

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 91-1423-B  
THE EXECUTIVE OFFICER TO LEASE )  
PROPERTY AT 209TH AVENUE AND ) Introduced by Executive  
TUALATIN VALLEY HIGHWAYS TO ) Officer Rena Cusma  
INTEL CORPORATION )

WHEREAS, Metro is the owner of a tract of land consisting of 8.26 acres located at the junction of southwest 209th Avenue and Tualatin Valley Highway in Aloha, Oregon; and

WHEREAS, Intel Corporation has offered to lease the property for a period of three (3) years at a monthly rate of four thousand dollars (\$4,000.00); and

WHEREAS, Metro believes that disposition of the property is contingent upon the establishment of a viable solid waste transfer station or stations in the West Watershed, but does not anticipate any public use of the property within the term of the lease; and

WHEREAS, Metro Code 2.04.033 requires that the lease of real property owned by Metro be approved by the Council of the Metropolitan Service District; and

WHEREAS, ORS 271.310 provides that public property should not be leased unless the governing body determines that the property not be needed for public use during the term of the lease; now therefore;

BE IT RESOLVED,

1. The 8.26 acre Metro parcel at the corner of Oregon Highway 8 (Tualatin Valley Highway) and SW 209th Avenue will not be needed for public use within the term of the attached lease

with Intel Corporation, made part of this Resolution by reference; and

2. The Executive Officer is authorized to execute a lease in substantially the form of the attached lease with Intel Corporation, for use of the 8.26 acre Metro property, so long as the lease contains a provision for early termination which could allow possession by Metro after January 1, 1992, with 90 days notice, without penalties.

ADOPTED by the Council of the Metropolitan Service District  
this 25th day of April, 1991.



Jim Gardner, Deputy Presiding Officer

A:LEGIS\91-1423A.RES

L E A S E

THIS LEASE, made as of this \_\_\_\_ day of \_\_\_\_\_ 1991, between the METROPOLITAN SERVICE DISTRICT (METRO), a municipal corporation and public body of the State of Oregon, hereinafter referred to as "Lessor," and INTEL CORPORATION, a Delaware corporation, hereinafter referred to as "Lessee;"

W I T N E S S E T H:

That, in consideration of the rents hereinafter specified and the covenants, terms, and conditions herein contained, the parties hereto do hereby covenant to and with each other as follows:

1. Premises and Initial Term. Lessor does hereby lease and demise unto Lessee, and Lessee hereby leases from Lessor, on the covenants, terms, and conditions hereinafter set forth, the real property and the building and improvements thereon in the County of Washington, State of Oregon, described in EXHIBIT A, attached hereto and made a part hereof. Said premises are leased subject to such covenants, conditions, restrictions, easements, reservations, assessments, charges and rights of way, if any, as are now of record against said premises, any state of facts an accurate survey might show, zoning rules, restrictions, regulations, resolutions and ordinances, and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authorities having jurisdiction.

TO HAVE AND TO HOLD the above-described premises, together with all the tenements, hereditaments, appurtenances, and easements

thereunto belonging, at the rental and upon the terms and conditions herein stated, for an initial term of three (3) years, commencing May 1, 1991, and ending at 11:59 p.m. on April 30, 1994, unless terminated earlier, as specified in of this Lease.

2. Rent.

2.1 For the initial term of this Lease (i.e., the period commencing with and including the month of May, 1991, and ending with and including the month of April, 1994), Lessee agrees to pay Lessor as rent the sum of FOUR THOUSAND AND NO/100THS DOLLARS (\$4,000.00) per month.

2.2 Monthly rent in the amounts hereinabove provided, which Lessee agrees to pay without offset or reduction, shall be due and payable in lawful money of the United States on or before the first day of each month in advance during the term of this Lease by check payable to Lessor and delivered to Lessor at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Accounting Division, or by check to any other payee or delivered to any other address which Lessor, or any successor in interest of Lessor, may designate by notice to Lessee.

3. Utilities and Governmental Impositions.

3.1 In addition to the rent provided for in Section 2 hereof, Lessee shall pay all charges and sums provided for in this Section 3. Lessee will pay all charges for electricity, water, sewer, gas, telephone, and other utility services used on or furnished to the premises. Lessee further agrees to pay all taxes, assessments, personal property taxes, water rents, rates and charges, sewer rents,

and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, which shall or may during the term hereof be charged, laid, levied, assessed or imposed upon or against the premises, or become due and payable upon or in respect of the premises or the rents payable hereunder, or become liens upon the premises or any rents payable hereunder, or arise in connection with the use, occupancy or possession of the premises, or grow due or payable out of or for the premises or the rents payable hereunder, during the term hereof; provided, however, that nothing contained herein shall obligate Lessee to pay:

(i) any federal, state or local gift, estate, inheritance or devolution tax; or

(ii) any federal, state or local tax upon or measured by the net income of Lessor, its successors and assigns; which may at any time be levied or assessed against, or become a lien upon, the premises or the rents payable hereunder. Taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges allocable to an assessment year, a tax year, a fiscal year, service period or other term commencing prior to the commencement or ending after the termination of this Lease, and local improvement district or similar assessments which are payable on an extended basis pursuant to the terms of bond financing as authorized by law, shall be adjusted and prorated, and Lessor shall pay the prorated share thereof that is allocable to the period prior or

subsequent to the term, and Lessee shall pay the prorated share thereof that is allocable to any period within the term of this Lease.

3.2 Lessee shall, within ten (10) days after any such tax, assessment or other charge constituting a lien on the leased premises shall become due and payable, or within ten (10) days of receiving written notice of any such tax, assessment or other charge if notice was initially sent to Lessor, produce and exhibit to Lessor satisfactory evidence of such payment.

4. Use of Premises. Lessee shall use the premises during the term of this Lease for parking, staging of materials for construction, and general office use (see paragraph 6.1) and for no other purpose whatsoever without Lessor's written consent, which shall not be unreasonably withheld. Lessee may not construct any new buildings or structures on the premises (see paragraph 6). Lessee will not make any unlawful, improper, or offensive use of the premises, will not suffer any strip or waste thereof, will not permit any objectionable noise or odor to escape or to be emitted from the premises, or do anything or permit anything to be done upon or about the premises in any way tending to create a nuisance. Subject to paragraph 6, Lessee may place or install in or upon the existing structures on the premises such trade fixtures and equipment as it shall deem desirable for the conduct of its business thereon. Personal property, trade fixtures, and equipment used in the conduct of Lessee's business (including telephone system, computer system and external wiring, and any other similar data processing equipment), as distinguished from fixtures and equipment used in connection with the physical operation

and maintenance of the building and improvements, placed by Lessee in or upon the premises shall not become a part of the realty, even if nailed or screwed or otherwise fastened to the premises, but shall retain their status as personal property and may be removed by Lessee at any time. Any damage caused the premises by the installation, use, or removal of such property shall be repaired by Lessee at its expense. Any personal property, trade fixtures, and equipment not used in connection with physical operation of the premises and belonging to Lessee, if not removed upon the expiration of the term of this Lease (or, in the event of the sooner termination of this Lease, within twenty (20) days after such termination) shall, at the option of Lessor, be deemed abandoned and shall become the property of Lessor without any payment or offset therefor.

5. Compliance With Laws. Lessee agrees, at Lessee's own cost and expense, to comply with and observe all laws, ordinances, orders, rules, regulations, or requirements of the United States of America, the State of Oregon and the County of Washington, and all duly constituted governmental bodies and authorities thereof, affecting the use and occupancy of the premises. Lessor represents and warrants that, as of the date of execution of this Lease, there are no known violations of any applicable zoning, building or safety code, regulation or ordinance affecting the premises.

6. Tenant Improvements, Alterations, Maintenance and Repairs.

6.1 Lessee shall be entitled to improve the premises to Lessee's standards by grinding, culverting, tilling, graveling, paving, landscaping and otherwise using the land area, substantially

as specified in the attached Exhibit B, which is made part of this Lease by reference. Lessee shall not construct improvements, remove materials from, or deposit materials into, any area identified on the map in Exhibit B as wetlands, without first obtaining all required state or federal permits for such removal, fill, or construction, and without first obtaining the written consent of Lessor. In making and maintaining improvements specified in this paragraph 6.1, Lessee shall take reasonable care to prevent erosion into the wetland area, destruction of vegetation in the wetland or "wetland setback" area, or other undue impacts to the wetland area.

6.2 Lessee shall also have the right to utilize the existing buildings located on the premises, including the brick structure and appurtenances. Lessee shall not make alterations, additions, or improvements to the premises, or remove landscaping or trees in the immediate vicinity of the brick structure, without the prior written approval of Lessor. Such approval shall not be unreasonably withheld. Approval is hereby granted to Lessee to make interior, nonstructural alterations, additions, or improvements to the brick structure on the premises, provided the cost of any such alteration, addition, or improvement does not exceed twenty-five thousand dollars (\$25,000).

6.3 Except as expressly agreed to by Lessor in writing, Lessee shall not erect any new structures on the premises. Lessee may, however, install trailers on the premises and connect them with utilities as needed. Any trailers installed by Lessor shall be placed on temporary footings, unless written permission is obtained from



Lessor, in advance, for placement of permanent footings or foundations. Lessor may refuse to allow any new structures at its sole discretion, or may attach reasonable conditions to approval, including conditions relating to the removal of such improvements upon termination and restoration of the premises to their prior condition.

6.4 Lessee shall pay, when due, all lawful claims for labor or materials furnished to or for Lessee at or for use in the premises, which claims are or may be secured by any construction, mechanics' or materialmen's lien against the premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the premises, and Lessor shall have the right to post notices of non-responsibility in or on the premises as provided by law.

7. Condition of Premises; Maintenance and Repairs.

7.1 Lessor agrees that, as of the delivery date, the premises shall be in broom clean condition and free of any personal property left by the previous occupant, and that any damage to the premises occasioned by the removal of the previous occupant shall be repaired at Lessor's cost. If previous tenants have left any significant amounts of refuse in the land areas of the premises, Lessee may have such materials removed, and deduct from the rents due hereunder the actual and reasonable costs of so doing. Lessee shall accept the premises on the delivery date in their condition as of the date of this Lease. The cost of any and all maintenance and repair to the premises, to include any structures thereon, shall be borne solely by the Lessee.

7.2 Lessor shall not be required to perform or pay for any maintenance, or to make or pay for any repairs, alterations, restoration, reconstruction, additions or improvements, to or upon the premises during the term of this Lease. In all respects, Lessee hereby agrees, at Lessee's own cost and expense, to maintain and keep the premises, including the building and other improvements thereon, in good order and repair. In the event of any damage or destruction to the brick building and appurtenances for which other provision is not made, Lessee agrees to construct and reconstruct such premises, building and other improvements, unless Lessor agrees in writing to some alternative arrangement.

8. Repairs by Lessor. Lessor shall make no improvements to the premises nor structures thereon during the term of this Lease and under no circumstance shall have any obligation to do so.

