manufacturing, supply and services agreements entered into by the Joint Venture Company.

A. **Purpose and Functions of the Manufacturing Committee.**

The primary purpose of the Manufacturing Committee is to review and approve certain proposed plans and actions of the Joint Venture Company prior to submission to the Members and/or the Board of Managers. In addition, the Manufacturing Committee shall assist and advise the Joint Venture Company and the Members in establishing, monitoring and improving the Product roadmap and loading, output and assembly and testing strategy of the Joint Venture Company. In fulfilling such purpose, the Manufacturing Committee shall approve the Joint Venture Company's proposed plans or actions as specified herein and may request the Joint Venture Company to explore alternatives to such proposals for resubmission to the Manufacturing Committee. The Manufacturing Committee's functions shall include:

1. Review the performance and projected performance of the Joint Venture Company against the Operating Plan and Performance Criteria (including projected cost, capacity, cycle-time, yield and quality) on a quarterly basis.

2. Review and approve proposed adjustments to the Probed Wafer Cost Forecast and the Projected Output Forecast, all as specified and defined in the Boise Supply Agreement.

3. Review of the Joint Venture Company's monthly updates and reports of performance to the Operating Plan (including the Manufacturing Plan, Assembly Plan and Test Plan) and performance to the ramp plan.

4. Review and approve for submission to the Board of Managers the Joint Venture Company's quarterly update of the Operating Plan and the Proposed Loading Plan.

5. Review and approve for submission to the Board of Managers the Joint Venture Company's proposed Operating Plan (annually) in support of the Joint Venture Company's Annual Business Plan, including but not limited to the Joint Venture Company's proposed operating and capital expenditure plan.

6. Review and advisory endorsement of the Joint Venture Company's packaging, assembly and test strategy in support of the Joint Venture Company's Annual Business Plan,

including but not limited to the Joint Venture Company's proposed operating and capital expenditure plan.

7. Review and approve the Joint Venture Company's proposed service agreement and support requests of each Member.

8. Review the Joint Venture Company's proposals for project related secondment.

9. Serve as an advice forum (on a non-binding basis) on best known methods and arrange for advice to the Joint Venture Company from Micron and Intel regarding manufacturing, assembly and testing process and operations, with the goal of improved production performance and ramp issue resolution. Such advice may include, but not necessarily be limited to advice on manufacturing process integration, manufacturing operations, fab automation, and strategy on assembly and testing operations or subcontracting.

10. Such other functions as the Joint Venture Company and the Members may specify by written consent.

B. Membership and Procedure.

1. **Membership on Manufacturing Committee**.

a. Number and Appointment of Manufacturing Committee Members. The Manufacturing Committee shall have eight (8) members or such other number as the Parties may specify by written consent. The members shall be the Intel Executive Officer and the Micron Executive Officer (or their replacement) with the remaining members being appointed one-half by Micron and one-half by Intel. Unless the Members otherwise specify, the members of the Manufacturing Committee appointed by each Member shall include:

(i) A planning manager having factory tactical planning, loading and scheduling experience, including logistics;

(ii) A manufacturing finance officer or director or business officer; and

(iii) A director with manufacturing, strategic factory capacity, materials, purchasing and demand planning experience.

The qualifications of any individual appointed by any Member to serve on the Manufacturing Committee shall be determined in the discretion of that Member. The initial members appointed by Micron and Intel to the Manufacturing Committee shall be named within thirty (30) days of the Effective Date.

b. Removal and Vacancies. Each Member having the right to appoint a member of the Manufacturing Committee in accordance with this Section shall also have the right, in its sole discretion, to remove such member at any time by delivery of written notice to the other

Member and the Joint Venture Company. Any vacancy on the Manufacturing Committee for any reason (including as a result of the death, resignation, retirement or removal pursuant to this Section of any member of the Manufacturing Committee) shall be filled by the Member that appointed such member of the Manufacturing Committee. Unless a member of the Manufacturing

Committee resigns, dies, retires or is removed in accordance with this Section, he or she shall hold office until a successor shall have been duly appointed by the appointing Member.

2. **Additional Attendees at Manufacturing Committee Meetings**. The Chief Financial Officer and the Planning Manager of the Joint Venture Company may attend all meetings of the Manufacturing Committee, but shall not be deemed members of the Manufacturing Committee and shall have no right to vote. In addition, the Manufacturing Committee may establish rules with respect to the attendance at the Manufacturing Committee meetings of staff and other invitees.

3. **Chairman of the Manufacturing Committee**. The Board of Managers of the Joint Venture shall annually appoint the Intel or Micron Executive Officer (or their replacement) on a rotating basis to serve as the chairman of the Manufacturing Committee (the "Chairman"). The Chairman shall preside at all meetings of the Manufacturing Committee and shall have such other duties and responsibilities as may be assigned to him by the Manufacturing Committee. The Chairman may delegate to the other Executive Officer, if any, authority to chair any meeting, either on a temporary or a permanent basis. The Chairman shall determine the agenda of each meeting of the Manufacturing Committee, but the other Executive Officer, if any, and any member of the Manufacturing Committee shall have the right to request that additional items be included in the agenda for any meeting and such items shall be included in the agenda and presented for discussion. The Chairman shall not have the power to end discussion on an agenda item, unless termination of the discussion is agreed to by a majority of the Committee members present at the meeting.

4. **Voting**. The Joint Venture Company, Micron and Intel shall each be entitled to one (1) vote for each respective company. If the members representing any one company (the Joint Venture Company, Micron or Intel) cannot agree on how to cast their vote they must abstain from the vote. All actions, determinations or resolutions of the Manufacturing Committee at a meeting shall require the unanimous affirmative vote or consent of the three (3) votes at such meeting at which a quorum is present.

5. **Meetings of the Manufacturing Committee; Quorum**. The Manufacturing Committee shall hold meetings at least once per calendar month at such times and at such locations as the Manufacturing Committee may establish. The presence of the Intel and Micron Executive Officers (or their replacement) and at least two (2) members of the Manufacturing Committee appointed by each Member, in person or by telephone conference or by other means of

communications acceptable to the Manufacturing Committee, shall be necessary and sufficient to constitute a quorum for the purpose of taking action at any meeting of the Manufacturing Committee. No action taken by the Manufacturing Committee at any meeting shall be valid unless the requisite quorum is present.

6. **Failure to Reach Agreement**.

a. If the Manufacturing Committee fails to secure a unanimous vote on any matter in Section A requiring approval of the Manufacturing Committee, then "Deadlock" shall be deemed to occur with respect to such matter. The Manufacturing Committee shall then have a ten (10) day period during which it shall hold at least one (1) additional meeting at which it shall make a good faith effort to break the Deadlock. The additional meetings shall be held at the time and place agreed to by the members of the Manufacturing Committee, or if the members are unable to agree, at a time and place determined by the Chairman of the Manufacturing Committee, on at least two (2) days' written notice.

b. If the Manufacturing Committee fails to break the Deadlock during such ten (10) day period the matter shall then be referred to the Board of Managers of the Joint Venture Company for resolution that shall be binding on the Joint Venture Company and each of the Members. Any Tie Vote at the Board of Managers on such matter shall be resolved in the manner set forth in the Operating Agreement. Notwithstanding the foregoing, if the Board of Managers fails to approve a specific [***] for a [***], then Intel and Micron may designate the [***] for such [***] in accordance with their respective Sharing Interests.

7. **Notice; Waiver**. The regular monthly meetings of the Manufacturing Committee shall be held upon not less than five (5) Business Days' written notice. Additional meetings of the Manufacturing Committee shall be held (A) at such other times as may be determined by the Manufacturing Committee, (B) at the request of at least two (2) members of the Manufacturing Committee or the Intel or Micron Executive Officer (or their replacement), upon not less than five (5) Business Days' written notice or (C) in accordance with Section 5, following a failure by the Manufacturing Committee to adopt or reject a proposal for action presented to it. For purposes of this Section, notice may be provided via facsimile, e-mail or any other manner provided in Section 18.1 of the Operating Agreement, or telephonic notice to each member of the Manufacturing Committee (which notice shall be provided to the other members of the Manufacturing Committee by the requesting members of the Manufacturing Committee). The presence of any member of the Manufacturing Committee at a meeting (including by means of telephone conference or other means of communications acceptable to the Manufacturing Committee) shall constitute a waiver of notice of the meeting with respect to such Manager, unless such member of the Manufacturing Committee declares at the meeting that such member of the Manufacturing Committee objects to the notice as having been improperly given. The Manufacturing Committee shall cause written minutes to be prepared of all actions taken by the Manufacturing Committee and shall cause

a copy thereof to be delivered to each member of the Manufacturing Committee within fifteen (15) days.

8. **Action without a Meeting.** On any matter that is to be voted on, consented to or approved by the Manufacturing Committee, the Manufacturing Committee may take such action without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, shall be signed by the members of the Manufacturing Committee having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all the members of the Manufacturing Committee were present and voted.

9. **Meetings by Telecommunications.** Unless the Manufacturing Committee determines otherwise, members of the Manufacturing Committee shall have the right to participate in all meetings of the Manufacturing Committee by means of a telephone conference or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at a meeting.

10. **Compensation of Members of the Manufacturing Committee**. The members of the Manufacturing Committee, in their capacity as such, shall not receive compensation. Each Member shall bear the cost and expenses incurred by its appointed members of the Manufacturing Committee in connection with the Joint Venture Company's business while such members of the Manufacturing Committee are serving in such capacity.

EXHIBIT A

FORM OF
MANDATORY NOTE

NEITHER THIS NOTE NOR ANY INTEREST IN THE JOINT VENTURE COMPANY (AS DEFINED BELOW) THAT MAY BE ACQUIRED UPON CONVERSION OF THIS NOTE HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THIS NOTE HAS BEEN ISSUED IN RELIANCE UPON THE REPRESENTATION OF THE HOLDER THAT IT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARDS THE RESALE OR OTHER DISTRIBUTION THEREOF. THIS NOTE AND ANY INTEREST IN THE JOINT VENTURE COMPANY ACQUIRED UPON CONVERSION OF THIS NOTE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD UNLESS PERMITTED UNDER SECTIONS 12.2 OR 12.5 OF THE LIMITED LIABILITY COMPANY OPERATING AGREEMENT, DATED JANUARY 6, 2006, OF THE JOINT VENTURE COMPANY AND THEN ONLY PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IM FLASH TECHNOLOGIES, LLC

REDEEMABLE NOTE

No.:
Principal Amount: $[ ] Location: [ ]
Date of Issuance: [ ] Maturity Date: [ ]

FOR VALUE RECEIVED, IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), promises to pay to [ ], a Delaware corporation (the "**Funding Member**"), or such Wholly-Owned Subsidiary of the Funding Member as the Funding Member may designate, the principal sum of [ ] Dollars ($[ ]) and to pay interest on the outstanding principal of this Convertible Promissory Note (this "**Note**"), in accordance with Section 2 of this Note.

This Note is delivered in exchange for Member Debt Financing received from the Funding Member pursuant to Section 3.1 of the Limited Liability Company Operating Agreement dated January 6, 2006, of the Joint Venture Company (the "**Operating Agreement**") and is issued under and subject to the terms, provisions and conditions of the Operating Agreement. Reference is hereby made to the Operating Agreement for a full statement of the respective rights, limitations of rights and duties of the Joint Venture Company, the Funding Member and [ ], a Delaware corporation (the "**Non-Funding Member**") and the terms under which this Note is issued and delivered. Capitalized terms used in this Note and not

defined shall have the meanings set forth in the Operating Agreement. This Note may be one of a series of Notes issued pursuant to Section 3.1 of the Operating Agreement. This Note is [a Mandatory Shortfall Note] [a Mandatory Equalization Note].

1. TERM.

(a) Subject to paragraph (b) below, from and after the date that is [***] after the date of this Note (the "**Maturity Date**"), the Funding Member shall elect to either:

(i) convert this Note in accordance with Section 4 below; or

(ii) permit this Note to remain outstanding (in which case this Note shall become a Continuing Mandatory Note) with the Maturity Date being the Liquidation Date (the Maturity Date as so extended, the "**Extended Maturity Date**").

In the event that the Funding Member fails to make an election under clause (i) or clause (ii) above, the Funding Member shall be deemed to have elected to permit this Note to remain outstanding in accordance with clause (ii) above, and this Note and the related Mandatory [Equalization][Shortfall] Note, shall automatically become a Continuing Mandatory Note.

(b) Subject to Section 4 below, upon the date of the first distribution under Section 13.13(C) of the Operating Agreement, the Outstanding Balance, plus all accrued and unpaid interest thereon, shall become due.

2. INTEREST. [***Mandatory Equalization Note***: [***].]

[***Mandatory Shortfall Note:*** As provided in the Operating Agreement, interest on the unpaid principal balance of this Note (such unpaid principal balance at any given time is referred to as the "**Outstanding Balance**") will accrue as follows:

(a) For the [***] after the issue date of this Note, interest will accrue at the [***] (as reported in the [***]), as in effect on the issue date of this Note and adjusted every [***], plus [***] ([***]) basis points, per annum, compounded [***], calculated on the basis of a 360 day year and actual days elapsed.

(b) For the period starting on the day after the [***] anniversary of the issue date of this Note through the Maturity Date, interest will accrue at the [***] (as reported in the [***]), as in effect on the [***] anniversary of the issue date of this Note and adjusted every [***], per annum, compounded [***], calculated on the basis of a 360 day year and actual days elapsed.

(c) [***] will accrue on the Outstanding Balance from the Maturity Date until this Note is converted or redeemed in full.**]**

All payments received shall be applied first against costs of collection and enforcement (if any), then against accrued and unpaid interest, and then against principal.

3. PREPAYMENT. The Joint Venture Company shall prepay, without premium or penalty, this Note if, as and to the extent required by the Operating Agreement, but only upon written notice executed by the chief executive officer of the holder of this Note.

4. CONVERSION.

(a) At any time, and from time to time, from the Maturity Date through the Extended Maturity Date, the Funding Member may, at its election, transfer to the Joint Venture Company as a Capital Contribution all or a portion of the Outstanding Balance plus all accrued and unpaid interest thereon and such amount shall be added to the Capital Contribution Balance of the Funding Member (a "**Conversion**").

(b) If the Outstanding Balance plus all accrued and unpaid interest thereon shall become due as set forth in Section 1(b) above, (i) the Funding Member may elect to make a Conversion in full, but not in part, of the Outstanding Balance plus all accrued and unpaid interest thereon or (ii) if the Funding Member does not so elect, a Conversion of the Outstanding Balance plus all accrued and unpaid interest thereon (in full, but not in part) may be effected in accordance with Section 13.13(B) of the Operating Agreement.

(c) Upon the occurrence of an Event of Default under Section 5 below, the Funding Member may, in addition to the remedies set forth in Section 6 below, elect to make a Conversion.

5. DEFAULT. The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (each an "**Event of Default**"):

(a) failure by the Joint Venture Company to pay any principal of or interest on this Note as and when required by the Operating Agreement or the terms hereof, unless the Funding Member makes an election under Section 1(a) hereof; and

(b) (i) the entry of a decree or order for relief of the Joint Venture Company by a court of competent jurisdiction in any involuntary case involving the Joint Venture Company under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; (iii) the ordering of the winding up or liquidation of the Joint Venture Company's affairs; (iv) the filing with respect to the Joint Venture Company of a petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of sixty (60) days or which is dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Joint Venture Company of a voluntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect; (vi) the consent by the Joint Venture Company to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; or (vii) the making by the Joint Venture Company of any general assignment for the benefit of creditors.

6. REMEDIES. If an Event of Default occurs, the Funding Member may, at its election, (a) elect to make a Conversion in accordance with Section 4 above, (b) accelerate repayment of the Outstanding Balance, in which case the Outstanding Balance plus all accrued and unpaid interest thereon shall be due and payable immediately, and (c) pursue a claim for payment of the amounts required to be paid under the Operating Agreement or this Note.

7. MISCELLANEOUS.

7.1 This Note shall be construed and enforced in accordance with and governed by the laws of the State of Delaware without giving effect to the principles of conflict of laws thereof.

7.2 The titles, captions and headings of this Note are provided for convenience of reference only and shall not be deemed to constitute a part of this Note. Unless otherwise specifically stated, all references herein to "sections" and "appendices" will mean "sections" and "appendices" to this Note.

7.3 All notices to the Joint Venture Company shall be sent addressed to the Authorized Officers, or the Chief Executive Officer, as applicable, of the Joint Venture Company at the Joint Venture Company's principal place of business. All notices to the Funding Member or the Non-Funding Member shall be sent addressed to such Member at the address as may be specified by Members from time to time in a notice to the Joint Venture Company. Notwithstanding the foregoing, the initial notice addresses for the Joint Venture Company and the Members are set forth below. All notices are effective the

next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

To the Joint Venture Company:	To the Funding Member:
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
Fax Number: [ ]	Fax Number: [ ]

7.4 No delay or omission to exercise any right, power or remedy accruing to the Funding Member, upon any breach or default of the Joint Venture Company under this Note, shall impair any such right, power or remedy of the Funding Member nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach of default thereafter occurring or any waiver of any other breach or default theretofore or thereafter occurring. The acceptance at any time by the Funding Member of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable. Any waiver, permit, consent or approval of any kind or character on the part of the Funding Member of any breach of default under this Note or any waiver on the part of the Funding Member of any provisions or conditions of this Note, must be in writing and shall be effective only to the extent specifically set forth in such writing. All other

remedies provided for in this Note shall be exclusive and shall be in lieu of any other remedies that the Funding Member may have in respect of this Note, at law or in equity.

7.5 This Note may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.6 Should any provision of this Note be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Note shall remain in full force in all other respects and the parties hereto shall negotiate in good faith appropriate modifications to this Note that most nearly effects the parties' intent in entering into this Note.

7.7 The Joint Venture Company hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, release of any or all of any security given from time to time for this Note, or other cause of release or discharge other than actual payment in full hereof.

7.8 The Funding Member shall not be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Funding Member and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

7.9 Time is of the essence hereof.

7.10 It is expressly agreed that if this Note is referred to an attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred upon the Funding Member by this Note or any other document evidencing this Note, then the Joint Venture Company promises and agrees to pay all costs, including attorneys' fees, incurred by the Funding Member.

7.11 If any provisions of this Note would require the Joint Venture Company to pay interest hereon at a rate exceeding the highest rate allowed by applicable law, the Joint Venture Company shall instead pay interest under this Note at the highest rate permitted by applicable law.

7.12 In the event of any conflict between the provisions of the Operating Agreement and this Note, the provisions of the Operating Agreement shall control.

IN WITNESS WHEREOF, the Joint Venture Company has executed this Note as of the date first above written.

IM FLASH TECHNOLOGIES, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

[ ], the Funding Member

By: _____

Name: _____

Title: _____

SIGNATURE PAGE TO
PROMISSORY NOTE
ISSUED BY IM FLASH TECHNOLOGIES
TO [ ]

EXHIBIT B

FORM OF OPTIONAL [***] NOTE

NEITHER THIS NOTE NOR ANY INTEREST IN THE JOINT VENTURE COMPANY (AS DEFINED BELOW) THAT MAY BE ACQUIRED UPON CONVERSION OF THIS NOTE HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THIS NOTE HAS BEEN ISSUED IN RELIANCE UPON THE REPRESENTATION OF THE HOLDER THAT IT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARDS THE RESALE OR OTHER DISTRIBUTION THEREOF. THIS NOTE AND ANY INTEREST IN THE JOINT VENTURE COMPANY ACQUIRED UPON CONVERSION OF THIS NOTE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD UNLESS PERMITTED UNDER SECTIONS 12.2 OR 12.5 OF THE LIMITED LIABILITY COMPANY OPERATING AGREEMENT, DATED JANUARY 6, 2006, OF THE JOINT VENTURE COMPANY AND THEN ONLY PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IM FLASH TECHNOLOGIES, LLC

REDEEMABLE NOTE

No.:

Principal Amount: $[ ] Location: [ ]
Date of Issuance: [ ] Maturity Date: [ ]

FOR VALUE RECEIVED, IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), promises to pay to [ ], a Delaware corporation (the "**Funding Member**"), or such Wholly-Owned Subsidiary of the Funding Member as the Funding Member may designate, the principal sum of [ ] Dollars ($[ ]) and to pay interest on the outstanding principal of this Convertible Promissory Note (this "**Note**"), in accordance with Section 2 of this Note.

This Note is delivered in exchange for Member Debt Financing received from the Funding Member pursuant to Section 3.2 of the Limited Liability Company Operating Agreement dated January 6, 2006, of the Joint Venture Company (the "**Operating Agreement**") and is issued under and subject to the terms, provisions and conditions of the Operating Agreement. Reference is hereby made to the Operating Agreement for a full statement of the respective rights, limitations of rights and duties of the Joint Venture Company, the Funding Member and [ ], a Delaware corporation (the "**Non-Funding Member**") and the terms under which this Note is issued and delivered. Capitalized terms used in this Note and not defined shall have the meanings set forth in the Operating Agreement. This Note may be one of

a series of Notes issued pursuant to Section 3.2 of the Operating Agreement. This Note is [an Optional [***] Shortfall Note] [an Optional [***] Equalization Note].

1. TERM. (a) This note will mature on the [***].

(b) Subject to Section 4 below, upon the date of the first distribution under Section 13.13(C) of the Operating Agreement, the Outstanding Balance, plus all accrued and unpaid interest thereon, shall become due.

2. INTEREST. [***Optional [***] Equalization Note:*** [***].]

[***Optional [***] Shortfall Note:*** As provided in the Operating Agreement, interest on the unpaid principal balance of this Note (such unpaid principal balance at any given time is referred to as the "**Outstanding Balance**") will accrue at the [***] (as reported in the [***]), as in effect on the issue date of this Note and adjusted every [***], per annum, compounded [***], calculated on the basis of a 360 day year and actual days elapsed.

All payments received shall be applied first against costs of collection and enforcement (if any), then against accrued and unpaid interest, and then against principal.

3. PREPAYMENT. The Joint Venture Company shall prepay, without premium or penalty, this Note if, as and to the extent required by the Operating Agreement, but only upon written notice executed by the chief executive officer of the holder of this Note.

4. CONVERSION.

(a) At any time, and from time to time, the Funding Member may, at its election, transfer to the Joint Venture Company as a Capital Contribution all or a portion of the Outstanding Balance plus all accrued and unpaid interest thereon and such amount shall be added to the Capital Contribution Balance of the Funding Member (a "**Conversion**").

(b) If the Outstanding Balance plus all accrued and unpaid interest thereon shall become due as set forth in Section 1(b) above, (i) the Funding Member may elect to make a Conversion in full, but not in part, of the Outstanding Balance plus all accrued and unpaid interest thereon or (ii) if the Funding Member does not so elect, a Conversion of the Outstanding Balance plus all accrued and unpaid interest thereon (in full, but not in part) may be effected in accordance with Section 13.13(B) of the Operating Agreement.

(c) Upon the occurrence of an Event of Default under Section 5 below, the Funding Member may, in addition to the remedies set forth in Section 6 below, elect to make a Conversion.

5. DEFAULT. The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (each an "**Event of Default**"):

(a) failure by the Joint Venture Company to pay any principal of or interest on this Note as and when required by the Operating Agreement or the terms hereof; and

(b) (i) the entry of a decree or order for relief of the Joint Venture Company by a court of competent jurisdiction in any involuntary case involving the Joint Venture Company under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; (iii) the ordering of the winding up or liquidation of the Joint Venture Company's affairs; (iv) the filing with respect to the Joint Venture Company of a petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of sixty (60) days or which is dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Joint Venture Company of a voluntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect; (vi) the consent by the Joint Venture Company to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; or (vii) the making by the Joint Venture Company of any general assignment for the benefit of creditors.

6. REMEDIES. If an Event of Default occurs, the Funding Member may, at its election, (a) elect to make a Conversion in accordance with Section 4 above, (b) accelerate repayment of the Outstanding Balance, in which case the Outstanding Balance plus all accrued and unpaid interest thereon shall be due and payable immediately, and (c) pursue a claim for payment of the amounts required to be paid under the Operating Agreement or this Note.

7. MISCELLANEOUS.

7.1 This Note shall be construed and enforced in accordance with and governed by the laws of the State of Delaware without giving effect to the principles of conflict of laws thereof.

7.2 The titles, captions and headings of this Note are provided for convenience of reference only and shall not be deemed to constitute a part of this Note. Unless otherwise specifically stated, all references herein to "sections" and "appendices" will mean "sections" and "appendices" to this Note.

7.3 All notices to the Joint Venture Company shall be sent addressed to the Authorized Officers, or the Chief Executive Officer, as applicable, of the Joint Venture Company at the Joint Venture Company's principal place of business. All notices to the Funding Member or the Non-Funding Member shall be sent addressed to such Member at the address as may be specified by Members from time to time in a notice to the Joint Venture Company. Notwithstanding the foregoing, the initial notice addresses for the Joint Venture Company and the Members are set forth below. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

To the Joint Venture Company:	To the Funding Member:
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
Fax Number: [ ]	Fax Number: [ ]

7.4 No delay or omission to exercise any right, power or remedy accruing to the Funding Member, upon any breach or default of the Joint Venture Company under this Note, shall impair any such right, power or remedy of the Funding Member nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach of default thereafter occurring or any waiver of any other breach or default theretofore or thereafter occurring. The acceptance at any time by the Funding Member of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable. Any waiver, permit, consent or approval of any kind or character on the part of the Funding Member of any breach of default under this Note or any waiver on the part of the Funding Member of any provisions or conditions of this Note, must be in writing and shall be effective only to the extent specifically set forth in such writing. All other remedies provided for in this Note shall be exclusive and shall be in lieu of any other remedies that the Funding Member may have in respect of this Note, at law or in equity.

7.5 This Note may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.6 Should any provision of this Note be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Note shall remain in full force in all other respects and the parties hereto shall negotiate in good faith appropriate modifications to this Note that most nearly effects the parties' intent in entering into this Note.

7.7 The Joint Venture Company hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, release of any or all of any security given from time to time for this Note, or other cause of release or discharge other than actual payment in full hereof.

7.8 The Funding Member shall not be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Funding Member and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

7.9 Time is of the essence hereof.

7.10 It is expressly agreed that if this Note is referred to an attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred

upon the Funding Member by this Note or any other document evidencing this Note, then the Joint Venture Company promises and agrees to pay all costs, including attorneys' fees, incurred by the Funding Member.

7.11 If any provisions of this Note would require the Joint Venture Company to pay interest hereon at a rate exceeding the highest rate allowed by applicable law, the Joint Venture Company shall instead pay interest under this Note at the highest rate permitted by applicable law.

7.12 In the event of any conflict between the provisions of the Operating Agreement and this Note, the provisions of the Operating Agreement shall control.

IN WITNESS WHEREOF, the Joint Venture Company has executed this Note as of the date first above written.

IM FLASH TECHNOLOGIES, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

[ ], the Funding Member

By: _____

Name: _____

Title: _____

SIGNATURE PAGE TO
PROMISSORY NOTE
ISSUED BY IM FLASH TECHNOLOGIES
TO [ ]

EXHIBIT C

FORM OF OPTIONAL OTHER NOTE

NEITHER THIS NOTE NOR ANY INTEREST IN THE JOINT VENTURE COMPANY (AS DEFINED BELOW) THAT MAY BE ACQUIRED UPON CONVERSION OF THIS NOTE HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**ACT**"), OR UNDER THE SECURITIES LAWS OF ANY STATES. THIS NOTE HAS BEEN ISSUED IN RELIANCE UPON THE REPRESENTATION OF THE HOLDER THAT IT HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TOWARDS THE RESALE OR OTHER

DISTRIBUTION THEREOF. THIS NOTE AND ANY INTEREST IN THE JOINT VENTURE COMPANY ACQUIRED UPON CONVERSION OF THIS NOTE ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD UNLESS PERMITTED UNDER SECTIONS 12.2 OR 12.5 OF THE LIMITED LIABILITY COMPANY OPERATING AGREEMENT, DATED JANUARY 6, 2006, OF THE JOINT VENTURE COMPANY AND THEN ONLY PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

IM FLASH TECHNOLOGIES, LLC

REDEEMABLE NOTE

No.:

Principal Amount: $[ ] Location: [ ]

Date of Issuance: [ ] Maturity Date: [ ]

FOR VALUE RECEIVED, IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**"), promises to pay to [ ], a Delaware corporation (the "**Funding Member**"), or such Wholly-Owned Subsidiary of the Funding Member as the Funding Member may designate, the principal sum of [ ] Dollars ($[ ])of this Convertible Promissory Note (this "**Note**"), in accordance with Section 2 of this Note.

This Note is delivered in exchange for Member Debt Financing received from the Funding Member pursuant to Section 3.3 of the Limited Liability Company Operating Agreement dated January 6, 2006, of the Joint Venture Company (the "**Operating Agreement**") and is issued under and subject to the terms, provisions and conditions of the Operating Agreement. Reference is hereby made to the Operating Agreement for a full statement of the respective rights, limitations of rights and duties of the Joint Venture Company, the Funding Member and [ ], a Delaware corporation (the "**Non-Funding Member**") and the terms under which this Note is issued and delivered. Capitalized terms used in this Note and not defined shall have the meanings set forth in the Operating Agreement. This Note may be one of

a series of Notes issued pursuant to Section 3.3 of the Operating Agreement. This Note is an Optional Other Shortfall Note.

1. TERM. This Note will mature on the [***].

2. INTEREST. [***].

3. PREPAYMENT. The Joint Venture Company shall prepay, without premium or penalty, this Note if, as and to the extent required by the Operating Agreement, but only upon written notice executed by the chief executive officer of the holder of this Note.

4. CONVERSION.

(a) At any time, and from time to time, the Funding Member may, at its election, transfer to the Joint Venture Company as a Capital Contribution all or a portion of the Outstanding Balance thereon and such amount shall be added to the Capital Contribution Balance of the Funding Member (a "**Conversion**").

(b) Upon the occurrence of an Event of Default under Section 5 below, the Funding Member may, in addition to the remedies set forth in Section 6 below, elect to make a Conversion.

5. DEFAULT. The occurrence of any one or more of the following events, acts or occurrences shall constitute an event of default (each an "**Event of Default**"):

(a) failure by the Joint Venture Company to pay any principal of on this Note as and when required by the Operating Agreement or the terms hereof; and

(b) (i) the entry of a decree or order for relief of the Joint Venture Company by a court of competent jurisdiction in any involuntary case involving the Joint Venture Company under any bankruptcy, insolvency or other similar law now or hereafter in effect; (ii) the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; (iii) the ordering of the winding up or liquidation of the Joint Venture Company's affairs; (iv) the filing with respect to the Joint Venture Company of a petition in any such involuntary bankruptcy case, which petition remains undismissed for a period of sixty (60) days or which is dismissed or suspended pursuant to Section 305 of the Federal Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law); (v) the commencement by the Joint Venture Company of a voluntary case under any bankruptcy, insolvency or other similar law now or hereafter in effect; (vi) the consent by the Joint Venture Company to the entry of an order for relief in an involuntary case under any such law or to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator or other similar agent for the Joint Venture Company or for any substantial part of the Joint Venture Company's assets or property; or (vii) the making by the Joint Venture Company of any general assignment for the benefit of creditors.

6. REMEDIES. If an Event of Default occurs, the Funding Member may, at its election, (a) elect to make a Conversion in accordance with Section 4 above, (b) accelerate repayment of the Outstanding Balance, in which case the Outstanding Balance shall be due and payable immediately, and (c) pursue a claim for payment of the amounts required to be paid under the Operating Agreement or this Note.

7. MISCELLANEOUS.

7.1 This Note shall be construed and enforced in accordance with and governed by the laws of the State of Delaware without giving effect to the principles of conflict of laws thereof.

7.2 The titles, captions and headings of this Note are provided for convenience of reference only and shall not be deemed to constitute a part of this Note. Unless otherwise specifically stated, all references herein to "sections" and "appendices" will mean "sections" and "appendices" to this Note.

7.3 All notices to the Joint Venture Company shall be sent addressed to the Authorized Officers, or the Chief Executive Officer, as applicable, of the Joint Venture Company at the Joint Venture Company's principal place of business. All notices to the Funding Member or the Non-Funding Member shall be sent addressed to such Member at the address as may be specified by Members from time to time in a notice to the Joint Venture Company. Notwithstanding the foregoing, the initial notice addresses for the Joint Venture Company and the Members are set forth below. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five (5) days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

To the Joint Venture Company:	To the Funding Member:
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
[ ]	[ ]
Fax Number: [ ]	Fax Number: [ ]

7.4 No delay or omission to exercise any right, power or remedy accruing to the Funding Member, upon any breach or default of the Joint Venture Company under this Note, shall impair any such right, power or remedy of the Funding Member nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of any similar breach of default thereafter occurring or any waiver of any other breach or default theretofore or thereafter occurring. The acceptance at any time by the Funding Member of any past-due amount shall not be deemed to be a waiver of the right to require prompt payment when due of any other amounts then or thereafter due and payable. Any waiver, permit, consent or approval of any kind or character on the part of the Funding Member of any breach of default under this Note or any waiver on the part of the Funding Member of any provisions or conditions of this Note, must be in writing and shall be effective only to the extent specifically set forth in such writing. All other

remedies provided for in this Note shall be exclusive and shall be in lieu of any other remedies that the Funding Member may have in respect of this Note, at law or in equity.

7.5 This Note may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.6 Should any provision of this Note be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Note shall remain in full force in all other respects and the parties hereto shall negotiate in good faith appropriate modifications to this Note that most nearly effects the parties' intent in entering into this Note.

7.7 The Joint Venture Company hereby waives presentment, demand, protest, notice of dishonor, diligence and all other notices, any release or discharge arising from any extension of time, discharge of a prior party, release of any or all of any security given from time to time for this Note, or other cause of release or discharge other than actual payment in full hereof.

7.8 The Funding Member shall not be deemed, by any act or omission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Funding Member and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.

7.9 Time is of the essence hereof.

7.10 It is expressly agreed that if this Note is referred to an attorney or if suit is brought to collect or interpret this Note or any part hereof or to enforce or protect any rights conferred upon the Funding Member by this Note or any other document evidencing this Note, then the Joint Venture Company promises and agrees to pay all costs, including attorneys' fees, incurred by the Funding Member.

