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ENT 61239:2017 PG 1 of 11  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2017 Jun 26 11:22 am FEE 31.00 BY MA  
RECORDED FOR IM FLASH TECHNOLOGIES

**AFTER RECORDING, PLEASE RETURN TO:**

Parsons Behle & Latimer  
Attention: Shawn C. Ferrin  
201 South Main Street, Suite 1800  
P.O. Box 45898  
Salt Lake City, Utah 84145-0898

**EASEMENT AGREEMENT**  
(IMFT Water Line)

THIS EASEMENT AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2017 (“**Effective Date**”), by MICRON LEHI DEVELOPMENT, LLC, a Delaware limited liability company (“**Grantor**”), and IM FLASH TECHNOLOGIES, LLC, a Delaware limited liability company (“**Grantee**”) (Grantor and Grantee are referred to collectively as the “**Parties**” and individually as a “**Party**”), with reference to the following:

A. Grantor is the owner of real property located in Utah County, Utah (“**Grantor Parcel**”).

B. Grantee is the owner of a parcel of real property located in Utah County, Utah (“**Grantee Parcel**”) and more particular described on **Exhibit A**. The Grantee Parcel is near portions of the Grantor Parcel (the Grantee Parcel and the Grantor Parcel are referred to collectively as the “**Parcels**” and individually as a “**Parcel**”).

C. Grantee desires to obtain from Grantor, and Grantor is willing to grant to Grantee, a waterline easement for an existing waterline across that portion of the Grantor Parcel more particularly described on **Exhibit B** (“**Easement Parcel**”) pursuant to this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which are hereby acknowledged, Grantee and Grantor agree as follows:

1. **Grant of the Easement.** Grantor grants and conveys to Grantee and the employees, contractors, invitees and licensees of Grantee (“**Permittees**”) a non-exclusive easement (“**Easement**”) on, over, across and through the Easement Parcel.

2. **Use of the Easement.** The Easement is solely for use by Grantee and its Permittees for the operation, maintenance and repair of an underground waterline and related underground improvements (“**Water Facilities**”).

3. **Grantor’s Reservation of Rights.** Subject to the terms and provisions hereof, Grantor reserves unto itself, its tenants, successors and assigns, forever, the right to cross over or under the Easement Parcel, to place or grant any other easements along, across, or under the Easement Parcel, and to otherwise make improvements to the Easement Parcel and the Water

Facilities, so long as such uses and improvements do not materially impair or diminish Grantee's use of the Easement Parcel and the Water Facilities.

4. **Operation and Maintenance.** Grantee will operate and maintain the Water Facilities subject to the following:

(a) The operation and maintenance of the Water Facilities will be completed at Grantee's sole cost and expense;

(b) Any work necessary to accomplish the maintenance and repair of the Water Facilities will be prosecuted diligently to completion and in a manner so as to minimize any interference to the Easement Parcel or the use of any utilities or facilities located within the Easement Parcel;

(c) All work necessary to maintain and repair the Water Facilities shall be performed in a good and workmanlike manner free of liens and defects, by qualified contractors, and all necessary licenses, permits and governmental and quasi-governmental authorizations will have been obtained.

(d) Grantee will give Grantor written notice of Grantee's intention to maintain or repair the Water Facilities at least 30 days prior to starting the work, which notice will be accompanied by plan(s) showing the proposed construction, improvements or repair. In the case of an emergency repair (defined as any situation where there is an imminent threat of harm to persons or property), Grantee will make commercially reasonable efforts to give advanced notice to Grantor of Grantee's work and, if advanced notice is not feasible, Grantee will give Grantor notice as soon as practicable and, in addition, within 10 days of completing the emergency repair, Grantee will give Grantor written notice of the repair, which notice will be accompanied by plans(s) showing the repair.

(e) Grantee will operate and maintain the Easement Parcel in a good, orderly and functional condition during any maintenance and repair, and upon completion of the maintenance and repair activities on the Easement Parcel, Grantee shall (i) remove all equipment and materials from the Easement Parcel; (ii) stabilize the Easement Parcel in accordance with the requirements of the Permits (defined below); and (iii) will restore the surface of the Easement Parcel to its preexisting condition, including the restoration of any landscaping and improvements.