9. Insurance and Indemnification.

9.1 Throughout the term of this Lease, Lessee shall cause to be kept insured, at Lessee's sole cost and expense, all building and other improvements located on the premises against loss or damage caused (a) by fire, windstorm, and perils generally included under "extended coverage," (b) boilers and machinery, and (c) vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Lessor or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than ninety percent (90%) of the then actual replacement cost (exclusive of the cost of excavations, foundations, and footings below the basement floor, but without deduction for

depreciation and with not more than ONE THOUSAND AND NO/100THS (\$1,000.00) DOLLARS deductible from the loss payable for any casualty). Said policy or policies of insurance shall provide that payment for any losses covered under or by said policy or policies shall be made unto Lessor, and/or any mortgagee or assignee designated by Lessor from time to time, and/or Lessee, as their respective interests may appear. Until such time as Lessor notifies Lessee that the amount of the insurance maintained by Lessee under this paragraph 9.1 is, in Lessor's opinion, less than the amount required by the second sentence of this paragraph 9.1, the amount of the insurance in force at any time, as evidenced by the certificate or certificates therefor furnished under paragraph 9.4, shall be deemed to be adequate under the second sentence of this paragraph 9.1.

9.2 Throughout the term of this Lease, at Lessee's sole cost and expense, Lessee shall keep in force public liability insurance (naming Lessor as an additional insured) insuring Lessor and Lessee against any and all loss, liability, and damage whatever for personal injury and property damage, or either, resulting from, or alleged to have resulted from negligence or the condition or use of the premises, or of any building or other improvement situated thereon, or of any sidewalk or way adjacent to said premises, with policy limits in such amounts as Lessor may at any time or from time to time require (provided, at the time, such policy amounts do not exceed those customarily maintained in connection with properties of similar size and utilization in the Portland, Oregon, metropolitan area). In no event shall such policy limits be less than ONE MILLION

AND NO/100THS DOLLARS (\$1,000,000.00) for property damage and THREE MILLION AND NO/100THS DOLLARS (\$3,000,000.00) for personal injury (whether or not resulting in death) suffered by one person and FIVE MILLION AND NO/100THS DOLLARS (\$5,000,000.00) for personal injuries (whether or not resulting in death) suffered by more than one person in one occurrence.

9.3 All insurance required by express provisions of this Lease shall be carried by responsible insurance companies licensed to do business in the State of Oregon. All such policies shall be nonassessable and shall contain language to the effect that (A) any loss shall be payable notwithstanding any act or negligence of Lessor that might otherwise result in a forfeiture of the insurance, and (B) the policies may not be canceled or materially changed except after thirty (30) days' notice by the insurer to Lessor or Lessor's designated representatives.

9.4 Lessee shall furnish Lessor with certificates evidencing the policies of insurance required hereunder to be maintained by Lessee and, in the case of any renewal or replacement of a policy already in existence, Lessee shall furnish a certificate evidencing such renewal or replacement at least thirty (30) days before expiration or other termination of the existing policy.

9.5 Lessee and Lessor each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under

any insurance policy in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

9.6 Notwithstanding the insurance requirements of this Lease, Lessee shall have the option to self insure for so long as Intel's net worth as a corporate entity remains above one billion dollars (\$1,000,000,000.00). Coverage shall apply to any loss which but for the existence of the deductible or self insured retention would be covered under the insurance requirements described herein.

9.7 Lessee shall, independently of its obligation to obtain and maintain liability insurance as above provided, indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the premises, to the extent not caused or contributed to by Lessor, and Lessee shall further indemnify and hold harmless Lessor from any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease to the extent not caused by the negligent or intentional misconduct of Lessor, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought against Lessor by reason of any such

claim, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel satisfactory to Lessor.

9.8 Lessor shall indemnify and hold Intel harmless from and against any and all claims as follows:

(i) By a governmental agency or citizen acting to enforce an environmental law or regulation relating to the condition of the site as of March 14, 1991, the date the parties entered into a Right of Entry Agreement, and alleged to have occurred during Lessor's ownership of the property;

(ii) By any person claiming to have been damaged by the condition of the site through contact with the site or off-site migration of hazardous substances during the period of Lessor's ownership of the site and prior to March 14, 1991; and

(iii) By any person claiming to have been damaged by off-site migration, during the term of this Lease, of hazardous substances that were placed on the premises during Lessor's ownership and prior to March 14, 1991, if migration has occurred due to natural causes.

This indemnity by Lessor does not extend to claims of damage or injury by Lessee, its agents, contractors, consultants, employees, or invitees on the property. This indemnity is not intended to override any liability Intel may have under state or federal law as a prior owner of the property.

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10. Condition of Premises in Lessee's Hands.

10.1 Lessee shall keep the driveways and parking areas upon the premises free and clear of ice, snow, rubbish, debris and obstruction.

10.2 At any time during the term of this Lease, Lessee, its sublessees and subtenants may place freestanding signs on the premises and may place wall signs on the exterior and interior walls of the existing buildings and structures on the premises. Such signs shall be for identification, for parking, or for directional purposes related to activities conducted on the premises; they shall be installed at Lessee's sole cost and expense, they shall conform at all times with applicable ordinance, codes, statutes, rules and regulations of governmental authorities, and they shall conform in terms of number, size, appearance and quality with standards prevailing for commercial buildings of similar size and utilization in the general neighborhood in which the premises are situated. At the expiration or sooner termination of this Lease, Lessee shall, at the Lessor's request and at Lessee's sole cost and expense, remove all such signs and restore the premises to their prior condition.

11. Assignment and Subletting.

11.1 Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber to or in favor of any third party all or any part of Lessee's interest in this Lease or in the premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Any determination of the reasonableness of Lessor's refusal to give consent shall

take into account the net worth, financial stability, and financial responsibility of such third party, as well as the general reputation of the third party in the community or communities in which it has theretofore carried on business activities. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be voidable, and shall constitute a material default and breach of this Lease. Lessee shall, however, have the right to assign this Lease to a wholly owned subsidiary of Lessee, without Lessor's consent.

11.2        Regardless of Lessor's consent, no subletting or assignment shall release Lessee from any of Lessee's obligations hereunder or alter the primary liability of Lessee to pay the rent and perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one subletting or assignment shall not be deemed consent to any subsequent subletting or assignment.

12.        Damage or Destruction. If the premises are damaged or destroyed and such damage or destruction is caused by a casualty covered under an insurance policy of the kind required to be maintained by Lessee pursuant to paragraph 9 above, Lessee shall, at Lessee's expense, repair such damage or reconstruct the premises, as the case may be, as soon as reasonably possible, and this Lease shall continue in full force and effect. In such event, all insurance proceeds shall be paid to Lessee as the work progresses and in a manner to ensure that no construction, labor, or material liens will



arise. In such event, moreover, the building and improvements as repaired or reconstructed by Lessee shall be of a value not less than the value of the building and improvements immediately prior to the casualty, and the building and improvements as repaired or reconstructed shall immediately become part of the realty and the property of Lessor. The plans and specifications for any reconstruction of the building or improvements shall be submitted in advance to Lessor for Lessor's approval, which approval shall not be unreasonably withheld.

13. Condemnation. If the premises or any portion thereof is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to any part of the premises so taken as of the date the condemning authority takes title or possession, whichever first occurs, and the rental under paragraph 2 shall be reduced in the proportion that the area taken on the premises bears to the total of the premises. Any award for the taking of all or any part of the entire premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to compensation for its loss, if any, of capital improvements installed in the premises by Lessee at Lessee's expense, in such amount as the Court may award or in proportion to the amount of any settlement reached in lieu of condemnation; and provided, further,

that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable tangible personal property.

14. Lessor's Performance of Lessee's Obligations. If Lessee fails to perform any obligation required hereunder to be performed by Lessee, and such failure continues for ten (10) days after written notice thereof is sent by Lessor, Lessor may make such payments and/or take all such other action as Lessor may deem reasonably necessary or appropriate to protect and preserve the property or the Lessor's interest therein, and, to this end, Lessor, its agents, contractors and employees, may, upon prior notice, enter upon the premises and put the same in good order, condition and repair. In an emergency, Lessor, its agents, contractors and employees, may make such payments, take such other action, or enter upon the premises to put the same in good order, condition or repair, without prior notice to Lessee. All costs, expenses and payments so paid or incurred by Lessor, together with interest thereon from the respective dates paid or incurred at the rate prescribed under section 32 below, shall be due and payable as additional rent to Lessor hereunder. Lessor is not required to make any such payment or take any such action, and by doing so, Lessor shall not be deemed to have waived any other remedy available unto Lessor.

15. Default by Lessee. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

15.1 The vacating or abandonment of the premises by Lessee.

15.2 The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee either to third parties or unto Lessor hereunder within ten (10) business days after the same becomes due and payable, if such failure continues for ten (10) days after notice has been given to Lessor.

15.3 Any attempted assignment, transfer, mortgage, encumbrance, or subletting in contravention of paragraph 11, above, or any recordation of this Lease in contravention of paragraph 26 below.

15.4 The failure by Lessee to observe or perform any other of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days is reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

15.5 The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty

(30) days; or the attachment, execution, or judicial seizure of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16. Remedies on Default by Lessee. In the event of any such material default or breach, Lessor may, at Lessor's option, exercise any one or more of the rights and remedies available to a landlord in the State of Oregon to redress such default, consecutively or concurrently, including but not limited to the following:

16.1 Lessor may elect to terminate Lessee's right to possession of the premises or any portion thereof by written notice to Lessee. Following such notice, Lessor may re-enter and take possession of the premises pursuant to process of law.

16.2 Following re-entry by Lessor, Lessor may relet the premises for a term longer or shorter than the term of this Lease and upon any reasonable terms, including the granting of rent concessions to the new tenant. Lessor may alter, refurbish, or otherwise change the character or use of the premises in connection with such reletting. Lessor shall not be required to relet for any use or purpose which Lessor may reasonably consider injurious to its property or to any tenant which Lessor may reasonably consider objectionable. No such reletting by Lessor following a default by Lessee shall be construed as an acceptance of the surrender of the premises. If rent received upon such reletting exceeds the rent received under this Lease, Lessee shall have no claim to the excess.

16.3 Following re-entry Lessor shall have the right to recover from Lessee the following damages:

16.3.1 All unpaid rent or other charges for the period prior to re-entry plus interest at the rate prescribed under paragraph 32 below.

16.3.2 An amount equal to the rent lost during any period during which the premises are not relet, if Lessor uses reasonable efforts to relet. If Lessor lists the premises with a real estate broker experienced in leasing commercial property in Portland, Oregon, for reasonable terms at market rent, such listing shall constitute the taking of reasonable efforts to relet the premises.

16.3.3 The following costs incurred in reletting or attempting to relet the premises: the cost of removing any personal property of Lessee from the premises, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations, the amount of any real estate commissions and advertising expenses, the cost (including, but not limited to, a reasonable attorney's fee) for negotiating and preparing a new lease, and the cost to Lessor of such rent concessions below market rent as may reasonably be required to induce a new tenant to lease the premises.

16.3.4 The difference between the rent reserved under this Lease and the amount actually received by Lessor after reletting at a market rate, as such amounts accrue.

16.3.5 Reasonable attorneys' fees incurred in connection with the default, whether or not any litigation is commenced.

16.4 Lessor may sue periodically to recover damages as they accrue throughout the term of this Lease and no action for accrued damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Lessor may seek a decree of specific performance requiring Lessee to pay damages as they accrue. Alternatively, Lessor may elect in any one action to seek to recover accrued damages plus the reasonable rental value of the premises for the remainder of the term, discounted to the time of the judgment at a reasonable discount rate.