7.11 If any provisions of this Note would require the Joint Venture Company to pay interest hereon at a rate exceeding the highest rate allowed by applicable law, the Joint Venture Company shall instead pay interest under this Note at the highest rate permitted by applicable law.

7.12 In the event of any conflict between the provisions of the Operating Agreement and this Note, the provisions of the Operating Agreement shall control.

IN WITNESS WHEREOF, the Joint Venture Company has executed this Note as of the date first above written.

IM FLASH TECHNOLOGIES, LLC

By: _____

Name: _____

Title: _____

ACKNOWLEDGED AND ACCEPTED:

[ ], the Funding Member

By: _____

Name: _____

Title: _____

SIGNATURE PAGE TO
PROMISSORY NOTE
ISSUED BY IM FLASH TECHNOLOGIES
TO [ ]

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

MANUFACTURING SERVICES AGREEMENT

This MANUFACTURING SERVICES AGREEMENT (the **"Agreement"**), is made and entered into as of this 6th day of January, 2006 (the **"Effective Date"**), by and between Micron Technology, Inc., a Delaware corporation (**"Micron"**), and IM Flash Technologies, LLC, a Delaware limited liability company (**"Joint Venture Company"**).

RECITALS

A. The Joint Venture Company is engaged in the manufacture, assembly and test of NAND Flash Memory Products (as defined hereinafter); and

B. Micron possesses the ability to perform manufacturing services in connection with Probed Wafers for NAND Flash Memory Products; and

C. Micron desires to provide and the Joint Venture Company desires to purchase manufacturing services upon the terms and subject to the conditions set forth in this Agreement (Micron and the Joint Venture Company are each, a "**Party"** and collectively, the **"Parties"**).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows.

SECTION 1

DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each of the Schedules will apply only to the corresponding Section or subsection of this Agreement, (3) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (4) words in the singular include the plural and visa versa, (5) the term "including" means "including without limitation," and (6) the terms "herein," "hereof," "hereunder" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. All references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "day" or "days" will mean calendar days and all references to "quarter(ly)", "month" or "year" will mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively.

(b) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting thereof

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or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

SECTION 2

PROVISION OF MANUFACTURING SERVICES; CONTROLS

2.1 Provision of Manufacturing Services. Micron will provide to the Joint Venture Company Manufacturing Services, as described on Schedule 2.1 in accordance with the terms and conditions contained herein.

2.2 Level of Manufacturing Services. The Joint Venture Company shall provide Micron with the Ramp Plan for the Site, as initially set forth in the Initial Business Plan in the LLC Operating Agreement and subject to adjustment in the Manufacturing Plan. Micron shall prepare for the Joint Venture Company, in response to the Ramp Plan, a proposal for the level of services to be provided at the Site. The Parties shall review such proposal and mutually agree on the level of Manufacturing Services, subject to mutually agreeable adjustment based upon changes in the Initial Business Plan and Manufacturing Plan. Micron shall staff and operate the Site to enable Micron to provide the agreed level of Manufacturing Services. The Parties acknowledge that in the normal course of performing Manufacturing Services, variances in output may and do occur and that nothing in the Approved Business Plan, Manufacturing Plan or the agreed level of Manufacturing Services is a binding commitment to achieve a specific output of Probed Wafers.

2.3 Control; Processes. Micron and the Joint Venture Company will periodically review Micron's processes and control mechanisms relating to the performance of the Manufacturing Services, including the Performance Criteria. If the Joint Venture Company requests any changes or additions to Micron's existing process and control mechanisms, the Parties shall work together in good faith to resolve any such requests.

2.4 Option to Designate WIP. [***].

2.5 [***]. In addition to the quarterly review and monthly report requirements set forth in ARTICLE 5, Micron will notify the Joint Venture Company promptly of all [***].

2.6 Masks. Masks required for the Manufacturing Services will either be provided by the Joint Venture Company or purchased by Micron hereunder. Such masks will only be used to perform the Manufacturing Services for the Joint Venture Company. Masks will be repaired and replaced solely at mask operations that have been approved by the Joint Venture Company, which approval shall not be unreasonably withheld. [***].

2.7 Traceability and Data Retention. The Joint Venture Company and Micron shall review Micron's Manufacturing Services process traceability system in regards to the manufacturing process [***]

and will agree on the level of data to be traced through such system and which data shall be available with real-time access or as otherwise mutually agreed by the Parties. Micron agrees to maintain such data for a minimum of [***] from completion of the Probed Wafer lot and [***] to the extent such level of data is offered real-time within Micron, subject to system limitations related to the exclusion of non-NAND data. The Joint Venture Company may provide its customers with access to such data, subject to any confidentiality requirements.

2.8 Business Continuity Plan. Micron and the Joint Venture Company will review Micron's Business Continuity Plan as it relates to the Manufacturing Services provided hereunder. If the Joint Venture Company requests any changes or additions to Micron's existing Business Continuity Plan, the Parties shall work together in good faith to resolve any such agreed resolutions. The Joint Venture Company may provide Micron's Business Continuity Plan to its customers, subject to any confidential requirements.

2.9 Additional Customer Requirements. The Joint Venture Company will inform Micron in writing of any auditable supplier requirements relating to Manufacturing Services requested by the Joint Venture Company's customers. Micron and the Joint Venture Company shall work together in good faith to resolve any such requests.

2.10 Transfer of Manufacturing Technology; Equivalency of Operations. [***].

SECTION 3

ITEMS TO BE SUPPLIED BY THE JOINT VENTURE COMPANY

3.1 Leased Space and Manufacturing Equipment; **[***]**. In order for Micron to perform Manufacturing Services hereunder, the Joint Venture Company shall provide Micron with access to all equipment owned or leased by the Joint Venture Company and installed at the Site, including, but not limited, to the automated material handling system, manufacturing equipment and other required equipment not provided by Micron hereunder (collectively **"Joint Venture Equipment"**). **[***]**.

3.2 **[***]**. **[***]**.

3.3 [***].

3.4 Provision of Technical Assistance. The Joint Venture Company shall furnish or have furnished to Micron in accordance with the requirements of the Joint Venture Documents such technical assistance as the Parties agree is reasonably necessary to enable Micron to perform the Manufacturing Services hereunder.

SECTION 4

ITEMS TO BE SUPPLIED BY MICRON

4.1 Facilities Maintenance, Manufacturing Systems, Secondary Equipment and Support. Micron shall utilize certain of its Site systems and equipment to perform the Manufacturing Services (collectively **"Micron Equipment"**). Micron shall provide necessary repair and maintenance of the Micron Equipment and Joint Venture Equipment in order to maintain such equipment in good working order and in accordance with any applicable, recommended manufacturer's guidelines, until such time as any of such equipment becomes obsolete or uneconomical to maintain or repair. All costs to repair or replace, maintain or to add to or expand or enhance the facilities and/or the Micron Equipment as reasonably required to perform the Manufacturing Services hereunder in accordance with Joint Venture Company's requirements hereunder shall be expensed or capitalized in accordance with Micron's accounting policies and charged accordingly in the pricing set forth on Schedule 6.5. Micron shall provide the Joint Venture Company with ninety (90) days advance written notice of any change in Micron's accounting policies that would materially change the manner of calculating the pricing hereunder. To the extent that any of the terms of this Section 4.1 conflict with the terms of the MTV Lease Agreement, the MTV Lease Agreement shall control, including the section entitled Limitation of Tenants Claims.

4.2 Manufacturing Services Location. Unless otherwise agreed to by the Joint Venture Company, all Manufacturing Services by Micron under this Agreement shall be performed at the Site specified in Schedule 2.1.

4.3 Service Providers. Micron shall staff the Site with the quantity of service providers reasonably necessary for Micron to provide the level of Manufacturing Services agreed to in Section 2.2, above. Micron shall provide services providers with substantially the same level of qualification and skills as Micron requires for personnel performing such services for its wholly-owned facilities. Micron shall provide substantially the same training for such service providers as Micron requires for personnel performing such services at its wholly-owned facilities. The Prices for the service providers are included in the pricing set forth on Schedule 6.5.

4.4 Materials. Micron shall procure on behalf of the Joint Venture Company the materials required for performance of the Manufacturing Services. To the extent that the Joint Venture Company

desires to provide certain materials, the Parties shall work together in good faith on the timing and manner for providing such materials so that it can be accommodated within Micron's business and manufacturing systems. Micron shall manage the use of materials as necessary to provide the Manufacturing Services. All such materials acquired by Micron are included in the pricing set forth on Schedule 6.5.

4.5 Title and Risk of Loss or Damage to Materials and Micron Equipment.

(a) Materials. [***].

(b) Micron Equipment. [***].

ARTICLE 5

PLANNING MEETINGS AND FORECASTS;

PERFORMANCE REVIEWS AND REPORTS

5.1 Planning and Forecasting

(a) Starting upon the Effective Date and continuing on a Fiscal Quarter basis pursuant to a schedule agreed by the Parties, the Joint Venture Company will provide Micron a demand forecast setting forth the Joint Venture Company's Probed Wafer demand. The forecast shall project Probed Wafer demand for the next [***] ([***]) Fiscal Quarters by design id, technology node and probe level ("**Demand Forecast**").

(b) In response to the Demand Forecast, Micron shall furnish the Joint Venture Company with a Fiscal Quarter written forecast of Manufacturing Services reasonably necessary to meet the Demand Forecast, on a schedule to be determined by the Parties. This written response (the **"Manufacturing Services Forecast"**), will include:

[***].

(c) Based on the Demand Forecast and the Manufacturing Services Forecast, the Joint Venture Company will prepare a [***] ([***]) Fiscal Quarter proposed loading plan ("**Proposed Loading Plan**"), which will be subject to review by the Manufacturing Committee. The Joint Venture Company

shall provide Micron with the Proposed Loading Plan at least [***] ([***]) Business Days prior to submission to the Manufacturing Committee.

(d) The Joint Venture Company will submit the Proposed Loading Plan and other requested information to the Manufacturing Committee for endorsement. Once endorsed by the Manufacturing Committee, the Proposed Loading Plan shall become part of the Manufacturing Plan. Micron shall use the Manufacturing Plan as the basis for determining the final quantity of Manufacturing Services that Micron will provide to the Joint Venture Company pursuant to Section 2.2 above.

5.2 Performance Review and Monthly Report on Performance. Micron shall meet with the Joint Venture Company on a quarterly basis to review Micron's performance of Manufacturing Services and to determine whether such services are resulting in the production of Probed Wafers that meet or exceed the desired Performance Criteria. Micron shall provide to the Joint Venture Company, on a monthly basis as agreed by the Parties, a written report that:

(a) Describes [***];

(b) Describes [***];

(c) Describes [***];

(d) Identifies [***];

(e) Describes [***]; and

(f) Identifies [***].

5.3 Monthly Review. In addition, the Parties shall hold a monthly meeting, on a schedule to be agreed by the Parties, with the primary purpose of [***].

ARTICLE 6
ORDER PLACEMENT, PRICING AND INVOICING

6.1 Placement of Purchase Orders. Prior to the commencement of every Fiscal Quarter or another time period agreed by the Parties, the Joint Venture Company shall place a non-cancelable blanket purchase order in writing (via e-mail or facsimile transmission) for Manufacturing Services to be supplied by Micron in the following Fiscal Quarter as agreed in the Manufacturing Services Forecast and Manufacturing Plan (each such order, a **"Purchase Order"**). The Joint Venture Company may issue change orders to such Purchase Orders to reflect approved changes in the Manufacturing Plan, provided

that such changes can be reasonably accommodated within Micron's performance of the Manufacturing Services without disrupting the on-going services in a manner to negatively impact the previously placed Purchase Orders. The Joint Venture Company may also request Manufacturing Services relating to special engineering or hot lots in accordance with Section II of Schedule 6.5. The terms and conditions of this Agreement supersede the terms and conditions contained in either Party's sales or purchase documentation provided in connection herewith unless expressly agreed otherwise in a writing signed by each Party.

6.2 Shortfall. Micron shall immediately notify the Joint Venture Company in writing of any inability to meet a Purchase Order commitment for Manufacturing Services to be provided to the Joint Venture Company and which may result in shortfall in achieving the quantity of Probed Wafers set forth in the approved Manufacturing Plan.

6.3 Acceptance of Purchase Order. Each Purchase Order that corresponds to the Manufacturing Plan in the manner contemplated by Section 6.1 and, and is otherwise free of errors, shall be deemed accepted by Micron upon receipt and shall be binding on the Parties, to the extent not inconsistent with the Manufacturing Plan.

6.4 Content of Purchase Orders. Each Purchase Order shall specify the following information:

(a) Purchase Order number;

(b) Quantity of wafer starts by part number, design id, technology node and probe level;

(c) Place of delivery of Probe Wafer output produced in the course of the Manufacturing Services; and

(d) Other terms (if any).

6.5 Pricing and Invoicing. Micron shall invoice the Joint Venture Company on a monthly basis for the Manufacturing Services provided hereunder in accordance with the pricing provided in Schedule 6.5. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars. Except as otherwise specified in this Agreement, the Joint Venture Company shall pay Micron for the amounts due, owing, and duly invoiced under this Agreement within [***] ([***]) days following delivery of an invoice therefore to such place as Micron may reasonably direct therein.

6.6 Taxes.

(a) General. All sales, use and other transfer taxes imposed directly on or solely as a result of the Services and payments therefore provided herein shall be stated separately on Micron's invoice, collected from the Joint Venture Company and shall be remitted by Micron to the appropriate tax authority ("Recoverable Taxes"), unless the Joint Venture Company provides valid proof of tax exemption. When property is delivered and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of taxes by the Joint Venture Company is required by law, Micron shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and Micron does not collect tax from the Joint Venture Company or pay such taxes to the appropriate Governmental Entity on a timely basis, and is subsequently audited by any tax authority, liability of the Joint Venture Company will be limited to the tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Notwithstanding anything herein to the contrary, taxes other than Recoverable Taxes shall not be reimbursed by the Joint Venture Company, and each Party is responsible

for its own respective income taxes (including franchise and other taxes based on net income or a variation thereof), taxes based upon gross revenues or receipts, and taxes with respect to general overhead, including but not limited to business and occupation taxes, and such taxes shall not be Recoverable Taxes.

(b) Withholding Taxes. In the event that the Joint Venture Company is prohibited by law from making payments to Micron unless the Joint Venture Company deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then the Joint Venture Company shall duly withhold and remit such taxes and shall pay to Micron the remaining net amount after the taxes have been withheld. Such taxes shall not be Recoverable Taxes and the Joint Venture Company shall not reimburse Micron for the amount of such taxes withheld.

6.7 Payment to Vendors. Micron shall be responsible for and shall hold the Joint Venture Company harmless for any and all payments to Micron's contractors or vendors utilized in the performance of Manufacturing Services under this Agreement.

6.8 Shipment. Micron, in order to ensure timely and complete shipment of Probed Wafers to the Joint Venture Company, shall arrange for shipping to the Joint Venture Company's customer or assembly services provider. To the extent that the shipping charges, insurance, taxes, customs charges and any fees and duties in connection with such shipment are not charged to directly to a Joint Venture Company account, Micron shall pay such costs and invoice to the Joint Venture Company in under the appropriate services agreement between the Parties. Micron shall mark all shipping containers with necessary lifting, handling, and shipping information, Purchase Order number, date of shipment, and the names of the Joint Venture Company and applicable customer, is any. If no instructions are given, Micron shall select the most cost effective carrier, given the time constraints known to Micron. At the Joint Venture Company's request, Micron will provide drop-shipment of Probed Wafers to the Joint Venture Company's customers or as otherwise directed by the Joint Venture Company.

6.9 Packaging. All shipment packaging of the Probed Wafers produced in the course of the Manufacturing Services hereunder shall be in conformance with: (i) the Specifications; (ii) the Joint Venture Company's reasonable instructions; (iii) general industry standards to ensure resistance to damage that may occur during transportation. Marking on the packages shall be made by Micron in accordance with the Joint Venture Company's instructions.

6.10 Customs Clearance. Upon the Joint Venture Company's request, Micron will promptly provide the Joint Venture Company with a statement of origin for all Probed Wafers produced in the course of the Manufacturing Services hereunder and with applicable customs documentation for Probed Wafers wholly or partially manufactured outside of the country of import.

ARTICLE 7

PROVISION OF MANUFACTURING SERVICES; SECONDARY SILICON

7.1 Performance Criteria. Micron will work with the Joint Venture Company in good faith to improve manufacturing Performance Criteria and to minimize Price.

7.2 Secondary Silicon. Any Secondary Silicon segregated as a result of the Manufacturing Services shall be provided by Micron to the Joint Venture Company, which shall provide the Secondary Silicon to its customers in accordance with the Sharing Interests at the time. ALL SECONDARY

SILICON PROVIDED HEREUNDER IS PROVIDED "AS IS," "WHERE IS" WITH ALL FAULTS AND DEFECTS BASIS WITHOUT WARRANTY OF ANY KIND.

ARTICLE 8

VISITATIONS AND AUDITS

8.1 Visits. Micron will support the Joint Venture Company's and its customers' reasonable requests for visits to the facility where Micron performs the Manufacturing Services hereunder for the purpose of reviewing Micron's performance of the Manufacturing Services, including requests for further information and assistance in troubleshooting performance issues. Such requests shall be reasonably granted by Micron so long as such visits and meetings do not unduly interfere with Micron's performance of the Manufacturing Services and other operations.

8.2 Performance Audit. The Joint Venture Company's and its customers' representatives upon reasonable advance notice, shall have the right to observe Micron's performance of Manufacturing Services at the Site during normal working hours as agreed by the Parties for the purposes of monitoring and auditing Micron's performance of the Manufacturing Services and compliance with any requirements set forth in this Agreement. Upon completion of the audit, Micron and the Joint Venture Company shall work in good faith to agree to an audit closure plan, which will be documented in the audit report issued by the Joint Venture Company. The Joint Venture Company may provide such audit report to its customers, subject to any confidentiality requirements.

8.3 Financial Audit. The Joint Venture Company reserves the right to have Micron's books and records related to the pricing of Probed Wafers hereunder inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Schedules 6.5 of this Agreement in regards to Pricing of Manufacturing Services. Such audit will be performed by an independent third party auditor acceptable to both Parties at the Joint Venture Company's expense. The Joint Venture Company shall provide [***] ([***]) days advance written notice to Micron of its desire to initiate an audit and the audit shall be scheduled so that it does not adversely impact or interrupt Micron's business operations. If the audit reveals any material discrepancies, Micron or the Joint Venture Company shall reimburse the other, as applicable, for any material discrepancies within [***] ([***]) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and only the discrepancies shall be reported to the Parties and the Joint Venture Company's customers, and be limited to discrepancies identified by the audit. Notwithstanding the foregoing, any auditor reports shall not disclose any Micron pricing or terms of purchase for any purchases of materials or equipment hereunder to the Joint Venture Company's customers other than Micron, absent written agreement from the customers' respective legal counsel. If any audit reveals a material discrepancy, the Joint Venture Company may increase the frequency of such audits to quarterly for the subsequent [***] ([***]) month period.

8.4 Subcontractor; Vendor Visits. Upon the Joint Venture Company's reasonable written request, Micron shall take reasonable commercial efforts to request that its subcontractors or vendors, if any, utilized in the performance of the Manufacturing Services hereunder allow a Joint Venture Company or customer representative to visit the vendor or subcontractors' site.

ARTICLE 9

WARRANTY; DISCLAIMER; LIMIT OF LIABILITY

9.1 Manufacturing Services Warranty. Micron warrants that it will perform the Manufacturing Services in a competent and workmanlike manner, and in no case with less than reasonable care and that Probed Wafers will be processed in accordance with the Process Specification (the **"Standard of Care"**). For the avoidance of doubt, Micron makes no representation or warranty that Manufacturing Services provided hereunder shall result in (i) Probed Wafers that meet a stated performance level or quality under the Product Specification or any applicable Performance Criteria, or (ii) that the level of Manufacturing Services supplied by Micron will result in the number of Probed Wafers stated in the Manufacturing Plan.

9.2 Warranty Claims. [***].

9.3 Inspections. The Joint Venture Company may, upon reasonable advance written notice, request samples of WIP upon which Micron is performing Manufacturing Services for purposes of determining whether the Manufacturing Services meet or exceed the Performance Criteria and are performed in accordance with Process Specification, provided that the provision of such samples shall not materially impact Micron's performance of the Manufacturing Services or its ability to meet delivery requirements under any accepted Purchase Order. Any samples provided hereunder shall be: (i) limited in quantity to the amount reasonably necessary for the purposes hereunder and (ii) included in the pricing. Micron shall provide reasonable assistance for the safety and convenience of the Joint Venture Company in obtaining the samples in such manner as shall not unreasonably hinder or delay Micron's performance.

9.4 Hazardous Materials.

(a) If the Manufacturing Services performed hereunder include Hazardous Materials as determined in accordance with applicable law, Micron represents and warrants that Micron and Micron's employees, agents, and subcontractors, if any, performing Manufacturing Services involving such materials shall be trained in accordance with applicable law regarding the nature of and hazards associated with the handling, transportation, and use of such Hazardous Materials, as applicable to Micron.

(b) To the extent required by applicable law, Micron shall provide the Joint Venture Company with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Probed Wafers to the Joint Venture Company.

9.5 Disclaimer. [***].

ARTICLE 10

CONFIDENTIALITY; OWNERSHIP

10.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained in connection with this Agreement or the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered **"Confidential Information"** under the Confidentiality Agreement for which each Party is considered a **"Receiving Party"** under such agreement. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

10.2 Intellectual Property Ownership. Ownership of any intellectual property developed by the Joint Venture Company will be governed by either the Technology License Agreement or Product Designs Development Agreement, as the case may be.

ARTICLE 11

INDEMNIFICATION

11.1 Mutual General Indemnity. [***].

11.2 Indemnification Procedures.

(a) Promptly after the receipt by any Indemnified Party of a notice of any Third Party Claim that an Indemnified Party seeks to be indemnified under this Agreement, such Indemnified Party shall give written notice of such Third Party Claim to the Indemnifying Party, stating in reasonable detail the nature and basis of each allegation made in the Third Party Claim and the amount of potential Indemnified Losses with respect to each allegation, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced by such failure or delay. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to such Third Party Claim upon written notice to the Indemnified Party delivered within [***] ([***]) days after receipt of the particular notice from the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified the Indemnified Party in writing thereof, *(i)* the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, it being understood that the Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim, *(ii)* the Indemnified Party shall not file any papers or, other than in connection with a settlement of the Third Party Claim, consent to the entry of any judgment without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and *(iii)* the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed). Whether or not the Indemnifying Party shall have assumed the defense of the Indemnified Party for a Third Party Claim, such Indemnifying Party shall not be obligated to indemnify and hold harmless the Indemnified Party hereunder for any consent to the entry of judgment or settlement entered into with respect to such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Equitable Remedies. In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (i.e., remedies involving the future activity and conduct of the Joint Venture Company), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; provided, however, that no Party shall be under any obligation to agree to any such settlement.

(c) Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Agreement shall be decreased by any amounts actually recovered by the Indemnified Party under third party insurance policies with respect to such Indemnified Losses (net of any premiums paid by such Indemnified Party under the relevant insurance policy), each Party agreeing *(i)* to use all reasonable efforts to recover all available insurance proceeds and *(ii)* to the extent that any indemnity payment under this Agreement has been paid by the Indemnifying Party to the Indemnified Party prior to

the recovery by the Indemnified Party of such insurance proceeds, the amount of such insurance proceeds actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

(d) Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim for indemnity by the Indemnified Party and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claim that a common interest privilege agreement exists between them), including, *(i)* permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests, *(ii)* providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim, *(iii)* preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases of the Joint Venture Company and relating to matters pertinent to the conduct of the Joint Venture Company under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnifying Party, *(iv)* notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other third party request for documents or interviews and testimony, *(v)* providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other third party request for documents; and *(vi)* except to the extent inconsistent with the Indemnified Party's obligations under applicable law and except to the extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, unless ordered by a court to do otherwise, not producing documents to a third party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

ARTICLE 12

LIMITATION OF LIABILITY

12.1 Damages Limitation. [***].

12.2 [***].

12.3 Damages Cap. [***].

12.4 Exclusions and Mitigation. Sections 12.1 and 12.3 will not apply to either Party's breach of ARTICLE 10 or any claim that should be brought under the [***]. Section 12.3 will not apply to the Joint Venture Company's payment obligations for Manufacturing Service hereunder. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which the other Party is responsible.

12.5 Losses. Except as provided under Section 11.1, the Joint Venture Company and Micron each shall be responsible for Losses to their respective tangible personal or real property (whether owned or leased), and each Party agrees to look only to their own insurance arrangements with respect to such damages. The Joint Venture Company and Micron waive all rights to recover against each other, including each Party's insurers' subrogation rights, if any, for any loss or damage to their respective tangible personal property or real property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. In the event of a loss hereunder involving a property, transit or crime event or occurrence that: (i) is insured under Micron's insurance policies; (ii) a single insurance deductible applies; and (iii) the loss event or occurrence affects the insured ownership or insured legal interests of both Parties, then the Parties shall share the cost of the deductible in proportion to each Party's insured ownership or legal interests in relative proportion to the total insured ownership or legal interests of the Parties.

ARTICLE 13

TERM AND TERMINATION; REMEDIES

13.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until the earlier of: (i) a period of ten (10) years from the Effective Date; [***].

13.2 Termination for Cause. Micron may terminate this Agreement for cause if the Joint Venture Company fails to make a payment which is due and payable under the terms of this Agreement and the Joint Venture Company fails to cure the same within one hundred eighty (180) days after receipt of written notice from the Micron, unless such failure to pay was in response to Micron's material breach. The Joint Venture Company may terminate this Agreement for cause as agreed in Section 13.4(c).

13.3 Survival. Termination of this Agreement shall not affect any of the Parties' respective rights accrued or obligations owed before termination including any rights or obligations of the Parties in respect of any accepted Purchase Orders existing at the time of termination. In addition, the following shall survive termination of this Agreement for any reason: Sections 2.7, 3.3, 4.5, 6.7 and 13.3 and ARTICLE 1, 9, 10, 12 and 14.

13.4 Failure to Adequately Perform Services. [***].

ARTICLE 14

MISCELLANEOUS

14.1 Force Majeure Events. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time

during which the Force Majeure Event renders performance impossible or infeasible and only if the Party asserting Force Majeure as an excuse for its failure to perform has provided written notice to the other Party specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event. As used herein, "Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of the party failing to perform, including, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party's nonperformance hereunder.

14.2 [***].

14.3 Assignment. Except as otherwise provided in the Joint Venture Document, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, other than a Wholly-Owned Subsidiary of such Party, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section shall be null and void and have no effect. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto.

14.4 Compliance with Laws and Regulations. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to the Manufacturing Services.

14.5 On-Site Visitations. Each Party and its employees, contractors or other representatives shall observe and be subject to all safety, security and other policies and regulations regarding visitors and contractors while on site at a facility of the other Party or its Affiliate. A Party's employees, contractors or other representatives who access any facility of the other Party or its Affiliate shall not interfere with, and except as otherwise agreed by the Parties, shall not participate in, the business or operations of the facility accessed.

14.6 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given upon (e) transmitter's confirmation of a receipt of a facsimile transmission, (f) confirmed delivery by a standard overnight carrier or when delivered by hand, (g) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (h) delivery in Person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

In the case of IM Flash Technologies, LLC:

IM Flash Technologies, LLC.
1550 East 3400 North
Lehi, Utah 84043
Attention: David A. Baglee; Rodney Morgan
Facsimile Number: (801) 767-5370

With a mandatory copy to:

Intel Corporation
2200 Mission College Blvd.
Mail-Stop SC4-203
Santa Clara, California 95054
Attention: General Counsel
Facsimile Number: (408) 653-8050

In the case of Micron:

Micron Technology, Inc.
8000 S. Federal Way
Boise, Idaho 83707-0006
Attention: General Counsel
Facsimile Number: (208) 368-4540.

Either Party may change its address for notices upon giving ten (10) days written notice of such change to the other Party in the manner provided above.

14.7 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

14.8 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

14.9 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

14.10 Amendment. This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

14.11 Entire Agreement. This Agreement and the applicable provisions of the Confidentiality Agreement, which are incorporated herein and made a part hereof, together with the Exhibits and Schedules hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

14.12 Choice of Law. [***].

14.13 Jurisdiction; Venue. [***].

14.14 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

14.15 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Signature page follows

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON
Name: Steven R. Appleton
Title: Chief Executive Officer and President

IM FLASH TECHNOLOGIES, LLC

By: /s/ DAVID A. BAGLEE
Name: David A. Baglee
Title: Authorized Officer

By: /s/ RODNEY MORGAN
Name: Rodney Morgan
Title: Authorized Officer

THIS IS THE SIGNATURE PAGE FOR THE MANUFACTURING SERVICES AGREEMENT ENTERED INTO BY AND BETWEEN MICRON TECHNOLOGY, INC. AND IM FLASH TECHNOLOGIES, LLC

EXHIBIT A

COMMON DEFINITIONS

"Affiliate" means, with respect to any specified Person, a Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Applicable Law" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"Approved Business Plan" shall have the meaning set forth in the Definitions of the LLC Operating Agreement.

"Business Continuity Plan" means a plan to recover the production process in the event of a natural disaster or any other event that disrupts the production process.

"Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of New York are authorized or required by Applicable Law to be closed.

"Confidentiality Agreement" means that Mutual Confidentiality Agreement by and among the Joint Venture Company, Intel and Micron dated as of the Effective Date.

"Confidential Information" shall have the meaning set forth in Section 10.1 hereof.

"Cycle-Time" means the time required to process a unit through a portion of the production process (e.g., FAB, assembly, or final test) or through the production process as a whole.

"Demand Forecast" shall have the meaning set forth in Section 5.1(a).

"Effective Date" shall have the meaning set forth in the preamble to this Agreement.

"Fiscal Quarter" means any of the four financial accounting quarters within Micron's Fiscal Year.

"Fiscal Month" means any of the twelve financial accounting months within Micron's Fiscal Year.

"Fiscal Year" means the fiscal year of Micron for financial accounting purposes

"Flash Memory Integrated Circuit" shall have the meaning set forth in the LLC Operating Agreement.

"Force Majeure Event" shall have the meaning set forth in Section 14.1, hereof.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"Hazardous Materials" means dangerous goods, chemicals, contaminants, substances, pollutants or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations and standards.

"Indemnified Party" shall mean any of the following to the extent entitled to seek indemnification under this Agreement: Intel, Micron, the Joint Venture Company, and their respective Affiliates, officers, directors, employees, agents, assigns and successors.

"Indemnified Losses" shall mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses of any nature incurred by an Indemnified Party, including reasonable attorneys' fees and consultants' fees, and all damages, fines, penalties and judgments awarded or entered against an Indemnified Party, but specifically excluding any special, consequential or other types of indirect damages.

"Indemnifying Party" shall mean the Party owing a duty of indemnification to another Party with respect to a particular Third Party Claim.

"Intel" means Intel Corporation, a Delaware corporation.

"Initial Business Plan" shall have the meaning set forth in the LLC Operating Agreement.

"Joint Development Program Agreement" means that certain Joint Development by and between Intel and Micron dated as of the Effective Date.

"Joint Venture Company" means IM Flash Technologies, LLC, a Delaware limited liability company that is the subject of the Joint Venture Documents.

"Joint Venture Documents" shall have the meaning set forth in that certain Master Agreement by and between Intel and Micron.

"Joint Venture Equipment" shall have the meaning set forth in Section 3.1 hereof.

"Liquidation Date" shall have the meaning set forth in the LLC Operating Agreement.

"LLC Operating Agreement" means that Limited Liability Company Operating Agreement of the Joint Venture Company, LLC between Intel and Micron.

"Losses" shall mean, collectively, any and all insurable liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"Manufacturing Committee" shall have the meaning set forth in Section 8.6 of the LLC Operating Agreement.

"Manufacturing Plan" shall have the meaning set forth in Section 11.6.A.1 of the LLC Operating Agreement.

"Manufacturing Services" shall have the meaning set forth on Schedule 2.1 hereof.

"Manufacturing Services Forecast" shall have the meaning set forth in Section 5.1(b) hereof.

"Master Agreement" shall mean that certain Master Agreement by and between Intel and Micron dated November 18, 2005.

"Members" means Micron and Intel.

"Micron" means Micron Technology, Inc., a Delaware corporation.

"Micron Equipment" shall have the meaning set forth in Section 4.1 hereof.

"Minority Closing" shall have the meaning set forth in the LLC Operating Agreement.

"MTV Assets" shall have the meaning set forth in the LLC Operating Agreement.

"MTV Lease Agreement" shall mean that certain MTV Lease Agreement by and between Intel and Micron.

"NAND Flash Memory Integrated Circuit" means a Flash Memory Integrated Circuit, where the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"NAND Flash Memory Product" shall have the meaning set forth in the LLC Operating Agreement.

"Party" and **"Parties"** shall have the meaning set forth in the Recitals to this Agreement.

"Performance Criteria" means [***].

"Person" means any neutral person, corporation, joint stock company, limited liability company, association, partnership, firm joint venture, organization, individual, business, trust, estate or any other entity or organization of any kind or character from any form of association.

"Price" and **"Pricing"** shall have the meaning set forth in Schedule 6.5.

"Prime Wafer(s)" means raw silicon wafers.

"Probe Testing" means testing, using a probe test program as set forth in the applicable Specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die constitute Probed Wafers, Secondary Silicon and Rejects.

"Probed Wafer" means a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing to meet Specification, but before singulation of said die into individual semiconductor die.

"Process Specification" shall mean those specifications or documents used to describe, characterize, and define the process by which Prime Wafers become Probed Wafers.

"Product Designs Development Agreement" means that Product Designs Development Agreement by and between Intel and Micron dated as of the Effective Date.

"Product Specifications" shall mean those specifications used to describe, characterize, and define the quality and performance of NAND Flash Memory Product, including any interim performance requirements at Probe Testing or back-end testing.

"Proposed Loading Plan" shall have the meaning set forth in Section 5.1(c) hereof.

"Provided Inputs" shall have the meaning set forth in Section 13.4 hereof.

"Purchase Order" shall have the meaning set forth in Section 6.1 hereof.

"Quality and Reliability" means Product quality and reliability standards as set forth in the Product Specification.

"Ramp Plan" means the document which defines the process and key milestone schedule to build and ramp a silicon fabrication facility.