5. **Relocation.** Grantor has the right to relocate the Easement Parcel and the Water Facilities, subject to the following conditions: (i) the relocation of the Easement Parcel and the Water Facilities must be to a location that does not materially adversely impact Grantee's use or operations of the Grantee Parcel; (ii) the relocation of the Easement Parcel and the Water Facilities must be completed at the sole cost and expense of Grantor ;and (iii) Grantor will use commercially reasonable efforts to cause the relocation of the Easement Parcel and the Water Facilities through a method and to a location that does not materially adversely impact Grantee's use or operations of the Grantee Parcel or Grantee's business operation on the Grantee Parcel.

6. **Permits and Approvals.** Prior to commencement of activities on the Easement Parcel, Grantee shall obtain all permits, licenses, variances, and approvals required in order to

conduct its activities on the Easement Parcel, including, but not limited to, all necessary storm water/water quality permits (“Permits”).

7. **Duration.** This Agreement and the Easement are perpetual and may be terminated only upon Grantee’s recordation of a notice of termination in the records of the Utah County Recorder.

8. **Not a Public Dedication.** Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of Grantor Parcel to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed herein.

9. **Insurance.** Grantee will maintain and/or cause to be maintained, at its sole expense, the following insurance policies:

(a) Liability insurance insuring against claims for bodily injury, death and property damage occurring on, in, or about the Grantor Parcel with a “Combined Single Limit” (covering bodily injury liability, death and property damage liability) of not less than \$1,000,000 for total claims for any one occurrence and not less than \$2,000,000 for total claims in the aggregate during one policy year; and

(b) Such other insurance policies as Grantor may reasonably require from time to time.

All insurance policies will name Grantor as additional insured and will be written by one or more insurance companies licensed to do business in Utah and rated “A-XII” or better by the then most current edition of Best’s Insurance Guide (or if that guide is no longer published, then having a comparable rating as specified by Grantor from time to time). The policies will also include an endorsement requiring the company writing the policy to give Grantor at least 30 days’ notice in writing in advance of any cancellation or lapse of the policy or the effective date of any reduction in the amount of coverage under the policy. All public liability, property damage, and other casualty insurance policies obtained by Grantee pursuant to this paragraph will be written as primary insurance and not contributing with separate coverage which Grantee may carry. Grantee must furnish Grantor with certificates of insurance showing that insurance meeting the requirements of this paragraph has been obtained and fully paid for by Grantee. Similar certificates of insurance as to renewal policies will be provided to Grantor at least 15 days prior to the expiration of any policy.

10. **Indemnification.** Grantee indemnifies, holds harmless and agrees to defend Grantor for, from, and against all claims, damages, expenses (including, without limitation, attorneys’ fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property occurring on the Grantor Parcel, caused by the active or passive negligence of Grantee or its Permittees, or the breach by Grantee of any of its obligations under this Agreement; provided, however, this indemnification does not apply to the extent any loss of life, injury to any person, or damage to any property is caused by the active or passive negligence of the indemnified party, or its respective agents, servants or employees.

11. **Liens.** Grantee will not permit any mechanic's lien, materialmen's lien, or other lien of any kind on the Grantor Parcel by anyone claiming by reason of any act or omission of Grantee, its Permittees, or any of its employees, agents, representatives, contractors, subcontractors, successors, or assigns, and Grantee indemnifies, defends, and holds Grantor harmless for, from, and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of any such liens.

12. **Remedies.** In the event of any violation or threatened violation by any Party of any of this Agreement, the other Party has, in addition to the right to collect damages, the right to enjoin the violation or threatened violation in any court of competent jurisdiction. Except as otherwise provided in this Agreement, it is expressly agreed that no breach of this Agreement will entitle any Party to cancel, rescind, or otherwise terminate this Agreement, but this limitation will not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of this Agreement. In addition to all other remedies, upon the failure of a defaulting Party to cure a breach within 20 days following written notice from the non-defaulting Party, the non-defaulting Party will have the right to perform the obligation contained in this Agreement on behalf of the defaulting Party and be reimbursed by the defaulting Party upon demand for the reasonable costs of performing the obligation. Notwithstanding the foregoing to the contrary, if the nature of the breach of this Agreement presents an immediate risk of damage to property, injury to persons, interruption of utility service or loss, obstruction or blockage of access, the prior notice requirement of this paragraph will not apply, and the non-defaulting Party is authorized to take immediate steps to minimize or eliminate the risk, and be reimbursed for the reasonable costs of performing the obligation. In that event, notice of the action will be given to the defaulting Party as soon as reasonably practicable under the circumstances.