16.5 In the event that Lessee remains in possession following default and Lessor does not elect to re-enter, Lessor may recover all back rent or other charges, plus interest at the rate prescribed under paragraph 32 below from the date of delinquency, and shall have the right to cure any default (other than one described at paragraph 15.2) and recover the cost of such cure from Lessee, plus interest at the rate prescribed under paragraph 32 below from the date of the expenditure. In addition, Lessor shall be entitled to recover attorneys' fees reasonably incurred in connection with the default, whether or not litigation is commenced. Lessor may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

16.6 The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided

hereunder or under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy.

16.7 No action of Lessor, other than Lessor's express written notice of the termination of this Lease, shall terminate this Lease or be construed as an acceptance of the surrender of the premises.

17. Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within thirty (30) days after written notice by Lessee to Lessor and to the holder of any mortgage upon the premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation. At any time when Lessor is in default (as in this paragraph 17 provided) in the performance of any obligation to be performed by Lessor hereunder (other than a default relating to Lessor's failure to give a consent or approval that, under the terms of this Lease, may not be unreasonably withheld), Lessee shall have the right to cure such default and recover the cost of such cure from Lessor, plus interest at the rate prescribed under paragraph 32 below from the date of the expenditure. In the event Lessor fails so to reimburse Lessee within thirty (30) days following Lessee's written demand for reimbursement, Lessee may offset against succeeding installments of the monthly rent hereunder the amount of such unpaid reimbursement.

18. Late Charge. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount

of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage upon the premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) business days after such amount shall be due, Lessee shall pay to lessor a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. The late charge herein prescribed shall be in addition to, and not in lieu of any interest payable on amounts for which interest is recoverable hereunder.

19. Surrender of Premises. At the expiration or sooner termination of this Lease, Lessee shall surrender the premises to Lessor peaceably, quietly and in as good order and condition (reasonable use and wear thereof alone excepted) as the same are in at the commencement of the term of this Lease (or as they may thereafter be put by Lessor or Lessee under the provisions of this Lease). Lessee shall remove alterations, improvements, additions, and utility installations and restore the premises to their prior condition to the extent required by Lessor as a condition of having given consent under paragraph 6.1, and Lessee will remove therefrom all of Lessee's



equipment, goods, and effects which may be affixed to or contained in or upon the premises. Lessee shall not be required to remove any of the alterations, improvements, or additions specified in the attached Exhibit B but shall remove any trailers placed on the property, including any footings or foundations, unless other written arrangements are made with Lessor in advance.

20. Estoppel Certificates.

20.1 Lessee shall at any time upon not less than fifteen (15) days' prior written notice from Lessor execute, acknowledge, and deliver to Lessor a certificate stating (a) whether this Lease is in full force and effect, (b) whether and in what respects this Lease has been modified, (c) whether Lessee is in occupancy and paying rent on a current basis with no rental offsets or claims, (d) whether there has been any prepayment of rent other than that provided for in the Lease, (e) whether any notice has been received by Lessee of any default which has not been cured, (f) whether Lessor is in default hereunder, (g) whether there is any action, voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof, and (h) such other matters as may be reasonably required by Lessor or any actual or prospective purchaser or mortgage lender. Any such certificate may be conclusively relied upon by any actual or prospective mortgagee, encumbrancer, or purchaser of the premises or any part thereof.

20.2 Lessee's failure to deliver such certificate within such time and within fifteen (15) days after Lessor's notice to Lessee of such failure shall be conclusive upon Lessee (a) that this Lease is

in full force and effect, without modification, except as may be represented by Lessor, (b) that Lessee is in occupancy and paying rent on a current basis with no rental offsets or claims, (c) that there has been no prepayment of rent other than that provided for in the Lease, (d) that no notice has been received by Lessee of any default which has not been cured, except as may be represented by Lessor, (e) that Lessor is not in default hereunder, (f) that there is no action, voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof, and (g) as to such other matters as Lessor may represent unto any actual or prospective purchaser or mortgage lender.

20.3 If Lessor desires to mortgage, encumber, sell, exchange or otherwise transfer the premises, or any part thereof, Lessee hereby agrees to deliver to any actual or prospective purchaser or mortgage lender designated by Lessor such publicly available financial information concerning Lessee as may be reasonably required by such actual or prospective purchaser or mortgage lender. Such financial information shall include the past three years' annual reports of Lessee.

21. Separability. The invalidity of any provision of this Lease, as determined by an arbitrator or a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

22. Time of Essence. Time is of the essence of this Lease.

23. Integration. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior

agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

24. Notices.

24.1 Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by registered or certified mail, postage and registration or certification prepaid, addressed to Lessor and Lessee respectively at the addresses set forth beside their signatures at the end of this Lease. Such notices, if mailed, shall be deemed sufficiently served or given, for all purposes hereunder, when received, or on the date of attempted delivery, if refused. Either party may, by like notice to the other party, at any time and from time to time, designate a different address to which notices shall be sent.

24.2 In the interest of establishing and maintaining lines of communication conducive to execution of this Lease in a manner satisfactory to both parties, each party designates the following individual as a contact for the party, to resolve disputes, accept notice and grant approvals when it is possible to handle such matters informally under the terms of this agreement:

For Lessor:

Neil Saling  
Acting Director of Regional Facilities  
Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-1646  
Phone: (503) 221-1646

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For Lessee:

Eric Kirkewoog  
Intel Corporation  
Mail Stop AL4-20  
5200 N.E. Elam Young Parkway  
Hillsboro, Oregon 97124-6497  
Phone: (503) 642-6873

25. Limited Scope of Waiver and Consent. No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

26. Recordation. Lessee shall not record this Lease without Lessor's prior written consent and such recordation shall, at the option of Lessor, constitute a noncurable material default and breach by Lessee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

27. Holding Over. If Lessee remains in possession of the premises or any part thereof after the expiration of the term hereof without the express written consent of Lessor, such occupancy shall be a tenancy from month to month at a rental in the amount of the last

monthly rental, plus all other charges payable hereunder, and upon all the terms hereof, as applied, however, to a month-to-month tenancy.

28. Binding Effect and Governing Law.

28.1 Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition, and shall run with the land.

28.2 Subject to any provisions hereof restricting assignment or subletting by Lessee, this Lease shall bind the parties, their successors and assigns.

28.3 This Lease shall be governed by the laws of the State of Oregon.

29. Attorneys' Fees. If either party hereto brings an action, suit or other legal proceeding to enforce the terms hereof, declare rights hereunder, or secure a remedy for a material default or breach of this Lease, the prevailing party in any such action, suit or other legal proceeding, on hearing, trial, appeal, or other proceeding, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court or other tribunal, as the case may be.

30. Lessor's Access. Lessor and Lessor's agents shall have the right to enter the premises upon twenty-four (24) hours prior notice to Lessee and during normal business hours for the purpose of inspecting the same. Lessor may enter the premises without prior notice and/or during periods other than normal business hours in an emergency. At no time shall Lessor place any "For Sale" or "For

Lease" signs on or about the premises without the prior written consent of Lessee. Such consent shall not be unreasonably withheld.

31. Surrender and Cancellation. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all such subtenancies.

32. Interest. Whenever, under any provision of this Lease, interest is due and payable at the rate prescribed under this paragraph 32, the rate of such interest shall be that rate per annum which is the lowest of (a) the highest rate per annum which may lawfully be charged under the laws of the State of Oregon, determined as of the time the underlying obligation to Lessor is incurred hereunder; or (b) at any time when quotations of discount rates on ninety (90) day commercial paper are outstanding from the Federal Reserve Bank of San Francisco, that rate per annum which is five (5) percentage points above the said discount rate of the Federal Reserve Bank of San Francisco on ninety (90) day commercial paper, determined as of the time the underlying obligation to Lessor is incurred hereunder; or (c) twenty percent (20%) per annum.

33. Net Lease. This is a net lease, it being the intention of the parties hereto that Lessee shall pay as additional rent, without offset or reduction all costs of maintenance, taxes and insurance, and other charges that are assessed or levied against the premises, including without limitation the costs, taxes, and charges set forth in this Lease. All taxes, charges, costs, and expenses which Lessee

assumes or agrees to pay hereunder, together with all interest and other charges that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, all other damages, costs, and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Lessee or failure on Lessee's part to comply with the covenants, agreements, terms, and conditions of this Lease on Lessee's part to be performed, and each or any of them, shall be deemed to be additional rent, and, in the event of nonpayment, Lessor shall have all of the rights and remedies herein provided (or provided under applicable law) in the case of nonpayment of rent.

34. Captions. The paragraph captions contained in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the intent of any provision hereof.

35. Authority of Officers Executing Lease. This Lease, and the rights and obligations of Lessee hereunder, are expressly conditioned upon the unqualified and unconditional ratification and approval of the Lease by Lessor's Council on or before the beginning of the term of this Lease. In the event Lessee's Council fails to so to ratify and approve this Lease, this Lease shall be null and void and of no further force and effect, and the parties hereto shall be relieved of any further liability or obligation each to the other under or by virtue of this Lease. Subject to ratification and approval as in this paragraph 35 above provided, the individual executing this Lease on behalf of Lessor represents and warrants that such individual is the

Executive Officer of Lessor and is duly authorized to execute and deliver this Lease on behalf of said Lessor, and that this Lease is binding upon said Lessor in accordance with its terms. The individual executing this Lease on behalf of Lessee likewise warrants that such individual is duly authorized to execute and deliver this Lease on behalf of Lessee.