"Receiving Party" shall have the meaning set forth in Section 10.1 hereof.

"Recoverable Taxes" shall have the meaning set forth in Section 6.6, hereof.

"Secondary Silicon" shall mean a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing (a) would otherwise constitute a Probed Wafer but for failure to achieve qualification and (b) otherwise conform to the applicable Secondary Silicon Specifications.

"Semiconductor Manufacturing Technology" shall have the meaning set forth in the Process Joint Development Program Agreement.

"Site(s)" shall mean the facilities described on Schedule 2.1 hereof.

"Standard of Care" shall have the meaning set forth in Section 9.1 hereof.

"Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"Technology License Agreement" means that Technology License Agreement by and among the Joint Venture Company, Intel and Micron dated as of the Effective Date.

"Term" shall have the meaning set forth in Section 13.1 hereof.

"Trigger Event" shall have the meaning set forth in Section 13.4 hereof.

"Third Party Claim" shall mean any claim, demand, action, suit or proceeding, and any actual or threatened lawsuit, complaint, cross-complaint or counter-complaint, arbitration or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled, by any Person other than Intel, Micron, the Joint Venture Company and Affiliates of the foregoing, against an Indemnified Party, in each case alleging entitlement to any Indemnified Losses pursuant to any indemnification obligation under this Agreement.

"Wafer Map" shall mean a map in electronic form or other form as mutually agreed of a Probed Wafers processed by Micron pursuant to this Agreement, such map depicting the location of each die on the wafer and whether it constitutes a Product, Secondary Silicon or a Reject.

"Wafer Start" shall mean the initiation of Manufacturing Services with respect to a Prime Wafer.

"Warranty Notice Period" shall have the meaning set forth in Section 9.2 hereof.

"Wholly-Owned Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"WIP" shall mean work in process of a Prime Wafer after Wafer Start towards but before becoming a NAND Flash Memory Wafer.

SCHEDULES

Schedule 2.1	Manufacturing Services
Schedule 6.5	Pricing

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

BOISE SUPPLY AGREEMENT

This BOISE SUPPLY AGREEMENT (the "**Agreement**"), is made and entered into as of this 6th day of January, 2006 (the "**Effective Date**"), by and between IM Flash Technologies, LLC, a Delaware limited liability company (the "**Joint Venture Company**") and Micron Technology, Inc., a Delaware corporation ("**Micron**").

RECITALS

A. The Joint Venture Company is engaged in the manufacture, assembly and test of NAND Flash Memory Products (as defined hereinafter) and desires additional capacity of NAND Flash Probed Wafers;

B. Micron possesses the ability to manufacture Probed Wafers for NAND Flash Memory Products; and

C. Micron desires to provide and the Joint Venture Company desires Micron to supply Probed Wafers to the Joint Venture Company upon the terms and subject to the conditions set forth in this Agreement (each, a "**Party**" and collectively, the "**Parties**").

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows.

ARTICLE 1
DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each of the Schedules will apply only to the corresponding Section or subsection of this Agreement, (3) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (4) words in the singular include the plural and visa versa, (5) the term "including" means "including without limitation," and (6) the terms "herein," "hereof," "hereunder" and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "day" or "days" will mean calendar days and all references to "quarter(ly)", "month(ly)" or "year(ly)" will mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively, unless specifically identified otherwise.

(b) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

ARTICLE 2
MICRON'S SUPPLY OBLIGATIONS

2.1 Micron's Supply Obligations.

(a) General. Micron will manufacture, sell and deliver to the Joint Venture Company Probed Wafers in accordance with the Specifications, Performance Criteria and the Manufacturing Plan as provided in the terms and conditions contained herein.

(b) Micron Manufacturing Location. Unless otherwise agreed to by the Parties, all manufacture of Probed Wafers by Micron under this Agreement shall be performed at Micron's NAND product line in Boise, Idaho ("**NAND Product Line**").

2.2 Specifications. The Joint Venture Company shall provide the Specifications for the Probed Wafers supplied hereunder.

2.3 Performance Criteria. The Joint Venture Company and Micron shall develop mutually agreed Performance Criteria to evaluate Micron's performance hereunder. The initial Performance Criteria are set forth on Schedule 2.3 and the Parties shall further define such Performance Criteria within sixty (60) days of the Effective Date.

2.4 Micron's Manufacturing Process and Control. The Joint Venture Company and Micron will review Micron's control and process mechanisms, including but not limited to such mechanisms that are designed to be utilized in meeting or exceeding all parameters of the Specification and the Performance Criteria with respect to the supply of Probed Wafers hereunder for the Joint Venture Company. The Parties agree to work together in good faith to define mutually agreeable control and process mechanisms relating to the following areas: [***].

2.5 [***]. In addition to the quarterly review and monthly report requirements set forth in ARTICLES 3 and 5, Micron will promptly notify the Joint Venture Company of all [***].

2.6 Equipment. Micron shall utilize certain existing equipment to provide the manufacturing capacity to support the initial Manufacturing Plan as defined in the LLC Operating Agreement. Micron will procure additional manufacturing equipment as specified in Schedule 2.6 ("Additional Equipment"), which is required to meet the Manufacturing Plan hereunder.

2.7 Maskworks. Masks required to manufacture the Probed Wafers will either be provided by the Joint Venture Company or purchased by Micron hereunder. Such masks will only be used to produce Probed Wafers for the Joint Venture Company. If the Joint Venture Company does not provide the masks required hereunder, then the Joint Venture Company shall provide to Micron in a timely manner all of the information, in the form typically required, for Micron to purchase the required masks. Masks will be repaired and replaced solely at mask operations which have been approved by the Joint Venture Company, which approval shall not be unreasonably withheld. [***].

2.8 Materials. Unless otherwise provided by the Joint Venture Company, Micron shall be responsible for providing all materials required for the manufacture and supply the Probed Wafers hereunder. All such materials procured by Micron shall be included in the pricing set forth on Schedule 4.6. Micron shall endeavor to manage the entire supply chain hereunder, including equipment, materials, systems, and subcontractors, if any, to create efficiency and maximize the Performance Criteria. To the extent that the Joint Venture Company desires to provide certain materials hereunder, the Parties shall work together in good faith on the timing and manner of providing such materials so as it can be accommodated within Micron's business and manufacturing systems.

2.9 Traceability and Data Retention. Micron and the Joint Venture Company shall review Micron's traceability systems in regards to manufacturing processing information [***]. The Parties shall agree upon the data to be traced through such system and which data shall be available with real-time access or otherwise. Micron agrees to maintain such data for a minimum of [***] from the date of manufacture of the Probed Wafer lot. [***] to the same extent that such access is available to Micron, subject to system limitations related to the exclusion of non-NAND data. The Joint Venture Company may provide its customers with such data, subject to any confidentiality requirements.

2.10 Business Continuity Plan. Micron and the Joint Venture Company will review Micron's Business Continuity Plan as it relates to Micron's supply of Probed Wafers hereunder. If the Joint Venture Company requests any changes or additions to Micron's existing Business Continuity Plan, the Parties shall work together in good faith to resolve any such requests. The Joint Venture Company may provide Micron's Business Continuity Plan to its customers, subject to any confidentiality requirements.

2.11 Compliance with Customer Requirements. The Joint Venture Company will inform Micron in writing of any auditable supplier requirements for Probed Wafers supplied hereunder, which are requested by the Joint Venture Company's customers. Micron and the Joint Venture Company shall work together in good faith to resolve any such requests.

2.12 Equivalency of Operations. [***].

2.13 Secondary Silicon. To the extent any Secondary Silicon is produced in the course of Micron's supplying the Probed Wafers under this Agreement, it shall be provided by Micron to the Joint Venture Company, which shall provide the Secondary Silicon to the Members in accordance with the Sharing Interests at the time. Micron shall provide forecast and quantity reports on Secondary Silicon to the Joint Venture Company, to the extent that such are reasonably available. ALL SECONDARY SILICON PROVIDED HEREUNDER IS PROVIDED "AS IS," "WHERE IS" WITH ALL FAULTS AND DEFECTS BASIS WITHOUT WARRANTY OF ANY KIND.

2.14 Option to Designate WIP. [***].

ARTICLE 3
PLANNING MEETINGS, FORECASTS AND MANUFACTURING PLAN

3.1 Planning and Forecasting.

(a) Micron shall furnish the Joint Venture Company with a forecast on a Fiscal Quarter basis, on a schedule agreed by the Parties, which includes the following information, collectively the ("**Planning Forecast**"):

[***].

(b) Proposed Loading Plan. Based on the Planning Forecast, the Joint Venture Company shall develop a [***] Proposed Loading Plan, which will be a proposed loading plan for Probed Wafers for such period ("**Proposed Loading Plan**"). The Joint Venture Company shall provide Micron with the Proposed Loading Plan at least [***] ([***]) days prior to its review by the Manufacturing Committee.

(c) Quarterly Review of Manufacturing Plan. The Joint Venture Company will submit the Proposed Loading Plan, the Planning Forecast and other requested information to the Manufacturing Committee for endorsement. Once endorsed by the Manufacturing Committee, the Proposed Loading Plan shall become the adopted Manufacturing Plan for provision of Probed Wafers hereunder.

3.2 Performance Reviews and Reports. Micron and the Joint Venture Company shall meet each Fiscal Quarter to discuss the Performance Criteria and the most recent monthly report. Micron shall provide the Joint Venture Company a monthly report, on a date to be agreed by the Parties, which will include the following information:

(a) Describes [***];

(b) Describes [***];

(c) Describes [***]; and

(d) Identifies [***].

3.3 Performance Reviews. The Parties shall hold monthly meetings on dates agreed by the Parties, with the primary purpose of such monthly meetings to be the [***].

ARTICLE 4
PURCHASE AND SALE OF PRODUCT

4.1 Product Quantity. The intent of the Parties is that the Joint Venture Company shall order and purchase from Micron **[***]** of Probed Wafers **[***]**. **[***]**.

4.2 Placement of Purchase Orders. Prior to the commencement of every Fiscal Quarter or another time period agreed by the Parties, the Joint Venture Company shall place a non-cancelable blanket purchase order in writing (via e-mail or facsimile transmission) for the Probed Wafers to be supplied by Micron in the following Fiscal Quarter as indicated in the Manufacturing Plan (each such order, a "**Purchase Order**"). The Joint Venture Company may issue change orders to such Purchase Orders to reflect changes in the Manufacturing Plan, provided that such changes can be reasonably accommodated within Micron's NAND operations, without disrupting the on-going production in a manner that negatively impacts the previously placed Purchase Orders. The Joint Venture Company and Micron will work to

accommodate any such changes and minimize the impact upon the Micron's NAND operations. The Joint Venture Company may also request special engineering or hot lots in accordance with Section II (e) of Schedule 4.6. In the case of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Purchase Order or other document issued by the Joint Venture Company or Micron in connection with this Agreement or any addition to any terms and condition in this Agreement in any such documents, the terms and conditions of this Agreement shall control.

4.3 Shortfall. Micron shall promptly notify the Joint Venture Company in writing of any inability to meet a Purchase Order commitment to the Joint Venture Company.

4.4 Acceptance of Purchase Order. Each Purchase Order that corresponds to the Manufacturing Plan in the manner contemplated by Section 4.2 and, and is otherwise free of errors, shall be deemed accepted by Micron upon receipt and shall be binding on the Parties, to the extent not inconsistent with the Manufacturing Plan.

4.5 Content of Purchase Orders. Each Purchase Order shall specify the following regarding the Probed Wafers:

(a) Purchase Order number;

(b) Description and part number for each Probed Wafer;

(c) Ordered quantity of each different product for the period;

(d) Projected Price for period covered by the Purchase Order;

(e) Requested delivery date;

(f) Place of delivery; and

(g) Other terms (if any).

4.6 Pricing. Pricing for the Probed Wafers shall be pursuant to Schedule 4.6, attached hereto and incorporated herein by this reference.

4.7 Taxes.

(a) General. All sales, use and other transfer taxes imposed directly on or solely as a result of the sale of products and payments therefore provided herein shall be stated separately on Micron's invoice, collected from he Joint Venture Company and shall be remitted by Micron to the appropriate tax authority ("**Recoverable Taxes**"), unless the Joint Venture Company provides valid proof of tax exemption. When property is delivered and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of taxes by the Joint Venture Company is required by law, Micron shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and Micron does not collect tax from the Joint Venture Company or pay such taxes to the appropriate governmental entity on a timely basis, and is subsequently audited by any tax authority, liability of the Joint Venture Company will be limited to the tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Notwithstanding anything herein to the contrary, taxes other

than Recoverable Taxes shall not be reimbursed by the Joint Venture Company, and each Party is responsible for its own respective income taxes (including franchise and other taxes based on net income or a variation thereof), taxes based upon gross revenues or receipts, and taxes with respect to general overhead,

including but not limited to business and occupation taxes, and such taxes shall not be Recoverable Taxes.

(b) Withholding Taxes. In the event that the Joint Venture Company is prohibited by law from making payments to Micron unless the Joint Venture Company deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then the Joint Venture Company shall duly withhold and remit such taxes and shall pay to Micron the remaining net amount after the taxes have been withheld. Such taxes shall not be Recoverable Taxes and the Joint Venture Company shall not reimburse Micron for the amount of such taxes withheld.

4.8 Invoicing. Micron shall invoice the Joint Venture Company on a monthly basis in accordance with the pricing provided in Schedule 4.6. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars. Except as otherwise specified in this Agreement, the Joint Venture Company shall pay Micron for the amounts due, owing, and duly invoiced under this Agreement within [***] ([***]) days following delivery of an invoice therefore to such place as Micron may reasonably direct therein.

4.9 Payment to Vendors. Micron shall be responsible for and shall hold the Joint Venture Company harmless for any and all payments to Micron's vendors or suppliers utilized in the performance of this Agreement.

4.10 Delivery, Title and Risk of Loss. The Joint Venture Company shall hold title to all Prime Wafers prior to Wafer Start and all WIP and Probed Wafers thereafter. Micron shall hold risk of loss or damage to Prime Wafers, WIP and Probed Wafers until the Probed Wafers are tendered to the carrier for shipment or transferred to the assembly location, if Micron is performing the assembly services.

4.11 Packaging and Shipping. The packaging of the Probed Wafers supplier hereunder shall be in conformance with: (i) the Specifications, as applicable; (ii) the Joint Venture Company's reasonable instructions; (iii) general industry standards to ensure resistance to damage that may occur during transportation. Micron shall mark all shipping containers with necessary lifting, handling, and shipping information, Purchase Order number, date of shipment, and the names of the Joint Venture Company and applicable customer, is any. If no instructions are given, Micron shall select the most cost effective carrier, given the time constraints known to Micron. At the Joint Venture Company's request, Micron will provide drop-shipment of Probed Wafers to the Joint Venture Company's customers or as otherwise directed by the Joint Venture Company.

4.12 Shipment Charges. In order to ensure timely and complete shipment of Probed Wafers to the Joint Venture Company, Micron shall arrange for shipping to the Joint Venture Company's customer or assembly services provider. To the extent that the shipping charges, insurance, taxes, customs charges and any fees and duties in connection with such shipment are not charged to directly to a Joint Venture Company account, Micron shall pay such costs and invoice them to the Joint Venture Company under the appropriate services agreement between the Parties.

4.13 Customs Clearance. Upon the Joint Venture Company's request, Micron will promptly provide the Joint Venture Company with a statement of origin for all Probed Wafers and with applicable customs documentation for Probed Wafers wholly or partially manufactured outside of the country of import.

ARTICLE 5
VISITATIONS, AUDITS AND MANAGEMENT REVIEWS

5.1 Visits. Micron will support the Joint Venture Company's and its customers' reasonable requests for visits to the NAND Product Line utilized hereunder for the supply of Probed Wafers for the purpose of reviewing performance of production of Probed Wafers, including requests for further information and assistance in troubleshooting performance issues. Such requests shall be reasonably granted by Micron so long as such visits and meetings do not unduly interfere with Micron's operations and business affairs.

5.2 Inventory Audit. Micron will grant reasonable access to the Joint Venture Company's personnel or appointed auditors to conduct an annual inventory audit of the inventory of WIP and Probed Wafers. Such annual audit shall be coordinated by Micron according to its standard inventory procedures and shall be conducted in such a manner as to minimize disruptions to the performance Micron's operations and business affairs. Any such annual audit will be pre-scheduled to coincide with a monthly, quarterly or yearly cut-off as reported by Micron or as otherwise agreed to by both Parties.

5.3 Performance Audit. The Joint Venture Company representatives shall be allowed to visit Micron's NAND Product Line during normal working hours upon reasonable advanced written notice to Micron for the purposes of auditing the processes and compliance with any requirements set forth in this Agreement. Upon completion of the audit, Micron and the Joint Venture Company shall work in good faith to agree to an audit closure plan, which will be documented in the audit report issued by the Joint Venture Company. If the Joint Venture Company requests any changes or additions to Micron's existing process and control mechanisms, the Parties shall work together in good faith to resolve any such requests.

5.4 Audit of Pricing and Additional Equipment. The Joint Venture Company reserves the right to have Micron's books and records related to the pricing of Probed Wafers and the purchase of Additional Equipment hereunder inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Schedules 2.6 and 4.6 of this Agreement in regards to pricing of the Probed Wafers. Such audit will be performed by an independent third party auditor acceptable to both Parties at the Joint Venture Company's expense. If the Parties cannot agree, the Joint Venture Company may select one of the major internationally recognized audit firms, which is not the auditor for either of the Joint Venture Company's customers. The Joint Venture Company shall provide [***] ([***]) days advance written notice to Micron of its desire to initiate an audit and the audit shall be scheduled so that it does not adversely impact or interrupt Micron's business operations. If the audit reveals any material discrepancies, Micron or the Joint Venture Company shall reimburse the other, as applicable, for any material discrepancies within [***] ([***]) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and only the discrepancies shall be reported to the Parties and

its customers, and be limited to the (i) discrepancies identified by the audit, (ii) results of the physical inspection of the Additional Equipment; and, (iii) subject to any limitations imposed by law, results regarding purchase and utilization of such Additional Equipment. Notwithstanding the foregoing, any auditor reports shall not disclose any Micron pricing or terms of purchase for any purchases of materials or equipment hereunder to the Joint Venture

Company's customers other than Micron, absent written agreement from the customers' respective legal counsel. If any audit reveals a material discrepancy, the Joint Venture Company may increase the frequency of such audits to quarterly for the subsequent [***] ([***]) month period.

ARTICLE 6
REPRESENTATIONS; WARRANTIES; HAZARDOUS MATERIALS; DISCLAIMER

6.1 Product Warranty. Micron warrants that the Probed Wafers supplied hereunder:

(a) conform in all material aspects to the agreed Specification;

(b) are free from defects in materials or workmanship; and

(c) free of liens and encumbrances, not including any express or implied warranty of non-infringement and Micron has the necessary right, title, and interest to provide the Probed Wafers to the Joint Venture Company.

Each of the warranties Sections 6.1 (a), (b) and (c) shall survive any delivery, inspection, acceptance, payment, or resale of the Probed Wafers.

6.2 Warranty Claims. **[***]**.

6.3 Inspections. The Joint Venture Company may, upon reasonable advance written notice, request samples of WIP hereunder for purposes of determining compliance with the Specifications and Performance Criteria hereunder, provided that the provision of such samples shall not materially impact Micron's NAND Product Line or its ability to meet delivery

requirements under any accepted Purchase Order. Prior to requesting such samples, the Joint Venture Company shall use good faith efforts to determine compliance using alternative methods, including but not limited to the review of data provided pursuant to Section 2.9. Any samples provided hereunder shall be: (i) limited in quantity to the amount reasonably necessary for the purposes hereunder; (ii) included in the pricing; and (iii) included in any performance requirements, if any. Micron shall provide reasonable assistance for the safety and convenience of the Joint Venture Company in obtaining the samples in such manner as shall not unreasonably hinder or delay Micron's performance.

6.4 Hazardous Materials.

(a) If Probed Wafers provided hereunder include Hazardous Materials as determined in accordance with applicable law, Micron represents and warrants that Micron and Micron's employees, agents, and subcontractors, if any, actually working with such materials in supplying the Probed Wafers hereunder to the Joint Venture Company shall be trained in accordance with applicable law regarding the nature of and hazards associated with the handling, transportation and use of such Hazardous Materials, as applicable to Micron.

(b) To the extent required by applicable law, Micron shall provide the Joint Venture Company with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Probed Wafers to the Joint Venture Company.

6.5 Disclaimer. [***].

ARTICLE 7
CONFIDENTIALITY

7.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained in connection with this Agreement or the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered "**Confidential Information**" under the Confidentiality Agreement for which each Party is considered a "**Receiving Party**" under such agreement. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

ARTICLE 8
INDEMNIFICATION

8.1 Mutual General Indemnity. [***].

8.2 General Procedures. Promptly after the receipt by any Indemnified Party of a notice of any Third Party Claim that an Indemnified Party seeks to be indemnified under this Agreement, such Indemnified Party shall give written notice of such Third Party Claim to the Indemnifying Party, stating in reasonable detail the nature and basis of each allegation made in the Third Party Claim and the amount of potential Indemnified Losses with respect to each allegation, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced by such failure or delay. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to such Third Party Claim upon written notice to the Indemnified Party delivered within [***] ([***]) days after receipt of the particular notice from the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified the Indemnified Party in writing thereof: (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, it being understood that the Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the

Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim; (ii) the Indemnified Party shall not file any papers or, other than in connection with a settlement of the Third Party Claim, consent to the entry of any judgment without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed); and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed). Whether or not the Indemnifying Party shall have assumed the defense of the Indemnified Party

for a Third Party Claim, such Indemnifying Party shall not be obligated to indemnify and hold harmless the Indemnified Party hereunder for any consent to the entry of judgment or settlement entered into with respect to such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(a) Equitable Remedies. In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (i.e., remedies involving the future activity and conduct of the Joint Venture Company), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; provided, however, that no Party shall be under any obligation to agree to any such settlement.

(b) Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Agreement shall be decreased by any amounts actually recovered by the Indemnified Party under third party insurance policies with respect to such Indemnified Losses (net of any premiums paid by such Indemnified Party under the relevant insurance policy), each Party agreeing; (i) to use all reasonable efforts to recover all available insurance proceeds; and (ii) to the extent that any indemnity payment under this Agreement has been paid by the Indemnifying Party to the Indemnified Party prior to the recovery by the Indemnified Party of such insurance proceeds, the amount of such insurance proceeds actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

(c) Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim for indemnity by the Indemnified Party and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claim that a common interest privilege agreement exists between them), including:, (i) permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests; (ii) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim; (iii) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases of the Joint Venture Company and relating to matters pertinent to the conduct of the Joint Venture Company under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnifying Party; (iv) notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other third party request for documents or interviews and testimony; (v) providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other third party request for documents; and (vi) except to the extent inconsistent with the Indemnified Party's obligations under applicable law and except to the extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, unless ordered by a court to do otherwise, not producing documents to a third party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

ARTICLE 9
LIMITATION OF LIABILITY

9.1 Damages Limitation. [***].

9.2 Damages Cap. **[***]**.

9.3 Exclusions and Mitigation. Sections 9.1 and 9.2 will not apply to either Party's breach of ARTICLE 7, and Section 9.2 shall not apply to the Joint Venture Company's payment obligations for Probed Wafers. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which the other Party is responsible.

9.4 Losses. Except as provided under Section 8.1 the Joint Venture Company and Micron each shall be responsible for Losses to their respective tangible personal or real property (whether owned or leased), and each Party agrees to look only to their own insurance arrangements with respect to such damages. The Joint Venture Company and Micron waive all rights to recover against each other, including each Party's insurers' subrogation rights, if any, for any loss or damage to their respective tangible personal property or real property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions. Notwithstanding the foregoing, in the event of Losses hereunder involving a property, transit or crime event or occurrence that: (i) is insured under Micron's insurance policies; (ii) a single insurance deductible applies; and (iii) the loss event or occurrence affects the insured ownership or insured legal interests of both Parties, then the Parties shall share the cost of the deductible in proportion to each Party's insured ownership or legal interests in relative proportion to the total insured ownership or legal interests

of the Parties.

ARTICLE 10
TERM AND TERMINATION

10.1 Term. The term of this Agreement commences on the Effective Date and continues until the earlier of: (i) five (5) years from the Effective Date, (ii) termination by mutual agreement of the Parties; or (iii) termination by either Party pursuant to Section 10.3 (such period of time, the "Term"). [***]. In addition, upon a [***] pursuant to the LLC Operating Agreement, the [***]. Notwithstanding the foregoing, in the event of such a [***] pursuant to the LLC Operating Agreement, all payments [***].

10.2 Renewal Terms. The Parties may extend the term of this Agreement beyond the expiration of the initial term as set forth in Section 10.1(i) upon mutual agreement.

10.3 Termination for Cause. Either party may terminate this Agreement for cause if the other party materially breaches this Agreement and fails to cure the same within one hundred eighty (180) days after receipt of written notice from the non-breaching party. In the event that the Joint Venture Company terminates the Agreement for cause hereunder, the Probed Wafer Output Performance Metric in Section III-V of Schedule 4.6 shall be the Joint Venture Company's sole remedy for such termination. Notwithstanding any provision to the contrary, if Micron terminates the Agreement for cause hereunder, Sections III-V of Schedule 4.6 shall not survive termination and neither the Joint Venture Company nor any of its Members shall be entitled to any payments there under commencing with the date of the Joint Venture Company's material breach, which resulted in the termination for cause hereunder.

10.4 Survival. Termination of this Agreement shall not affect any of the Parties' respective rights accrued or obligations owed before termination, including any rights or obligations of the Parties in respect of any accepted Purchase Orders existing at the time of termination. In addition, the following shall survive termination of this Agreement for any reason: Sections 4.7, 4.8, 5.4, 6.2, 6.5 and 7.1 and ARTICLES 7, 8, 9, and 11. The survival of Sections III - V of Schedule 4.6 shall be governed by Section 10.3 and Section V of Schedule 4.6.

ARTICLE 11
MISCELLANEOUS

11.1 Force Majeure Events. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time during which the Force Majeure Event renders performance impossible or infeasible and only if the Party asserting Force Majeure as an excuse for its failure to perform has provided written notice to the other party specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event. As used herein, "Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of the Party failing to perform, including, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party's nonperformance hereunder.

11.2 Assignment. Except as otherwise provided in the Joint Venture Documents, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, other than a Wholly-Owned Subsidiary of such Party, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section shall be null and void and have no effect. This Agreement shall be binding upon and inure to the benefit of the permitted successors and permitted assigns of each Party hereto.

11.3 Compliance with Laws and Regulations. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of a Party's rights hereunder.

11.4 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, (c) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (d) delivery in Person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

In the case of the Joint Venture Company:
IM Flash Technologies, LLC
1550 East 3400 North
Lehi, UT 84043
Attention: David A. Baglee; Rodney Morgan
Facsimile: (801) 767-5370

In the case of Intel:
Intel Corporation
2200 Mission College Blvd.
Mail Stop SC4-203
Santa Clara, CA 95054

Attention: General Counsel
Facsimile: (408) 653-8050

with a copy to:

Intel Corporation
2200 Mission College Blvd.
Mailstop RN6-46

Santa Clara, CA 95054
Attention: [***]
Facsimile: [***]

In the case of Micron:
Micron Technology, Inc.
8000 S. Federal Way
Boise, ID 83707-0006
Attention: General Counsel
Facsimile: (208) 368-4540

Either Party may change its address for notices upon giving ten (10) days written notice of such change to the other Party in the manner provided above.

11.5 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

11.6 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

11.7 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other
than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

11.8 Amendment. This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

11.9 Entire Agreement. This Agreement and the applicable provisions of the Confidentiality Agreement, which are incorporated herein and made a part hereof, together with the Exhibits and Schedules hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

11.10 Choice of Law. [***].

11.11 Jurisdiction; Venue. [***].

11.12 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

11.13 Compliance with Policies. Each Party and its employees, contractors or other representatives shall observe and be subject to all safety, security and other policies and regulations regarding visitors and contractors while on site at a facility of the other Party or its Affiliate. A Party's employees, contractors or other representatives who access any facility of the other Party or its Affiliate shall not interfere with, and except as otherwise agreed by the Parties, shall not participate in the Party's business or operations.

11.14 Insurance. Without limiting or qualifying Micron's liabilities, obligations, or indemnities otherwise assumed by Micron pursuant to this Agreement, Micron shall maintain with companies acceptable to the Joint Venture Company:

(a) Commercial General Liability with limits of liability not less than $[***] per occurrence and including liability coverage for bodily injury or property damage (1) assumed in a contract or agreement pertaining to Micron's business and (2) arising out of Micron's products, Services, or work. Micron's insurance shall be primary with respect to liabilities assumed by Micron in this Agreement to the extent such liabilities are the subject of

(b) Micron's insurance, and any applicable insurance maintained by the Joint Venture Company shall be excess and non-contributing. The above coverage shall name Parent as additional insured as respects Micron's work or services provided to or on behalf of Parent.

(c) Automobile Liability Insurance with limits of liability not less than $[***] per accident for bodily injury or property damage.

(d) Statutory Workers' Compensation coverage, including a Broad Form All States Endorsement in the amount required by law, and Employers' Liability Insurance in the amount of $[***] per occurrence. Such insurance shall include mutual insurer's waiver of subrogation.

11.15 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[*Signature page follows*]

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON
Name: Steven R. Appleton
Title: Chief Executive Officer and President

IM FLASH TECHNOLOGIES, LLC

By: /s/ DAVID A. BAGLEE
Name: David A. Baglee
Title: Authorized Officer

By: /s/ RODNEY MORGAN
Name: Rodney Morgan
Title: Authorized Officer

THIS IS THE SIGNATURE PAGE FOR THE BOISE SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN MICRON TECHNOLOGY, INC. AND IM FLASH TECHNOLOGIES, LLC

EXHIBIT A

DEFINITIONS

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"Affiliate" means a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Applicable Law" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"Business Continuity Plan" means a plan to recover the production process in the event of a natural disaster or any other event that disrupts the production process or the ability to meet its delivery commitments or satisfy customer orders.

"Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of Delaware are authorized or required by Applicable Law to be closed.

"Confidentiality Agreement" means that Mutual Confidentiality Agreement by and among the Joint Venture Company, Micron and Intel Corporation dated as of the Effective Date.

"Capacity" means the rate of output (defined in terms of units per time period), at a particular point in time, at which a particular facility or set of facilities of Micron (or of a third party on Micron's behalf) is capable of producing such units.

"Cycle Time" means the time required to process a unit through a portion of the manufacturing process (e.g., FAB, assembly, or final test) or through the manufacturing process as a whole.

"Effective Date" shall have the meaning set forth in the preamble to this Agreement.

"Excursion" means an occurrence, either during production or after customer delivery, that is outside normal historical behavior as established by both Parties in writing in the applicable Specification which may impact performance, Quality and Reliability, or customer delivery commitments for Probed Wafers, NAND Flash Memory Product or Known Good Die.

"Fiscal Month" means any of the twelve financial accounting months within Micron's Fiscal Year.

"Fiscal Quarter" means any of the four financial accounting quarters within Micron's Fiscal Year.

"Fiscal Year" means the fiscal year of Micron for financial accounting purposes.

"Flash Memory Integrated Circuit" means a non-volatile memory integrated circuit that contains memory cells that are electrically programmable and electrically erasable whereby the memory cells consist of one or more transistors that have a floating gate, charge-trapping regions or any other

functionally equivalent structure utilizing one or more different charge levels (including binary or multi-level cell structures), together with any on-chip control, I/O and other support circuitry.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"Hazardous Materials" means dangerous goods, chemicals, contaminants, substances, pollutants or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations and standards.

"Indemnified Party" shall mean any of the following to the extent entitled to seek indemnification under this Agreement: Micron and the Joint Venture Company, and their respective Affiliates, officers, directors, employees, agents, assigns and successors.

"Indemnified Losses" shall mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses of any nature incurred by an Indemnified Party, including reasonable attorneys' fees and consultants' fees, and all damages, fines, penalties and judgments awarded or entered against an Indemnified Party, but specifically excluding any special, consequential or other types of indirect damages.

"Indemnifying Party" shall mean the Party owing a duty of indemnification to another Party with respect to a particular Third Party Claim.

"Intel" means Intel Corporation, a Delaware corporation.

"Joint Venture Company" means IM Flash Technologies, LLC, a Delaware limited liability company that is the subject of the Joint Venture Documents.

"Joint Venture Documents" means that certain Master Agreement by and between Intel Corporation and Micron dated November 18, 2005, and each agreement referenced therein (whether directly or indirectly through reference in any of such referenced agreements).

"Indemnified Party" shall mean any of the following to the extent entitled to seek indemnification under this Agreement: Intel, Micron, the Joint Venture Company, and their respective Affiliates, officers, directors, employees, agents, assigns and successors.

"Indemnified Losses" shall mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses of any nature incurred by an Indemnified Party, including reasonable attorneys' fees and consultants' fees, and all damages, fines, penalties and judgments awarded or

entered against an Indemnified Party, but specifically excluding any special, consequential or other types of indirect damages.

"Indemnifying Party" shall mean the Party owing a duty of indemnification to another Party with respect to a particular Third Party Claim.

"Losses" mean, collectively, any and all insurable liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"Manufacturing Committee" means the Manufacturing Committee as defined in Section 8.6 of the LLC Operating Agreement.

"Manufacturing Plan" means the manufacturing plan developed pursuant to Section 8.5(b) of the LLC Operating Agreement.

"Members" means Micron and Intel.

"Micron" means Micron Technology, Inc., a Delaware corporation.

"NAND Flash Memory Integrated Circuit" means a Flash Memory Integrated Circuit, where the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"NAND Flash Memory Product" means any NAND Flash Memory Wafer, NAND Flash Memory Die or NAND Flash Memory Die Package.

"Party" and "Parties" shall have the meaning set forth in the Recitals to this Agreement.

"Performance Criteria" means[***].

"Person" means any neutral person, corporation, joint stock company, limited liability company, association, partnership, firm joint venture, organization, individual, business, trust, estate or any other entity or organization of any kind or character from any form of association.

"Price" shall have the meaning as set forth on Schedule 4.6.

"Probe Testing" means testing, using a wafer test program as set forth in the applicable Specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the Specifications.