13. **Notices.** Any notice or demand to be given by the Parties will be in writing and deemed given upon delivery by personal service, facsimile (provided that a hard copy of any notice has been dispatched by one of the other means for giving notice within 24 hours after facsimile transmission), by express mail, FedEx, or any other similar form of courier or delivery service that keeps delivery receipts, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to as follows.

To Grantor:	Micron Technology, Inc. Mail Stop 507 8000 S. Federal Way P.O. Box 6 Boise, Idaho 83707-0006 Attention: General Counsel Telephone: (208) 368-4500 Facsimile: (208) 368-4540
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With a required copy to: Micron Technology, Inc.  
 Attention: \_\_\_\_\_  
 Mail Stop \_\_\_\_\_  
 8000 S. Federal Way  
 P.O. Box 6  
 Boise, ID 83707-0006  
 Telephone: (208) 368-\_\_\_\_\_  
 Facsimile: (208) 368-\_\_\_\_\_

To Grantee: IM Flash Technologies, LLC  
 4000 N. Flash Drive  
 Lehi, Utah 84043  
 Facsimile: (801) 767-5125

With a required copy to: Nathan Hyde  
 Senior Counsel  
 4000 N Flash Drive, Lehi, UT 84043

Either Party may change the address at which it desires to receive notice on written notice of the change to the other Party. Any notice will be deemed to have been given, and will be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated will not defeat or delay the giving of a notice. Notice may be given by counsel to a Party.

14. **Estoppel.** Grantee must, upon not less than 10 days' prior written notice from Grantor, execute, acknowledge and deliver to Grantor a statement in writing (i) certifying that this Agreement is unmodified, or if modified stating the nature of such modification, and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect), and (ii) acknowledging that there are not, to Grantee's knowledge, any uncured defaults on the part of Grantee hereunder, or specifying such defaults if any are claimed.

15. **Mutuality; Reciprocity; Runs with the Land.**

(a) The Easement, and the rights and obligations granted or created by this Agreement, are appurtenances to the Parcels and none of the easements, rights or obligations may be transferred, assigned or encumbered except as an appurtenance to the Parcels. For the purposes of the easements and rights set forth in this Agreement, the Parcel benefited thereby will constitute the dominant estate, and the Parcel burdened thereby will constitute the servient estate.

(b) Each of the easements and rights contained in this Agreement (whether affirmative or negative in nature) (i) will constitute covenants running with the land; (ii) will bind every person having a fee, leasehold or other interest in any portion of the Parcels at any time or from time to time to the extent such portion is affected or bound by the easement or right in question, or to the extent that easement or right is to be performed on such portion; (iii) will

inure to the benefit of and be binding upon the Parties and their respective successors and assigns as to their respective Parcels; and (iv) will create mutual, equitable servitudes upon each Parcel in favor of the other Parcels.

16. **Modification.** A modification of, or amendment to, this Agreement will be effective only if the modification or amendment is in writing and signed by all Parties. Any oral representation or modification concerning this Agreement will be of no force or effect. This Agreement will not be supplemented or modified by any course of dealing.

17. **Successors and Assigns.** This Agreement inures to the benefit of, and is binding on, the Parties and their respective successors and assigns.

18. **Applicable Law; Jurisdiction.** This Agreement is governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. The Parties subject themselves to the exclusive jurisdiction of the state and federal courts of the State of Utah and agree to commence and maintain any lawsuit related to this Agreement in those courts.

19. **Interpretation.** Unless otherwise provided, references in this Agreement to paragraphs are to paragraphs in this Agreement. This Agreement is to be construed according to its fair meaning and not strictly for or against either of the Parties, as if both Grantor and Grantee had prepared this Agreement. Except as otherwise provided in this Agreement, no remedy provided in this Agreement is exclusive of any other remedy, and all remedies under this Agreement may be exercised concurrently, independently or successively from time to time.

20. **Counterparts.** This Agreement may be executed in counterparts and delivered by electronic transmittal.

21. **Titles and Headings.** Titles and headings of paragraphs of this Agreement are for convenience of reference only and so not affect the construction of any provision of this Agreement.

22. **Exhibits.** Each exhibit referred to in, and attached to, this Agreement is an integral part of this Agreement and is incorporated in this Agreement by this reference.

23. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court or as a result of future legislative action, and if the rights or obligations of any Party will not be materially and adversely affected thereby, (i) the holding or action will be strictly construed; (ii) the provision will be fully severable; (iii) this Agreement will be construed and enforced as if that provision had never comprised a part hereof; (iv) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Agreement; and (v) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to the illegal, invalid and unenforceable provision as may be possible.

24. **Authorization.** Each individual executing this Agreement represents and warrants that they have been duly authorized to execute and deliver this Agreement in the capacity and for the entity specified in the signature blocks.

25. **Relationship Between Parties.** Nothing in this Agreement will be construed to create any partnership, agency or joint venture relationship between the Parties.

26. **No Third-Party Rights.** The obligations of the Parties set forth in this Agreement do not create any rights in or obligations to any persons or parties other than to the Parties and their respective successors and assigns. This Agreement is not intended to nor will it be construed to benefit any third party.

27. **No Waiver.** Any Party's failure to enforce any provision of this Agreement will not constitute a waiver of the right to enforce that provision. The provisions of this Agreement may only be waived by a writing signed by the Party intended to be benefited by the provisions to be waived specifically acknowledging an intent to waive that provisions. A waiver by a Party of any breach by the other Party will not be construed as a waiver of any succeeding breach of the same or other provisions.

28. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties regarding the subject matter of this Agreement and supersedes any prior promises, representations, warranties, agreements or understandings, whether oral, written or implied, between the Parties that are not set forth in this Agreement.

**[Signature Pages Follow]**





STATE OF UTAH )  
 : ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2017, by Bert Blaha the Co-CEO of IM FLASH TECHNOLOGIES, LLC, a Delaware limited liability company.

Sandra F Whitlock  
NOTARY PUBLIC  
Residing at: Utah County

My Commission Expires:

8-1-2020



**EXHIBIT A  
TO  
EASEMENT AGREEMENT**

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GRANTEE PARCEL

The Grantee Parcel is located in Utah County, Utah and is more particularly described as follows:

**[CONFIRM SURVEYED DESCRIPTION]**

COM N 447.44 FT & E 525.08 FT FR S 1/4 COR. SEC. 28, T4S, R1E, SLB&M.; N 7 DEG 36' 13" W 561.63 FT; N 57 DEG 40' 47" E 197.97 FT; N 32 DEG 19' 13" W 130 FT; N 57 DEG 40' 50" E 470 FT; N 32 DEG 19' 13" W 292.14 FT; N 57 DEG 40' 47" E 927.5 FT; N 14 DEG 38' 7" W 470.87 FT; N 75 DEG 21' 53" E 850 FT; S 14 DEG 38' 7" E 393.2 FT; S 74 DEG 14' 9" E 895.77 FT; S 15 DEG 45' 51" W 356.2 FT; S 74 DEG 14' 9" E 434.88 FT; S 15 DEG 45' 51" W 1123.8 FT; N 74 DEG 14' 9" W 945.26 FT; S 81 DEG 45' 51" W 494.18 FT; S 57 DEG 45' 51" W 643.51 FT; S 81 DEG 48' 12" W 794.6 FT TO BEG. AREA 99.853 AC.

**EXHIBIT B  
TO  
EASEMENT AGREEMENT**

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EASEMENT PARCEL

The Easement Parcel is located in Utah County, Utah and is more particularly described as follows:

A non-exclusive perpetual easement, upon part of an entire tract of property, situate in the NW1/4 of Section 34, T. 4 S., R. 1 E., Salt Lake Base and Meridian to facilitate water supply. The boundaries of said perpetual easement are described as follows:

Beginning at a point on the highway right of way and limited-access line of State Route 92 that is S89°57'03"W along the section line 258.57 feet and SOUTH 1017.19 feet from the North Quarter Corner of said Section 34; and running thence S0°00'48"E 20.00 feet along said highway right of way and limited-access line; thence N88°59'15"W 29.52 feet; thence N89°33' 5"W 211.64 feet; thence S89°18'24"W 234.38 feet; thence N0°32'20"W 20.00 feet; thence N89°18'24"E 234.52 feet; thence S89°33'25"E 211.93 feet; thence S88°59'15"E 29.26 feet to the point of beginning. Contains 9,512 square feet or 0.218 acres more or less.