36. Termination. If Lessor determines that the premises are needed for a public use, Lessor may terminate this Lease, without penalty, by giving at least 90 days written notice of pending termination to Lessee. Lessor shall not be entitled to take possession of the premises under this paragraph prior to January 1, 1992. Termination as specified herein shall not excuse obligations incurred by either party prior to termination nor act as a waiver of any rights of either party. Upon termination, Lessor shall have no obligation to reimburse Lessee for any improvements made to the premises, and Lessee shall not be required to remove improvements made during the term

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unless such removal was a condition for approval of the improvement by Lessor.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

Address: 2000 S.W. First Avenue  
Portland, Oregon  
97201-5398

Metropolitan Service District,  
a municipal corporation of the  
State of Oregon

By: \_\_\_\_\_  
"Lessor"

Address: Legal Department  
Intel Corporation  
3535 Garrett Drive, GR1-21  
Santa Clara, California  
95052-8199

Intel Corporation, a Delaware  
corporation

By: \_\_\_\_\_  
"Lessor"

1049c

EXHIBIT A

ATTACHMENT  
TO  
LEASE  
BETWEEN  
METROPOLITAN SERVICE DISTRICT  
AND  
INTEL CORPORATION

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Description of Premises

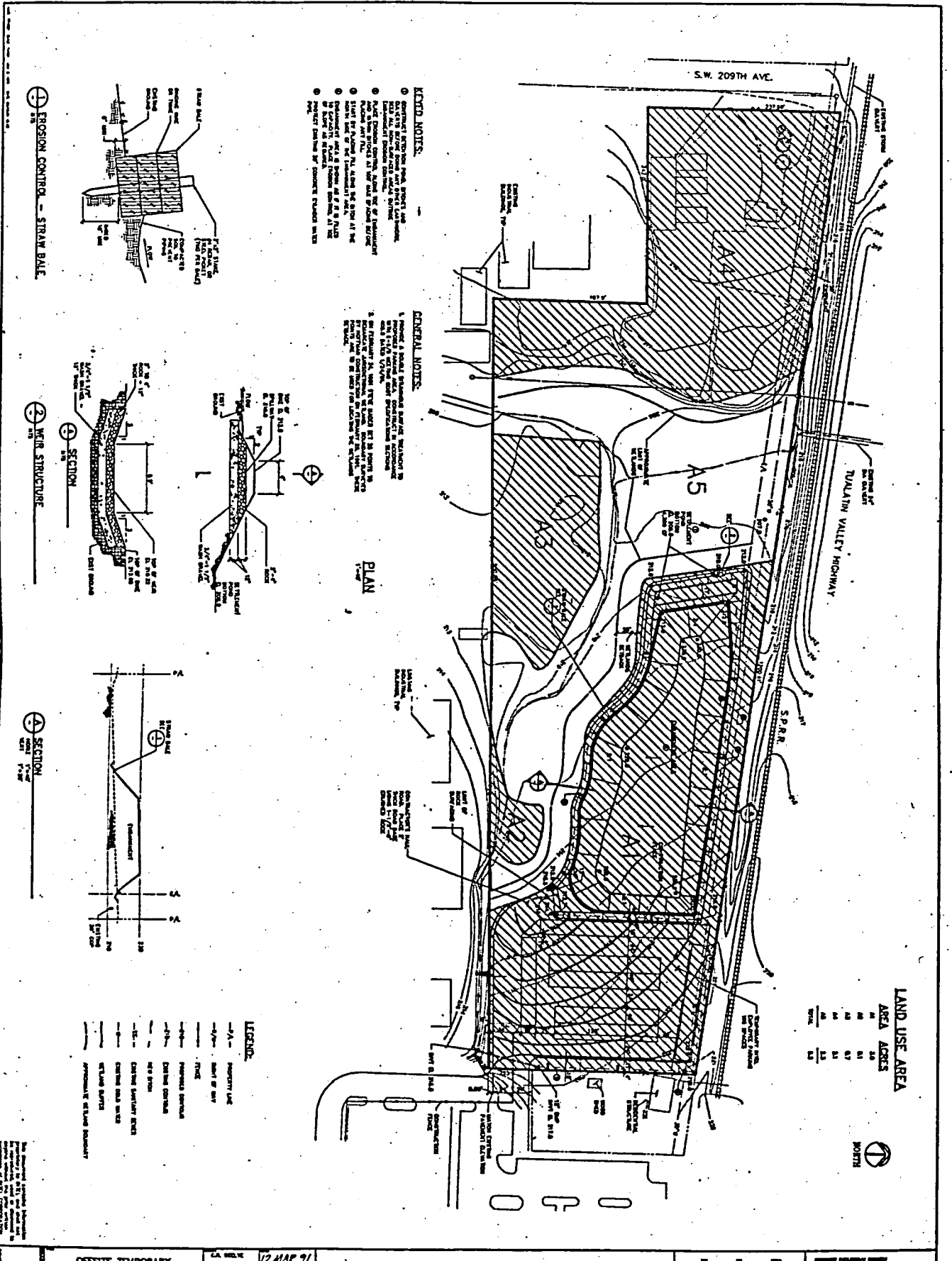
Being a portion of A. J. Masters Donation Land Claim No. 46 in Sections 11 and 12, Township 1 South, Range 2 West, of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the South boundary line of the Oregon Central Railroad Company right of way, said point being West 22.55 chains and South 1°30' West, 27.17 chains from the Northeast corner of said Donation Land Claim No. 46; running thence South 1°30' West, 3.85 chains; thence West 14.40 chains; thence North 1°30' West 187.9 feet to the Northeast corner of that certain tract conveyed to John Frank, Jr., et ux, by deed recorded January 11, 1956, in Book 377, Page 486, Washington County Deed Records; thence West along the North line of said Frank tract 273.0 feet to the West line of said Donation Land Claim about 275.0 feet to the South boundary line of said right of way; thence South 81°30'0" East along the South boundary line of said right of way to the place of beginning.

SAVE AND EXCEPT that portion conveyed to Washington County, as set forth by instrument recorded October 20, 1977, Fee No. 77-13933; Mortgage Records of Washington County.

EXHIBIT B

Page 1



**LAND USE AREA**

AREA	ACRES
1	2.8
2	2.8
3	0.7
4	2.1
5	2.1
<b>TOTAL</b>	<b>10.5</b>

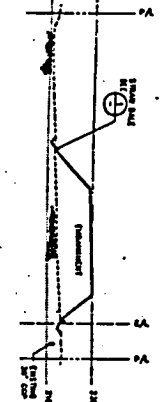
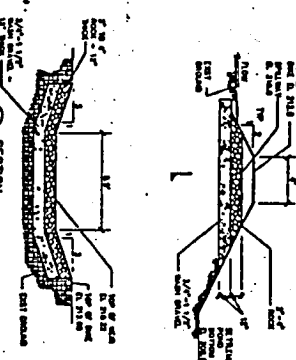
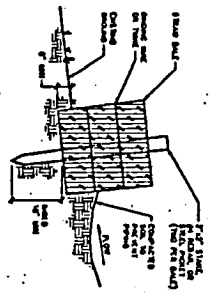
- KEYED NOTES:**
1. EROSION CONTROL STRUCTURE, SEE PLAN AND SECTION 1 FOR DETAILS.
  2. WEIR STRUCTURE, SEE PLAN AND SECTION 2 FOR DETAILS.
  3. STREAM BANK STABILIZATION STRUCTURE, SEE PLAN AND SECTION 3 FOR DETAILS.

- GENERAL NOTES:**
1. PROVIDE A SLOPED STABILIZED STREAM BED THROUGHOUT THE PROJECT AREA AS SHOWN ON THE PLAN AND SECTION 1.
  2. THE STRUCTURE IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 100, AND THE STANDARD SPECIFICATIONS FOR STREAM CHANNELS, SECTION 101.
  3. THE STRUCTURE IS TO BE CONSTRUCTED IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION, SECTION 100, AND THE STANDARD SPECIFICATIONS FOR STREAM CHANNELS, SECTION 101.

1 EROSION CONTROL - STRAW BALE

2 WEIR STRUCTURE

3 SECTION



- LEGEND:**
- A- PROPERTY LINE
  - B- CENTER OF WAY
  - C- FENCE
  - D- PROPOSED CHANNEL
  - E- EXISTING CHANNEL
  - F- EXISTING CHANNEL CENTER
  - G- EXISTING BANK WIDTH
  - H- EXISTING BANKS
  - I- APPROXIMATE EXISTING BANKLINE

The Engineer warrants that the drawings were prepared in accordance with the professional standards of the State of California, and that the drawings were prepared in accordance with the professional standards of the State of California.

EXHIBIT B  
Page 2

Narrative to Accompany Map

The wetlands (area A5, 2.3 acres) and fill areas surrounded by wetlands (area A2 & A3, 0.1 acres & 0.7 acres) will not be used by Intel.

The section on the West side (area A4, 2.1 acres) will be used for construction staging.

The section on the East side (area A1, 3.0 acres) will be used for Intel temporary parking and fill dirt. The parking area will be graded flat and covered with gravel. Fill dirt will be added to the remaining space left on area A1 as per the drawing.

Special provisions have been taken to protect the wetlands. This includes a 25-foot buffer, straw bales, additional ditches, and settlement ponds. Please refer to the attached drawing for detail.

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 91-1423-A  
THE EXECUTIVE OFFICER TO LEASE )  
PROPERTY AT 209TH AVENUE AND ) Introduced by Executive  
TUALATIN VALLEY HIGHWAYS TO ) Officer Rena Cusma  
INTEL CORPORATION )

WHEREAS, Metro is the owner of a tract of land consisting of 8.26 acres located at the junction of southwest 209th Avenue and Tualatin Valley Highway in Aloha, Oregon; and

WHEREAS, Intel Corporation has offered to lease the property for a period of three (3) years at a monthly rate of four thousand dollars (\$4,000.00); and

WHEREAS, Metro believes that disposition of the property is contingent upon the establishment of a viable solid waste transfer station or stations in the West Watershed, but does not anticipate any public use of the property within the [~~next three years~~] term of the lease; and

WHEREAS, Metro Code 2.04.033 requires that the lease of real property owned by Metro be approved by the Council of the Metropolitan Service District; and

WHEREAS, ORS 271.310 provides that public property should not be leased unless the governing body determines that the property not be needed for public use during the term of the lease; now therefore;

BE IT RESOLVED,

1. The 8.26 acre Metro parcel at the corner of Oregon Highway 8 (Tualatin Valley Highway) and SW 209th Avenue will not be needed for public use within the [~~three-year~~] term of the

attached lease with Intel Corporation, made part of this Resolution by [~~referencing~~] reference; and

2. The Executive Officer is authorized to execute a lease in substantially the form of the attached lease with Intel Corporation, for use of the 8.26 acre Metro property, so long as the lease contains a provision for early termination which could allow possession by Metro with 90 days notice without penalties.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

Tanya Collier, Presiding Officer

A:LEGIS\91-1423A.RES

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 91-1423 FOR THE PURPOSE OF APPROVING THE LEASE OF METRO OWNED PROPERTY LOCATED AT THE JUNCTION OF SOUTHWEST 209TH AVENUE AND TUALATIN VALLEY HIGHWAY IN ALOHA, OREGON

Date: April 1, 1991

Presented by: Neil E. Saling

Proposed Action

This resolution would permit the Executive Officer to execute a three (3) year lease with Intel Corporation for 8.26 acres of land located in Aloha, Oregon and sell that property should it be determined to be excess to Metro's needs.

Background and Analysis

In October 1986, Metro purchased 8.26 acres of land located at the junction of SW 209th avenue and Tualatin Valley Highway from Intel Corporation for the purpose of constructing a solid waste transfer station. The purchase price was \$810,000. The tract was mostly undeveloped except for 1.21 acres upon which a small office building, storage sheds and a surfaced parking area were located. Two leases were transferred to Metro at the time of sale: Close Construction which occupied the office building and utilized the adjacent sheds and parking area, and K&G Construction which parked heavy earthmoving equipment on a 0.55 acre fill they had created for that purpose. The lease payments covered little more than the property taxes on the taxed portions of the tract. For a variety of reasons, construction of the transfer station has not gone forward.

In mid - 1990, Coldwell Banker Real Estate, representing Intel Corporation, contacted Metro asking about the availability of the 8.26 acre tract. Coldwell indicated that Intel was looking at alternative locations for expanding its facilities and wanted a sales price on Metro's property. After discussions with the Directors of Solid Waste and Planning & Development, the Executive Officer determined that Metro should not relinquish title to the property until such time as the establishment of a Metro West Transfer Station (or stations) was resolved between Metro and Washington County. Intel Corporation, through Coldwell Banker, was informed that the land is not for sale at this time.