"Prime Wafer" means the raw silicon wafers required, on a product-by-product basis, for the manufacturer.

"Probed Wafer" means a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing to the level requested by the Joint Venture Company, but before singulation of said die into individual semiconductor die.

"Products" means a Probed Wafer, Known Good Die, or NAND Flash Memory Product, or such other products that are manufactured by or for the Joint Venture Company.

"Purchase Order" shall have the meaning set forth in Section 3.3 hereof.

"Quality and Reliability" or "Q&R" means building and sustaining relationships which assess, anticipate, and fulfill the quality and reliability standards as set forth in the Specification or Manufacturing Plan for products and other areas of the Joint Venture or its facilities (including, environmental health and safety, environmental compliance, employment law).

"Receiving Party" shall have the meaning set forth in the definition of Confidential Information.

"Secondary Silicon" shall mean a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing: (a) would otherwise constitute a Probed Wafer but for failure to achieve qualification and (b) otherwise conform to the applicable Secondary Silicon Specifications.

"Specifications" means those data sheet specifications used to describe, characterize, and define the quality and performance of NAND Flash Memory Products, Known Good Die and Probed Wafers, including any interim performance specifications at Probe Testing or other testing, as such specifications may be determined from time to time by the Joint Venture Company in accordance with the Joint Venture Documents.

"Term" shall have the meaning set forth in Section 10.1 hereof.

"Third Party Claim" shall mean any claim, demand, action, suit or proceeding, and any actual or threatened lawsuit, complaint, cross-complaint or counter-complaint, arbitration or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled, by any Person other than Intel, Micron, the Joint Venture Company and Affiliates of the foregoing, against an Indemnified Party, in each case alleging entitlement to any Indemnified Losses pursuant to any indemnification obligation under this Agreement.

"Warranty Claim Period" shall have the meaning set forth in Section 6.4 hereof.

"WIP" means work in process. This includes all wafers and product in wafer fabrication, sort, assembly, and/or final test, including prime and secondary wafers, and all completed product units not yet delivered to the Joint Venture Company.

"Yield" means anticipated output of Probed Wafers from WIP at a particular point in time, including line yield, die yield, assembly yield and final testing yield.

SCHEDULES

Schedule 2.3	Performance Criteria
Schedule 2.6	Additional Equipment
Schedule 2.6(A)	Form Of Addendum To Agreement
Schedule 2.6 (B)	Additional Equipment
Schedule 4.6	Prepaid, Pricing And Performance Metrics
Schedule 4.6(A)	Cost Forecast
Schedule 4.6(B)	Projected Output

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

MTV LEASE AGREEMENT

This MTV Lease Agreement (this "**Lease**") is made as of the 6th day of January, 2006, by and between MICRON TECHNOLOGY, INC., a Delaware corporation (hereinafter referred to as the "**Landlord**"), and IM FLASH TECHNOLOGIES, LLC, a Delaware limited liability company (hereinafter referred to as "**Tenant**").

RECITALS

A. Landlord and Intel Corporation ("Intel") entered into that certain Master Agreement dated as of the 18th day of November, 2005 (the "**Master Agreement**") with respect to the formation of Tenant;

B. Pursuant to the Master Agreement, Landlord and Intel entered into that certain Limited Liability Company Operating Agreement dated as of the 6th day of January, 2006 (the "**Operating Agreement**"), pursuant to which Landlord and Intel set forth their agreement regarding the operation of Tenant, of which Landlord and Intel are each Members (as defined in the Operating Agreement);

C. Pursuant to the Master Agreement, Landlord and Tenant have entered into that certain Manufacturing Services Agreement as of the 6th day of January, 2006 (the "**Manufacturing Services Agreement**"), which controls Landlord's and Tenant's relationship with respect to certain services provided by Landlord in connection with the manufacture and production of certain product described in the Manufacturing Services Agreement (the "**Product**");

D. Landlord is the owner of a wafer fabrication building (the "**Building**") situated on a parcel of land located in Manassas, Virginia, more particularly described on Exhibit A attached hereto (the "**Land**"; the Building and the Land collectively, the "**MTV Site**");

E. The Building consists of two modules, known as "Module 1" and "Module 2", each of which contains approximately 78,000 square feet of clean room space;

F. Pursuant to the Operating Agreement, Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord, Module 1, which is depicted on Exhibit B attached hereto (the "**Premises**");

NOW, THEREFORE, in consideration of the mutual premises, covenants, terms and conditions herein contained and intending to be legally bound, Landlord and Tenant hereby agree as follows:

ARTICLE 1
GRANT

1.1 Premises. Subject to the provisions of the Operating Agreement and the Manufacturing Services Agreement, Landlord, in consideration of its membership interest in Tenant, does hereby lease the Premises to Tenant. The configuration of the Premises within the

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Building may be modified from time to time by mutual agreement of Landlord and Tenant. Tenant acknowledges that Landlord retains the right to use up to 1,000 square feet of the Premises as shown on Exhibit B for the operation of DRAM tools used in connection with Landlord's manufacturing activities in Module II of the Building.

1.2 Common Areas. Tenant shall have the nonexclusive right, in common with Landlord and any other occupants of the Building and the Land, to use (1) the public and common areas of the Building and any other building amenities or facilities which are necessary in connection with the manufacturing of Product as provided by the Manufacturing Services Agreement or as otherwise contemplated by the Manufacturing Services Agreement; and (2) any entrances, stairs, rights of pedestrian and vehicular ingress, egress and access, elevators, driveways, alleys, fire corridors, public restrooms, cafeterias, parking lots, and loading docks within the Building or located on the Land that are generally necessary in connection with the manufacturing of Product as provided by the Manufacturing Services Agreement, all upon the terms and conditions hereinafter set forth (collectively, the "**Common Areas**"). Landlord shall be responsible at its expense to maintain the Common Areas in accordance with Landlord's standard of maintenance existing on the date hereof.

1.3 Rights Retained by Landlord. Subject to the provisions of the Manufacturing Services Agreement, Landlord hereby reserves the following rights with respect to the Common Areas: to establish reasonable and non-discriminatory rules and regulations for the use thereof; to use or permit the use by others to whom Landlord may have granted such rights; to close all or any portion thereof as may be deemed necessary by Landlord to prevent a dedication thereof or the accrual of any rights by any person or the public therein; and to change the layout of the Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of Building improvements or otherwise, provided in all such cases reasonably equivalent access to the Premises shall be maintained.

1.4 Condition of Premises. The Parties acknowledge that the Premises need to be improved by Landlord as specified in Exhibit C attached hereto so that the Premises will be ready for the installation of the Tenant's manufacturing tools (as defined therein, the "**Improvements**"). At such time as the Improvements have been completed by Landlord and Tenant has approved the Improvements in accordance with the sign off procedures provided below, Tenant shall take possession of the Premises. Tenant will be deemed to have approved the Improvements when all of the following sign off procedures are completed:

(a) Landlord shall have provided written notification to the Tenant that the clean room ballrooms, bay and chases have been certified by Landlord's micro contamination team to have met Landlord's design parameters for the Premises;

(b) Landlord and/or its contractor(s) shall have provided written notification that the tool utility generation and distribution systems have been installed, are operating as designed, and are ready for tool connection;

(c) Landlord shall have provided written notification to Tenant that its facilities technicians are all trained in the operation and maintenance of the systems that are part of the Improvements;

(d) Landlord shall have provided written notification to Tenant that the bulk and process chemical and gas systems have been correctly installed and qualified as required for the NAND manufacturing process chemistry used to manufacture the Product; and

(e) Landlord shall have provided to Tenant a copy of the certificate of occupancy for the Premises.

Following receipt of the notification pursuant to Subsection (a) and while the approval process continues, Tenant may commence installation of its manufacturing tools.

ARTICLE 2
LEASE TERM

2.1 Term. The term of this Lease (the "**Term**") shall begin on the date hereof (the "**Commencement Date**") and continue for a period of ten (10) years and thereafter until the Liquidation Date, as defined in the Operating Agreement (the "Expiration Date"); provided, however, that the Term shall terminate on the earlier to occur of (i) a Liquidation Date that occurs prior to the Expiration Date, (ii) the termination or expiration of the Manufacturing Services Agreement, (iii) the date on which the closing of the Micron [***] Purchase Option, as defined in the Operating Agreement, occurs, or (iv) the "**Minority Closing**" as defined in the Operating Agreement.

ARTICLE 3
RENT

3.1 Rent. Landlord and Tenant acknowledge and agree that the consideration for this Lease recited in the Operating Agreement constitutes valuable and adequate consideration for this Lease, and that, except as otherwise expressly set forth in Section 3.2 below, no further payment from Tenant shall be required hereunder.

3.2 Other Amounts. Landlord and Tenant acknowledge that Tenant's share of the costs incurred by Landlord hereunder (including, for example, Real Estate Taxes as hereinafter defined, personal property and other ad valorem taxes paid by Landlord as referred to in Section 4.2, services, utilities, insurance and maintenance), shall be reimbursed by Tenant as a component of the costs of production pursuant to the terms of the Manufacturing Services Agreement. Nothing in this Lease shall be construed as limiting or precluding the allocation of any costs or expenses as provided for in the Manufacturing Services Agreement, including, without limitation, any references herein that Landlord is obligated to provide a certain thing or that an obligation is at the expense of or at the cost of Landlord. No other costs besides those charged pursuant to the Manufacturing Services Agreement will be imposed on Tenant for occupation and use of the Premises pursuant to this Lease.

ARTICLE 4
TAXES

4.1 Real Estate Taxes. Landlord shall pay, prior to delinquency, all real estate taxes and assessments, general or special, which at any time during the Term may be assessed,

levied, imposed upon, or grow or become due and payable out of or in respect of, the Premises (the "**Real Estate Taxes**").

4.2 Personal Property Taxes. Landlord and Tenant shall cooperate in the filing of personal property tax returns and payment of all taxes, charges, and other governmental impositions assessed against, or levied upon, Tenant's trade fixtures, furnishings, equipment, and other personal property, if any (collectively, "**Tenant's Personal Property**"), located upon the Premises. Notwithstanding the preceding sentence, the Party to this Agreement that is the owner of record of Tenant's Personal Property shall pay, prior to delinquency, all aforementioned taxes, charges and other governmental impositions assessed against Tenant's Personal Property.

ARTICLE 5
BUILDING SERVICES

5.1 Services. Landlord shall furnish all of the services to Tenant that are necessary for its operations and production of the Product on the Premises, in each case during such times and in such amounts and pursuant to such standards as provided in the Manufacturing Services Agreement, including but not limited to the following services: (i) heating, ventilating and air conditioning; (ii) all utilities, including, without limitation, electricity, natural gas, telephone and water both for production and for sanitary uses; (iii) oil free (or clean dry) air, vacuum, specialty gases, ultra pure water, acid waste neutralization system and any other waste water treatment system within the Building, (iv) janitor service; (v) security (vi) exhaust and abatement systems; and (vii) maintenance of (A) the structural elements of the Building, (B) the communications and network wiring serving the Building, (C) the mechanical, electrical, plumbing and fire/life safety systems serving the Building in general, (D) the Common Areas, and (E) the Building in general, including without limitation the roof thereof.

5.2 Interruption of Services. Landlord shall be liable to Tenant as a result of the interruption of any services provided pursuant to Section 5.1 only (i) to the extent that such interruption is caused by Landlord, any of its agents, partners, employees, invitees or contractors, and (ii) by a claim brought under the Manufacturing Services Agreement, which claim shall be subject to limitations set forth in Article 12 thereof.

ARTICLE 6

USE; COMPLIANCE WITH LAWS

6.1 Use. Tenant agrees that it shall occupy and use the Premises only for the purposes as contemplated by the Manufacturing Services Agreement and ancillary uses and for no other purposes (the "**Permitted Use**"). Landlord shall provide and maintain all occupancy related licenses and permits legally necessary for the operation of the business within the Building, which excludes, without limitation, any intellectual property licenses relating to Tenant's business. Tenant acknowledges that Landlord shall have access to and shall use the Premises as provided in the Manufacturing Services Agreement.

6.2 Compliance with Law. Tenant shall comply with all Applicable Laws as defined in the Master Agreement in its use of the Premises.

6.3 Compliance with Insurance Requirements. Tenant further agrees to obey and fully comply with all requirements and provisions of any and all insurance policies which Landlord maintains, and shall not make or permit any use of the Premises, or permit to be done anything in or upon the Premises or the Building, or bring or keep anything in the Premises or the Building, which may invalidate or increase the rate of insurance on the Building, its appurtenances, contents or operations.

6.4 No Tenant Duties. Landlord acknowledges and agrees that Tenant shall have no duties or obligations with respect to the repair and/or maintenance of the Premises and that, except as may be otherwise provided in the Manufacturing Services Agreement, Landlord is solely responsible for the operations within the Premises. Notwithstanding the foregoing, Landlord acknowledges and agrees that any officer or employee of Tenant may, at any time, have access to the Premises.

ARTICLE 7
TENANT'S INSURANCE AND INDEMNITY

7.1 Property Insurance. Except as set forth in Section 7.3, at its expense, Tenant shall maintain property insurance insuring Tenant's tenant improvements in the Premises and Tenant's personal property against loss due to causes typically insured against under "all risk" or "special causes of loss" policy forms, at a limit equal to the full insurable replacement cost of such improvements and personal property, with coinsurance waived and permitting the insured to waive subrogation rights prior to loss.

7.2 Liability Insurance. Except as set forth in Section 7.3, at its expense, Tenant shall, commencing on the first day of the Term and continuing throughout the entire Term maintain or cause to be maintained, under the provisions of the Manufacturing Services Agreement or otherwise, for the benefit of Landlord, Landlord's lender, if any, and Tenant as their interests may appear, a comprehensive commercial public liability insurance policy against such risks as are customarily insured against which arise out of the use, occupancy, repair, maintenance or alteration of the Premises and all areas appurtenant thereto, including liability for the acts of Tenant's independent contractors with regard to any activities of such independent contractors. Such insurance shall have a minimum limit of ten million dollars ($10,000,000) per occurrence for bodily injury and property damage combined.

7.3 Member Insurance Programs. Upon mutual agreement of the parties, Tenant may satisfy its obligations under Section 7.1 and/or Section 7.2 by policies issued under any corporate insurance program(s) maintained by any of Tenant's members.

7.4 Notice of Cancellation. Reasonable efforts will be made to have all insurance required to be carried under this Article 7 not be subject to cancellation or material change without at least thirty (30) days' prior notice to Landlord and Landlord's lender, if any, and such insurance shall be with insurance companies reasonably acceptable to Landlord and Landlord's lender, if any, and shall name Landlord, Landlord's lender, if any, and Tenant as insureds, as their interests may appear.

7.5 Evidence of Insurance. Prior to the commencement of the Term of this Lease, or as soon as is reasonably practicable after that date, Tenant shall provide at Landlord's request to Landlord and Landlord's lender, if any, certificates of the insurance policies referred to in this Article 7. Tenant also shall furnish annually, to Landlord and Landlord's lender, if any, throughout the Term, certificates of renewals of such policies.

7.6 Landlord's Rights. If Tenant fails to procure, maintain and/or pay for, at the times and for the durations specified in this Lease, the insurance required under this Article 7, Landlord may (but without obligation to do so), without notice to Tenant, perform such obligations on behalf of Tenant, and the cost thereof shall immediately become due and payable to Landlord.

7.7 Indemnity of Landlord by Tenant. Subject to the provisions of the Manufacturing Services Agreement, Tenant shall indemnify, defend and save Landlord, its affiliates, partners, shareholders, members, directors, officers, employees and agents harmless from and against all losses, claims, costs, liabilities, fines and penalties of any nature (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "**Claims**") arising or occurring, from and after the date of this Lease, out of (i) Tenant's failure to comply with the terms and conditions set forth in this Lease, (ii) any personal injury or death, damage to or destruction of the Land or Building caused by the gross negligence or willful acts or omissions of Tenant or its representatives and/or (iii) any other Claim made by any affiliate, partner, member, director, officer, employee, visitor, invitee, licensee or lessee of Tenant against Landlord arising out of Tenant's use of the Land or Building; provided, however, that for the purposes of this section, in no event shall the actions or omissions of Landlord pursuant to the Manufacturing Services Agreement be deemed to be gross negligence or willful acts or omissions of Tenant.

ARTICLE 8
LANDLORD'S INSURANCE REQUIREMENTS

8.1 Property Insurance. Landlord shall maintain property insurance insuring the Premises against loss due to causes typically insured against under "all risk" or "special causes of loss" policy forms, at a limit equal to the full insurable replacement cost of the Building, with coinsurance waived and permitting the insured to waive subrogation rights prior to loss.

8.2 Liability Insurance. At its sole cost and expense, Landlord shall, commencing on the first day of the Term and continuing throughout the entire Term maintain for the benefit of Landlord, Landlord's lender, if any, and Tenant as their interests may appear, a comprehensive commercial public liability insurance policy against such risks as are customarily insured against which arise out of Landlord's activities relating to the Premises including liability for the acts of Landlord's independent contractors with regard to any activities of such independent contractors. Such insurance shall have a minimum limit of ten million dollars ($10,000,000) per occurrence for bodily injury and property damage combined.

8.3 Indemnity of Tenant by Landlord. Landlord shall indemnify, defend and save Tenant, its affiliates, partners, shareholders, members, directors, officers, employees and agents harmless from and against all Claims arising or occurring, from and after the date of this Lease, out of (i) Landlord's failure to comply with the terms and conditions set forth in this Lease

(except as otherwise provided in Section 5.2), (ii) any personal injury or death, damage to or destruction of the Premises, Tenant's tenant improvements and Tenant's personal property caused by the gross negligence or willful acts or omissions of Landlord or its representatives and/or (iii) any other Claim made by any affiliate, partner, member, director, officer, employee, visitor, invitee, licensee or lessee of Landlord against Tenant arising out of Landlord's gross negligence or willful misconduct.

8.4 Limitation on Tenant's Claims. Notwithstanding anything in this Lease to the contrary, if Tenant has any claim under this Lease against Landlord, for indemnity or otherwise, Tenant shall be required to bring such claim under another Joint Venture Document (as defined in the Master Agreement) and not under this Lease if such claim can be made under such other Joint Venture Document (notwithstanding that recovery under such claim may be subject to deductibles, caps or limitations on survival set forth therein); provided, however, that this limitation shall not apply to claims made by Tenant against Landlord for damage to buildings, improvements, fixtures and manufacturing tools and equipment.

ARTICLE 9
WAIVER OF SUBROGATION

Any other provisions of this Lease to the contrary notwithstanding, if (a) either party shall suffer any loss required to be insured against hereunder or (b) any portion of the Premises or Tenant's trade fixtures, equipment or other personal property in the Premises shall be damaged or destroyed by fire, explosion or other casualty required to be insured against hereunder, whether or not such loss, damage or destruction is caused, or claimed to be caused, by the negligence or misconduct of Landlord or Tenant, or any of their respective managers, members, officers, employees, agents, contractors or invitees, neither Landlord, Tenant nor their respective insurance company(ies), shall have any right of action, by way of subrogation or otherwise, against Tenant or Landlord, or any of their respective managers, members, officers, employees, agents, contractors or invitees, arising from such damage or destruction, and each policy of insurance required pursuant to this Lease shall provide a waiver and release by the insurer of any such right. Landlord and Tenant further agree that during or after Tenant's occupancy of the Premises, each will indemnify and hold the other harmless from any claim against the other made by way of subrogation by Landlord's or Tenant's liability and property insurance carrier(s).

ARTICLE 10
ALTERATIONS

10.1 Requirements. Tenant may not make any replacement, alteration, improvement or addition to or removal from the Premises (collectively an "**alteration**") without the prior written consent of Landlord, such consent not to be withheld if the alteration is commercially reasonable; provided, however, that Tenant may make any alterations necessary or desirable in order for the services to be provided under the Manufacturing Services Agreement. Tenant agrees that each alteration shall be performed in a good and workmanlike manner, and shall meet or exceed the standards for construction and quality of materials established by Landlord for the Building. In addition, each alteration shall be performed in compliance with all Applicable Laws. Each alteration, whether temporary or permanent in character, made by

Landlord or Tenant in or upon the Premises shall become Landlord's property and shall remain upon the Premises at the expiration or termination of this Lease without compensation to Tenant. Tenant shall not be obligated to remove such alterations at the end of the Term. Notwithstanding anything to the contrary contained in this Section 10.1, alterations do not include the Associated Assets (as defined in Section 20.1 below) that Tenant may remove as provided in Section 20.1.

10.2 Covenant Against Liens. Tenant shall not cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon Landlord's title or interest in the Building or the Premises, and any and all liens and encumbrances created by Tenant shall attach to Tenant's interest only. Tenant covenants and agrees not to suffer or permit any liens to be placed against the Building or the Premises as a result of work performed or materials supplied by or on behalf of Tenant and in case of any such lien attaching or claim thereof being asserted, Tenant covenants and agrees no later than forty-five (45) days from notice to Tenant of the filing thereof to (i) cause it to be released and removed of record, (ii) deliver to Landlord a surety bond in an amount sufficient to discharge the lien, or (iii) provide Landlord, with endorsements (satisfactory to Landlord) to Landlord's title insurance policy insuring against the existence of or attempted enforcement of such lien. In the event that such lien is not released, removed, or bonded or insured over within said forty-five (45) day period, Landlord, at its sole option, may take all action necessary to release and remove such lien (without any duty to investigate the validity thereof) and Tenant shall, within ten (10) days following notice, either before or after such release and removal, pay or reimburse Landlord for all sums, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs) incurred by Landlord in connection with removal of such lien.

ARTICLE 11
CASUALTY

11.1 Damage. If the Premises, or so much thereof as to cause the Premises to be unusable in furtherance of the terms of the Manufacturing Services Agreement, are damaged by any casualty so as to cause the Premises to be uninhabitable, and the damage (exclusive of any property or improvements installed by Tenant in the Premises) can be repaired in Landlord's reasonable judgment within one hundred eighty (180) days without the payment of an amount more than 120% of the amount of insurance proceeds, Tenant shall waive all rights to any insurance proceeds therefor in favor of

Landlord, and Landlord shall repair such damage as soon as practicable and this Lease shall continue in full force and effect. Landlord agrees to give Tenant written notice within sixty (60) days after the occurrence of any such damage or destruction indicating the anticipated time period of such restoration (the "**Repair Estimate**"). If the Premises, or so much of thereof as to cause the Premises to be unusable in furtherance of the terms of the Manufacturing Services Agreement, are damaged by any casualty, and the damage (exclusive of any property or improvements installed by Tenant in the Premises) cannot be repaired in Landlord's reasonable judgment within one hundred eighty (180) days without the payment of an amount more than 120% of the amount of insurance proceeds, Landlord may give Tenant written notice within thirty (30) days after Landlord delivers to Tenant its Repair Estimate of Landlord's intention to terminate this Lease, in which event this Lease shall terminate as of the date of the occurrence of such damage.

11.2 Insurance Proceeds Upon Termination. If this Lease is terminated as permitted under Section 11.1, all insurance proceeds payable with respect to the damage giving rise to such right of termination shall be paid to Landlord or Landlord's lender, if any.

ARTICLE 12
CONDEMNATION

12.1 Notice. Landlord and Tenant shall each notify the other if either party becomes aware that any portion of the Premises will be taken in condemnation proceedings or by exercise of any right of eminent domain (any such action being hereinafter referred to as a "**Taking**"), or if it becomes aware of the commencement of any proceedings which might result in a Taking.

12.2 Taking. In the event of the Taking of all or any portion of the Premises renders the Premises unsuitable for Tenant's business objectives, Tenant, at its sole election, may terminate this Lease as of the date of such Taking. In the event Tenant chooses not to terminate this Lease, the portion of the Premises so taken shall be excluded from the definition of the Premises hereunder, and this Lease shall continue in full force and effect as to the remainder of the Premises.

12.3 Award. Tenant shall be entitled to all condemnation awards granted on account of the Taking of all or any portion of the Premises.

ARTICLE 13
ASSIGNMENT AND SUBLETTING

13.1 No Landlord Assignment. Landlord shall not have the right to transfer, assign or convey, in whole or in part, the Land or the Building or any or all of its rights under this Lease; provided, however, that such prohibition shall not apply to (i) any transfer, assignment or conveyance by Landlord to an Affiliate (as defined in the Operating Agreement) of Landlord, (ii) any leases of any portion of the Land or the Building other than the Premises to any third party provided that such lease does not materially adversely affect the operation of the Tenant's business at the Premises and is to a third party who is not manufacturing and is only providing services or supplies incidental to Landlord's operations, or (iii) the granting of any mortgage, deed of trust, or similar encumbrances as security for indebtedness. For purposes hereof, transfer, assign or convey shall not include any reorganization which simply results in a change in the state of incorporation and Micron continues to hold the Land and Building, any recapitalization in which Micron continues to hold the Land and Building or any merger or change of control of Landlord.

13.2 No Tenant Assignment. Tenant shall not have the right to transfer, assign or convey, in whole or in part, the Premise or any or all of its rights under this Lease; provided, however, that such prohibition shall not apply to any transfer, assignment or conveyance by Tenant to an Affiliate of Tenant.

ARTICLE 14
DEFAULT

14.1 Tenant's Default. The occurrence of any of the following shall constitute a default (a "**Default**") by Tenant under this Lease: (i) Tenant is in default under the terms of the Manufacturing Services Agreement; (ii) Tenant effects or attempts to effect a Transfer without Landlord's consent; (iii) Tenant fails to perform any other provision of this Lease and such failure is not cured within thirty (30) days after written notice thereof is given to Tenant (or immediately if the failure involves a hazardous or dangerous condition), provided that in the event such matter does not involve a hazardous or dangerous condition and cannot be reasonably cured within such thirty (30) day period despite Tenant's diligent efforts then Tenant shall be permitted such reasonable time as reasonably required to cure such default, provided that Tenant has commenced such cure within the thirty (30) day period and diligently prosecutes such cure to completion; (iv) the leasehold interest of Tenant is levied upon or attached under process of law; or (v) any voluntary or involuntary proceedings are filed by or against Tenant under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing.

14.2 Landlord's Remedies. In the event of a Tenant Default and Tenant fails to cure such Default within a commercially reasonable period of time after receipt of written notice from Landlord, Landlord shall have the right to cure such Default and thereafter be reimbursed by Tenant within thirty (30) days after receipt of an invoice together with appropriate backup documentation. In the event a Tenant Default cannot be reasonably cured by Landlord and such Default materially adversely affects the Premises or the Building (a "Tenant Material Default"), Tenant agrees that Landlord shall be entitled to obtain specific performance and any other equitable remedy available by law. Notwithstanding any Tenant Default or Tenant Material Default, Landlord shall not be entitled to terminate this Lease except as provided in Section 2.1(i), (ii), (iii) or (iv) above.

14.3 Landlord's Default and Tenant's Remedies. In the event that Landlord defaults under any provisions of this Lease and fails to cure such default within a commercially reasonable period of time after receipt of written notice from Tenant, in addition to any and all remedies that Tenant may have at law or equity, including without limitation specific performance, Tenant shall have the right to cure such default and thereafter be reimbursed by Landlord within thirty (30) days after receipt of an invoice together with appropriate backup documentation. In the event of a Landlord Event of Default (as defined in Section 13.2 of the Operating Agreement), Tenant shall also have the rights and remedies specified in Article 13 of the Operating Agreement.

14.4 No Other Remedies. The remedies of each party shall only be as provided in Section 14.2 and 14.3 hereof and neither party shall be entitled to any other right or remedy otherwise available to such party.

ARTICLE 15
NOTICES

Any notice, summons or other process of notification to be served under the Lease or in connection with any proceeding or action arising out of this Lease or the tenancy created thereby shall be provided to the addresses and in the manner as set forth in the Manufacturing Services Agreement.

ARTICLE 16
REAL ESTATE BROKERS

Tenant warrants and represents to Landlord that no commission, fee or other compensation is or will become due and payable to any real estate broker, salesman, consultant, finder or agent it has hired as a result of the creation of this Lease or any transaction described in this Lease. Landlord warrants and represents to Tenant that no commission, fee or other compensation is or will become due and payable to any real estate broker, salesman, consultant, finder or agent it has hired as a result of the creation of this Lease or any transaction described in this Lease.

ARTICLE 17
NO WAIVER

No waiver of any condition or covenant of this Lease or of the breach of any such covenant or condition shall be deemed to constitute a waiver of any subsequent breach of such covenant or condition or to justify the non-observance on any other occasion of the same or of any other covenant or condition hereof.

ARTICLE 18
ESTOPPEL CERTIFICATES

Tenant agrees that, from time to time upon not less than twenty (20) days' prior request by Landlord, Tenant shall execute and deliver to Landlord a written certificate certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, a description of such modifications and that this Lease as modified is in full force and effect); (ii) whether Tenant is in possession of the Premises, if that is the case; (iii) that to Tenant's knowledge Landlord is not in default under this Lease, or, if Tenant believes Landlord is in default, the nature thereof in detail; (iv) that to Tenant's knowledge Tenant is not in default under this Lease; (v) that Landlord is not obligated to perform any tenant improvement work in the Premises, (vi) that to Tenant's knowledge Tenant has no off-sets or defenses to the performance of its obligations under this Lease (or if Tenant believes there are any off-sets or defenses, a full and complete explanation thereof); and (vii) such additional matters as may be reasonably requested by Landlord, it being agreed that such certificate may be relied upon by any prospective purchaser, mortgagee or other person having or acquiring an interest in the Building, the Premises, or any portion thereof.

ARTICLE 19
SUBORDINATION

This Lease is and shall be expressly subject and subordinate at all times to the lien of any present or future mortgage or deed of trust encumbering fee title to the Land or the Building. The foregoing provision is declared to be self-operative and no further instruments shall be required to effect such subordination and/or attornment; provided, however, that Tenant agrees upon request by any such mortgagee, beneficiary, lessor or purchaser at foreclosure or transfer, as the case may be, to execute such reasonable subordination and/or attornment instruments as may be required by such person to confirm such subordination and/or attornment on the reasonable form customarily used by such party. Notwithstanding anything to the contrary contained herein, Tenant's agreement to subordinate this Lease shall not be effective unless and until the mortgagee, beneficiary or lessor, as the case may be, shall execute and deliver to Tenant a commercially reasonable non-disturbance agreement providing, among other things, that if any mortgage is foreclosed (or if the Land or the Building is transferred in lieu of foreclosure), such mortgagee or purchaser shall agree to accept this Lease and not disturb Tenant's occupancy (so long as Tenant is not in default hereunder beyond all applicable notice and cure periods).

ARTICLE 20
SURRENDER; [***]; ACQUISITION

20.1 Surrender. Upon termination of the Term for any reason, (i) Tenant shall return the Premises to Landlord broom clean, in good order and condition, ordinary wear and tear excepted, in compliance with all Applicable Laws; provided, however, that Tenant shall not be responsible to remove any residue or other materials within pipes, ducts, utilities and treatment facilities within the Building. In the event that Landlord does not exercise the Micron [***] Purchase Option (as defined in the Operating Agreement) to purchase [***] owned by Tenant, Tenant and its members shall, subject to Section 20.2 below, have the right for a period of up to sixty (60) days after the expiration of the Micron [***] Purchase Option, to remove all or any portion of [***]. Tenant shall not be obligated to [***] at the end of the Term.

20.2 Repair. In the event that Tenant shall damage the Building in connection with the removal of any Associated Assets owned by Tenant, Tenant shall, at its expense, repair such damage to return the Building to its former condition, reasonable wear and tear excepted.

ARTICLE 21
APPLICABLE LAW AND CONSTRUCTION

21.1 Governing Law. This Lease shall be governed by the laws of the State of Delaware as to all matters other than those matters pertaining to real property which are customarily governed by the laws of the State where the Premises is located.

21.2 Independent Provisions. Any provision of this Lease which is contrary to a law, which the parties cannot legally waive or contract against (such, for example, as labor laws and anti-trust laws) is and shall be void and not binding on either party hereto; provided,

however, that the invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provision of this Lease.

ARTICLE 22
QUIET ENJOYMENT

Landlord hereby covenants and agrees that if Tenant shall perform all of the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have peaceable and quiet enjoyment and possession of the Premises without hindrance from Landlord or any person or persons lawfully claiming the Premises.

ARTICLE 23
SUCCESSORS AND ASSIGNS

The terms, conditions and agreements of this Lease and all rights and obligations herein given to or imposed upon the parties hereto shall bind and inure to the benefit of the respective heirs, executors, administrators, successors and permitted assigns of the parties hereto. No rights, however, shall inure to the benefit of any assignee of a Party unless the assignment to such assignee has been approved (if required) by the other Party.

ARTICLE 24
MISCELLANEOUS

24.1 Execution and Delivery. Submission of this instrument for examination or signature by Tenant does not constitute a reservation of space or an option for lease, and it is not effective until execution and delivery by both Landlord and Tenant.

24.2 Memorandum of Lease. This Lease shall not be recorded, either independently or as an exhibit, schedule, annex, or addendum to any other document. However, a Memorandum of Lease, in substantially the form attached hereto as Exhibit D, shall be executed, acknowledged and delivered for recording by both parties. The cost of such recording shall be divided equally between the parties.

24.3 Captions. The headings and titles in this Lease are for convenience only and shall have no effect upon the construction or interpretation of this Lease.

24.4 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Lease shall be brought in a state or federal court located in Delaware and each of the parties to this Lease hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by applicable Laws, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court.

24.5 Due Authority. The individuals executing this Lease represent and warrant to each party that they have full right, power and authority to execute this Lease on behalf of such party.

24.6 Only Landlord/Tenant Relationship. Nothing contained herein shall be deemed or construed by the parties hereto nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto or any other relationship, other than the relationship of Landlord and Tenant.

24.7 Counterparts. This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

24.8 Construction. Any reference to any Applicable Law shall be deemed also to refer to all rules and regulations promulgated thereunder unless the context requires otherwise. Whenever required by the context, any gender shall include any other gender, the singular shall include the plural and the plural shall include the singular. The words "herein," "hereof," "hereunder," and words of similar import refer to this Lease as a whole and not to a particular section. Whenever the word "including" is used in this Lease, it shall be deemed to mean "including without limitation," "including, but not limited to" or other words of similar import such that the items following the word "including" shall be deemed to be a list by way of illustration only and shall not be deemed to be an exhaustive list of applicable items in the context thereof. References to Sections and Exhibits in this Lease are references to Sections of, and Exhibits to, this Lease unless otherwise indicated.