In December 1990, Intel Corporation, through Coldwell Banker, proposed to lease the property for a period of three years at a price of \$4000 per month. Intel Corporation asked to be given a right of first refusal to buy the property upon the determination by Metro that the property was excess to its needs. The rent would be applied to the eventual sale price should Intel choose to buy the property. Metro responded with a Letter of Intent reflecting its intention to enter into such a lease and providing additional provisions including a purchase price of \$1,100,000.

Concurrently, Metro granted a limited Right of Entry for the purpose of surveying and soils evaluation (December 13, 1990) and subsequently granted a more comprehensive Right of Entry for improving the property for parking and storage of construction materials. Based upon the Letter of Intent, Metro has also given notice to the lessees of the pending termination of their leases. All Metro actions taken to date are reversible.

Metro Code Section 2.04.033 (a) (3) requires Council approval of "Any contract for the sale, lease or transfer of real property owned by the District." In addition, ORS 271.310 provides that public property should only be leased if the governing body determines that the property will not be needed for public use within the period of the lease. Accordingly, a proposed lease has been prepared for your approval.

The proposed lease reflects the provisions of the Letter of Intent with the exception of a right of first refusal with an agreed sales price which has been deleted. Intel Corporation has indicated that their consultant, CH2M-Hill, has determined that 3.1 acres of the tract is wetland which will not be used by Intel but which will be protected. Coldwell Banker indicates a desire to negotiate a new sales price based upon the CH2M-Hill determination. However, they wish to expeditiously execute a lease with a right of first refusal with a purchase price to be negotiated. Metro staff concurs in this approach.

The proposed lease is attached as Attachment A. Approval of the proposed lease and authority to negotiate a fair and equitable sales price is requested.

Recommendation:

The Executive Officer recommends Council approval of Resolution No. 91-1423.



BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 91-1423  
THE EXECUTIVE OFFICER TO LEASE )  
PROPERTY AT 209TH AVENUE AND ) Introduced by  
TUALATIN VALLEY HIGHWAYS ) Executive Officer  
TO INTEL CORPORATION ) Rena Cusma

WHEREAS, Metro is the owner of a tract of land consisting of 8.26 acres located at the junction of southwest 209th Avenue and Tualatin Valley Highway in Aloha, Oregon; and

WHEREAS, Intel Corporation has offered to lease the property for a period of three (3) years at a monthly rate of four thousand dollars (\$4,000.00); and

WHEREAS, Metro believes that disposition of the property is contingent upon the establishment of a viable solid waste transfer station or stations in the West Wastshed, but does not anticipate any public use of the property within the next three years; and

WHEREAS, Metro Code 2.04.033 requires that the lease of real property owned by Metro be approved by the Council of the Metropolitan Service District; and;

WHEREAS, ORS 271.310 provides that public property should not be leased unless the governing body determines that the property not be needed for public use during the term of the lease; now therefore;

BE IT RESOLVED,

1. The 8.26 acre Metro parcel at the corner of Oregon Highway 8 (Tualatin Valley Highway) and SW 209th Avenue will not be needed for public use within the 3 year term of the attached lease with Intel Corporation, made part of this Resolution by referencing; and
2. The Executive Officer is authorized to execute a lease in substantially the form of the attached lease with Intel Corporation, for use of the 8.26 acre Metro property.

ADOPTED BY THE COUNCIL of the Metropolitan Service District

This \_\_\_\_\_ day of \_\_\_\_\_, 1991.

Tanya Collier, Presiding Officer

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1423, FOR THE PURPOSE OF APPROVING THE LEASE OF METRO OWNED PROPERTY LOCATED AT THE JUNCTION OF SOUTHWEST 209TH AVENUE AND TUALATIN VALLEY HIGHWAY IN ALOHA, OREGON

Date: April 17, 1991

Presented by: Councilor McLain

Committee Recommendation: At the April 16, 1991 meeting, the Committee voted 3-0 to recommend Council adoption of Resolution No. 91-1423 as amended. Voting in favor were Councilors Gardner, McLain and Wyers. Councilors DeJardin and McFarland were excused.

Committee Issues/Discussion: Neil Saling said that this resolution would permit the Executive Officer to execute a three year lease with Intel for a site adjacent to its facilities which Metro acquired for the purpose of constructing a solid waste transfer station. He said that Metro has granted Intel right of entry to stockpile construction material.

In response to a question from Councilor Gardner, Mr. Saling clarified that Intel ultimately wants to purchase the property to build a parking lot.

Councilor Wyers asked the rationale behind a lease rather than a sale. Mr. Saling indicated the Executive Officer wanted Metro to retain a tract of land in the event that it might still be needed for solid waste facilities.

Councilor Gardner noted that the Council is in the final decision-making stage about Washington County solid waste facilities, and said it seems prudent not to foreclose options. He expressed willingness to continue the right of entry, but not to commit to a three year lease. He asked what type of language would be needed to assert Metro's right to require Intel to vacate the site during the lease term at no cost to Metro.

Todd Sadlo, Senior Assistant Counsel, said Metro could be responsible for damages, but that damages should not be great. Councilor Wyers expressed concern that seemingly small damages can be made to appear large.

Councilor Wyers expressed reluctance to keep the resolution in the Solid Waste Committee, since presently Intel is using the site without paying rent.

SOLID WASTE COMMITTEE REPORT  
Resolution No. 91-1423  
Page Two

Mr. Sadlo noted that a termination provision would have to be negotiated with Intel and added to the proposed lease.

Councilor Gardner said the lease should incorporate such a provision. He said it is imprudent to sell the property, or to put it beyond Metro's use for three years. He suggested adding language to the resolution conditioning execution of the lease on inclusion of a clause providing for termination on short notice. Additionally, he said he was not prepared to make the finding in paragraph 1 that the site will not be needed for public use within the three year term of the lease. Mr. Sadlo clarified that state law requires a finding that the site will not be needed for public use.

Mr. Sadlo suggested that Councilor Gardner's intent could be met by removing references to a three year lease term, and by adding language authorizing execution of the lease so long as the lease contains a provision for early termination which would allow possession by Metro with 90 days notice, without penalties.

The Committee voted 3-0 to amend the resolution to incorporate these changes.



**METRO**

2000 S.W. First Avenue  
Portland, OR 97201-5398  
503/221-1646

# Memorandum

Date: April 23, 1991

To: Metro Council

From: Todd Sadlo, Senior Assistant Counsel *TS*

Regarding: Resolution No. 91-1423B  
Lease of Metro property in Aloha, Oregon to Intel Corporation

---

On April 16, 1991, the Council Solid Waste Committee recommended adoption of Resolution No. 91-1423A authorizing the lease of Metro property in Aloha, Oregon to Intel Corporation. The original proposal was to lease the property for a period of three years. The Committee amended the resolution to clarify that the lease must allow termination by Metro with 90 days notice, without penalty.

Intel will agree to a 90 day/no penalty termination clause, but is planning to use a portion of the property for construction staging and would like assurances that Metro will not attempt to regain possession prior to January 1, 1992. Metro's only proposed use of the property is as a site for a solid waste transfer facility. Given normal timelines for construction of transfer facilities, it is unlikely that such a restriction would interfere with Metro's possible use of the site.

Attached is proposed Resolution No. 91-1423B, which authorizes execution of the originally proposed lease, with an additional clause allowing Metro to retake possession with 90 days notice, without penalty, after January 1, 1992. Also attached is the lease amendment anticipated by Resolution No. 91-1423B.

TSS

1450

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING ) RESOLUTION NO. 91-1423-B  
THE EXECUTIVE OFFICER TO LEASE )  
PROPERTY AT 209TH AVENUE AND ) Introduced by Executive  
TUALATIN VALLEY HIGHWAYS TO ) Officer Rena Cusma  
INTEL CORPORATION )

WHEREAS, Metro is the owner of a tract of land consisting of 8.26 acres located at the junction of southwest 209th Avenue and Tualatin Valley Highway in Aloha, Oregon; and

WHEREAS, Intel Corporation has offered to lease the property for a period of three (3) years at a monthly rate of four thousand dollars (\$4,000.00); and

WHEREAS, Metro believes that disposition of the property is contingent upon the establishment of a viable solid waste transfer station or stations in the West Watershed, but does not anticipate any public use of the property within the [~~next three years~~] term of the lease; and

WHEREAS, Metro Code 2.04.033 requires that the lease of real property owned by Metro be approved by the Council of the Metropolitan Service District; and

WHEREAS, ORS 271.310 provides that public property should not be leased unless the governing body determines that the property not be needed for public use during the term of the lease; now therefore;

BE IT RESOLVED,

1. The 8.26 acre Metro parcel at the corner of Oregon Highway 8 (Tualatin Valley Highway) and SW 209th Avenue will not be needed for public use within the [~~three-year~~] term of the

attached lease with Intel Corporation, made part of this Resolution by [~~refereneing~~] reference; and

2. The Executive Officer is authorized to execute a lease in substantially the form of the attached lease with Intel Corporation, for use of the 8.26 acre Metro property, so long as the lease contains a provision for early termination which could allow possession by Metro after January 1, 1992, with 90 days notice, without penalties.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

Tanya Collier, Presiding Officer

A:LEGIS\91-1423A.RES

PROPOSED TERMINATION CLAUSE  
LEASE BETWEEN METRO AND INTEL CORPORATION  
(Resolution No. 91-1423B)

36. Termination. If Lessor determines that the premises are needed for a transfer station, Lessor may terminate this Lease, without penalty, by giving at least 90 days written notice of pending termination to Lessee. Lessor shall not be entitled to take possession of the premises under this paragraph prior to January 1, 1992. Termination as specified herein shall not excuse obligations incurred by either party prior to termination nor act as a waiver of any rights of either party. Upon termination, Lessor shall have no obligation to reimburse Lessee for any improvements made to the premises, and Lessee shall not be required to remove improvements made during the term unless such removal was a condition for approval of the improvement by Lessor.



## L E A S E

THIS LEASE, made as of this \_\_\_\_ day of \_\_\_\_\_ 1991, between the METROPOLITAN SERVICE DISTRICT (METRO), a municipal corporation and public body of the State of Oregon, hereinafter referred to as "Lessor," and INTEL CORPORATION, a Delaware corporation, hereinafter referred to as "Lessee;"

W I T N E S S E T H:

That, in consideration of the rents hereinafter specified and the covenants, terms, and conditions herein contained, the parties hereto do hereby covenant to and with each other as follows:

1. Premises and Initial Term. Lessor does hereby lease and demise unto Lessee, and Lessee hereby leases from Lessor, on the covenants, terms, and conditions hereinafter set forth, the real property and the building and improvements thereon in the County of Washington, State of Oregon, described in EXHIBIT A, attached hereto and made a part hereof. Said premises are leased subject to such covenants, conditions, restrictions, easements, reservations, assessments, charges and rights of way, if any, as are now of record against said premises, any state of facts an accurate survey might show, zoning rules, restrictions, regulations, resolutions and ordinances, and building restrictions and governmental regulations now in effect or hereafter adopted by any governmental authorities having jurisdiction.

TO HAVE AND TO HOLD the above-described premises, together with all the tenements, hereditaments, appurtenances, and easements thereunto belonging, at the rental and upon the terms and conditions

herein stated, for an initial term of three (3) years, commencing May 1, 1991, and ending at 11:59 p.m. on April 30, 1994.

2. Rent.

2.1 For the initial term of this Lease (i.e., the period commencing with and including the month of May, 1991, and ending with and including the month of April, 1994), Lessee agrees to pay Lessor as rent the sum of FOUR THOUSAND AND NO/100THS DOLLARS (\$4,000.00) per month.

2.2 Monthly rent in the amounts hereinabove provided, which Lessee agrees to pay without offset or reduction, shall be due and payable in lawful money of the United States on or before the first day of each month in advance during the term of this Lease by check payable to Lessor and delivered to Lessor at 2000 S.W. First Avenue, Portland, Oregon 97201-5398, Attention: Accounting Division, or by check to any other payee or delivered to any other address which Lessor, or any successor in interest of Lessor, may designate by notice to Lessee.

3. Utilities and Governmental Impositions.

3.1 In addition to the rent provided for in Section 2 hereof, Lessee shall pay all charges and sums provided for in this Section 3. Lessee will pay all charges for electricity, water, sewer, gas, telephone, and other utility services used on or furnished to the premises. Lessee further agrees to pay all taxes, assessments, personal property taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, which shall or may during the term hereof be

charged, laid, levied, assessed or imposed upon or against the premises, or become due and payable upon or in respect of the premises or the rents payable hereunder, or become liens upon the premises or any rents payable hereunder, or arise in connection with the use, occupancy or possession of the premises, or grow due or payable out of or for the premises or the rents payable hereunder, during the term hereof; provided, however, that nothing contained herein shall obligate Lessee to pay:

(i) any federal, state or local gift, estate, inheritance or devolution tax; or

(ii) any federal, state or local tax upon or measured by the net income of Lessor, its successors and assigns;

which may at any time be levied or assessed against, or become a lien upon, the premises or the rents payable hereunder. Taxes, water rents, rates and charges, sewer rents, and other governmental impositions and charges allocable to an assessment year, a tax year, a fiscal year, service period or other term commencing prior to the commencement or ending after the termination of this Lease, and local improvement district or similar assessments which are payable on an extended basis pursuant to the terms of bond financing as authorized by law, shall be adjusted and prorated, and Lessor shall pay the prorated share thereof that is allocable to the period prior or subsequent to the term, and Lessee shall pay the prorated share thereof that is allocable to any period within the term of this Lease.

3.2 Lessee shall, within ten (10) days after any such tax, assessment or other charge constituting a lien on the leased premises shall become due and payable, or within ten (10) days of receiving written notice of any such tax, assessment or other charge if notice was initially sent to Lessor, produce and exhibit to Lessor satisfactory evidence of such payment.

4. Use of Premises. Lessee shall use the premises during the term of this Lease for parking, staging of materials for construction, and general office use (see paragraph 6.1) and for no other purpose whatsoever without Lessor's written consent, which shall not be unreasonably withheld. Lessee may not construct any new buildings or structures on the premises (see paragraph 6). Lessee will not make any unlawful, improper, or offensive use of the premises, will not suffer any strip or waste thereof, will not permit any objectionable noise or odor to escape or to be emitted from the premises, or do anything or permit anything to be done upon or about the premises in any way tending to create a nuisance. Subject to paragraph 6, Lessee may place or install in or upon the existing structures on the premises such trade fixtures and equipment as it shall deem desirable for the conduct of its business thereon. Personal property, trade fixtures, and equipment used in the conduct of Lessee's business (including telephone system, computer system and external wiring, and any other similar data processing equipment), as distinguished from fixtures and equipment used in connection with the physical operation and maintenance of the building and improvements, placed by Lessee in or upon the premises shall not become a part of the realty, even if nailed or screwed or

otherwise fastened to the premises, but shall retain their status as personal property and may be removed by Lessee at any time. Any damage caused the premises by the installation, use, or removal of such property shall be repaired by Lessee at its expense. Any personal property, trade fixtures, and equipment not used in connection with physical operation of the premises and belonging to Lessee, if not removed upon the expiration of the term of this Lease (or, in the event of the sooner termination of this Lease, within twenty (20) days after such termination) shall, at the option of Lessor, be deemed abandoned and shall become the property of Lessor without any payment or offset therefor.

5. Compliance With Laws. Lessee agrees, at Lessee's own cost and expense, to comply with and observe all laws, ordinances, orders, rules, regulations, or requirements of the United States of America, the State of Oregon and the County of Washington, and all duly constituted governmental bodies and authorities thereof, affecting the use and occupancy of the premises. Lessor represents and warrants that, as of the date of execution of this Lease, there are no known violations of any applicable zoning, building or safety code, regulation or ordinance affecting the premises.

6. Tenant Improvements, Alterations, Maintenance and Repairs.

6.1 Lessee shall be entitled to improve the premises to Lessee's standards by grinding, culverting, tilling, graveling, paving, landscaping and otherwise using the land area, substantially as specified in the attached Exhibit B, which is made part of this Lease

by reference. Lessee shall not construct improvements, remove materials from, or deposit materials into, any area identified on the map in Exhibit B as wetlands, without first obtaining all required state or federal permits for such removal, fill, or construction, and without first obtaining the written consent of Lessor. In making and maintaining improvements specified in this paragraph 6.1, Lessee shall take reasonable care to prevent erosion into the wetland area, destruction of vegetation in the wetland or "wetland setback" area, or other undue impacts to the wetland area.

6.2 Lessee shall also have the right to utilize the existing buildings located on the premises, including the brick structure and appurtenances. Lessee shall not make alterations, additions, or improvements to the premises, or remove landscaping or trees in the immediate vicinity of the brick structure, without the prior written approval of Lessor. Such approval shall not be unreasonably withheld. Approval is hereby granted to Lessee to make interior, nonstructural alterations, additions, or improvements to the brick structure on the premises, provided the cost of any such alteration, addition, or improvement does not exceed twenty-five thousand dollars (\$25,000).

6.3 Except as expressly agreed to by Lessor in writing, Lessee shall not erect any new structures on the premises. Lessee may, however, install trailers on the premises and connect them with utilities as needed. Any trailers installed by Lessor shall be placed on temporary footings, unless written permission is obtained from Lessor, in advance, for placement of permanent footings or foundations.

Lessor may refuse to allow any new structures at its sole discretion, or may attach reasonable conditions to approval, including conditions relating to the removal of such improvements upon termination and restoration of the premises to their prior condition.

6.4 Lessee shall pay, when due, all lawful claims for labor or materials furnished to or for Lessee at or for use in the premises, which claims are or may be secured by any construction, mechanics' or materialmen's lien against the premises or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in the premises, and Lessor shall have the right to post notices of non-responsibility in or on the premises as provided by law.

7. Condition of Premises; Maintenance and Repairs.

7.1 Lessor agrees that, as of the delivery date, the premises shall be in broom clean condition and free of any personal property left by the previous occupant, and that any damage to the premises occasioned by the removal of the previous occupant shall be repaired at Lessor's cost. If previous tenants have left any significant amounts of refuse in the land areas of the premises, Lessee may have such materials removed, and deduct from the rents due hereunder the actual and reasonable costs of so doing. Lessee shall accept the premises on the delivery date in their condition as of the date of this Lease. The cost of any and all maintenance and repair to the premises, to include any structures thereon, shall be borne solely by the Lessee.

7.2 Lessor shall not be required to perform or pay for any maintenance, or to make or pay for any repairs, alterations,

restoration, reconstruction, additions or improvements, to or upon the premises during the term of this Lease. In all respects, Lessee hereby agrees, at Lessee's own cost and expense, to maintain and keep the premises, including the building and other improvements thereon, in good order and repair. In the event of any damage or destruction to the brick building and appurtenances for which other provision is not made, Lessee agrees to construct and reconstruct such premises, building and other improvements, unless Lessor agrees in writing to some alternative arrangement.

8. Repairs by Lessor. Lessor shall make no improvements to the premises nor structures thereon during the term of this Lease and under no circumstance shall have any obligation to do so.

9. Insurance and Indemnification.

9.1 Throughout the term of this Lease, Lessee shall cause to be kept insured, at Lessee's sole cost and expense, all building and other improvements located on the premises against loss or damage caused (a) by fire, windstorm, and perils generally included under "extended coverage," (b) boilers and machinery, and (c) vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Lessor or Lessee from becoming a co-insurer under the provisions of the policy, but in no event shall the amount be less than ninety percent (90%) of the then actual replacement cost (exclusive of the cost of excavations, foundations, and footings below the basement floor, but without deduction for depreciation and with not more than ONE THOUSAND AND NO/100THS (\$1,000.00) DOLLARS deductible from the loss payable for any casualty). Said policy or policies of insurance shall



provide that payment for any losses covered under or by said policy or policies shall be made unto Lessor, and/or any mortgagee or assignee designated by Lessor from time to time, and/or Lessee, as their respective interests may appear. Until such time as Lessor notifies Lessee that the amount of the insurance maintained by Lessee under this paragraph 9.1 is, in Lessor's opinion, less than the amount required by the second sentence of this paragraph 9.1, the amount of the insurance in force at any time, as evidenced by the certificate or certificates therefor furnished under paragraph 9.4, shall be deemed to be adequate under the second sentence of this paragraph 9.1.

9.2 Throughout the term of this Lease, at Lessee's sole cost and expense, Lessee shall keep in force public liability insurance (naming Lessor as an additional insured) insuring Lessor and Lessee against any and all loss, liability, and damage whatever for personal injury and property damage, or either, resulting from, or alleged to have resulted from negligence or the condition or use of the premises, or of any building or other improvement situated thereon, or of any sidewalk or way adjacent to said premises, with policy limits in such amounts as Lessor may at any time or from time to time require (provided, at the time, such policy amounts do not exceed those customarily maintained in connection with properties of similar size and utilization in the Portland, Oregon, metropolitan area). In no event shall such policy limits be less than ONE MILLION AND NO/100THS DOLLARS (\$1,000,000.00) for property damage and THREE MILLION AND NO/100THS DOLLARS (\$3,000,000.00) for personal injury (whether or not resulting in death) suffered by one person and FIVE MILLION AND NO/100THS DOLLARS

(\$5,000,000.00) for personal injuries (whether or not resulting in death) suffered by more than one person in one occurrence.

9.3 All insurance required by express provisions of this Lease shall be carried by responsible insurance companies licensed to do business in the State of Oregon. All such policies shall be nonassessable and shall contain language to the effect that (A) any loss shall be payable notwithstanding any act or negligence of Lessor that might otherwise result in a forfeiture of the insurance, and (B) the policies may not be canceled or materially changed except after thirty (30) days' notice by the insurer to Lessor or Lessor's designated representatives.

9.4 Lessee shall furnish Lessor with certificates evidencing the policies of insurance required hereunder to be maintained by Lessee and, in the case of any renewal or replacement of a policy already in existence, Lessee shall furnish a certificate evidencing such renewal or replacement at least thirty (30) days before expiration or other termination of the existing policy.