24.9 Entire Agreement. This Lease, the Master Agreement, the Manufacturing Services Agreement, and the Operating Agreement sets forth all of the covenants, promises, agreements, conditions, and understandings of the parties hereto with respect to the Premises. No alteration, modification, amendment, change or addition to this Lease shall be effective unless the same shall be reduced to writing and signed by both parties hereto.

24.10 Time is of the Essence. Time is of the essence in the performance of all terms and conditions of this Lease in which time is an element.

24.11 Confidentiality. Landlord and Tenant shall abide by the terms of that certain Mutual Confidentiality Agreement among Landlord, Tenant and Intel dated as of the Effective Date of the Operating Agreement, and as may be amended or replaced from time to time (the "**Confidentiality Agreement**"), which agreement is incorporated herein by reference. Landlord and Tenant agree that the Confidentiality Agreement shall govern the

confidentiality, non-disclosure and non-use obligations between the parties respecting the information provided or disclosed pursuant to this Lease. If the Confidentiality Agreement is terminated or expires and is not replaced, such Confidentiality Agreement shall continue with respect to confidential information provided in connection with this Lease, notwithstanding such expiration or termination, for the duration of the Term of this Lease or until a new Confidentiality Agreement is entered into between the Landlord and Tenant. To the extent there is a conflict between this Lease and the Confidentiality Agreement, the terms of this Lease shall control. This Lease and its terms shall be deemed "Confidential Information" under the Confidentiality Agreement.

24.12 Damages Limitation. EXCEPT AS PROVIDED BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, SUCH LIMITATION SHALL NOT APPLY TO EITHER PARTY'S BREACH OF SECTION 24.11. EACH PARTY SHALL HAVE A DUTY TO USE COMMERCIALLY REASONABLE EFFORTS TO MITIGATE DAMAGES FOR WHICH THE OTHER PARTY IS RESPONSIBLE.

24.13 Indemnification Procedures.

(a) If any person who or which is entitled to seek indemnification under this Lease (an "**Indemnified Party**") obtains knowledge of, or receives notice of, any Claim against the person against whom or which such indemnification is being sought hereunder (an "**Indemnifying Party**"), the Indemnified Party will give such Indemnifying Party reasonably prompt written notice thereof, but in any event not later than ten (10) days after knowledge or notice of such Claim. Such notice by the Indemnified Party will describe the Claim in reasonable detail, will include copies of all available material written evidence thereof and will indicate the estimated amount, if reasonably practicable, of the damages that have been or may be sustained by the Indemnified Party. The Indemnifying Party will have the right to participate in, or, by giving written notice to the Indemnified Party, to assume, the defense of any Claim at such Indemnifying Party's own expense and by such Indemnifying Party's own counsel (reasonably satisfactory to the Indemnified Party), and the Indemnified Party will cooperate in good faith in such defense.

(b) If, within ten (10) days after giving notice of a Claim to an Indemnifying Party pursuant to Section 24.13(a), an Indemnified Party receives written notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim as provided in the last sentence of Section 24.13(a), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving written notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all damages relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs and expenses paid or incurred in connection therewith and the Indemnified Party may employ separate counsel, and the Indemnifying Party will bear the expenses of such separate counsel, if in the written opinion of counsel to the Indemnified Party use of counsel of the Indemnifying Party's choice would be expected to give rise to a conflict of interest. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim that would lead to loss, liability or create any financial or other obligation on the part of any Indemnified Party for which such Indemnified Party is not entitled to indemnification

hereunder, or which provides for injunctive or other non-monetary relief applicable to any Indemnified Party, or does not include an unconditional release of all Indemnified Parties.

(c) A failure to give timely notice or to include any specified information in any notice as provided in Sections 24.13(a) or (b) will not affect the rights or obligations of any party hereunder, except and only to the extent that, as a result of such failure, any party that was entitled to receive such notice was materially prejudiced as a result of such failure

(d) Notwithstanding anything to the contrary contained herein, Landlord and Tenant agree that, for the purposes of this section, in no event shall the actions or omissions of Landlord pursuant to the Manufacturing Services Agreement be deemed acts or omissions of Tenant.

24.14 Force Majeure. The parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time during which the Force Majeure Event renders performance impossible or infeasible and only if the party asserting Force Majeure as an excuse for its failure to perform has provided written notice to the other party specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event. As used herein, "Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of the party failing to perform, including, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other party's nonperformance hereunder.

Signature Page Follows

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed on the day and year first above written.

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON
Name: Steven R. Appleton
Title: Chief Executive Officer and President

IM FLASH TECHNOLOGIES, LLC

By: /s/ DAVID A. BAGLEE
Name: David A. Baglee
Title: Authorized Officer

By: /s/ RODNEY MORGAN
Name: Rodney Morgan
Title: Authorized Officer

THIS IS THE SIGNATURE PAGE FOR THE MTV LEASE AGREEMENT ENTERED INTO BY AND BETWEEN MICRON TECHNOLOGY, INC. AND IM FLASH TECHNOLOGIES, LLC

Exhibit A

Legal Description of Land

All of that certain lot, piece or parcel of land lying, being and situate in the City of Manassas, Virginia, being more particularly described as follows:

Parcel "B", consisting of 123.5353 acres, more or less, a Subdivision of the Property of International Business Machines Corporation, as the same is shown on a plat attached to the Deed of Subdivision recorded in Deed Book 2119 at page 1774 among the land records of Prince William County, Virginia.

LESS AND EXCEPT the "overhead industrial waste discharge lines" and associated fixtures attached thereto, as shown on the plat dated December 13, 1995, made by Ross, France & Ratliff, Ltd. entitled "Composite Plat Showing Overhead Industrial Waste Discharge Lines Parcel B", a copy of which plat is attached to and recorded with a deed dated December 11, 1995 and recorded in Deed Book 2297 at page 1711, said plat recorded in Map Drawer 170 at page 121.

ALSO LESS AND EXCEPT 0.1190 acres, more or less, dedicated for public use for street purposes and conveyed to the City of Manassas by Deed of Dedication and Deed of Easement recorded in Deed Book 2333 at page 1035.

AND BEING a portion of the same property which was conveyed to Dominion Semiconductor L.L.C., a Virginia limited liability company, by Special Warranty Deed from Virginia LLC Holding, Inc., a Virginia corporation, dated February 5, 1996 and recorded February 7, 1996 in Deed Book 2309 at page 1638 in the Clerk's Office of the Circuit Court of Prince William County, Virginia.

TOGETHER WITH those certain permanent, non-exclusive easements for ingress and egress over and across Parcel A, which parcel is shown on plat attached to Deed of Subdivision recorded in Deed Book 2119 at page 1774, as more particularly set forth in Reciprocal Ingress and Egress Access Easements and Agreement of Indemnification by Dominion recorded in the aforesaid Clerk's Office on December 26, 2001 as Instrument No. 200112260137848.

FURTHER TOGETHER WITH that certain permanent, non-exclusive domestic sanitary sewer easement and right-of-way thereto across said Parcel A, as more particularly set forth in Domestic Sanitary Sewer Easement recorded in the aforesaid Clerk's Office on December 26, 2001 as Instrument No. 200112260137840.

FURTHER TOGETHER WITH that certain permanent, non-exclusive sixty-five (65) ft. wide easement and right-of-way for the transmission of domestic water supply, fire system water supply and sanitary sewer flows by underground pipelines, and the transmission of industrial chemicals and utility services by overhead trestle over said Parcel A, as more particularly set forth in Building 130 Utility, Chemical Transmission and Access Easement and Agreement of

Indemnification by Dominion recorded in the aforesaid Clerk's Office on December 26, 2001 as Instrument No. 200112260137846.

FURTHER TOGETHER WITH that certain permanent, non-exclusive fire protection water supply line and maintenance easement and right-of-way thereto across said Parcel A as more particularly set forth in Fire Protection Water Supply Line and Maintenance Easement recorded in the aforesaid Clerk's Office on December 26, 2001 as Instrument No. 200112260137852.

FURTHER TOGETHER WITH that certain permanent, non-exclusive easement for ingress and egress to and from the public road, i.e., Godwin Drive (Virginia State Route 661) over and across said Parcel A as more particularly set forth in Ingress and Egress Access Easement recorded in the aforesaid Clerk's Office on December 26, 2001 as Instrument No. 200112260137856.

BEING the same property conveyed to Micron Technology, Inc., a Delaware corporation, by Special Warranty Deed from Dominion Semiconductor L.L.C., a Virginia limited liability company, dated April 22, 2002 and recorded April 22, 2002 among the land records of Prince William County, Virginia as

Instrument No. 200204220051249, recorded April 26, 2002 as Instrument No. 200204260053995.

Exhibit B

Depiction of the Premises

[Picture Showing Premises]

Exhibit C

Scope of Work

SCOPE	Estimated Start	Estimated Finish
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
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[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]
[***]	[***]	[***]

Exhibit D

Memorandum of Lease

When recorded, return to:
Jones Waldo Holbrook & McDonough, P.C.
170 S. Main Street, Suite 1500
Salt Lake City, Utah 84101-1622
Attn: Glen D. Watkins

Space above for recorder's use

DEED OF LEASE

This Deed of Lease is dated as of January 6, 2006, by and between IM Flash Technologies, LLC, a Delaware limited liability company with an address at 1550 East 3400 North, Lehi, Utah 84043 ("Tenant") and Micron Technology, Inc., a Delaware corporation with an address at 8000 S. Federal Way, Mail Stop 1-507, Boise, ID 83716 ("Landlord").

1. For and in consideration of Ten Dollars ($10.00) and other good and valuable consideration paid and exchanged between Landlord and Tenant, Landlord has leased to Tenant and Tenant has leased from Landlord, a designated portion (as shown on Exhibit A) of a certain building located at 9600 Godwin Drive, Manassas, Virginia, 20110 (the "Building"), on property more particularly described on Exhibit B attached hereto (the "Land"), pursuant to a certain MTV Lease Agreement dated as of even date herewith between Landlord and Tenant (the "Lease"). Under the Lease and in accordance with its terms, Tenant has the nonexclusive right to use the Common Areas (as defined therein) that are located within the Building and on the Land.

2. The term of the Lease commenced on the date hereof and expires, unless sooner terminated as set forth in the Lease, on the tenth anniversary of the date hereof; provided, however, that the term shall automatically extend for a period coterminous with any Renewal Term as defined in that certain Operating Agreement dated January 6, 2006 between Micron and Intel (the "Term").

3. Landlord and Tenant execute this Deed of Lease for purposes of recordation and notice of the Lease and do not intend to change any provision of the Lease.

NOTE TO RECORDER: THIS INSTRUMENT IS EXEMPT FROM THE STATE OF VIRGINIA RECORDATION TAX (AS IMPOSED BY § 58.1-801 OF THE VIRGINIA CODE) PURSUANT TO § 58.1-811A(10) OF THE VIRGINIA CODE SINCE THIS INSTRUMENT EVIDENCES A CONVEYANCE TO A LIMITED LIABILITY COMPANY WHERE THE

GRANTOR (LANDLORD) IS ENTITLED TO RECEIVE NOT LESS THAN 50% OF THE PROFITS AND SURPLUS OF SUCH LIMITED LIABILITY COMPANY.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Deed of Lease as of the date first above written.

Micron Technology, Inc.

By: _____
Name: _____
Title: _____

IM Flash Technologies, LLC

By: _____
Name: _____
Title: _____

STATE OF)
) SS.
COUNTY OF)

Acknowledged before me a Notary Public in and for the aforementioned County and State this day of January, 2006 by the of Micron Technology, Inc., a Delaware corporation, on behalf of such corporation.

_____
Notary Public

STATE OF)
) SS.
COUNTY OF)

Acknowledged before me a Notary Public in and for the aforementioned County and State this day of January, 2006 by the of IM Flash Technologies, LLC, a Delaware limited liability company, on behalf of such company.

_____
Notary Public

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

PRODUCT DESIGNS ASSIGNMENT AGREEMENT

This **PRODUCT DESIGNS ASSIGNMENT AGREEMENT** ("**Agreement**") is made and entered into as of this 6th day of January, 2006 ("**Effective Date**"), by and between Intel Corporation, a Delaware corporation ("**Intel**"), and Micron Technology, Inc., a Delaware corporation ("**Micron**"). (Micron and Intel are referred to in this Agreement individually as a "**Party**" and collectively, as the "**Parties**.")

RECITALS

A. Micron has produced certain NAND Flash Memory Designs (as defined hereinafter).

B. Micron and Intel have agreed that Micron will transfer and assign to Intel all of Micron's ownership in and to certain NAND Flash Memory Designs (as defined hereinafter), upon the terms and subject to the conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows:

ARTICLE 1

DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions.

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"**Affiliate**" means, a Person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"[***]" shall mean the **[***]**, if any, from the list set forth in Schedule 5 within the time period specified therein.

"**Business Day**" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of Delaware are authorized or required by Applicable Law to be closed.

"**Confidentiality Agreement**" means that Mutual Confidentiality Agreement by and among the Joint Venture Company, Intel and Micron dated as of the Effective Date.

"**Controller Supporting Materials**" shall have the meaning set forth in Section 3.1(b).

"**Effective Date**" shall have the meaning set forth in the preamble to this Agreement.

"**Flash Memory Integrated Circuit**" means a non-volatile memory integrated circuit that contains memory cells that are electrically programmable and electrically erasable whereby the memory cells consist of one or more transistors that have a floating gate, charge-trapping regions or any other functionally equivalent structure utilizing one or more different charge levels (including binary or multi-level cell structures) with or without any on-chip control, I/O and other support circuitry.

"**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of a Party and includes, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party or third-party nonperformance (except for delays caused by a Party's subcontractors or agents).

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"**In-Process Designs**" means those Pre-existing Product Designs listed on Schedule 1 indicated as "In-Process."

"**Intel**" shall have the meaning set forth in the preamble to this Agreement.

"**[***]**" means that **[***]**.

"**IP Rights**" means copyrights, trade secrets, Mask Work Rights and registrations of any of the foregoing anywhere in the world.

"**Joint Venture Company**" means IM Flash Technologies, LLC, a Delaware limited liability company that is the subject of the Joint Venture Documents.

"**Joint Venture Documents**" means that certain Master Agreement by and between the Parties dated November 18, 2005 and each agreement referenced therein (whether directly or indirectly through reference in any of such referenced agreements).

"**LLC Operating Agreement**" means the Limited Liability Company Operating Agreement, dated as of the Effective Date, by and between the Parties.

"**Losses**" shall mean, collectively, any and all liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, and under any similar counterpart laws in countries other than the United States.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Missing Materials**" shall have the meaning set forth in Section 2.4.

"**NAND Controller**" means a discrete integrated circuit device that controls the data input and output to/from the memory array of the NAND Flash Memory Die.

"**NAND Flash Memory Design**" means, with respect to a NAND Flash Memory Die, the corresponding design components, materials and information listed on Schedule 2, and all IP Rights in and to those design components, materials and information listed on Schedule 2. Notwithstanding anything to the contrary in the foregoing, NAND Flash Memory Design shall not include any Patent Rights.

"**NAND Flash Memory Die**" means a discrete integrated circuit die, wherein such die includes at least one NAND Flash Memory Integrated Circuit and such die is designed, developed, marketed and used primarily as a non-volatile memory die.

"**NAND Flash Memory Die Package**" means a discrete integrated circuit package for a NAND Flash Memory Die, including TSOP, COB, BOC, BGA and FBGA or other type package, wherein such package contains only one or more NAND Flash Memory Die but no other die.

"**NAND Flash Memory Integrated Circuit**" means a Flash Memory Integrated Circuit wherein the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"**NAND Flash Memory Product**" means any NAND Flash Memory Wafer, NAND Flash Memory Die or NAND Flash Memory Die Package.

"**NAND Flash Memory Wafer**" means a prime wafer that has been processed to the point of containing multiple NAND Flash Memory Die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor die.

"**Party**" and "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

"**Patent Rights**" means any and all issued and unexpired patents and pending patent applications in any country in the world, together with any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Permitted Affiliate**" means, with respect to a Party, any Affiliate of such Party except to the extent otherwise agreed by Intel and Micron in any other Joint Venture Document (such exception being applicable only while any applicable term(s) of the Joint Venture Documents remain in effect).

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, individual, business, trust, estate or any other entity or organization of any kind or character from any form of association.

"**Pre-existing Product Designs**" means the NAND Flash Memory Designs, as and to the extent that each element thereof exists on the Effective Date, for each of the NAND Flash Memory Products listed on Schedule 1.

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable Specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the Specifications.

"**Publicly Available Software**" means (a) any Software that contains, or is derived in any manner (in whole or in part) from, any Software that is distributed as free Software, open source Software (*e.g.* Linux) or similar licensing or distribution models; and (b) any Software that requires as a condition of use, modification and/or distribution of such Software that such Software or other Software incorporated into, derived from or distributed with such Software (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making derivative works, or (iii) be redistributable at no charge. Publicly Available Software includes Software licensed or distributed under any of the following: (1) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (2) the Artistic License *(e.g.*, PERL); (3) the Mozilla Public License; (4) the Netscape Public License; (5) the Sun Community Source License (SCSL); (6) the Sun Industry Source License (SISL); and (7) the Apache Software license.

"**Software**" means computer program instruction code, whether in human-readable source code form, machine-executable binary form, firmware, scripts, interpretive text, or otherwise. For avoidance of doubt, Software does not include databases and other information stored in electronic form, other than executable instruction codes or source code that is intended to be compiled into executable instruction codes.

"**Specifications**" means those specifications used to describe, characterize, and define the quality, functionality and/or performance of any NAND Flash Memory Die, including any interim performance requirements at Probe Testing or other testing.

"**Supporting Materials**" means, with respect to each NAND Flash Memory Design, those things set forth on Schedule 3 solely as and to the extent (a) such things exist on the Effective Date, (b) they are either owned by Micron or are licensed to Micron with the right to sublicense without any further payment to any Third Party, and (c) Micron is not prohibited by Applicable Law or contractual restriction from disclosing or licensing as contemplated under this Agreement.

"**Tangible Design Package**" shall have the meaning set forth in Section 2.3 below.

"**Term**" shall have the meaning set forth in Section 8.1.

"**Third Party**" means any Person other than Micron or Intel.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (3) words in the singular include the plural and visa versa, (4) the term "including" means "including without limitation," and (5) the terms "herein," "hereof," "hereunder" and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "day" or "days" will mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

ARTICLE 2

PRE-EXISTING DESIGNS

2.1 Assignment. Subject to the terms and conditions of this Agreement, Micron, on behalf of itself and its Affiliates, hereby grants, conveys and assigns (and agrees to cause its Affiliates to grant, convey and assign) to Intel, by execution of this Agreement (or, where appropriate or required, by execution of separate instruments of assignment), all right, title and interest that Micron and Affiliates of Micron have in and to the Pre-existing Product Designs and **[***]**, to be held and enjoyed by Intel and Intel's successors and assigns.

2.2 Further Assurances. For a period of **[***]** from the Effective Date, Micron will, without receiving any further consideration, at the reasonable request of Intel, do (and cause Affiliates of Micron to do) all lawful and just acts that are necessary to record and perfect the transfer of ownership to Intel of any IP Rights in and to the Pre-existing Product Designs and **[***]**, including execution and acknowledgement of (and causing its Affiliates to execute and acknowledge) assignments and other instruments in a form reasonably

required by Intel for each relevant jurisdiction. All costs and expenses associated with recording or perfecting such transfer of ownership shall be borne solely by Intel.

2.3 Delivery. Promptly following the Effective Date, except for the In-Process Designs, Micron shall deliver to Intel the tangible information and materials embodying the Pre-existing Product Designs and Supporting Materials in formats and on storage media mutually agreed to by the Parties (hereinafter, the "**Tangible Design Package**"), in accordance with the delivery protocol set forth on Schedule 6. Within **[***]** of the Effective Date, Micron shall deliver to Intel the datasheets and all errata thereto (as identified in Schedule 2) associated with the Pre-existing Product Designs other than the In-Process Designs.

2.4 Missing Materials. If within **[***]** of the Effective Date, Intel identifies any information, documents or any other materials that is/are missing from the Tangible Design Package ("**Missing Materials**") subsequent to delivery of the Tangible Design Package by Micron, Intel may request Micron in writing to deliver the Missing Materials to Intel within a period of time identified by Intel, and Micron shall deliver such Missing Materials within such period of time and in accordance with the delivery protocol set forth on Schedule 6, *provided that*:

(a) the period of time identified by Intel for delivery of the Missing Materials is reasonable considering (i) the nature of those specific Missing Materials, and (ii) the reason why those Missing Materials were not previously delivered, and

(b) Intel describes the Missing Materials with a degree of specificity that Micron is reasonably able to ascertain.

If Intel identifies any Missing Materials after the foregoing **[***]** time period but before **[***]** after the delivery of the Pre-existing Product Designs other than the In-Process Designs, Intel may request Micron in writing to deliver the Missing Materials to the Intel within a period of time identified by Intel consistent with foregoing clauses (a) and (b), and Micron shall use reasonable efforts to deliver such Missing Materials to the extent in existence at the time of such request in the form that should have been delivered previously.

2.5 Training. During the **[***]** period commencing on the Effective Date, Micron will provide a reasonable level of training to design personnel of Intel regarding the Pre-existing Product Designs, other than the In-Process Designs, and each such design's corresponding Supporting Materials.

ARTICLE 3

LICENSES AND RESERVATION OF RIGHTS

3.1 License to Supporting Materials.

(a) Micron hereby grants to Intel **[***]**, perpetual, **[***]**, fully paid up, **[***]**, license under all IP Rights owned or licensable by Micron in the Supporting Materials **[***]**, subject to the terms and conditions of this Agreement and, for so long as any applicable term(s) of the Joint Venture

Documents remain in effect, the applicable terms of the Joint Venture Documents. The foregoing license further includes the **[***]**. The license granted in the first sentence of this Section 3.1(a) includes the **[***]**.

(b) With respect to any of the Supporting Materials identified on Schedule 3 indicated as specifically related to a "NAND Controller Board" ("**Controller Supporting Materials**"), the license under Section 3.1(a) is **[***]**, but Intel shall not extract or separate the Controller Supporting Materials from such board or attempt to reverse engineer or copy such Controller Supporting Materials.

(c) With respect to any of the Supporting Materials identified on Schedule 3 that constitute an "IBIS model", the license under Section 3.1(a) includes the **[***]**.

3.2 No Other Rights. No other rights are granted hereunder by either Party, by implication, estoppel, statute or otherwise, except as expressly provided herein. Without limiting the generality of the foregoing, (a) Intel agrees and acknowledges that no rights are granted under this Agreement by Micron to any Patent Rights, copyright, Mask Work Rights, trade secret, trademark or other intellectual property right except as expressly granted hereunder with respect to the Pre-existing Product Designs or the Supporting Materials, and (b) Micron agrees and acknowledges that no rights are granted under this Agreement by Intel to any Patent Rights, copyright, Mask Work Rights, trade secret, trademark or other intellectual property right with respect to the Pre-existing Product Designs. **[***]**.

3.3 Limitation on Obligation to Disclose or License. Anything to the contrary notwithstanding, Micron shall not be obligated to disclose to Intel (or any other Person) or license to Intel any portion of the Supporting Materials with respect to which Micron is prevented by Applicable Law or contractual restriction from so disclosing or licensing or which would require payment by Micron to any Third Party. Moreover, use of the NAND Flash Memory Designs, Tangible Design Package and Supporting Materials may require use of Software owned by a Third Party for which no rights to use such Software are conferred by Micron to Intel hereunder. Any such Software or hardware required to use the Supporting

Materials or Tangible Design Package is solely the responsibility of Intel. If Micron determines that it is unable to deliver any of the Supporting Materials or Tangible Design Package due to the limitations in this Section 3.3, then Micron will promptly notify Intel of same.

ARTICLE 4

PRICE AND PAYMENT

4.1 Price for Assignment of Product Designs. In full consideration for (a) the assignment of the Pre-existing Product Designs and the delivery of the Tangible Design Package and (b) the **[***]**, Intel shall pay to Micron on the Effective Date the respective amounts therefor specified on Schedule 4. For clarification, in no event shall Intel or any Affiliate of Intel owe to Micron, Affiliates of Micron, or any other Person any money in connection with this Agreement beyond the amount specified on Schedule 4.

4.2 Payments. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars ($ U.S.).

4.3 Taxes.

(a) Transfer of Intangible Rights. The Parties agree that any rights transferred pursuant to this Agreement constitute intangible personal property rights comprised of a copyright interest and/or a patent interest (as such terms are defined in California Sale and Use Tax Regulation 1507). Consequently, this Agreement is considered to be a "Technology Transfer Agreement" as defined in California Revenue and Taxation Code section 6012(c)(10) and California Sale and Use Tax Regulations 1507. Because this Agreement represents a transfer of intangible property rights, and because this Agreement is considered to be a Technology Transfer Agreement, no sales or use taxes should be imposed by the state of Utah, Idaho or Virginia, or in California, respectively, on the transfers pursuant to this Agreement, other than to the value of any tangible personal property included in such transfer as

provided in Section 4.3(b) below, and neither Party has an obligation under this Agreement to collect or remit sales or use tax on the transfer of such intangible personal property rights.

(b) Tangible Personal Property Included in Transfers. To the extent that the rights transferred pursuant to this Agreement are transferred through the use of tangible property such as tape or compact disc, the Parties agree that the amount of any applicable sales or use tax shall be determined based upon a reasonable determination of fair market value for such tangible property, and that any and all sales or use tax shall be stated separately on Micron's invoice, collected from Intel, and shall be remitted by Micron to the appropriate tax authority, unless Intel provides valid proof of tax exemption prior to the effective date or otherwise as permitted by law prior to the time Micron is required to pay such taxes to the appropriate tax authority.

ARTICLE 5

WARRANTIES; DISCLAIMERS

5.1 Warranties. Micron represents and warrants to Intel that, to the best of Micron's knowledge, as of the Effective Date:

(a) Micron has full title to, and ownership of, the [***] and the **[***]** free and clear of all liens and has the right to transfer such ownership to Intel;

(b) **[***]**;

(c) Micron has the right to transfer the Tangible Design Package to Intel;

(d) Micron has the right to grant the licenses to the Supported Materials granted hereunder;

(e) Micron has not granted any rights in or to the Pre-existing Product Designs or Supporting Materials that conflict with the rights granted to Intel under this Agreement;

(f) there are no unresolved claims, demands or pending litigation relating to the Pre-existing Product Designs or Supporting Materials; and

(g) the Pre-existing Product Designs and Supporting Materials do not contain any Publicly Available Software.

The foregoing representations and warranties shall terminate as of the tenth (10^{th}) anniversary of the Effective Date, except for Section 5.1(f), which shall terminate as of the second (2^{nd}) anniversary of the Effective Date. Any claim by Intel that any representation or warranty was untrue must be made before expiration of the applicable foregoing time period, otherwise Micron shall have no liability whatsoever with respect to any such representations and warranties.

5.2 No Implied Obligation. Nothing contained in this Agreement shall be construed as:

(a) a warranty or representation by either of the Parties to this Agreement as to the validity, enforceability or scope of any class or type of intellectual property assigned or licensed hereunder;

(b) a warranty or representation that any manufacture, sale, lease, use or other disposition of the Pre-existing Product Designs, Tangible Design Package, Supporting Materials or any products based on any of the foregoing will be free from infringement, misappropriation or other violation of any Patent Rights or other intellectual property rights other than the intellectual property licensed hereunder;

(c) an agreement to bring or prosecute proceedings against Third Parties for infringement or conferring any right to bring or prosecute proceedings against Third Parties for infringement of any of the Supporting Materials;

(d) conferring any right to use in advertising, publicity, or otherwise, any trademark, trade name or names, or any contraction, abbreviation or simulation thereof, of either Party; or

(e) requiring either Party to defend any proceeding brought by a Third Party challenging or concerning the validity of the IP Rights in the Pre-existing Product Designs or Supporting Materials, **[***]**.

5.3 Disclaimer. EXCEPT AS PROVIDED IN SECTION 5.1, MICRON ASSIGNS THE PRE-EXISTING PRODUCT DESIGNS, TRANSFERS THE TANGIBLE DESIGN PACKAGE AND LICENSES THE SUPPORTING MATERIALS ON AN "AS IS," "WHERE IS" (BUT SUBJECT TO MICRON'S DELIVERY OBLIGATIONS UNDER ARTICLE 2) BASIS, WITH ALL FAULTS AND DEFECTS, AND WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. WITHOUT LIMITING THE FOREGOING, EXCEPT AS PROVIDED IN SECTION 5.1, MICRON DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT WITH RESPECT TO THE FOREGOING. EXCEPT AS PROVIDED IN SECTION 5.1, MICRON MAKES NO WARRANTIES WITH RESPECT TO INTEL'S ABILITY TO: (A) USE ANY OF THE PRE-EXISTING PRODUCT DESIGNS, TANGIBLE DESIGN PACKAGE OR SUPPORTING MATERIALS, OR (B) MANUFACTURE OR HAVE MANUFACTURED ANY PRODUCTS BASED THEREON. [***]. SUCH DISCLAIMERS ARE NOT INTENDED TO AFFECT ANY DIRECT CLAIMS OR REMEDIES INTEL MAY ASSERT AGAINST ANY THIRD PARTY OR PREVENT THE PASS-THROUGH OR ASSIGNMENT TO INTEL OF ANY RIGHTS MICRON MAY HAVE AGAINST ANY THIRD PARTY.

ARTICLE 6

LIMITATION OF LIABILITY

6.1 LIMITATION OF LIABILITY. EXCEPT FOR A BREACH OF ARTICLE 7, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH HEREIN ARE AN ESSENTIAL

ELEMENT IN THE CONSIDERATION PROVIDED BY EACH PARTY UNDER THIS AGREEMENT.

ARTICLE 7

CONFIDENTIALITY

7.1 Confidentiality Obligations. All information provided, disclosed or obtained in connection with this Agreement or the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Confidentiality Agreement.

(a) All Pre-existing Product Designs and the portions of the Tangible Design Package related thereto shall be considered "Confidential Information" under the Confidentiality Agreement for which Micron shall be considered a "Receiving Party" under such agreement.

(b) All Supporting Materials and the portions of the Tangible Design Package related thereto shall be considered "Confidential Information" under the Confidentiality Agreement for which Intel shall be considered a "Receiving Party" under such agreement.

(c) The terms and conditions of this Agreement shall be considered "Confidential Information" under the Confidentiality Agreement for which Micron and Intel shall each be considered a "Receiving Party" under such agreement.

7.2 Permitted Disclosures.

(a) With respect to any of the Supporting Materials that constitute an **[***]** (and that is Confidential Information), Intel or its sublicensed Permitted Affiliate(s) hereunder **[***]**.

(b) Intel or its sublicensed Permitted Affiliate(s) **[***]**.

(c) Intel or its sublicensed Permitted Affiliate(s) **[***]**.

(d) With respect to any "Confidential Information" (as that term is defined in the Confidentiality Agreement) listed in **[***]**.

(e) Intel shall not and shall cause it Permitted Affiliates not to **[***]**.

7.3 Conflicts. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

ARTICLE 8

TERM AND TERMINATION

8.1 Term. The term of this Agreement commences on the Effective Date and continues in effect in perpetuity (such period of time, the "**Term**").

8.2 No Termination. This Agreement may not be terminated for any reason, including breach by a Party.

ARTICLE 9

MISCELLANEOUS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, (c) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (d) delivery in person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Intel:

Intel Corporation
1900 Prairie City Road
FM3-63
Folsom, CA 95630

Attention: [***]
Fax: [***]

with a copy to:

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95054
Attention: General Counsel
Facsimile: (408) 653-8050

If to Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Telephone: (208) 368-4517
Facsimile: (208) 368-4537
Attention: General Counsel

9.2 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

9.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. Except as permitted by the Joint Venture Documents, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, without the prior written consent of the nonassigning Party.

9.4 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

9.5 Choice of Law. [***].

9.6 Jurisdiction; Venue. [***].

9.7 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

9.8 Force Majeure. The Parties hereto shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event.

9.9 Export Control. Each Party agrees that it will not knowingly: (i) export or re-export, directly or indirectly, any technical data (as defined by the U.S. Export Administration Regulations) provided by the other Party or (ii) disclose such technical data for use in, or export or re-export directly or indirectly, any direct product of such technical data, including Software, to any destination to which such export or re-export is restricted or prohibited by United States or non-United States law, without obtaining prior authorization from the U.S. Department of Commerce and other competent Government Entities to the extent required by Applicable Laws.

9.10 Entire Agreement. This Agreement, together with the Schedules attached hereto and the agreements and instruments expressly provided for herein, and, for so long as any applicable term(s) of the Joint Venture Documents remain in effect, the applicable terms of the Joint Venture Documents, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

9.11 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

9.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Signature Page Follows

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the Effective Date.

INTEL CORPORATION

By: /s/ ARVIND SODHANI
Name: Arvind Sodhani
Title: Senior Vice President, Intel Corporation
President, Intel Capital

MICRON TECHNOLOGY, INC.

By: /s/ STEVEN R. APPLETON
Name: Steven R. Appleton
Title: Chief Executive Officer and President

THIS IS THE SIGNATURE PAGE FOR THE PRODUCT DESIGNS ASSIGNMENT AGREEMENT ENTERED INTO BY AND BETWEEN INTEL CORPORATION AND MICRON TECHNOLOGY, INC.

SCHEDULES

Schedule 1	Pre-Existing Product Design Designations
Schedule 2	NAND Flash Memory Design Materials and Information
Schedule 3	Supporting Materials
Schedule 4	Payments
Schedule 5	[***]
Schedule 6	Delivery Protocol

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

NAND Flash Supply Agreement
Between Micron and Apple

This NAND Flash Supply Agreement (the "***Agreement***") is entered into by and between Apple, a California corporation doing business at 1 Infinite Loop, Cupertino, California ("***Apple***"), and Micron Technology, Inc., a Delaware corporation, doing business at 8000 S. Federal Way, P.O. Box 6, Boise, Idaho 83707 ("***Micron***") as of the Effective Date (as defined below). Apple and Micron are sometimes individually referred to as a "***Party***" and collectively as the "***Parties***".