9.5 Lessee and Lessor each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents and representatives of the other, for loss of or damage to such waiving party or its property or the property of others under its control, where such loss or damage is insured against under any insurance policy in force at the time of such loss or damage. Lessee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Lease.

9.6 Notwithstanding the insurance requirements of this Lease, Lessee shall have the option to self insure for so long as Intel's net worth as a corporate entity remains above one billion dollars (\$1,000,000,000.00). Coverage shall apply to any loss which but for the existence of the deductible or self insured retention would be covered under the insurance requirements described herein.

9.7 Lessee shall, independently of its obligation to obtain and maintain liability insurance as above provided, indemnify and hold harmless Lessor from and against any and all claims arising from Lessee's use of the premises, or from the conduct of Lessee's business or from any activity, work or things done, permitted or suffered by Lessee in or about the premises, to the extent not caused or contributed to by Lessor, and Lessee shall further indemnify and hold harmless Lessor from any and all claims arising from any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Lease to the extent not caused by the negligent or intentional misconduct of Lessor, or arising from any negligence of the Lessee, or any of Lessee's agents, contractors or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, shall defend the same at Lessee's expense by counsel satisfactory to Lessor.

9.8 Lessor shall indemnify and hold Intel harmless from and against any and all claims as follows:

(i) By a governmental agency or citizen acting to enforce an environmental law or regulation relating to the condition of the site as of March 14, 1991, the date the parties entered into a Right of Entry Agreement, and alleged to have occurred during Lessor's ownership of the property;

(ii) By any person claiming to have been damaged by the condition of the site through contact with the site or off-site migration of hazardous substances during the period of Lessor's ownership of the site and prior to March 14, 1991; and

(iii) By any person claiming to have been damaged by off-site migration, during the term of this Lease, of hazardous substances that were placed on the premises during Lessor's ownership and prior to March 14, 1991, if migration has occurred due to natural causes.

This indemnity by Lessor does not extend to claims of damage or injury by Lessee, its agents, contractors, consultants, employees, or invitees on the property. This indemnity is not intended to override any liability Intel may have under state or federal law as a prior owner of the property.

10. Condition of Premises in Lessee's Hands.

10.1 Lessee shall keep the driveways and parking areas upon the premises free and clear of ice, snow, rubbish, debris and obstruction.

10.2 At any time during the term of this Lease, Lessee, its sublessees and subtenants may place freestanding signs on the premises and may place wall signs on the exterior and interior walls of the existing buildings and structures on the premises. Such signs shall be for identification, for parking, or for directional purposes related to activities conducted on the premises; they shall be installed at Lessee's sole cost and expense, they shall conform at all times with applicable ordinance, codes, statutes, rules and regulations of governmental authorities, and they shall conform in terms of number, size, appearance and quality with standards prevailing for commercial buildings of similar size and utilization in the general neighborhood in which the premises are situated. At the expiration or sooner termination of this Lease, Lessee shall, at the Lessor's request and at Lessee's sole cost and expense, remove all such signs and restore the premises to their prior condition.

11. Assignment and Subletting.

11.1 Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber to or in favor of any third party all or any part of Lessee's interest in this Lease or in the premises, without Lessor's prior written consent, which Lessor shall not unreasonably withhold. Any determination of the reasonableness of Lessor's refusal to give consent shall take into account the net worth, financial stability, and

financial responsibility of such third party, as well as the general reputation of the third party in the community or communities in which it has theretofore carried on business activities. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such consent shall be voidable, and shall constitute a material default and breach of this Lease. Lessee shall, however, have the right to assign this Lease to a wholly owned subsidiary of Lessee, without Lessor's consent.

11.2 Regardless of Lessor's consent, no subletting or assignment shall release Lessee from any of Lessee's obligations hereunder or alter the primary liability of Lessee to pay the rent and perform all other obligations to be performed by Lessee hereunder. The acceptance of rent by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one subletting or assignment shall not be deemed consent to any subsequent subletting or assignment.

12. Damage or Destruction. If the premises are damaged or destroyed and such damage or destruction is caused by a casualty covered under an insurance policy of the kind required to be maintained by Lessee pursuant to paragraph 9 above, Lessee shall, at Lessee's expense, repair such damage or reconstruct the premises, as the case may be, as soon as reasonably possible, and this Lease shall continue in full force and effect. In such event, all insurance proceeds shall be paid to Lessee as the work progresses and in a manner to ensure that no construction, labor, or material liens will arise. In such event, moreover, the building and improvements as repaired or reconstructed by

Lessee shall be of a value not less than the value of the building and improvements immediately prior to the casualty, and the building and improvements as repaired or reconstructed shall immediately become part of the realty and the property of Lessor. The plans and specifications for any reconstruction of the building or improvements shall be submitted in advance to Lessor for Lessor's approval, which approval shall not be unreasonably withheld.

13. Condemnation. If the premises or any portion thereof is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate as to any part of the premises so taken as of the date the condemning authority takes title or possession, whichever first occurs, and the rental under paragraph 2 shall be reduced in the proportion that the area taken on the premises bears to the total of the premises. Any award for the taking of all or any part of the entire premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee, or as severance damages; provided, however, that Lessee shall be entitled to compensation for its loss, if any, of capital improvements installed in the premises by Lessee at Lessee's expense, in such amount as the Court may award or in proportion to the amount of any settlement reached in lieu of condemnation; and provided, further, that Lessee shall be entitled to any award for loss of or damage to Lessee's trade fixtures and removable tangible personal property.

14. Lessor's Performance of Lessee's Obligations. If Lessee fails to perform any obligation required hereunder to be performed by Lessee, and such failure continues for ten (10) days after written notice thereof is sent by Lessor, Lessor may make such payments and/or take all such other action as Lessor may deem reasonably necessary or appropriate to protect and preserve the property or the Lessor's interest therein, and, to this end, Lessor, its agents, contractors and employees, may, upon prior notice, enter upon the premises and put the same in good order, condition and repair. In an emergency, Lessor, its agents, contractors and employees, may make such payments, take such other action, or enter upon the premises to put the same in good order, condition or repair, without prior notice to Lessee. All costs, expenses and payments so paid or incurred by Lessor, together with interest thereon from the respective dates paid or incurred at the rate prescribed under section 32 below, shall be due and payable as additional rent to Lessor hereunder. Lessor is not required to make any such payment or take any such action, and by doing so, Lessor shall not be deemed to have waived any other remedy available unto Lessor.

15. Default by Lessee. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:

15.1 The vacating or abandonment of the premises by Lessee.

15.2 The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee either to third parties or unto Lessor hereunder within ten (10) business days after the



same becomes due and payable, if such failure continues for ten (10) days after notice has been given to Lessor.

15.3 Any attempted assignment, transfer, mortgage, encumbrance, or subletting in contravention of paragraph 11, above, or any recordation of this Lease in contravention of paragraph 26 below.

15.4 The failure by Lessee to observe or perform any other of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days is reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

15.5 The making by Lessee of any general assignment or general arrangement for the benefit of creditors; the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Lessee, the same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution, or judicial seizure of substantially all of Lessee's assets located at the premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

16. Remedies on Default by Lessee. In the event of any such material default or breach, Lessor may, at Lessor's option, exercise any one or more of the rights and remedies available to a landlord in the State of Oregon to redress such default, consecutively or concurrently, including but not limited to the following:

16.1 Lessor may elect to terminate Lessee's right to possession of the premises or any portion thereof by written notice to Lessee. Following such notice, Lessor may re-enter and take possession of the premises pursuant to process of law.

16.2 Following re-entry by Lessor, Lessor may relet the premises for a term longer or shorter than the term of this Lease and upon any reasonable terms, including the granting of rent concessions to the new tenant. Lessor may alter, refurbish, or otherwise change the character or use of the premises in connection with such reletting. Lessor shall not be required to relet for any use or purpose which Lessor may reasonably consider injurious to its property or to any tenant which Lessor may reasonably consider objectionable. No such reletting by Lessor following a default by Lessee shall be construed as an acceptance of the surrender of the premises. If rent received upon such reletting exceeds the rent received under this Lease, Lessee shall have no claim to the excess.

16.3 Following re-entry Lessor shall have the right to recover from Lessee the following damages:

16.3.1 All unpaid rent or other charges for the period prior to re-entry plus interest at the rate prescribed under paragraph 32 below.

16.3.2 An amount equal to the rent lost during any period during which the premises are not relet, if Lessor uses reasonable efforts to relet. If Lessor lists the premises with a real estate broker experienced in leasing commercial property in Portland, Oregon, for reasonable terms at market rent, such listing shall constitute the taking of reasonable efforts to relet the premises.

16.3.3 The following costs incurred in reletting or attempting to relet the premises: the cost of removing any personal property of Lessee from the premises, the cost of cleanup and repair in preparation for a new tenant, the cost of correcting any defaults or restoring any unauthorized alterations, the amount of any real estate commissions and advertising expenses, the cost (including, but not limited to, a reasonable attorney's fee) for negotiating and preparing a new lease, and the cost to Lessor of such rent concessions below market rent as may reasonably be required to induce a new tenant to lease the premises.

16.3.4 The difference between the rent reserved under this Lease and the amount actually received by Lessor after reletting at a market rate, as such amounts accrue.

16.3.5 Reasonable attorneys' fees incurred in connection with the default, whether or not any litigation is commenced.

16.4 Lessor may sue periodically to recover damages as they accrue throughout the term of this Lease and no action for accrued

damages shall be a bar to a later action for damages subsequently accruing. To avoid a multiplicity of actions, Lessor may seek a decree of specific performance requiring Lessee to pay damages as they accrue. Alternatively, Lessor may elect in any one action to seek to recover accrued damages plus the reasonable rental value of the premises for the remainder of the term, discounted to the time of the judgment at a reasonable discount rate.

16.5 In the event that Lessee remains in possession following default and Lessor does not elect to re-enter, Lessor may recover all back rent or other charges, plus interest at the rate prescribed under paragraph 32 below from the date of delinquency, and shall have the right to cure any default (other than one described at paragraph 15.2) and recover the cost of such cure from Lessee, plus interest at the rate prescribed under paragraph 32 below from the date of the expenditure. In addition, Lessor shall be entitled to recover attorneys' fees reasonably incurred in connection with the default, whether or not litigation is commenced. Lessor may sue to recover such amounts as they accrue, and no one action for accrued damages shall bar a later action for damages subsequently accruing.

16.6 The foregoing remedies shall not be exclusive but shall be in addition to all other remedies and rights provided hereunder or under applicable law, and no election to pursue one remedy shall preclude resort to another consistent remedy.

16.7 No action of Lessor, other than Lessor's express written notice of the termination of this Lease, shall terminate this Lease or be construed as an acceptance of the surrender of the premises.

17. Default by Lessor. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within thirty (30) days after written notice by Lessee to Lessor and to the holder of any mortgage upon the premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation. At any time when Lessor is in default (as in this paragraph 17 provided) in the performance of any obligation to be performed by Lessor hereunder (other than a default relating to Lessor's failure to give a consent or approval that, under the terms of this Lease, may not be unreasonably withheld), Lessee shall have the right to cure such default and recover the cost of such cure from Lessor, plus interest at the rate prescribed under paragraph 32 below from the date of the expenditure. In the event Lessor fails so to reimburse Lessee within thirty (30) days following Lessee's written demand for reimbursement, Lessee may offset against succeeding installments of the monthly rent hereunder the amount of such unpaid reimbursement.