Purpose

Apple is entering into this Agreement to enable it to have a long term supply of NAND flash products from Micron, and Micron is entering into this Agreement to enable it to supply on a long term basis NAND flash products to Apple. This Agreement sets forth the terms and conditions on which Micron will supply to Apple, and Apple will purchase from Micron**,** NAND flash products.

Agreement

In consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. Venture

1.1 On or before October 31, 2005, Micron intends to execute an agreement with Intel Corporation, a Delaware corporation ("***Intel***"), to form a Delaware limited liability company (the "***Manufacturer***") to manufacture NAND flash products. Intel and Micron will be the only members of the Manufacturer. Micron will be a 51% owner of the Manufacturer and 51% of the Manufacturer's wafer starts will be for NAND flash products sold to Micron.

1.2 The chief executive officer of Micron will recommend to the Board of Directors of Micron that the formation of the Manufacturer be approved by the Board of Directors on or before October 31, 2005.

2. Term

2.1 Sections 1, 2.2, 9, 11 through 18 and this Section 2.1 of this Agreement will take effect when the Agreement is executed by Micron and Apple.

2.2 The remaining provisions of this Agreement will not take effect unless and until the closing of the transaction to form the Manufacturer occurs (the "***Effective Date***"). If the closing of the transaction to form the Manufacturer does not occur before [***], the Parties agree to amend Exhibit A with respect to the Supply Commitment

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for each calendar quarter to reflect the delay between the date of the beginning of the Supply Commitment specified in Exhibit A and the actual closing date of such transaction on a day for day basis. If the closing of the transaction to form the Manufacturer does not occur by [***], Apple may elect not to enter into the provisions of this Agreement that are not effective under Section 2.1 by providing written notice to Micron by [***]. If the closing of the transaction to form the Manufacturer does not occur by [***], Micron may elect not to enter into the provisions of this Agreement that are not effective under Section 2.1 by providing written notice to Apple by [***]. In the event that the closing of the transaction to form the Manufacturer does not occur by [***], then the provisions of the Agreement that are not effective under Section 2.1 shall not take effect and this Agreement shall terminate. If the remaining provisions of this Agreement become effective as provided in this Section 2.2, this Agreement will expire on December 31, 2010, unless terminated sooner in accordance with Sections 2.3 or 2.4 below or by written agreement of the Parties.

2.3 Apple may terminate this Agreement if: (i) Micron materially breaches this Agreement and fails to cure such breach within 30 days after receipt of written notice from Apple; or (ii) Micron or the Manufacturer files or has filed against it a petition in bankruptcy, has a receiver appointed to handle its assets or affairs, or makes or attempts to make an assignment for the benefit of creditors, or is dissolved (other than in connection with the acquisition of all of the capital stock or substantially all of the assets of Micron).

2.4 Micron may terminate this Agreement if: (i) Apple materially breaches this Agreement and fails to cure such breach within 30 days after receipt of written notice from Micron; or (ii) Apple files or has filed against it a petition in bankruptcy, has a receiver appointed to handle its assets or affairs, or makes or attempts to make an assignment for the benefit of creditors, or is dissolved (other than in connection with the acquisition of all of the capital stock or substantially all of the assets of Apple).

2.5 The last sentence of Section 3.3, and Sections 3.6, 7.3, 9, and 11 through 18 of this Agreement shall survive termination or expiration of this Agreement. Section 3.4 will survive with respect to the last calendar quarter of the term of the Agreement until the calculation is made with respect to such quarter and Section 10 will survive for a period of two (2) years after the termination or expiration date.

3. Supply Commitment by Micron

3.1 Micron agrees to supply to Apple the number of gigabytes ("***GBs***") identified in Exhibit A as the supply commitment for each calendar quarter (as may be adjusted under Sections 2 or 3 of Exhibit A), (the "***Supply Commitment***"). Micron will accept and fulfill all P.O.s (as defined in Section 5.4) for Micron Products (as defined in Exhibit D) placed by Apple in accordance with Section 5.4, except to the extent the total GBs ordered for delivery in a calendar quarter exceeds the Supply Commitment for that calendar quarter. At least [***] ([***]) days prior to each calendar quarter,

Micron will provide to Apple written notice of (i) the total number of GBs that Micron will make available for sale to Apple during such quarter and (ii) the number of GBs of each gigabit die density available for use in such Micron Products during such quarter, consistent with the Density Road Map (as defined in Section 8.1).

3.2 (a) If Micron reasonably believes it will be unable to meet the Supply Commitment in any calendar quarter during the term of this Agreement, Micron will immediately notify Apple in writing of such shortage and the GBs it will be able to supply to Apple if Micron takes the actions set forth in Section 3.2(c) below.

(b) Within [***] ([***]) business days after receipt of such notification issued under Section 3.2(a), Apple may [***].

(c) If Apple [***], Micron will, to the extent necessary to meet such P.O.s: (i) direct the Manufacturer to use Micron's allocation of wafer starts, work in process (if possible), and the resulting output from such wafer starts to manufacture Micron Products; and (ii) make available for sale to Apple finished Micron Products delivered to Micron or held by the Manufacturer for Micron for such quarter, and any Micron Products manufactured for Micron in previous quarters for later delivery to Apple, up to [***].

3.3 If in any calendar quarter Micron did not meet at least [***]% of the Supply Commitment for such calendar quarter for any reason, and:

(a) Micron provided notice under Section 3.2(a) and Apple [***] P.O.s for Micron Product, as required by Section 3.2(b), that Micron was unable to fulfill in such quarter; or

(b) Micron provided notice under Section 3.2(a), Apple [***] P.O.s for Micron Product, as required by Section 3.2(b), and Apple provided written notice representing that it would have placed P.O.s up to the Supply Commitment but did not due to the notification it received from Micron under Section 3.2(a); or

(c) Micron did not provide notice under Section 3.2(a),

then Micron will promptly reimburse the portion of the Pre-Payment equal to the sum of:

(i) to the extent Apple is able to purchase NAND flash products [***], the difference between (x) [***] and (y) [***]; and

(ii) to the extent Apple is able to purchase NAND flash products [***], the difference between (x) [***], and (y) [***]; and

(iii) to the extent (x) Apple is unable to purchase NAND flash products [***], (y) Apple provides Micron written notice representing that it actively contacted its other suppliers and other third party suppliers of NAND flash products to replace the Micron Products Apple placed P.O.s for, in accordance with Section 5.4, for delivery during such quarter that Micron was unable to fulfill during such quarter (or would have placed P.O.s for, pursuant to Section 5.4, for delivery during such quarter as identified in the notice provided by Apple under Section 3.3(b) above), but NAND flash products were not available for sale from such suppliers, and (z) [***]; and

(iv) the product of (x) [***] GB and (y) [***] USD. For purposes of this Section 3.3(iv), "***Shortfall***" shall mean the difference between the Supply Commitment for such quarter and the number of GBs of Micron Products purchased by Apple during such quarter.

Notwithstanding anything herein to the contrary, in the event Micron has paid to Apple [***], Micron shall have no further liability under this Section 3.3.

3.4 If in any calendar quarter Micron failed to meet the Supply Commitment for such quarter, but (A) had GBs available which could have been supplied to Apple [***] (unless otherwise permitted under additional purchase terms and conditions specifically referencing this Agreement and signed by authorized representatives of both parties) or (B) [***] (unless otherwise permitted under additional purchase terms and

conditions specifically referencing this Agreement and signed by authorized representatives of both parties), and if (i) the actual percentage of GBs that Micron [***] to Apple was less than [***]% if such calendar quarter was in [***], [***]% if in [***], or [***]% if in [***], of Micron's total GB output from the Manufacturer for such quarter; (ii) the then current Supply Commitment is greater than [***]% of the original Supply Commitment set forth in Exhibit A, and (iii) Apple has placed P.O.s in accordance with Section 5.4 for Micron Products [***] pursuant to Section 3.1 (not to exceed the Supply Commitment) and such P.O.s have not been cancelled during the calendar quarter or re-scheduled for delivery after the calendar quarter by Apple for any reason other than failure to meet the conditions in Section 4.2 (such an occurrence referred to as a "***Willful Failure to Supply***"), then Micron will promptly:

(a) pay Apple [***] above; provided, however, that if the Willful Failure to Supply occurs in a calendar quarter immediately after a calendar quarter in which Apple did not meet the conditions set forth in Section 3.4(iii) above, the [***] shall be as follows:

(i) in the event that [***].

(ii) in the event that it is determined under Section 3.4(a)(i) [***] then nevertheless Micron [***] under this Section 3.4 if the number of GB of Micron Products purchased by Apple during the quarter in which the Willful Failure to Supply occurs is greater than an amount equal to ("[***]"): (1) the product of: [***] and (B) the Supply Commitment for the quarter in which the Willful Failure to Supply occurs; or (2) if there was a calculation

under clause (1) immediately above in the prior quarter, the product of [***], the Supply Commitment for the most recent calendar quarter in which the Willful Failure to Supply occurs and [***], provided such product does not exceed the Supply Commitment for that quarter; or (3) if there was a calculation under clause (2) immediately above in the prior quarter, the product of the [***], the Supply Commitment for the most recent calendar quarter in which the Willful Failure to Supply occurs and [***], provided such product does not exceed the Supply Commitment for that quarter. [***].

(iii) in the event that it is determined under Section 3.4(a)(i) or (ii) [***] then the volume of GB subject to [***] shall be equal to the difference between (A) the lesser of (X) [***] and (Y) the number of GB of Micron Products which Apple placed P.O.s for Micron Products in accordance with Section 5.4 to be delivered during such quarter and (B) the number of GB of Micron Products which Apple purchased during such quarter (the "[***]"), Micron shall pay to Apple [***] under this Section 3.4 an amount equal to, [***], the difference between (1) [***] and (2) [***]. In each consecutive quarter thereafter in which a Willful Failure to Supply occurs, the volume of GBs subject to [***] shall be the product of [***], the Supply Commitment for the most recent calendar quarter in which the Willful Failure to Supply occurs and [***], but in no event shall the volume of GB subject to the [***] in any given quarter exceed the Supply Commitment for that quarter.

(b) if the aggregate amount to be paid by Micron in accordance with subsection (a) exceeds a lifetime cap of [***] US Dollars ($[***] USD) **("**[***]**")**, then, in addition to the amount of such cap, Micron shall reimburse Apple all of remaining Pre-Payment as of the date the cap is exceeded.

(c) the Parties agree that the [***] plus the reimbursement of the remaining Pre-Payment as of the date the [***] is exceeded, shall be the sole and exclusive remedy available to Apple under this Section 3.4. Nothing provided in this Section 3.4 will affect Micron's obligations with respect to the Supply Commitment for any calendar quarter.

3.5 Micron is not obligated to sell any Micron Products in excess of the Supply Commitment to Apple either on an annual or a quarterly basis under the terms and conditions of this Agreement. Further, nothing in this Section 3 adjusts the Supply Commitment.

3.6 The Parties agree [***].

4. Purchase Commitment by Apple

4.1 Subject to Section 4.2 and 5.4 below, Apple agrees to purchase from Micron in each calendar quarter [***] (as defined below) for such calendar quarter [***]; provided that the total amount in GBs of the highest density of NAND flash die contained in the Micron Products ordered pursuant to a P.O. for Micron Products (when aggregated with the other P.O.s for such Micron Products for delivery in such quarter) placed in accordance with Section 5.4 does not exceed the product of (i) the percentage set forth in the Density Roadmap for such die density during such quarter; and (ii) the Supply Commitment for such quarter. [***]. For the last two quarters of [***], and for the years [***], NAND flash products [***].

4.2 Micron's [***] and Apple's obligation to meet its Purchase Commitment for a particular quarter are expressly conditioned upon: (i) availability of Micron Products that are qualified for use in Apple Products; provided that Apple does not unreasonably withhold qualification; (ii) such Micron Products being available for delivery in time to meet the delivery date requested in accordance with the P.O. and forecast procedures; and (iii) conformance of such Micron Products with mutually agreed upon specifications and quality requirements.

If an Micron Product fails to meet applicable qualification requirements after being qualified by Apple, Apple will have no obligation to purchase such Micron Product from Micron unless and until Apple has re-qualified such Micron Product for use in Apple Products, provided that Apple does not unreasonably withhold such re-qualification. Apple will include Micron Products in Apple's component qualification process with NAND flash products provided by other suppliers, provided that the Micron Products meet Apple's minimum requirements for inclusion in such process and that samples are provided on a timely basis. During the QTM's (as defined in Section 8.3 below) the Parties will discuss the schedule and the timing needed to get samples of Micron Products into Apple's qualification process.

5. Forecast and Purchase Orders

5.1 Each [***], Apple will provide Micron with a [***] rolling forecast of its demand for Micron Products (the **"**[***]**"**). The [***] Forecast will be prepared in good faith and reflect Apple's best estimate of its demand for Micron Products. Each [***] Forecast will show volume and density requirements for the first [***] of such Forecast by week and for the second through [***] by month. [***] Forecasts will be delivered no later than November 30, February 28, May 30, and August 30 of each year for the [***] commencing on the first, second, third and fourth calendar [***], respectively; provided, however, that the first [***] Forecast will be delivered upon payment of the Initial Pre-Payment under Section 7.1 for the subsequent [***]. Micron will respond with a statement of supply availability for the [***] covered by such [***] Forecast within [***] ([***]) business days of receipt of the [***] Forecast. The supply availability will be prepared in good faith and reflect Micron's best estimate of its ability to supply Micron Products during such period.

5.2 On or before [***], Apple will give Micron a forecast for Apple's demand for Micron Products, including volume and density, for the upcoming [***] (the "[***] ***Forecasts***"). The [***] Forecasts will include forecasts for current and future Micron Products.

5.3 The rolling [***] Forecast and the [***] Forecast provided by Apple are for planning purposes only and do not constitute an obligation to purchase.

5.4 Micron will accept all purchase orders and, in the case of blanket purchase orders, subsequent shipping orders ("***P.O.s***"), submitted by Apple for Micron Products within the Supply Commitment, except that (i) if the total GBs of Micron Product in any P.O. for a quarter would exceed the Supply Commitment for such quarter, Micron shall not be obligated to accept such P.O. for such excess Micron Product; (ii) Micron shall not be obligated to accept any P.O. to the extent such P.O. would cause the amount of Micron Products to be delivered to Apple in the [***] or [***] month of a calendar quarter, respectively, to exceed [***] percent ([***]%) of the Supply Commitment for such quarter; and (iii) Micron shall not be obligated to accept any P.O. in any calendar quarter to the extent that the total GBs of the highest density of NAND flash die contained in the Micron Products ordered pursuant to a P.O. for

Micron Products (when aggregated with the other P.O.s for such Micron Products for delivery during such quarter) placed in accordance with this Section 5.4 exceeds the product of (i) the percentage set forth in the Density Roadmap for such die density during such quarter; and (ii) the Supply Commitment for such quarter. Micron will drop ship Micron Products to any location designated by Apple in a P.O. provided that Apple provides Micron with reasonable advance notice of a request to drop ship to a location Micron has not previously shipped to under this Agreement. Apple will issue P.O.s for Micron Products no less than [***] ([***]) days prior to shipment, unless the Parties agree in writing to a different time period. [***].

6. Pricing

6.1 Subject to Section 2.1 of Exhibit B, the price at which Micron will offer and sell Micron Products to Apple for incorporation into Apple Products under this Agreement will be as set forth in Exhibit B. [***].

7. Pre-Payment

7.1 Apple will pay Micron Two Hundred Fifty Million U.S. Dollars ($250,000,000 USD) (the "**Initial Pre-Payment**"): (i) on January 10, 2006 if the closing of the transaction to form the Manufacturer occurs before January 1, 2006; or (ii) if the closing of the transaction to form the Manufacturer occurs on or after January 1, 2006, within ten days after the closing of such transaction. If the Initial Pre-Payment is not timely paid, Micron may terminate this Agreement effective five (5) days after written notice to Apple. The Initial Pre-Payment, together with any additional amounts paid by Apple to Micron as additions to the Initial Pre-Payment under Exhibit A shall be referred to herein as the **"Pre-Payment"**. Micron shall be entitled to any interest earned on the Pre-Payment once paid by Apple.

7.2 Beginning on [***], the Pre-Payment will be applied by Micron on a dollar for dollar basis for those purchases of Micron Products by Apple, during a calendar year beginning with the first dollar of such purchases until such purchases equals [***]% of the Pre-Payment (the "***Annual Credit Amount***"). In the event Apple does not purchase Micron Products equal in value to the Annual Credit Amount during

such calendar year, any remaining portion thereof will be added to the Annual Credit Amount for the next calendar year.

7.3 If any portion of the Pre-Payment is remaining and has not otherwise been reimbursed on the earlier of December 31, 2010 and the termination of this Agreement, Micron will pay Apple the remaining portion of the Pre-Payment within 30 days after such date.

8. Micron Products and Apple Products

8.1 This Agreement, including the pricing of Micron Product as set forth in Section 6, shall apply to Micron Products purchased by Apple for use in Apple Products. Micron Products and Apple Products are defined in Exhibit D.

8.2 Any products ordered or purchased by Apple from Micron that are not Micron Products are not subject to the terms and conditions of this Agreement.

8.3 At least once per calendar quarter Apple's CTO group and Micron's CTO group will hold a technical meeting ("***QTM***") to discuss Apple's future requirements, and Micron's future supply outlook, including, without limitation, any proposed changes to the Density Road Map.

9. Non-Disclosure

9.1 The Parties will maintain the confidentiality of the existence of this Agreement, the terms and conditions thereof, and information exchanged in connection with the Agreement in accordance with the terms of the confidential non-disclosure agreement entered into between Apple and Micron dated March 9, 1999, as amended.

9.2 Micron and Apple agree that there shall be no public statements or releases regarding the proposed transaction, except as in the judgment of counsel is required by law to be made or as mutually agreed by the Parties.

9.3 If it is determined that disclosure is required by law, the person making such disclosure will notify the other Party in advance of any such disclosure, will coordinate with the others with respect to the content of such disclosure and will disclose only such information as is legally required to be disclosed in the opinion of legal counsel for the disclosing Party.

9.4 Subject to the foregoing, the Parties to this Agreement will cooperate with each other to coordinate all such public statements and releases to be made with respect to the purchase & supply transactions contemplated hereby.

10. Audit

Either Apple or Micron may appoint an independent auditor reasonably acceptable to the other party to review the other party's records no more than once in any calendar year (unless

the results of an audit disclose material irregularities, in which case, the auditing party may conduct quarterly audits for the next three quarters) to confirm that the other party has satisfied its obligations under this Agreement with regard to price and quantity commitments. The audited party will ensure that an employee who is knowledgeable with relevant records and business practices is available to facilitate any audit and will cooperate with the auditor's reasonable requests. The requesting party will pay for any audit unless the audit discloses that the other party materially breached such an obligation under this Agreement, in which case the other party will pay for the audit. Micron represents that, as of the consummation of the transaction between Micron and Intel regarding the formation of the Manufacturer, Micron will have the right to audit the Manufacturer to confirm that the Manufacturer has provided the percentage of products produced by the Manufacturer to Micron as set forth in Section 1.1 and, as applicable, has complied with Micron's direction to take the actions set forth in Section 3.2(c). Upon Apple's request, Micron will exercise such audit rights and make available the results of such audit to Apple.

11. Assignments

The Agreement shall be binding upon, and inure to the benefit of, the successors, representatives, and administrators of the parties. Neither party may assign this Agreement without the other party's prior written consent except to an acquiring party in connection with (i) the sale of a majority of the capital stock or all or substantially all of the assets of such party or (ii) the sale of all or substantially all of its assets related to this Agreement, in the case of Apple or Micron, or of its interest in the Manufacturer, in the case of Micron, by way of merger or acquisition provided such assignee assumes such party's rights and obligations under this Agreement; provided, however, that:

(i) [***];

(ii) Apple may terminate this Agreement [***] effective immediately upon written notice if Micron assigns this Agreement to [***]; and

(iii) Micron may terminate this Agreement [***] effective immediately upon written notice if Apple assigns this Agreement to [***].

In each case, such party shall exercise its right to terminate under this Section 11 within [***] after such assignment. In the event consent is required above, any purported assignment without the required written consent shall be void and of no effect.

(iv) Micron may not divest any portion of its ownership interest in the Manufacturer, or its rights in the wafer starts of the Manufacturer (51%, as of the Effective Date), to

any third party other than Intel without Apple's prior written consent except in connection with a transaction described above.

12. Other Terms and Conditions

This Agreement and the Micron Products purchased hereunder are subject to any additional purchase terms and conditions agreed to in a written agreement specifically referencing this Agreement and signed by authorized representatives of both parties, which are incorporated herein by reference.

13. Governing Law

The Agreement and the rights and obligations of the parties will be governed by and construed and enforced in accordance with the laws of the State of California as applied to agreements entered into and to be performed entirely within California between California residents, without regard to conflicts of law principles. The parties expressly agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods will not apply to the Agreement or to their relationship.

14. Dispute Resolution, Jurisdiction and Venue

If there is a dispute between the parties (whether or not the dispute arises out of or relates to the Agreement), the parties agree that they will first attempt to resolve the dispute through one senior management member of each party. If they are unable to do so within 60 days after the complaining party's written notice to the other party, the parties will then seek to resolve the dispute through non-binding mediation conducted in Santa Clara County or San Francisco County, California. Each party must bear its own expenses in connection with the mediation and must share equally the fees and expenses of the mediator. If the parties are unable to resolve the dispute within 60 days after commencing mediation, either party may commence litigation in the state or federal courts in Santa Clara County, California. The parties irrevocably submit to the exclusive jurisdiction of those courts and agree that final judgment in any action or proceeding brought in such courts will be conclusive and may be enforced in any other jurisdiction by suit on the judgment (a certified copy of which will be conclusive evidence of the judgment) or in any other manner provided by law. Process served personally or by registered or certified mail, return receipt requested, will constitute adequate service of process in any such action, suit or proceeding. Each party irrevocably waives to the fullest extent permitted by applicable law (i) any objection it may have to the laying of venue in any court referred to above; (ii) any claim that any such action or proceeding has been brought in an inconvenient forum; and (iii) any immunity that it or its assets may have from any suit, execution, attachment (whether provisional or final, in aid of execution, before judgment or otherwise) or other legal process. Notwithstanding the foregoing, either party may seek equitable relief in order to protect its confidential information or intellectual property at any time, provided it does so in the state or federal courts in Santa Clara County, California (and only those courts). The parties hereby waive any bond requirements for obtaining equitable relief. The confidentiality provisions of the Agreement will be enforceable under the provisions of the California Uniform Trade Secrets Act, California Civil Code Section 3426, as amended.

15. Headings

The section headings used in the Agreement are used for convenience only and are not to be considered in construing or interpreting the Agreement.

16. Severability

If a court of competent jurisdiction finds any provision of the Agreement unlawful or unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect.

17. Counterparts

The Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

18. Amendments

Except as specifically provided herein, the Agreement may be modified only by a written amendment referring to the Agreement and signed by authorized representatives of each party.

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

Apple	Micron
By: /s/ TIM D. COOK	By: /s/ STEVEN R. APPLETON
Name: Tim D. Cook	Name: Steven R. Appleton
Title: Executive Vice President, World-Wide Sales and Operations	Title: Chief Executive Officer and President
Date: October 13, 2005	Date: October 13, 2005

EXHIBIT A
Purchase Commitment, Supply Commitment and Contract Price

1. Purchase Commitment, Supply Commitment & Contract Price by Calendar Quarter

Item	Q1	Q2	Q3	Q4
2006				
Purchase Commitment	[***]	[***]	[***]	[***]
Supply Commitment	[***]	[***]	[***]	[***]
Contract Price	[***]	[***]	[***]	[***]
2007				
Purchase Commitment	[***]	[***]	[***]	[***]
Supply Commitment	[***]	[***]	[***]	[***]
Contract Price	[***]	[***]	[***]	[***]
2008				
Purchase Commitment	[***]	[***]	[***]	[***]
Supply Commitment	[***]	[***]	[***]	[***]
Contract Price	[***]	[***]	[***]	[***]
2009				
Purchase Commitment	[***]	[***]	[***]	[***]
Supply Commitment	[***]	[***]	[***]	[***]
Contract Price	[***]	[***]	[***]	[***]
2010				
Purchase Commitment	[***]	[***]	[***]	[***]
Supply Commitment	[***]	[***]	[***]	[***]
Contract Price	[***]	[***]	[***]	[***]

The Supply Commitment numbers above are in millions of GBs. Contract Prices are for one GB equivalents.

2. Transfers

2.1 If the allocation of Manufacturer wafer starts between Micron and Intel changes for any reason, Micron shall promptly notify Apple as to the amount of the increase or decrease, and Micron's Supply Commitment, Apple's Purchase Commitment, and the Pre-Payment shall decrease or increase, as the case may be, in a proportionate manner for all calendar quarters of this Agreement after such change as follows:

(a) Micron's Supply Commitment shall be revised to equal the [***];

(b) Apple's Purchase Commitment shall be revised to equal [***];

2.2 If Micron's Supply Commitment is reduced, Micron will reimburse Apple the amount of the Pre-Payment equal [***]; and

2.3 If Micron's Supply Commitment is increased, Apple shall pay to Micron, as additional Pre-Payment, the amount [***].

3. Supply Commitment Reduction

Micron's obligations with respect to the Supply Commitment will be reduced as follows:

3.1 The "***Percentage Purchased***" means the percentage equal [***].

3.2 The "***Percentage Available***" means the lesser of: [***].

3.3 The "***Purchase Commitment Adjustment***" means the percentage equal to [***].

3.4 The initial "***Adjustment Threshold***" is [***]%.

3.5 Subject to Section 3.6 below, if the average Purchase Commitment Adjustment for any [***] after [***] is less than the Adjustment Threshold, then Micron may, upon notice to Apple no later than [***] after the end of the [***], reduce the Supply Commitment for all remaining [***] during the term of this Agreement by the lesser of [***].

3.6 If the average Percentage Available for any [***] is less than the Adjustment Threshold and Apple has placed P.O.s, in accordance with Section 5.4 of the Agreement, for the total number of GBs made available for sale by Micron during each of the [***] pursuant to Section 3.1 of the Agreement (or if a notice has been provided by Micron pursuant to Section 3.2(a) of the Agreement, the number of GBs made available for sale pursuant to Section 3.2(a) of the Agreement) that meet the conditions set forth in Section 4.2 of the Agreement; and (ii) indicated pursuant to Section 3.3(b) of the Agreement, that Apple would have ordered additional Micron Products in each of such quarters if Micron had made more GBs available for sale, then the Adjustment Threshold will be reduced for all remaining calendar quarters during the term of this Agreement by [***]%.

3.7 In no event will the Supply Commitment for any calendar quarter be reduced below [***]% of the original Supply Commitment set forth in Section 1 above for such quarter. In no event will the Adjustment Threshold be reduced below [***]%.

3.8 In the event that the Supply Commitment is reduced under this Section 3, Micron will reimburse Apple [***].

3.9 To facilitate the calculation of the foregoing, Micron will use reasonable efforts to provide Apple with quarterly reports no later than [***] after the end of each calendar quarter, setting forth (i) the basis for calculation of the [***]; and (ii) [***].

3.10 [***].

4. Purchase Commitment in [***]

Micron only plans to make available for sale Micron Products with [***] during the [***], and [***] during [***]. In the event Apple has a need to purchase any GBs of NAND flash products [***], Apple agrees to [***]. During such period, Apple will provide Micron written notice specifying the number of GBs of Micron Products it will require at least [***] ([***]) days before the required delivery date. In the event Micron provides written notice within five (5) business days after Apple's written notice of the amount of GBs Micron will supply to Apple, Apple shall, within five (5) business days after Micron's response, place a P.O. in accordance with Section 5.4 of the Agreement for

delivery of the Micron Products specified in such notice, and Micron shall accept such P.O. in accordance with Section 5.4 of the Agreement. If Micron does not provide written notice that it is [***] under this Section 4 within five (5) business days after Apple's written notice, Apple shall be entitled to [***].

EXHIBIT B
Pricing Exhibit

The price of Micron Products purchased under this Agreement (the ***"Purchase Price"***) will be the lesser of: (a) the contract price set forth in Exhibit A for the applicable calendar quarter (the "***Contract Price***"); or (b) the [***].

1. [***]

[***].

[***].

2. Accrued [***]

2.1 If, at any time Micron Products are purchased [***].

2.2 [***].

3. Invoice Price

Micron will invoice Apple at Purchase Price in effect at the beginning of the calendar quarter (the ***"Invoice Price"***), but will reconcile pricing as follows:

[***].

EXHIBIT C

The percentages shown are percentages of gigabytes (GB) of output by product density.

Density Road Map

[***].

EXHIBIT D
Micron Products and Apple Products

1. "***Micron Products***" means NAND flash products available in packaging and pinouts [***] based on the densities available in accordance with the density roadmap in Exhibit C, which roadmap may be modified from time to time by Micron, upon agreement by Apple, which agreement by Apple shall not be unreasonably withheld or delayed (the "***Density Road Map***"), and other NAND flash products mutually agreed upon by the Parties. Micron will promptly notify Apple of changes in the NAND flash die densities being produced by the Manufacturer and propose updates to the Density Road Map to reflect such changes provided Micron fulfills its obligations under Section 3.2(c).

2. "***Apple Products***" means [***].

3. Apple shall [***].

4. If Apple requests that Micron supply [***].

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

SUPPLY AGREEMENT

This SUPPLY AGREEMENT (the **"Agreement**"), is made and entered into as of this 6th day of January, 2006 (the **"Effective Date"**), by and between Micron Technology, Inc., a Delaware corporation (**"Micron"**), and IM Flash Technologies, LLC, a Delaware limited liability company (the **"Joint Venture Company"**).

RECITALS

A. The Joint Venture Company is engaged in the manufacturing, assembly and test of NAND Flash Memory Products (as defined hereinafter) for Micron.

B. Micron and the Joint Venture Company (each, a **"Party"** and collectively, the **"Parties"**) desire the Joint Venture Company to supply Products, including Secondary Silicon, for Micron in accordance with Micron's Sharing Interest upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows.

ARTICLE 1
DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each of the Schedules will apply only to the corresponding Section or subsection of this Agreement, (3) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with Modified GAAP, (4) words in the singular include the plural and visa versa, (5) the term "including" means "including without limitation," and (6) the terms "herein," "hereof," "hereunder" and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "day" or "days" will mean calendar days and all references to "quarter(ly)", "month(ly)" or "year(ly)" will mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively.

(b) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting

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thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

ARTICLE 2
OBLIGATIONS OF THE JOINT VENTURE COMPANY; PROCESSES AND CONTROLS

2.1 General Obligations. The Joint Venture Company will (1) supply Product to Micron in accordance with the purchasing process set forth in Article 4 hereof; (2) develop its Facilities and operations to meet Capacity according to the Ramp Plan and the Initial Business Plan, as may be amended thereafter, and the Operating Plan and the obligations set forth herein, including Sections 2.2, 2.5 and 2.9; (3) supply Products which meet the Specification(s), Price, Yield, Cycle-Time, and Quality and Reliability as agreed by the Parties; and (4) operate its Facilities so that Product output from any one Facility matches the other Facilities in form, fit and function, in accordance with Section 2.14.

2.2 Products to Supply. The Joint Venture Company will manufacture, assemble and test Products for Micron in accordance with the Operating Plan and applicable Specifications, developed in response to Micron's Demand Forecast provided to Joint Venture Company in accordance with Article 3 below.

2.3 Process and Design Information. Micron agrees to provide to the Joint Venture Company: (i) such process technology or information as is required to be disclosed under the Joint Development Program Agreement and the Technology License Agreement; and (ii) design information reasonably required to manufacture NAND Flash Memory Wafers.

2.4 Control; Processes. The Joint Venture Company and Micron will review Joint Venture Company's control and process mechanisms, including but not limited to such mechanisms that are utilized to ensure that all parameters of the Specification, including the Performance Criteria, are met or exceeded in the Joint Venture Company's manufacture of Products by either the Joint Venture Company or its approved subcontractor for Micron. The Parties agree to work together in good faith to define mutually agreeable control and process mechanisms including the following: [***].

2.5 Equipment, Systems, Materials. Except as provided in other Joint Venture Documents, the Joint Venture Company shall be responsible for procuring all manufacturing equipment, tools, automated material handling systems therein and materials, including Prime Wafers, which are reasonably

required for the Joint Venture Company to achieve the Ramp Plan and the Operating Plan. The Joint Venture Company shall endeavor to manage the entire supply chain, including equipment, materials, systems, maintenance and subcontractors and vendors, to create efficiency and maximize the Performance Criteria.

2.6 Production Masks. Unless otherwise agreed with Micron, the Joint Venture Company or its subcontractors will be responsible to obtain, maintain, repair and replace masks used in the production of Products. Such masks will only be used in the production of Products for Micron. Production masks will be repaired and replaced solely at mask operations which have been approved by Micron, which approval shall not be unreasonably withheld. [***].

2.7 Designation of WIP. [***].

2.8 Subcontractors. The Joint Venture Company may utilize subcontractors to perform any portion of the manufacture, assembly and test process in making Products for Micron, subject to all subcontractors being approved by the Members, which approval shall not be unreasonably withheld. The Joint Venture Company will ensure that all contracts with subcontractors will provide the Joint Venture Company with the same level of access and controls as set forth in the Agreement, including Sections 2.4, 2.9, 2.10, 2.11, 2.12 and Article 5.

2.9 Staffing. The Joint Venture Company shall adequately staff its Facilities and ensure that its subcontractors adequately staff their facilities to sustain and manage production of Product for Micron, including the obligations set forth in Section 2.1 and meeting scheduled commitments, including the Ramp Plan, the Operating Plan and the Performance Criteria.

2.10 Business Continuity Plan. The Joint Venture Company will develop a process to recover the production process in the event of a natural disaster or any other event that disrupts the production process or the ability of the Joint Venture Company to meet its delivery commitments to Micron or satisfy customer orders. If requested by Micron, Joint Venture Company will review its Business Continuity Plan with Micron and make changes as agreed with Micron, subject to any confidentiality requirements.

2.11 [***]. In addition to the quarterly review and monthly report requirements set forth in Section 3.2 and 3.3, the Joint Venture Company will promptly notify Micron of [***].

2.12 Traceability and Data Retention. Micron and the Joint Venture Company shall review the Joint Venture Company's process traceability system [***]. The Joint Venture Company agrees to maintain such data for a minimum of [***]. The Joint Venture Company will endeavor to provide Micron [***].

2.13 Additional Customer Requirements. Micron will inform the Joint Venture Company in writing of any auditable supplier requirements of Micron's customer relating to any Facility at which Product is manufactured, assembled or tested. The Parties will work together in good faith to resolve such requests.

2.14 Transfer; Equivalency of Operations. [***].

ARTICLE 3
PLANNING MEETINGS AND FORECASTS; PERFORMANCE REVIEWS AND REPORTS

3.1 Planning and Forecasting.

(a) Micron will quarterly provide the Joint Venture Company, in a timeframe to be mutually agreed by the Parties to meet customer expectations, with a written demand forecast for [***] ([***]) quarters corresponding to the Joint Venture Company's Fiscal Quarters or as may be otherwise agreed between the Parties. This demand will include desired finished product breakout by design id, technology node, wafer as finished goods or package type (**"Demand Forecast"**);

(b) The Joint Venture Company shall furnish Micron with a written response within [***] ([***]) Business Days indicating a response regarding capacity and what portion of the demand that the Joint Venture Company can commit to meet. This written response (the **"Planning Forecast"**) will include:

[***].

(c) Based on the Planning Forecast, the Joint Venture Company shall develop a [***] ([***]) Fiscal Quarter proposed Product loading plan for such period (**"Proposed Loading Plan"**). The Joint Venture Company shall provide Micron with the Proposed Loading Plan at least [***] ([***]) Business Days prior to its review by the Manufacturing Committee.

(d) The Joint Venture Company will submit the Proposed Loading Plan, Planning Forecast and other requested information to the Manufacturing Committee for endorsement. Once endorsed by the Manufacturing Committee, the Proposed Loading Plan shall become part of the Operating Plan.

3.2 Performance Reviews and Reports. The Joint Venture Company shall meet with Micron each quarter to discuss the Performance Criteria and the most recent monthly report. The monthly report will be distributed to Micron monthly, on a date to be agreed by the Parties, and will include the following information:

(a) Describes [***];

(b) Describes [***];

(c) Describes [***];

(d) Describes [***].

(e) Identifies [***].

3.3 Monthly Review. In addition, the Parties shall hold a monthly meeting, on a date to be agreed by the Parties, with the primary purpose of [***].

ARTICLE 4
PURCHASE AND SALE OF PRODUCTS

4.1 Product Quantity. Micron shall purchase from the Joint Venture Company a percentage, equal to Micron's Sharing Interest (as the same may change from time to time), of all of the Joint Venture Company's output of Products that meet the Specifications. The Joint Venture Company shall produce all Products in accordance with the Operating Plan, developed in response to Micron's Demand Forecast under Article 3 above. If Micron fails purchase its full Sharing Interest of the Joint Venture Company's output, produced in accordance with the Operating Plan (**"Underloading"**), then the increased Prices associated with such Underloading shall be isolated and charged solely to Micron, which Micron shall remain solely responsible for paying. Notwithstanding the foregoing, Micron may elect, but is not obligated, to purchase Product in excess of its Sharing Interest only by mutual agreement of the other Member.

4.2 Secondary Silicon. Any Secondary Silicon produced by the Joint Venture Company or its subcontractors will be provided [***] by the Joint Venture Company to the Members in a percentage equal to Micron's Sharing Interest (as the same may change from time to time). ALL SECONDARY SILICON PROVIDED HEREUNDER IS PROVIDED "AS IS," "WHERE IS" WITH ALL FAULTS AND DEFECTS BASIS WITHOUT WARRANTY OF ANY KIND.

4.3 Placement of Purchase Orders. Prior to the commencement of every Fiscal Quarter or another time period agreed by the Parties in conjunction with the planning cycle specified in Article 3, the Joint Venture Company shall place a non-cancelable blanket purchase order in writing (via e-mail or facsimile transmission) for the quantity of Product to be supplied by the Joint Venture Company in the following Fiscal Quarter as indicated in the Operating Plan (each such order, a "**Purchase Order"**). Micron may issue change orders to such Purchase Orders to reflect changes in the Operating Plan, provided that such changes can be reasonably accommodated by the Joint Venture Company without disrupting on-going manufacturing operations. Micron may also elect to place out-of-cycle purchase order of Product, including expedited Probed Wafers, to the Joint Venture Company on an as-needed basis. The terms and conditions of this Agreement supersede the terms and conditions contained in either Party's sales or purchase documentation provided in connection herewith unless expressly agreed otherwise in a writing signed by each Party.

4.4 Shortfall. The Joint Venture Company shall immediately notify Micron in writing of any inability to meet a Purchase Order commitment to Micron.

4.5 Acceptance of Purchase Order. Each Purchase Order that corresponds to the Operating Plan in the manner contemplated by Section 4.3 and, and is otherwise free of errors, shall be deemed accepted by the Joint Venture Company upon receipt and shall be binding on the Parties, to the extent not inconsistent with the Operating Plan.

4.6 Content of Purchase Orders. Each Purchase Order shall specify the following items:

(a) Purchase Order number;

(b) Description and part number of each Product;

(c) Forecasted quantity of each different Product and the Sharing Interest portion thereof for the calendar month;

(d) Forecasted unit Price and total forecasted Price for each different Product, and total forecasted Price for all Products ordered;

(e) Level of Probe Testing;

(f) Marking specification and packaging requirements;

(g) Requested delivery date;

(h) Place of delivery; and

(i) Other terms (if any).

4.7 Taxes.

(a) General. All sales, use and other transfer taxes imposed directly on or solely as a result of the supplying of Products and the payments therefor provided herein shall be stated separately on the Joint Venture Company's invoice, collected from Micron and shall be remitted by the Joint Venture Company to the appropriate tax authority ("**Recoverable Taxes"**), unless Micron provides valid proof of tax exemption prior to the effective date of

the transfer of the Products or otherwise as permitted by law prior to the time the Joint Venture Company is required to pay such taxes to the appropriate tax authority. When property is delivered and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of taxes by Micron is required by law, the Joint Venture Company shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and the Joint Venture Company does not collect tax from Micron or pay such taxes to the appropriate governmental entity on a timely basis, and is subsequently audited by any tax authority, liability of Micron will be limited to the tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Notwithstanding anything herein to the contrary, taxes other than Recoverable Taxes shall not be reimbursed by Micron, and each Party is responsible for its own respective income taxes (including franchise and other taxes based on net income or a variation thereof), taxes based upon gross revenues or receipts, and taxes with respect to general overhead, including but not limited to business and occupation taxes, and such taxes shall not be Recoverable Taxes.

(b) Withholding Taxes. In the event that Micron is prohibited by law from making payments to the Joint Venture Company unless Micron deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then Micron shall duly withhold and remit such taxes and shall

pay to the Joint Venture Company the remaining net amount after the taxes have been withheld. Such taxes shall not be Recoverable Taxes and Micron shall not reimburse the Joint Venture Company for the amount of such taxes withheld.

4.8 Invoicing; Payment. The Joint Venture Company shall invoice Micron on a monthly basis for the Price of the Products provided and all overhead, interest, general and administrative and other costs, including all start-up costs for Facilities which shall be split between the Members based on Sharing Interest. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars. Except as otherwise specified in this Agreement, the Micron shall pay the Joint Venture Company for the amounts due, owing, and duly invoiced under this Agreement within [***] ([***]) days following delivery of an invoice therefore to such place as the Joint Venture Company may reasonably direct therein.

4.9 Payment to Subcontractors. The Joint Venture Company shall be responsible for and shall hold Micron harmless for any and all payments to its vendors or subcontractors utilized in the performance of this Agreement.

4.10 Delivery, Title and Risk of Loss. The Joint Venture Company, in order to ensure timely and complete shipment of Products to Micron, shall arrange for and pay for all shipping charges, insurance, taxes, customs charges and any fees and duties in connection with such shipment. The Joint Venture Company shall hold title to and risk of loss of Products under this Agreement, including WIP held by subcontractors, until tender to the carrier, at which time title and risk of loss and damage to Products shall transfer to Micron.

4.11 Packaging. All shipment packaging of the Products shall be in conformance with the Specifications, the Micron's reasonable instructions, and general industry standards, and shall be resistant to damage that may occur during transportation. Marking on the packages shall be made by Joint Venture Company in accordance with Micron's reasonable instructions.

4.12 Shipment. All Products shall be prepared for shipment in a manner that: (i) follow good commercial practice; (ii) is acceptable to common carriers for shipment at the lowest rate; and (iii) is adequate to ensure safe arrival. The Joint Venture Company shall mark all containers with necessary lifting, handling, and shipping information, Purchase Order number, date of shipment, and the names of the Micron and applicable customer. If no instructions are given, the Joint Venture Company shall select the most price effective carrier, given the time constraints known to the Joint Venture Company. At Micron's request, the Joint Venture will provide drop-shipment of Products to Micron's customers. Such shipment service may be provided by a subcontractor to the Joint Venture Company provided that title remains with the Joint Venture Company and then passes to Micron upon tender to the carrier.

4.13 Customs Clearance. Upon Micron's request, the Joint Venture Company will promptly provide Micron with a statement of origin for all Products and with applicable customs documentation for Products wholly or partially manufactured outside of the country of import.

ARTICLE 5
VISITATIONS, AUDITS

5.1 Visits. The Joint Venture Company will support Micron's reasonable requests for visits to Facilities and meetings for the purpose of reviewing performance of production of Products including requests for further information and assistance in troubleshooting performance issues. Such requests shall

be reasonably granted by the Joint Venture Company so long as such visits and meetings do not unduly interfere with the Joint Venture Company's operations and business affairs.

5.2 Audit. Micron representatives and key customer representatives, upon Micron's request, shall be allowed to visit the Joint Venture Company's Facilities during normal working hours upon reasonable advanced written notice to the Joint Venture Company for the purposes of monitoring production processes and compliance with any requirements set forth in this Agreement and the Specifications. Upon completion of the audit, the Joint Venture Company and Micron will agree to an audit closure plan, to be documented in the audit report issued by Micron.

5.3 Financial Audit. Micron reserves the right to have the Joint Venture Company's books and records related to the Pricing hereunder inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Schedule 4.8 of this Agreement in regards to Pricing. Such audit will be performed by an independent third party auditor acceptable to both Parties at Micron's expense. Micron shall provide [***] ([***]) days advance written notice to the Joint Venture Company of its desire to initiate an audit and the audit shall be scheduled so that it does not adversely impact or interrupt the Joint Venture Company's business operations. If the audit reveals any material discrepancies, the Joint Venture Company or Micron shall reimburse the other, as applicable, for any material discrepancies within [***] ([***]) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and only the discrepancies shall be reported to the Parties, and be limited to discrepancies identified by the audit. Notwithstanding the

foregoing, any auditor reports shall not disclose any the Joint Venture Company pricing or terms of purchase for any purchases of materials or equipment hereunder to Micron, absent written agreement from the Members' respective legal counsel. If any audit reveals a material discrepancy, Micron may increase the frequency of such audits to [***] for the subsequent [***] ([***]) month period.

5.4 Subcontractor; Vendor Visits. The Joint Venture Company will use commercially reasonable efforts to ensure that all contracts with vendors and subcontractors will provide the Joint Venture Company and Micron with the right to visit and audit rights similar to those set forth in this Article 5.

ARTICLE 6
WARRANTY; HAZARDOUS MATERIALS; DISCLAIMER

6.1 Product Warranty. The Joint Venture Company makes the following warranties regarding Products furnished hereunder, which warranties shall survive any delivery, inspection, acceptance, payment, or resale of the Products:

(a) Products conform to all agreed Specifications;

(b) Products are free from defects in materials or workmanship; and

(c) The Joint Venture Company has the necessary right, title, and interest to provide Products to the Joint Venture Company and the Products will be free of liens and encumbrances, not including any implied warranty of non-infringement.

6.2 Warranty Claims. [***].

6.3 Inspections. Member may, upon reasonable advance written notice, request samples of Products (including WIP) during production for purposes of determining compliance with the requirements and Specification(s) hereunder, provided that the provision of such samples shall not materially impact the Joint Venture Company's performance to the Operating Plan or its ability to meet delivery requirements under any accepted Purchase Order. Any samples provided hereunder shall be: (i) limited in quantity to the amount reasonably necessary for the purposes hereunder; (ii) included in the pricing; and (iii) included in any performance requirements, if any. The Joint Venture Company shall provide reasonable assistance for the safety and convenience of Micron in obtaining the samples in such manner as shall not unreasonably hinder or delay the Joint Venture Company's performance.

6.4 Hazardous Materials.

(a) If Products provided hereunder include Hazardous Materials as determined in accordance with applicable law, the Joint Venture Company represents and warrants that the Joint Venture Company and the Joint Venture Company's employees, agents, and subcontractors actually working with such materials in providing the Products hereunder to Micron shall be trained in accordance with applicable law regarding the nature of and hazards associated with the handling, transportation, and use of such Hazardous Materials, as applicable to the Joint Venture Company.

(b) To the extent required by applicable law, Joint Venture Company shall provide Micron with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Products to Micron.

6.5 Disclaimer. [***].

ARTICLE 7
CONFIDENTIALITY; OWNERSHIP

7.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained in the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered **"Confidential Information"** under the Confidentiality Agreement for which each Party is considered a **"Receiving Party"** under such agreement. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

7.2 Masks. Any masks produced pursuant to this Agreement will be based on Product designs owned by Intel and shall be treated as Confidential Information of Intel.

7.3 Intellectual Property Ownership. Ownership of any intellectual property developed by the Joint Venture Company will be governed by the Technology License Agreement or Product Designs Development Agreement.

ARTICLE 8
INDEMNIFICATION

8.1 Mutual General Indemnity. [***].

8.2 Indemnification Procedures.

(a) Promptly after the receipt by any Indemnified Party of a notice of any Third Party Claim that an Indemnified Party seeks to be indemnified under this Agreement, such Indemnified Party shall give written notice of such Third Party Claim to the Indemnifying Party, stating in reasonable detail the nature and basis of each allegation made in the Third Party Claim and the amount of potential Indemnified Losses with respect to each allegation, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced by such failure or delay. Thereafter, the Indemnified Party

shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to such Third Party Claim upon written notice to the Indemnified Party delivered within [***] after receipt of the particular notice from the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified the Indemnified Party in writing thereof, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, it being understood that the

Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim, (ii) the Indemnified Party shall not file any papers or, other than in connection with a settlement of the Third Party Claim, consent to the entry of any judgment without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed). Whether or not the Indemnifying Party shall have assumed the defense of the Indemnified Party for a Third Party Claim, such Indemnifying Party shall not be obligated to indemnify and hold harmless the Indemnified Party hereunder for any consent to the entry of judgment or settlement entered into with respect to such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Equitable Remedies. In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (i.e., remedies involving the future activity and conduct of the Joint Venture Company), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; provided, however, that no Party shall be under any obligation to agree to any such settlement.

(c) Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Agreement shall be decreased by any amounts actually recovered by the Indemnified Party under third party insurance policies with respect to such Indemnified Losses (net of any premiums paid by such Indemnified Party under the relevant insurance policy), each Party agreeing (i) to use all reasonable efforts to recover all available insurance proceeds and (ii) to the extent that any indemnity payment under this Agreement has been paid by the Indemnifying Party to the Indemnified Party prior to the recovery by the Indemnified Party of such insurance proceeds, the amount of such insurance proceeds actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

(d) Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim for indemnity by the Indemnified Party and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claim that a common interest privilege agreement exists between them), including, (i) permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests, (ii) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim, (iii) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases of the Joint Venture Company and relating to matters pertinent to the conduct of the Joint Venture Company under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnifying Party, (iv) notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other third party request for documents or interviews and testimony, (v) providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other third party request for documents; and (vi) except to the extent inconsistent with the Indemnified Party's obligations under applicable law and except to the

extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, unless ordered by a court to do otherwise, not producing documents to a third party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

ARTICLE 9
LIMITATION OF LIABILITY

9.1 Damages Limitation. [***].

9.2 THE PARTIES AGREE THAT TO THE EXTENT A CLAIM ARISES UNDER THIS AGREEMENT, THE CLAIM SHALL BE BROUGHT UNDER THIS AGREEMENT.

9.3 Damages Cap. [***].

9.4 Exclusions and Mitigation. Section 9.1 and 9.3 will not apply to either Party's breach of ARTICLE 7. Section 9.3 will not apply to Micron's failure to meet either an Underloading charge under Section 4.1 or a payment obligation which is due and payable under this Agreement. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which the other Party is responsible.

9.5 Losses. Except as provided under Section 8.1, the Joint Venture Company and Micron each shall be responsible for Losses to their respective tangible personal or real property (whether owned or leased), and each Party agrees to look only to their own insurance arrangements with respect to such damages. The Joint Venture Company and Micron waive all rights to recover against each other, including each Party's insurers' subrogation rights, if any, for any loss or damage to their respective tangible personal property or real property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions.

Notwithstanding the foregoing, in the event of a loss hereunder involving a property, transit or crime event or occurrence that: (i) is insured under Micron's insurance policies; (ii) a single insurance deductible applies; and (iii) the loss event or occurrence affects the insured ownership or insured legal interests of both Parties, then the Parties shall share the cost of the deductible in proportion to each Party's insured ownership or legal interests in relative proportion to the total insured ownership or legal interests of the Parties.

ARTICLE 10
TERM AND TERMINATION; SUPPLY OBLIGATIONS FOLLOWING LIQUIDATING EVENT

10.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until the first to occur of (a) the [***] or (b) a [***] (such period of time, the "**Term**").

10.2 Termination. This Agreement may not be terminated for any reason, including breach by a Party, before termination pursuant to Section 10.1.

10.3 Masks. On the Liquidation Date, the Joint Venture Company shall immediately transfer possession of production masks possessed by it at each Facility to the Micron that then owns that Facility as of the Liquidation Date.

10.4 Survival. Termination of this Agreement shall not affect any of the Parties' respective rights accrued or obligations owed before termination, including any rights or obligations of the Parties in respect of any accepted Purchase Orders existing at the time of termination. In addition, the following shall survive termination of this Agreement for any reason: Sections 2.12, 6.2, 6.5, and Articles 4, 7, 8, 9, 10 and 11.

10.5 Supply Obligations Following Liquidating Event. Upon the occurrence of a Liquidating Event any supply obligations of the Parties will be as set forth in Article 13 of the LLC Operating Agreement.

ARTICLE 11
MISCELLANEOUS

11.1 Force Majeure Events. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time during which the Force Majeure Event renders performance impossible or infeasible and only if the Party asserting Force Majeure as an excuse for its failure to perform has provided written notice to the other Party specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event. As used herein, "**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of the party failing to perform, including, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or

unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party's nonperformance hereunder.

11.2 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the Parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate preliminary or permanent injunctive relief may be applied for and granted in connection therewith. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that a Party may have under this Agreement.

11.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each Party hereto. Neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, other than a Wholly-Owned Subsidiary of such Party, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section shall be null and void and have no effect.

11.4 Compliance with Laws and Regulations. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of a Party's rights hereunder.

11.5 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, (c) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (d) delivery in Person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

In the case of the IM Flash Technologies, LLC:
1550 East 3400 North
Lehi, Utah 84043
Attention: David A. Baglee; Rodney Morgan
Facsimile Number: (801) 767-5370

With a mandatory copy to:
Intel Corporation
2200 Mission College Blvd.

Mail-Stop SC4-203
Santa Clara, California 95054
Attention: General Counsel
Facsimile Number: (408) 653-8050

In the case of Micron:
Micron Technology, Inc.
8000 S. Federal Way
Boise, Idaho 83707-0006
Attention: General Counsel
Facsimile Number: (208)368-4540

Either Party may change its address for notices upon giving ten (10) days written notice of such change to the other Party in the manner provided above.

11.6 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

11.7 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

11.8 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

11.9 Amendment. This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

11.10 Entire Agreement. This Agreement and the applicable provisions of the Confidentiality Agreement, which are incorporated herein and made a part hereof, together with the Exhibits and Schedules hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

11.11 Choice of Law. [***].

11.12 Jurisdiction; Venue. [***].

11.13 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

11.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.15 Insurance. Without limiting or qualifying the Joint Venture Company's liabilities, obligations, or indemnities otherwise assumed by the Joint Venture Company pursuant to this Agreement, the Joint Venture Company shall maintain, at no charge to Micron, with companies acceptable to Micron:

(a) Commercial General Liability with limits of liability not less than $[***] per occurrence and including liability coverage for bodily injury or property damage (1) assumed in a contract or agreement pertaining to The Joint Venture Company's business and (2) arising out of The Joint Venture Company's products, Services, or work. The Joint Venture Company's insurance shall be primary with respect to liabilities assumed by The Joint Venture Company in this Agreement to the extent such liabilities are the subject of The Joint Venture Company's insurance, and any applicable insurance maintained by Micron shall be excess and non-contributing. The above coverage shall name Micron as additional insured as respects The Joint Venture Company's work or services provided to or on behalf of Micron.

(b) Automobile Liability Insurance with limits of liability not less than $[***] per accident for bodily injury or property damage.

(c) Statutory Workers' Compensation coverage, including a Broad Form All States Endorsement in the amount required by law, and Employers' Liability Insurance in the amount of $[***] per occurrence. Such insurance shall include mutual insurer's waiver of subrogation.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

MICRON TECHNOLOGY, INC.	**IM FLASH TECHNOLOGIES, LLC**
By: /s/ STEVEN R. APPLETON	By: /s/ DAVID A. BAGLEE
Name: Steven R. Appleton	Name: David A. Baglee
Title: Chief Executive Officer and President	Title: Authorized Officer
	By: /s/ RODNEY MORGAN
	Name: Rodney Morgan
	Title: Authorized Officer

THIS IS THE SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN MICRON TECHNOLOGY, INC. AND IM FLASH TECHNOLOGIES, LLC

EXHIBIT A
DEFINITIONS

"Affiliate" means, with respect to any specified Person, a Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Applicable Law" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"Approved Business Plan" shall have the meaning set forth in the LLC Operating Agreement.

"Assembly Outs" shall mean a Product for which the Assembly Services have been completed and meets all of the Assembly Specification applicable at such time and is not Secondary Silicon or Rejects.

"Boise Supply Agreement" means that certain Boise Supply Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Business Continuity Plan" shall have the meaning set forth in Section 2.8 hereof.

"Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of New York are authorized or required by Applicable Law to be closed.

"Capacity" means the rate of output (defined in terms of units per time period), at a particular point in time, at which a particular Facility or set of Facilities of the Joint Venture Company (or of a third party on the Joint Venture Company's behalf) is capable of producing such units.

"Confidential Information" shall have the meaning set forth in Section 7.1 hereof.

"Confidentiality Agreement" means that Mutual Confidentiality Agreement by and among the Joint Venture Company, Intel and Micron dated as of the Effective Date.

"Custom Products" shall have the meaning set forth in the Product Designs Committee Agreement.

"Cycle Time" means the time required to process a unit through a portion of the manufacturing process (e.g., fab, assembly, or final test) or through the manufacturing process as a whole.

"Demand Forecast" shall have the meaning set forth in Section 3.1(a) hereof.

"Effective Date" shall have the meaning set forth in the preamble to this Agreement.

"Excursion" means an occurrence, either during production or after customer delivery that is outside normal historical behavior as established by both Parties in writing in the applicable Specifications which may impact performance, Quality and Reliability, or customer delivery commitments for Probed Wafers, NAND Flash Memory Product or Known Good Die.

"Facilities" shall mean all of the Joint Venture Company's facilities at which it may perform manufacturing, assembly or test services, including subcontractors.

"Fiscal Quarter" means any of the four financial accounting quarters within the Joint Venture Company's Fiscal Year.

"Fiscal Month" means any of the twelve financial accounting months within the Joint Venture Company's Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Joint Venture Company for financial accounting purposes.

"Flash Memory Integrated Circuit" shall have the meaning set forth in the LLC Operating Agreement.

"Force Majeure Event" shall have the meaning set forth in Section 11.1.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"Hazardous Materials" means dangerous goods, chemicals, contaminants, substances, pollutants or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations and standards.

"Indemnified Party" shall mean any of the following to the extent entitled to seek indemnification under this Agreement: Micron, the Joint Venture Company, and their respective Affiliates, officers, directors, employees, agents, assigns and successors.

"**Indemnified Losses"** shall mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses of any nature incurred by an Indemnified Party, including reasonable attorneys' fees and consultants' fees, and all damages, fines, penalties and judgments awarded or entered against an Indemnified Party, but specifically excluding any special, consequential or other types of indirect damages.

"Indemnifying Party" shall mean the Party owing a duty of indemnification to another Party with respect to a particular Third Party Claim.

"Intel" means Intel Corporation, a Delaware Corporation.

"Initial Business Plan" shall have the meaning set forth in the LLC Operating Agreement.

"Joint Development Program Agreement" means that certain Joint Development by and between Intel and Micron dated as of the Effective Date.

"Joint Venture Company" shall have the meaning set forth in the preamble to this Agreement.

"Joint Venture Documents" shall have the meaning set forth in the Master Agreement.

"**Known Good Die"** means a raw wafer that has been processed to the point of containing functional and/or operational NAND Flash Memory Integrated Circuits that has undergone Probe Testing (a.k.a. "Sort" procedure), meeting predefined performance and quality criteria and singulated to

individual semiconductor die. Die will have been fully tested but will not been assembled into final packaging or undergone final product testing.

"LLC Operating Agreement" means that Limited Liability Company Operating Agreement of the Joint Venture Company, LLC between, Intel and Micron.

"Liquidation Date" shall have the meaning set forth in the LLC Operating Agreement.

"Liquidation Event" shall have the meaning set forth in the LLC Operating Agreement.

"Losses" shall mean, collectively, any and all insurable liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"Manufacturing Committee" shall have the meaning set forth in the LLC Operating Agreement.

"Master Agreement" means that certain Master Agreement by and between Intel and Micron as defined in the LLC Operating Agreement.

"Members" means Micron and Intel.

"Micron" shall have the meaning set forth in the preamble to this Agreement.

"Minority Closing" shall have the meaning set forth in the LLC Operating Agreement.

"Modified GAAP" shall have the meaning set forth in the LLC Operating Agreement.

"MTV Lease Agreement" means that certain MTV Lease Agreement by and between the Joint Venture Company and Micron dated as of the Effective Date.

"NAND Flash Memory Integrated Circuit" means a Flash Memory Integrated Circuit, in the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"NAND Flash Memory Product" shall have the meaning set forth in the LLC Operating Agreement.

"NAND Flash Memory Wafer" means a raw wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor die.

"Operating Plan" means the Manufacturing Plan, Assembly Plan and Testing Plan developed pursuant to the Definitions in the LLC Operating Agreement.

"Optional Purchase Agreement" means that certain Optional Purchase Agreement dated as of the Effective Date.

"Party" and **"Parties"** shall have the meaning set forth in the Recitals to this Agreement.

"Performance Criteria" means [***].

"Person" shall have the meaning set forth in the LLC Operating Agreement.

"Planning Forecast" shall have the meaning set forth in Section 3.1(b) hereof.

"**Price"** or **"Pricing"** means the calculation set forth on Schedule 4.8 hereof.

"Prime Wafer" means the raw silicon wafers required, on a product-by-product basis, for the manufacturer.

"**Probe Testing"** means testing, using a wafer test program as set forth in the applicable Specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the Specifications.

"Probed Wafer" means a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor dice.

"Product Designs Committee Agreement" means that certain Product Designs Committee Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Product Designs Development Agreement" means that certain Product Designs Development Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Products" means a Probed Wafer, Known Good Die, or NAND Flash Memory Product, or such other products that are manufactured by the Joint Venture Company under Section 2.2 hereof.

"Proposed Loading Plan" shall have the meaning set forth in Section 3.1 hereof.

"Purchase Order" shall have the meaning set forth in Section 4.3 hereof.

"Quality and Reliability" or **"Q&R"** means building and sustaining relationships which assess, anticipate, and fulfill the quality and reliability standards as set forth in the Specification or Operating Plan for Products.

"Ramp Plan" means the document which defines the process and key milestone schedule to build and ramp a silicon fabrication facility.

"Receiving Party" shall have the meaning set forth in Section 7.1 hereof.

"Recoverable Taxes" shall have the meaning set forth in Section 4.7 hereof.

"Secondary Silicon" shall mean: (i) a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing would otherwise constitute a Probed Wafer but for failure to achieve

qualification; or (ii) singulated and/or packaged die that would otherwise constitute Assembly Outs or Test Outs but for failure to achieve qualification; and otherwise conform to the applicable Secondary Silicon Specification.

"Semiconductor Manufacturing Technology" shall have the meaning set forth in the Process Joint Development Program Agreement.

"Sharing Interest" shall have the meaning set forth in the LLC Operating Agreement.

"Specifications" means those specifications used to describe, characterize, and define the quality and performance of NAND Flash Memory Products and Known Good Die, including any interim performance specifications at Probe Testing or other testing, as such specifications may be determined from time to time by the Joint Venture Company.

"Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"Technology License Agreement" means that certain Technology License Agreement by and between Intel, Micron and the Joint Venture Company dated as of the Effective Date.

"Term" shall have the meaning set forth in Section 11.1 hereof.

"**Test Outs**" shall mean a Product Candidate for which Testing Services have been completed and meets all of the Testing Specification applicable at such time and is not Secondary Silicon or Rejects.

"Third Party Claim" shall mean any claim, demand, action, suit or proceeding, and any actual or threatened lawsuit, complaint, cross-complaint or counter-complaint, arbitration or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled, by any Person other than Micron, the Joint Venture Company and Affiliates of the foregoing, against an Indemnified Party, in each case alleging entitlement to any Indemnified Losses pursuant to any indemnification obligation under this Agreement.

"Under-loading" shall have the meaning set forth in Section 4.1.

"Wafer Start" shall mean the initiation of Manufacturing Services with respect to a Prime Wafer.

"Warranty Claim Period" shall have the meaning set forth in Section 6.2 hereof.

"Wholly-Owned Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"WIP" means work in process. This includes all wafers and Product in wafer fabrication, sort, assembly, and/or final test, including prime and secondary wafers, and all completed Product units not yet delivered to Micron.

"Yield" means anticipated output of Product from WIP at a particular point in time, including line yield, die yield, assembly yield and final testing yield.

SCHEDULES

Schedule 4.8	Price

[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT.

INTEL/MICRON CONFIDENTIAL

SUPPLY AGREEMENT

This SUPPLY AGREEMENT (the **"Agreement**"), is made and entered into as of this 6th day of January, 2006 (the **"Effective Date"**), by and between Intel Corporation, a Delaware corporation (**"Intel"**), and IM Flash Technologies, LLC, a Delaware limited liability company (the **"Joint Venture Company"**).

RECITALS

A. The Joint Venture Company is engaged in the manufacturing, assembly and test of NAND Flash Memory Products (as defined hereinafter) for Intel.

B. Intel and the Joint Venture Company (each, a **"Party"** and collectively, the **"Parties"**) desire the Joint Venture Company to supply Products, including Secondary Silicon, for Intel in accordance with Intel's Sharing Interest upon the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows.

ARTICLE 1
DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth in Exhibit A.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each of the Schedules will apply only to the corresponding Section or subsection of this Agreement, (3) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with Modified GAAP, (4) words in the singular include the plural and visa versa, (5) the term "including" means "including without limitation," and (6) the terms "herein," "hereof," "hereunder" and words of similar import shall mean references to this Agreement as a whole and not to any individual Section or portion hereof. All references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "day" or "days" will mean calendar days and all references to "quarter(ly)", "month(ly)" or "year(ly)" will mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively.

(b) No provision of this Agreement will be interpreted in favor of, or against, any of the Parties by reason of the extent to which any such Party or its counsel participated in the drafting

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thereof or by reason of the extent to which any such provision is inconsistent with any prior draft of this Agreement or such provision.

ARTICLE 2
OBLIGATIONS OF THE JOINT VENTURE COMPANY; PROCESSES AND CONTROLS

2.1 General Obligations. The Joint Venture Company will (1) supply Product to Intel in accordance with the purchasing process set forth in Article 4 hereof; (2) develop its Facilities and operations to meet Capacity according to the Ramp Plan and the Initial Business Plan, as may be amended thereafter, and the Operating Plan and the obligations set forth herein, including Sections 2.2, 2.5 and 2.9; (3) supply Products which meet the Specification(s), Price, Yield, Cycle-Time, and Quality and Reliability as agreed by the Parties; and (4) operate its Facilities so that Product output from any one Facility matches the other Facilities in form, fit and function, in accordance with Section 2.14.

2.2 Products to Supply. The Joint Venture Company will manufacture, assemble and test Products for Intel in accordance with the Operating Plan and applicable Specifications, developed in response to Intel's Demand Forecast provided to Joint Venture Company in accordance with Article 3 below.

2.3 Process and Design Information. Intel agrees to provide to the Joint Venture Company: (i) such process technology or information as is required to be disclosed under the Joint Development Program Agreement and the Technology License Agreement; and (ii) design information reasonably required to manufacture NAND Flash Memory Wafers.

2.4 Control; Processes. The Joint Venture Company and Intel will review Joint Venture Company's control and process mechanisms, including but not limited to such mechanisms that are utilized to ensure that all parameters of the Specification, including the Performance Criteria, are met or exceeded in the Joint Venture Company's manufacture of Products by either the Joint Venture Company or its approved subcontractor for Intel. The Parties agree to work together in good faith to define mutually agreeable control and process mechanisms including the following: [***].

2.5 Equipment, Systems, Materials. Except as provided in other Joint Venture Documents, the Joint Venture Company shall be responsible for procuring all manufacturing equipment, tools, automated material handling systems therein and materials, including Prime Wafers, which are reasonably required for the Joint Venture Company to achieve the Ramp Plan and the Operating Plan. The Joint Venture Company shall endeavor to manage the entire

supply chain, including equipment, materials, systems, maintenance and subcontractors and vendors, to create efficiency and maximize the Performance Criteria.

2.6 Production Masks. Unless otherwise agreed with Intel, the Joint Venture Company or its subcontractors will be responsible to obtain, maintain, repair and replace masks used in the production of Products. Such masks will only be used in the production of Products for Intel. Production masks will be repaired and replaced solely at mask operations which have been approved by Intel, which approval shall not be unreasonably withheld. [***].