18. Late Charge. Lessee hereby acknowledges that late payment by Lessee to Lessor of rent and other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Lessor by the terms of any mortgage upon the premises. Accordingly, if any installment of rent or any other sum due from Lessee shall not be received by Lessor or Lessor's designee within ten (10) business days after such amount shall be due, Lessee

shall pay to lessor a late charge equal to five percent (5%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of late payment by Lessee. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies granted hereunder. The late charge herein prescribed shall be in addition to, and not in lieu of any interest payable on amounts for which interest is recoverable hereunder.

19. Surrender of Premises. At the expiration or sooner termination of this Lease, Lessee shall surrender the premises to Lessor peaceably, quietly and in as good order and condition (reasonable use and wear thereof alone excepted) as the same are in at the commencement of the term of this Lease (or as they may thereafter be put by Lessor or Lessee under the provisions of this Lease). Lessee shall remove alterations, improvements, additions, and utility installations and restore the premises to their prior condition to the extent required by Lessor as a condition of having given consent under paragraph 6.1, and Lessee will remove therefrom all of Lessee's equipment, goods, and effects which may be affixed to or contained in or upon the premises. Lessee shall not be required to remove any of the alterations, improvements, or additions specified in the attached Exhibit B but shall remove any trailers placed on the property, including any footings or foundations, unless other written arrangements are made with Lessor in advance.

20. Estoppel Certificates.

20.1 Lessee shall at any time upon not less than fifteen (15) days' prior written notice from Lessor execute, acknowledge, and deliver to Lessor a certificate stating (a) whether this Lease is in full force and effect, (b) whether and in what respects this Lease has been modified, (c) whether Lessee is in occupancy and paying rent on a current basis with no rental offsets or claims, (d) whether there has been any prepayment of rent other than that provided for in the Lease, (e) whether any notice has been received by Lessee of any default which has not been cured, (f) whether Lessor is in default hereunder, (g) whether there is any action, voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof, and (h) such other matters as may be reasonably required by Lessor or any actual or prospective purchaser or mortgage lender. Any such certificate may be conclusively relied upon by any actual or prospective mortgagee, encumbrancer, or purchaser of the premises or any part thereof.

20.2 Lessee's failure to deliver such certificate within such time and within fifteen (15) days after Lessor's notice to Lessee of such failure shall be conclusive upon Lessee (a) that this Lease is in full force and effect, without modification, except as may be represented by Lessor, (b) that Lessee is in occupancy and paying rent on a current basis with no rental offsets or claims, (c) that there has been no prepayment of rent other than that provided for in the Lease, (d) that no notice has been received by Lessee of any default which has not been cured, except as may be represented by Lessor, (e) that Lessor is not in default hereunder, (f) that there is no

action, voluntary or otherwise, pending against Lessee under the bankruptcy laws of the United States or any state thereof, and (g) as to such other matters as Lessor may represent unto any actual or prospective purchaser or mortgage lender.

20.3 If Lessor desires to mortgage, encumber, sell, exchange or otherwise transfer the premises, or any part thereof, Lessee hereby agrees to deliver to any actual or prospective purchaser or mortgage lender designated by Lessor such publicly available financial information concerning Lessee as may be reasonably required by such actual or prospective purchaser or mortgage lender. Such financial information shall include the past three years' annual reports of Lessee.

21. Separability. The invalidity of any provision of this Lease, as determined by an arbitrator or a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

22. Time of Essence. Time is of the essence of this Lease.

23. Integration. This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

24. Notices.

24.1 Any notice required or permitted to be given hereunder shall be in writing and may be served personally or by registered or certified mail, postage and registration or certification



prepaid, addressed to Lessor and Lessee respectively at the addresses set forth beside their signatures at the end of this Lease. Such notices, if mailed, shall be deemed sufficiently served or given, for all purposes hereunder, when received, or on the date of attempted delivery, if refused. Either party may, by like notice to the other party, at any time and from time to time, designate a different address to which notices shall be sent.

24.2 In the interest of establishing and maintaining lines of communication conducive to execution of this Lease in a manner satisfactory to both parties, each party designates the following individual as a contact for the party, to resolve disputes, accept notice and grant approvals when it is possible to handle such matters informally under the terms of this agreement:

For Lessor:

Neil Saling  
Acting Director of Regional Facilities  
Metropolitan Service District  
2000 SW First Avenue  
Portland, Oregon 97201-1646  
Phone: (503) 221-1646  
Fax: (503)

For Lessee:

Eric Kirkewoog  
Intel Corporation  
Mail Stop AL4-20  
5200 N.E. Elam Young Parkway  
Hillsboro, Oregon 97124-6497  
Phone: (503) 642-6873

25. Limited Scope of Waiver and Consent. No waiver by Lessor of any provision hereof shall be deemed a waiver of any other provision

hereof or of any subsequent breach by Lessee of the same or any other provision. Lessor's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to or approval of any subsequent act by Lessee. The acceptance of rent hereunder by Lessor shall not be a waiver of any preceding breach by Lessee of any provision hereof, other than the failure of Lessee to pay the particular rent so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent.

26. Recordation. Lessee shall not record this Lease without Lessor's prior written consent and such recordation shall, at the option of Lessor, constitute a noncurable material default and breach by Lessee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a "short form" memorandum of this Lease for recording purposes.

27. Holding Over. If Lessee remains in possession of the premises or any part thereof after the expiration of the term hereof without the express written consent of Lessor, such occupancy shall be a tenancy from month to month at a rental in the amount of the last monthly rental, plus all other charges payable hereunder, and upon all the terms hereof, as applied, however, to a month-to-month tenancy.

28. Binding Effect and Governing Law.

28.1 Each provision of this Lease performable by Lessee shall be deemed both a covenant and a condition, and shall run with the land.

28.2 Subject to any provisions hereof restricting assignment or subletting by Lessee, this Lease shall bind the parties, their successors and assigns.

28.3 This Lease shall be governed by the laws of the State of Oregon.

29. Attorneys' Fees. If either party hereto brings an action, suit or other legal proceeding to enforce the terms hereof, declare rights hereunder, or secure a remedy for a material default or breach of this Lease, the prevailing party in any such action, suit or other legal proceeding, on hearing, trial, appeal, or other proceeding, shall be entitled to its reasonable attorneys' fees to be paid by the losing party as fixed by the court or other tribunal, as the case may be.

30. Lessor's Access. Lessor and Lessor's agents shall have the right to enter the premises upon twenty-four (24) hours prior notice to Lessee and during normal business hours for the purpose of inspecting the same. Lessor may enter the premises without prior notice and/or during periods other than normal business hours in an emergency. At no time shall Lessor place any "For Sale" or "For Lease" signs on or about the premises without the prior written consent of Lessee. Such consent shall not be unreasonably withheld.

31. Surrender and Cancellation. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subtenancies or may, at the option of Lessor, operate as an assignment to Lessor of any or all such subtenancies.

32. Interest. Whenever, under any provision of this Lease, interest is due and payable at the rate prescribed under this paragraph 32, the rate of such interest shall be that rate per annum which is the lowest of (a) the highest rate per annum which may lawfully be charged under the laws of the State of Oregon, determined as of the time the underlying obligation to Lessor is incurred hereunder; or (b) at any time when quotations of discount rates on ninety (90) day commercial paper are outstanding from the Federal Reserve Bank of San Francisco, that rate per annum which is five (5) percentage points above the said discount rate of the Federal Reserve Bank of San Francisco on ninety (90) day commercial paper, determined as of the time the underlying obligation to Lessor is incurred hereunder; or (c) twenty percent (20%) per annum.

33. Net Lease. This is a net lease, it being the intention of the parties hereto that Lessee shall pay as additional rent, without offset or reduction all costs of maintenance, taxes and insurance, and other charges that are assessed or levied against the premises, including without limitation the costs, taxes, and charges set forth in this Lease. All taxes, charges, costs, and expenses which Lessee assumes or agrees to pay hereunder, together with all interest and other charges that may accrue thereon in the event of Lessee's failure to pay the same as herein provided, all other damages, costs, and expenses which Lessor may suffer or incur, and any and all other sums which may become due, by reason of any default of Lessee or failure on Lessee's part to comply with the covenants, agreements, terms, and conditions of this Lease on Lessee's part to be performed, and each or any of them,

shall be deemed to be additional rent, and, in the event of nonpayment, Lessor shall have all of the rights and remedies herein provided (or provided under applicable law) in the case of nonpayment of rent.

34. Captions. The paragraph captions contained in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit, extend, or describe the intent of any provision hereof.

35. Authority of Officers Executing Lease. This Lease, and the rights and obligations of Lessee hereunder, are expressly conditioned upon the unqualified and unconditional ratification and approval of the Lease by Lessor's Council on or before the beginning of the term of this Lease. In the event Lessee's Council fails to so to ratify and approve this Lease, this Lease shall be null and void and of no further force and effect, and the parties hereto shall be relieved of any further liability or obligation each to the other under or by virtue of this Lease. Subject to ratification and approval as in this paragraph 35 above provided, the individual executing this Lease on behalf of Lessor represents and warrants that such individual is the Executive Officer of Lessor and is duly authorized to execute and deliver this Lease on behalf of said Lessor, and that this Lease is binding upon said Lessor in accordance with its terms. The individual executing this Lease on behalf of Lessee likewise warrants that such individual is duly authorized to execute and deliver this Lease on behalf of Lessee.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

Address: 2000 S.W. First Avenue  
Portland, Oregon  
97201-5398

Metropolitan Service District,  
a municipal corporation of the  
State of Oregon

By: \_\_\_\_\_  
"Lessor"

Address: Legal Department  
Intel Corporation  
3535 Garrett Drive, GR1-21  
Santa Clara, California  
95052-8199

Intel Corporation, a Delaware  
corporation

By: \_\_\_\_\_  
"Lessee"

1049c  
04/08/91

EXHIBIT A

ATTACHMENT  
TO  
LEASE  
BETWEEN  
METROPOLITAN SERVICE DISTRICT  
AND  
INTEL CORPORATION

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Description of Premises

Being a portion of A. J. Masters Donation Land Claim No. 46 in Sections 11 and 12, Township 1 South, Range 2 West, of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the South boundary line of the Oregon Central Railroad Company right of way, said point being West 22.55 chains and South 1°30' West, 27.17 chains from the Northeast corner of said Donation Land Claim No. 46; running thence South 1°30' West, 3.85 chains; thence West 14.40 chains; thence North 1°30' West 187.9 feet to the Northeast corner of that certain tract conveyed to John Frank, Jr., et ux, by deed recorded January 11, 1956, in Book 377, Page 486, Washington County Deed Records; thence West along the North line of said Frank tract 273.0 feet to the West line of said Donation Land Claim about 275.0 feet to the South boundary line of said right of way; thence South 81°30'0" East along the South boundary line of said right of way to the place of beginning.

SAVE AND EXCEPT that portion conveyed to Washington County, as set forth by instrument recorded October 20, 1977, Fee No. 77-13933, Mortgage Records of Washington County.

1049c  
01/17/91