2.7 Designation of WIP. [***].

2.8 Subcontractors. The Joint Venture Company may utilize subcontractors to perform any portion of the manufacture, assembly and test process in making Products for Intel, subject to all subcontractors being approved by the Members, which approval shall not be unreasonably withheld. The Joint Venture Company will ensure that all contracts with subcontractors will provide the Joint Venture Company with the same level of access and controls as set forth in the Agreement, including Sections 2.4, 2.9, 2.10, 2.11, 2.12 and Article 5.

2.9 Staffing. The Joint Venture Company shall adequately staff its Facilities and ensure that its subcontractors adequately staff their facilities to sustain and manage production of Product for Intel, including the obligations set forth in Section 2.1 and meeting scheduled commitments, including the Ramp Plan, the Operating Plan and the Performance Criteria.

2.10 Business Continuity Plan. The Joint Venture Company will develop a process to recover the production process in the event of a natural disaster or any other event that disrupts the production process or the ability of the Joint Venture Company to meet its delivery commitments to Intel or satisfy customer orders. If requested by Intel, Joint Venture Company will review its Business Continuity Plan with Intel and make changes as agreed with Intel, subject to any confidentiality requirements.

2.11 [***]. In addition to the quarterly review and monthly report requirements set forth in Section 3.2 and 3.3, the Joint Venture Company will promptly notify Intel of [***].

2.12 Traceability and Data Retention. Intel and the Joint Venture Company shall review the Joint Venture Company's process traceability system [***]. The Joint Venture Company agrees to maintain such data for a minimum of [***] years. The Joint Venture Company will endeavor to provide Intel [***].

2.13 Additional Customer Requirements. Intel will inform the Joint Venture Company in writing of any auditable supplier requirements of Intel's customer relating to any Facility at which Product is manufactured, assembled or tested. The Parties will work together in good faith to resolve such requests.

2.14 Transfer; Equivalency of Operations. [***].

ARTICLE 3
PLANNING MEETINGS AND FORECASTS; PERFORMANCE REVIEWS AND REPORTS

3.1 Planning and Forecasting.

(a) Intel will quarterly provide the Joint Venture Company, in a timeframe to be mutually agreed by the Parties to meet customer expectations, with a written demand forecast for [***] ([***]) quarters corresponding to the Joint Venture Company's Fiscal Quarters or as may be otherwise agreed between the Parties. This demand will include desired finished product breakout by design id, technology node, wafer as finished goods or package type (**"Demand Forecast"**);

(b) The Joint Venture Company shall furnish Intel with a written response within [***] ([***]) Business Days indicating a response regarding capacity and what portion of the demand that the Joint Venture Company can commit to meet. This written response (the **"Planning Forecast"**) will include:

[***].

(c) Based on the Planning Forecast, the Joint Venture Company shall develop a [***] ([***]) Fiscal Quarter proposed Product loading plan for such period (**"Proposed Loading Plan"**). The Joint Venture Company shall provide Intel with the Proposed Loading Plan at least [***] ([***]) Business Days prior to its review by the Manufacturing Committee.

(d) The Joint Venture Company will submit the Proposed Loading Plan, Planning Forecast and other requested information to the Manufacturing Committee for endorsement. Once endorsed by the Manufacturing Committee, the Proposed Loading Plan shall become part of the Operating Plan.

3.2 Performance Reviews and Reports. The Joint Venture Company shall meet with Intel each quarter to discuss the Performance Criteria and the most recent monthly report. The monthly report will be distributed to Intel monthly, on a date to be agreed by the Parties, and will include the following information:

(a) Describes [***];

(b) Describes [***];

(c) Describes [***];

(d) Describes [***].

(e) Identifies [***].

3.3 Monthly Review. In addition, the Parties shall hold a monthly meeting, on a date to be agreed by the Parties, with the primary purpose of [***].

ARTICLE 4
PURCHASE AND SALE OF PRODUCTS

4.1 Product Quantity. Intel shall purchase from the Joint Venture Company a percentage, equal to Intel's Sharing Interest (as the same may change from time to time), of all of the Joint Venture Company's output of Products that meet the Specifications. The Joint Venture Company shall produce all Products in accordance with the Operating Plan, developed in response to Intel's Demand Forecast under Article 3 above. If Intel fails purchase its full Sharing Interest of the Joint Venture Company's output, produced in accordance with the Operating Plan (**"Underloading"**), then the increased Prices associated with such Underloading shall be isolated and charged solely to Intel, which Intel shall remain solely responsible for paying. Notwithstanding the foregoing, Intel may elect, but is not obligated, to purchase Product in excess of its Sharing Interest only by mutual agreement of the other Member.

4.2 Secondary Silicon. Any Secondary Silicon produced by the Joint Venture Company or its subcontractors will be provided [***] by the Joint Venture Company to the Members in a percentage equal to Intel's Sharing Interest (as the same may change from time to time). ALL SECONDARY SILICON PROVIDED HEREUNDER IS PROVIDED "AS IS," "WHERE IS" WITH ALL FAULTS AND DEFECTS BASIS WITHOUT WARRANTY OF ANY KIND.

4.3 Placement of Purchase Orders. Prior to the commencement of every Fiscal Quarter or another time period agreed by the Parties in conjunction with the planning cycle specified in Article 3, the Joint Venture Company shall place a non-cancelable blanket purchase order in writing (via e-mail or facsimile transmission) for the quantity of Product to be supplied by the Joint Venture Company in the following Fiscal Quarter as indicated in the Operating Plan (each such order, a "**Purchase Order"**). Intel may issue change orders to such Purchase Orders to reflect changes in the Operating Plan, provided that such changes can be reasonably accommodated by the Joint Venture Company without disrupting on-going manufacturing operations. Intel may also elect to place out-of-cycle purchase order of Product, including expedited Probed Wafers, to the Joint Venture Company on an as-needed basis. The terms and conditions of this Agreement supersede the terms and conditions contained in either Party's sales or purchase documentation provided in connection herewith unless expressly agreed otherwise in a writing signed by each Party.

4.4 Shortfall. The Joint Venture Company shall immediately notify Intel in writing of any inability to meet a Purchase Order commitment to Intel.

4.5 Acceptance of Purchase Order. Each Purchase Order that corresponds to the Operating Plan in the manner contemplated by Section 4.3 and, and is otherwise free of errors, shall be deemed accepted by the Joint Venture Company upon receipt and shall be binding on the Parties, to the extent not inconsistent with the Operating Plan.

4.6 Content of Purchase Orders. Each Purchase Order shall specify the following items:

(a) Purchase Order number;

(b) Description and part number of each Product;

(c) Forecasted quantity of each different Product and the Sharing Interest portion thereof for the calendar month;

(d) Forecasted unit Price and total forecasted Price for each different Product, and total forecasted Price for all Products ordered;

(e) Level of Probe Testing;

(f) Marking specification and packaging requirements;

(g) Requested delivery date;

(h) Place of delivery; and

(i) Other terms (if any).

4.7 Taxes.

(a) General. All sales, use and other transfer taxes imposed directly on or solely as a result of the supplying of Products and the payments therefor provided herein shall be stated separately on the Joint Venture Company's invoice, collected from Intel and shall be remitted by the Joint Venture Company to the appropriate tax authority ("**Recoverable Taxes**"), unless Intel provides valid proof of tax exemption prior to the effective date of the transfer of the Products or otherwise as permitted by law prior to the time the Joint Venture Company is required to pay such taxes to the appropriate tax authority. When property is delivered and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of

taxes by Intel is required by law, the Joint Venture Company shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and the Joint Venture Company does not collect tax from Intel or pay such taxes to the appropriate governmental entity on a timely basis, and is subsequently audited by any tax authority, liability of Intel will be limited to the tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Notwithstanding anything herein to the contrary, taxes other than Recoverable Taxes shall not be reimbursed by Intel, and each Party is responsible for its own respective income taxes (including franchise and other taxes based on net income or a variation thereof), taxes based upon gross revenues or receipts, and taxes with respect to general overhead, including but not limited to business and occupation taxes, and such taxes shall not be Recoverable Taxes.

(b) Withholding Taxes. In the event that Intel is prohibited by law from making payments to the Joint Venture Company unless Intel deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then Intel shall duly withhold and remit such taxes and shall

pay to the Joint Venture Company the remaining net amount after the taxes have been withheld. Such taxes shall not be Recoverable Taxes and Intel shall not reimburse the Joint Venture Company for the amount of such taxes withheld.

4.8 Invoicing; Payment. The Joint Venture Company shall invoice Intel on a monthly basis for the Price of the Products provided and all overhead, interest, general and administrative and other costs, including all start-up costs for Facilities which shall be split between the Members based on Sharing Interest. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars. Except as otherwise specified in this Agreement, the Intel shall pay the Joint Venture Company for the amounts due, owing, and duly invoiced under this Agreement within [***] ([***]) days following delivery of an invoice therefore to such place as the Joint Venture Company may reasonably direct therein.

4.9 Payment to Subcontractors. The Joint Venture Company shall be responsible for and shall hold Intel harmless for any and all payments to its vendors or subcontractors utilized in the performance of this Agreement.

4.10 Delivery, Title and Risk of Loss. The Joint Venture Company, in order to ensure timely and complete shipment of Products to Intel, shall arrange for and pay for all shipping charges, insurance, taxes, customs charges and any fees and duties in connection with such shipment. The Joint Venture Company shall hold title to and risk of loss of Products under this Agreement, including WIP held by subcontractors, until tender to the carrier, at which time title and risk of loss and damage to Products shall transfer to Intel.

4.11 Packaging. All shipment packaging of the Products shall be in conformance with the Specifications, the Intel's reasonable instructions, and general industry standards, and shall be resistant to damage that may occur during transportation. Marking on the packages shall be made by Joint Venture Company in accordance with Intel's reasonable instructions.

4.12 Shipment. All Products shall be prepared for shipment in a manner that: (i) follow good commercial practice; (ii) is acceptable to common carriers for shipment at the lowest rate; and (iii) is adequate to ensure safe arrival. The Joint Venture Company shall mark all containers with necessary lifting, handling, and shipping information, Purchase Order number, date of shipment, and the names of the Intel and applicable customer. If no instructions are given, the Joint Venture Company shall select the most price effective carrier, given the time constraints known to the Joint Venture Company. At Intel's request, the Joint Venture will provide drop-shipment of Products to Intel's customers. Such shipment service may be provided by a subcontractor to the Joint Venture Company provided that title remains with the Joint Venture Company and then passes to Intel upon tender to the carrier.

4.13 Customs Clearance. Upon Intel's request, the Joint Venture Company will promptly provide Intel with a statement of origin for all Products and with applicable customs documentation for Products wholly or partially manufactured outside of the country of import.

ARTICLE 5
VISITATIONS, AUDITS

5.1 Visits. The Joint Venture Company will support Intel's reasonable requests for visits to Facilities and meetings for the purpose of reviewing performance of production of Products including requests for further information and assistance in troubleshooting performance issues. Such requests shall

be reasonably granted by the Joint Venture Company so long as such visits and meetings do not unduly interfere with the Joint Venture Company's operations and business affairs.

5.2 Audit. Intel representatives and key customer representatives, upon Intel's request, shall be allowed to visit the Joint Venture Company's Facilities during normal working hours upon reasonable advanced written notice to the Joint Venture Company for the purposes of monitoring production processes and compliance with any requirements set forth in this Agreement and the Specifications. Upon completion of the audit, the Joint Venture Company and Intel will agree to an audit closure plan, to be documented in the audit report issued by Intel.

5.3 Financial Audit. Intel reserves the right to have the Joint Venture Company's books and records related to the Pricing hereunder inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Schedule 4.8 of this Agreement in regards to Pricing. Such audit will be performed by an independent third party auditor acceptable to both Parties at Intel's expense. Intel shall provide [***] ([***]) days advance written notice to the Joint Venture Company of its desire to initiate an audit and the audit shall be scheduled so that it does not adversely impact or interrupt the Joint Venture Company's business operations. If the audit reveals any material discrepancies, the Joint Venture Company or Intel shall reimburse the other, as applicable, for any material discrepancies within [***] ([***]) days after completion of the audit. The results of such audit shall be kept confidential by the auditor and only the discrepancies shall be reported to the Parties, and be limited to discrepancies identified by the audit. Notwithstanding the foregoing, any auditor reports shall not disclose any the Joint Venture Company pricing or terms of purchase for any purchases of materials or equipment hereunder to Intel, absent written agreement from the Members' respective legal counsel. If any audit reveals a material discrepancy, Intel may increase the frequency of such audits to [***] for the subsequent [***] ([***]) month period.

5.4 Subcontractor; Vendor Visits. The Joint Venture Company will use commercially reasonable efforts to ensure that all contracts with vendors and subcontractors will provide the Joint Venture Company and Intel with the right to visit and audit rights similar to those set forth in this Article 5.

ARTICLE 6
WARRANTY; HAZARDOUS MATERIALS; DISCLAIMER

6.1 Product Warranty. The Joint Venture Company makes the following warranties regarding Products furnished hereunder, which warranties shall survive any delivery, inspection, acceptance, payment, or resale of the Products:

(a) Products conform to all agreed Specifications;

(b) Products are free from defects in materials or workmanship; and

(c) The Joint Venture Company has the necessary right, title, and interest to provide Products to the Joint Venture Company and the Products will be free of liens and encumbrances, not including any implied warranty of non-infringement.

6.2 Warranty Claims. [***].

6.3 Inspections. Member may, upon reasonable advance written notice, request samples of Products (including WIP) during production for purposes of determining compliance with the requirements and Specification(s) hereunder, provided that the provision of such samples shall not materially impact the Joint Venture Company's performance to the Operating Plan or its ability to meet delivery requirements under any accepted Purchase Order. Any samples provided hereunder shall be: (i) limited in quantity to the amount reasonably necessary for the purposes hereunder; (ii) included in the pricing; and (iii) included in any performance requirements, if any. The Joint Venture Company shall provide reasonable assistance for the safety and convenience of Intel in obtaining the samples in such manner as shall not unreasonably hinder or delay the Joint Venture Company's performance.

6.4 Hazardous Materials.

(a) If Products provided hereunder include Hazardous Materials as determined in accordance with applicable law, the Joint Venture Company represents and warrants that the Joint Venture Company and the Joint Venture Company's employees, agents, and subcontractors actually working with such materials in providing the Products hereunder to Intel shall be trained in accordance with applicable law regarding the nature of and hazards associated with the handling, transportation, and use of such Hazardous Materials, as applicable to the Joint Venture Company.

(b) To the extent required by applicable law, Joint Venture Company shall provide Intel with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Products to Intel.

6.5 Disclaimer. [***].

ARTICLE 7
CONFIDENTIALITY; OWNERSHIP

7.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained in the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered **"Confidential Information"** under the Confidentiality Agreement for which each Party is considered a **"Receiving Party"** under such agreement. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

7.2 Masks. Any masks produced pursuant to this Agreement will be based on Product designs owned by Intel and shall be treated as Confidential Information of Intel.

7.3 Intellectual Property Ownership. Ownership of any intellectual property developed by the Joint Venture Company will be governed by the Technology License Agreement or Product Designs Development Agreement.

ARTICLE 8
INDEMNIFICATION

8.1 Mutual General Indemnity. [***].

8.2 Indemnification Procedures.

(a) Promptly after the receipt by any Indemnified Party of a notice of any Third Party Claim that an Indemnified Party seeks to be indemnified under this Agreement, such Indemnified Party shall give written notice of such Third Party Claim to the Indemnifying Party, stating in reasonable detail the nature and basis of each allegation made in the Third Party Claim and the amount of potential Indemnified Losses with respect to each allegation, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced by such failure or delay. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to such Third Party Claim upon written notice to the Indemnified Party delivered within [***] after receipt of the particular notice from the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified

the Indemnified Party in writing thereof, (i) the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim, it being understood that the

Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim, (ii) the Indemnified Party shall not file any papers or, other than in connection with a settlement of the Third Party Claim, consent to the entry of any judgment without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and (iii) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed). Whether or not the Indemnifying Party shall have assumed the defense of the Indemnified Party for a Third Party Claim, such Indemnifying Party shall not be obligated to indemnify and hold harmless the Indemnified Party hereunder for any consent to the entry of judgment or settlement entered into with respect to such Third Party Claim without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(a) Equitable Remedies. In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (i.e., remedies involving the future activity and conduct of the Joint Venture Company), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; provided, however, that no Party shall be under any obligation to agree to any such settlement.

(b) Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Agreement shall be decreased by any amounts actually recovered by the Indemnified Party under third party insurance policies with respect to such Indemnified Losses (net of any premiums paid by such Indemnified Party under the relevant insurance policy), each Party agreeing (i) to use all reasonable efforts to recover all available insurance proceeds and (ii) to the extent that any indemnity payment under this Agreement has been paid by the Indemnifying Party to the Indemnified Party prior to the recovery by the Indemnified Party of such insurance proceeds, the amount of such insurance proceeds actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

(d) Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim for indemnity by the Indemnified Party and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claim that a common interest privilege agreement exists between them), including, (i) permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests, (ii) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim, (iii) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases of the Joint Venture Company and relating to matters pertinent to the conduct of the Joint Venture Company under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnifying Party, (iv) notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other third party request for documents or interviews and testimony, (v) providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other third party request for documents; and (vi) except to the extent inconsistent with the Indemnified Party's obligations under applicable law and except to the

extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, unless ordered by a court to do otherwise, not producing documents to a third party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

ARTICLE 9
LIMITATION OF LIABILITY

9.1 Damages Limitation. [***].

9.2 THE PARTIES AGREE THAT TO THE EXTENT A CLAIM ARISES UNDER THIS AGREEMENT, THE CLAIM SHALL BE BROUGHT UNDER THIS AGREEMENT.

9.3 Damages Cap. [***].

9.4 Exclusions and Mitigation. Section 9.1 and 9.3 will not apply to either Party's breach of ARTICLE 7. Section 9.3 will not apply to Intel's failure to meet either an Underloading charge under Section 4.1 or a payment obligation which is due and payable under this Agreement. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which the other Party is responsible.

9.5 Losses. Except as provided under Section 8.1, the Joint Venture Company and Intel each shall be responsible for Losses to their respective tangible personal or real property (whether owned or leased), and each Party agrees to look only to their own insurance arrangements with respect to such damages. The Joint Venture Company and Intel waive all rights to recover against each other, including each Party's insurers' subrogation rights, if any, for any loss or damage to their respective tangible personal property or real property (whether owned or leased) from any cause covered by insurance maintained by each of them, including their respective deductibles or self-insured retentions.

Notwithstanding the foregoing, in the event of a loss hereunder involving a property, transit or crime event or occurrence that: (i) is insured under Intel's insurance policies; (ii) a single insurance deductible applies; and (iii) the loss event or occurrence affects the insured ownership or insured legal interests of both Parties, then the Parties shall share the cost of the deductible in proportion to each Party's insured ownership or legal interests in relative proportion to the total insured ownership or legal interests of the Parties.

ARTICLE 10
TERM AND TERMINATION; SUPPLY OBLIGATIONS FOLLOWING LIQUIDATING EVENT

10.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until the first to occur of (a) [***] or (b) [***] (such period of time, the "**Term**").

10.2 Termination. This Agreement may not be terminated for any reason, including breach by a Party, before termination pursuant to Section 10.1.

10.3 Masks. On the Liquidation Date, the Joint Venture Company shall immediately transfer possession of production masks possessed by it at each Facility to the Intel that then owns that Facility as of the Liquidation Date.

10.4 Survival. Termination of this Agreement shall not affect any of the Parties' respective rights accrued or obligations owed before termination, including any rights or obligations of the Parties in respect of any accepted Purchase Orders existing at the time of termination. In addition, the following shall survive termination of this Agreement for any reason: Sections 2.12, 6.2, 6.5, and Articles 4, 7, 8, 9, 10 and 11.

10.5 Supply Obligations Following Liquidating Event. Upon the occurrence of a Liquidating Event any supply obligations of the Parties will be as set forth in Article 13 of the LLC Operating Agreement.

ARTICLE 11
MISCELLANEOUS

11.1 Force Majeure Events. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time during which the Force Majeure Event renders performance impossible or infeasible and only if the Party asserting Force Majeure as an excuse for its failure to perform has provided written notice to the other Party specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event. As used herein, "Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of the party failing to perform, including, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign governmental authorities or courts; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or

unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party's nonperformance hereunder.

11.2 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Parties agree that any damages available at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the Parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate preliminary or permanent injunctive relief may be applied for and granted in connection therewith. Such remedies and all other remedies provided for in this Agreement shall, however, be cumulative and not exclusive and shall be in addition to any other remedies that a Party may have under this Agreement.

11.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each Party hereto. Neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, other than a Wholly-Owned Subsidiary of such Party, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section shall be null and void and have no effect.

11.4 Compliance with Laws and Regulations. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of a Party's rights hereunder.

11.5 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, (c) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (d) delivery in Person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

In the case of the IM Flash Technologies, LLC:
1550 East 3400 North Lehi, Utah 84043
Attention: David A. Baglee; Rodney Morgan
Facsimile Number: (801) 767-5370

With a mandatory copy to:
Micron Technology, Inc.
8000 S. Federal Way
Boise, Idaho 83707-0006
Attention: General Counsel
Facsimile Number: (208)368-4540

In the case of Intel Corporation:

Intel Corporation
2200 Mission College Blvd.
Mail-Stop SC4-203
Santa Clara, California 95054
Attention: General Counsel
Facsimile Number: (408) 653-8050

Either Party may change its address for notices upon giving ten (10) days written notice of such change to the other Party in the manner provided above.

11.6 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

11.7 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

11.8 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

11.9 Amendment. This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

11.10 Entire Agreement. This Agreement and the applicable provisions of the Confidentiality Agreement, which are incorporated herein and made a part hereof, together with the Exhibits and Schedules hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

11.11 Choice of Law. [***].

11.12 Jurisdiction; Venue. [***].

11.13 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

11.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.15 Insurance. Without limiting or qualifying the Joint Venture Company's liabilities, obligations, or indemnities otherwise assumed by the Joint Venture Company pursuant to this Agreement, the Joint Venture Company shall maintain, at no charge to Intel, with companies acceptable to Intel:

(a) Commercial General Liability with limits of liability not less than $[***] per occurrence and including liability coverage for bodily injury or property damage (1) assumed in a contract or agreement pertaining to The Joint Venture Company's business and (2) arising out of The Joint Venture Company's products, Services, or work. The Joint Venture Company's insurance shall be primary with respect to liabilities assumed by The Joint Venture Company in this Agreement to the extent such liabilities are the subject of The Joint Venture Company's insurance, and any applicable insurance maintained by Intel shall be excess and non-contributing. The above coverage shall name Intel as additional insured as respects The Joint Venture Company's work or services provided to or on behalf of Intel.

(b) Automobile Liability Insurance with limits of liability not less than $[***] per accident for bodily injury or property damage.

(c) Statutory Workers' Compensation coverage, including a Broad Form All States Endorsement in the amount required by law, and Employers' Liability Insurance in the amount of $[***] per occurrence. Such insurance shall include mutual insurer's waiver of subrogation.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

INTEL CORPORATION

By: /s/ BRIAN L. HARRISON
Name: Brian L. Harrison
Title: Vice President and General Manager,
Flash Memory Group

IM FLASH TECHNOLOGIES, LLC

By: /s/ DAVID A. BAGLEE
Name: David A. Baglee
Title: Authorized Officer

By: /s/ RODNEY MORGAN
Name: Rodney Morgan
Title: Authorized Officer

THIS IS THE SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED INTO BY AND BETWEEN INTEL CORPORATION AND IM FLASH TECHNOLOGIES, LLC

EXHIBIT A
DEFINITIONS

"Affiliate" means, with respect to any specified Person, a Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Applicable Law" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"Approved Business Plan" shall have the meaning set forth in the LLC Operating Agreement.

"Assembly Outs" shall mean a Product for which the Assembly Services have been completed and meets all of the Assembly Specification applicable at such time and is not Secondary Silicon or Rejects.

"Boise Supply Agreement" means that certain Boise Supply Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Business Continuity Plan" shall have the meaning set forth in Section 2.8 hereof.

"Business Day" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in the State of New York are authorized or required by Applicable Law to be closed.

"Capacity" means the rate of output (defined in terms of units per time period), at a particular point in time, at which a particular Facility or set of Facilities of the Joint Venture Company (or of a third party on the Joint Venture Company's behalf) is capable of producing such units.

"Confidential Information" shall have the meaning set forth in Section 7.1 hereof.

"Confidentiality Agreement" means that Mutual Confidentiality Agreement by and among the Joint Venture Company, Intel and Micron dated as of the Effective Date.

"Custom Products" shall have the meaning set forth in the Product Designs Committee Agreement.

"Cycle Time" means the time required to process a unit through a portion of the manufacturing process (e.g., fab, assembly, or final test) or through the manufacturing process as a whole.

"Demand Forecast" shall have the meaning set forth in Section 3.1(a) hereof.

"Effective Date" shall have the meaning set forth in the preamble to this Agreement.

"Excursion" means an occurrence, either during production or after customer delivery that is outside normal historical behavior as established by both Parties in writing in the applicable Specifications which may impact performance, Quality and Reliability, or customer delivery commitments for Probed Wafers, NAND Flash Memory Product or Known Good Die.

"Facilities" shall mean all of the Joint Venture Company's facilities at which it may perform manufacturing, assembly or test services, including subcontractors.

"Fiscal Quarter" means any of the four financial accounting quarters within the Joint Venture Company's Fiscal Year.

"Fiscal Month" means any of the twelve financial accounting months within the Joint Venture Company's Fiscal Year.

"**Fiscal Year**" means the fiscal year of the Joint Venture Company for financial accounting purposes.

"Flash Memory Integrated Circuit" shall have the meaning set forth in the LLC Operating Agreement.

"Force Majeure Event" shall have the meaning set forth in Section 11.1.

"GAAP" means United States generally accepted accounting principles as in effect from time to time.

"Governmental Entity" means any governmental authority or entity, including any agency, board, bureau, commission, court, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"Hazardous Materials" means dangerous goods, chemicals, contaminants, substances, pollutants or any other materials that are defined as hazardous by relevant local, state, national, or international law, regulations and standards.

"Indemnified Party" shall mean any of the following to the extent entitled to seek indemnification under this Agreement: Intel, the Joint Venture Company, and their respective Affiliates, officers, directors, employees, agents, assigns and successors.

"**Indemnified Losses"** shall mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses of any nature incurred by an Indemnified Party, including reasonable attorneys' fees and consultants' fees, and all damages, fines, penalties and judgments awarded or entered against an Indemnified Party, but specifically excluding any special, consequential or other types of indirect damages.

"Indemnifying Party" shall mean the Party owing a duty of indemnification to another Party with respect to a particular Third Party Claim.

"Intel" means Intel Corporation, a Delaware Corporation.

"Initial Business Plan" shall have the meaning set forth in the LLC Operating Agreement.

"Joint Development Program Agreement" means that certain Joint Development by and between Intel and Micron dated as of the Effective Date.

"Joint Venture Company" shall have the meaning set forth in the preamble to this Agreement.

"Joint Venture Documents" shall have the meaning set forth in the Master Agreement.

"**Known Good Die"** means a raw wafer that has been processed to the point of containing functional and/or operational NAND Flash Memory Integrated Circuits that has undergone Probe Testing

(a.k.a. "Sort" procedure), meeting predefined performance and quality criteria and singulated to individual semiconductor die. Die will have been fully tested but will not been assembled into final packaging or undergone final product testing.

"LLC Operating Agreement" means that Limited Liability Company Operating Agreement of the Joint Venture Company, LLC between, Intel and Micron.

"Liquidation Date" shall have the meaning set forth in the LLC Operating Agreement.

"Liquidation Event" shall have the meaning set forth in the LLC Operating Agreement.

"Losses" shall mean, collectively, any and all insurable liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"Manufacturing Committee" shall have the meaning set forth in the LLC Operating Agreement.

"Master Agreement" means that certain Master Agreement by and between Intel and Micron as defined in the LLC Operating Agreement.

"Members" means Micron and Intel.

"Micron" shall have the meaning set forth in the preamble to this Agreement.

"Minority Closing" shall have the meaning set forth in the LLC Operating Agreement.

"Modified GAAP" shall have the meaning set forth in the LLC Operating Agreement.

"MTV Lease Agreement" means that certain MTV Lease Agreement by and between the Joint Venture Company and Micron dated as of the Effective Date.

"NAND Flash Memory Integrated Circuit" means a Flash Memory Integrated Circuit, in the memory cells included in the Flash Memory Integrated Circuit are arranged in groups of serially connected memory cells (each such group of serially connected memory cells called a "string") in which the drain of each memory cell of a string (other than the first memory cell in the string) is connected in series to the source of another memory cell in such string, the gate of each memory cell in such string is directly accessible, and the drain of the uppermost bit of such string is coupled to the bitline of the memory array.

"NAND Flash Memory Product" shall have the meaning set forth in the LLC Operating Agreement.

"NAND Flash Memory Wafer" means a raw wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor die.

"Operating Plan" means the Manufacturing Plan, Assembly Plan and Testing Plan developed pursuant to the Definitions in the LLC Operating Agreement.

"Optional Purchase Agreement" means that certain Optional Purchase Agreement dated as of the Effective Date.

"Party" and **"Parties"** shall have the meaning set forth in the Recitals to this Agreement.

"Performance Criteria" means [***].

"Person" shall have the meaning set forth in the LLC Operating Agreement.

"Planning Forecast" shall have the meaning set forth in Section 3.1(b) hereof.

"**Price"** or **"Pricing"** means the calculation set forth on Schedule 4.8 hereof.

"Prime Wafer" means the raw silicon wafers required, on a product-by-product basis, for the manufacturer.

"**Probe Testing"** means testing, using a wafer test program as set forth in the applicable Specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired NAND Flash Memory Integrated Circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the Specifications.

"Probed Wafer" means a Prime Wafer that has been processed to the point of containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing, but before singulation of said die into individual semiconductor dice.

"Product Designs Committee Agreement" means that certain Product Designs Committee Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Product Designs Development Agreement" means that certain Product Designs Development Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date.

"Products" means a Probed Wafer, Known Good Die, or NAND Flash Memory Product, or such other products that are manufactured by the Joint Venture Company under Section 2.2 hereof.

"Proposed Loading Plan" shall have the meaning set forth in Section 3.1 hereof.

"Purchase Order" shall have the meaning set forth in Section 4.3 hereof.

"Quality and Reliability" or **"Q&R"** means building and sustaining relationships which assess, anticipate, and fulfill the quality and reliability standards as set forth in the Specification or Operating Plan for Products.

"Ramp Plan" means the document which defines the process and key milestone schedule to build and ramp a silicon fabrication facility.

"Receiving Party" shall have the meaning set forth in Section 7.1 hereof.

"Recoverable Taxes" shall have the meaning set forth in Section 4.7 hereof.

"Secondary Silicon" shall mean: (i) a Prime Wafer that has been processed to the point of

containing NAND Flash Memory Integrated Circuits organized in multiple semiconductor die and that has undergone Probe Testing would otherwise constitute a Probed Wafer but for failure to achieve qualification; or (ii) singulated and/or packaged die that would otherwise constitute Assembly Outs or Test Outs but for failure to achieve qualification; and otherwise conform to the applicable Secondary Silicon Specification.

"Semiconductor Manufacturing Technology" shall have the meaning set forth in the Process Joint Development Program Agreement.

"Sharing Interest" shall have the meaning set forth in the LLC Operating Agreement.

"Specifications" means those specifications used to describe, characterize, and define the quality and performance of NAND Flash Memory Products and Known Good Die, including any interim performance specifications at Probe Testing or other testing, as such specifications may be determined from time to time by the Joint Venture Company.

"Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"Technology License Agreement" means that certain Technology License Agreement by and between Intel, Micron and the Joint Venture Company dated as of the Effective Date.

"Term" shall have the meaning set forth in Section 11.1 hereof.

"**Test Outs**" shall mean a Product Candidate for which Testing Services have been completed and meets all of the Testing Specification applicable at such time and is not Secondary Silicon or Rejects.

"Third Party Claim" shall mean any claim, demand, action, suit or proceeding, and any actual or threatened lawsuit, complaint, cross-complaint or counter-complaint, arbitration or other legal or arbitral proceeding of any nature, brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled, by any Person other than Intel, the Joint Venture Company and Affiliates of the foregoing, against an Indemnified Party, in each case alleging entitlement to any Indemnified Losses pursuant to any indemnification obligation under this Agreement.

"Under-loading" shall have the meaning set forth in Section 4.1.

"Wafer Start" shall mean the initiation of Manufacturing Services with respect to a Prime Wafer.

"Warranty Claim Period" shall have the meaning set forth in Section 6.2 hereof.

"Wholly-Owned Subsidiary" shall have the meaning set forth in the LLC Operating Agreement.

"WIP" means work in process. This includes all wafers and Product in wafer fabrication, sort, assembly, and/or final test, including prime and secondary wafers, and all completed Product units not yet delivered to Intel.

"Yield" means anticipated output of Product from WIP at a particular point in time, including line yield, die yield, assembly yield and final testing yield.

SCHEDULES

Schedule 4.8	Price

EXHIBIT 31.1

RULE 13a-14(a) CERTIFICATION OF
CHIEF EXECUTIVE OFFICER

I, Steven R. Appleton, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, 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(s) 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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: January 9, 2006

/s/ STEVEN R. APPLETON
Steven R. Appleton
Chairman, Chief Executive Officer and President

EXHIBIT 31.2

RULE 13a-14(a) CERTIFICATION OF
CHIEF FINANCIAL OFFICER

I, W. G. Stover, Jr., certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, 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(s) 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) 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: January 9, 2006

/s/ W. G. STOVER, JR.
W. G. Stover, Jr.
Vice President of Finance and Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. 1350

I, Steven R. Appleton, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended December 1, 2005, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: January 9, 2006

By: /s/ STEVEN R. APPLETON
Steven R. Appleton
Chairman, Chief Executive Officer and President

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO 18 U.S.C. 1350

I, W. G. Stover, Jr., certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended December 1, 2005, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: January 9, 2006

By: /s/ W. G. STOVER, JR.
W. G. Stover, Jr.
Vice President of Finance and Chief Financial Officer