UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended July 1, 2017

or

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

For the transition period from to

Commission file number 001-33170

NETLIST, INC.

(Exact name of registrant as specified in its charter)

Delaware	**95-4812784**
State or other jurisdiction of incorporation or organization	(I.R.S. Employer Identification No.)

175 Technology Drive, Suite 150
Irvine, CA 92618
(Address of principal executive offices) (Zip Code)

(949) 435-0025
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☒ Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

The number of shares outstanding of the registrant's common stock as of the latest practicable date:

Common Stock, par value $0.001 per share
61,919,646 shares outstanding at August 10, 2017

NETLIST, INC. AND SUBSIDIARIES
QUARTERLY REPORT ON FORM 10-Q
FOR THE THREE AND SIX MONTHS ENDED JULY 1, 2017

TABLE OF CONTENTS

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

NETLIST, INC. AND SUBSIDIARIES
Condensed Consolidated Balance Sheets
(in thousands, except par value)

	July 1, 2017 (unaudited)	December 31, 2016 (audited)
ASSETS		
Current Assets:		
Cash and cash equivalents	$ 4,496	$ 9,476
Restricted cash	3,100	3,100
Accounts receivable, net of reserves of $90 (2017) and $151 (2016)	1,819	1,751
Inventories	4,908	3,160
Prepaid expenses and other current assets	1,851	1,766
Total current assets	16,174	19,253
Property and equipment, net	554	645
Other assets	83	70
Total assets	$ 16,811	$ 19,968
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current Liabilities:		
Accounts payable	$ 6,648	$ 4,028
Revolving line of credit	1,332	676
Accrued payroll and related liabilities	789	1,085
Accrued expenses and other current liabilities	263	270
Notes payable and capital lease obligation, current	141	151
Total current liabilities	9,173	6,210
Convertible promissory note, net of debt discount, and accrued interest	14,509	14,251
Long-term warranty liability	45	36
Total liabilities	23,727	20,497
Commitments and contingencies		
Stockholders' deficit:		
Preferred stock, $0.001 par value - 10,000 shares authorized; no shares issued and outstanding	-	-
Common stock, $0.001 par value - 150,000 shares authorized; 61,870 (2017) and 61,653 (2016) shares issued and outstanding	62	62
Additional paid-in capital	144,837	144,035
Accumulated deficit	(151,815)	(144,626)
Total stockholders' deficit	(6,916)	(529)
Total liabilities and stockholders' deficit	$ 16,811	$ 19,968

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Operations
(in thousands, except per share amounts)

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
Net product revenues	$ 11,404	$ 3,500	$ 20,830	$ 4,671
Non-recurring engineering revenues	-	3,428	-	6,857
Total net revenues	11,404	6,928	20,830	11,528
Cost of sales(1)	10,760	3,267	19,506	4,416
Gross profit	644	3,661	1,324	7,112
Operating expenses:				
Research and development(1)	1,487	1,831	2,983	3,477
Intellectual property legal fees	915	1,023	1,381	1,846
Selling, general and administrative(1)	1,951	2,159	3,865	4,424
Total operating expenses	4,353	5,013	8,229	9,747
Operating loss	(3,709)	(1,352)	(6,905)	(2,635)
Other expense, net:				
Interest expense, net	(138)	(132)	(286)	(269)
Other income (expense), net	-	(10)	2	(2)
Total other expense, net	(138)	(142)	(284)	(271)
Loss before provision for income taxes	(3,847)	(1,494)	(7,189)	(2,906)
Provision for income taxes	-	-	-	1
Net loss	$ (3,847)	$ (1,494)	$ (7,189)	$ (2,907)
Net loss per common share:				
Basic and diluted	$ (0.06)	$ (0.03)	$ (0.12)	$ (0.06)
Weighted-average common shares outstanding:				
Basic and diluted	61,844	51,080	61,763	50,723

(1) Amounts include stock-based compensation expense as follows:

Cost of sales	$ 13	$ 13	$ 29	$ 28
Research and development	114	55	180	190
Selling, general and administrative	254	235	436	543
Total stock-based compensation	$ 381	$ 303	$ 645	$ 761

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Cash Flows
(in thousands)

	Six Months Ended	
	July 1, 2017	July 2, 2016
Cash flows from operating activities:		
Net loss	$ (7,189)	$ (2,907)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	144	126
Interest accrued on convertible promissory note	150	-
Amortization of debt discount	108	108
Stock-based compensation	645	761
Changes in operating assets and liabilities:		
Restricted cash	-	(200)
Accounts receivable	(68)	(306)
Inventories	(1,748)	(312)
Prepaid expenses and other assets	122	191
Accounts payable	2,620	1,026
Accrued payroll and related liabilities	(296)	(191)
Accrued expenses and other liabilities	2	44
Deferred revenue	-	(6,857)
Net cash used in operating activities	(5,510)	(8,517)
Cash flows from investing activities:		
Acquisition of property and equipment	(53)	(274)
Net cash used in investing activities	(53)	(274)
Cash flows from financing activities:		
Net borrowings under line of credit	656	-
Payments on debt	(230)	(137)
Proceeds from exercise of stock options	157	47
Net cash provided by (used in) financing activities	583	(90)
Net change in cash and cash equivalents	(4,980)	(8,881)
Cash and cash equivalents at beginning of period	9,476	19,684
Cash and cash equivalents at end of period	$ 4,496	$ 10,803

See accompanying notes.

NETLIST, INC. AND SUBSIDIARIES
NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
July 1, 2017

Note 1—Description of Business

Netlist, Inc. together with its wholly owned subsidiaries (hereinafter collectively referred to as the "Company" or "Netlist," unless the context or the use of the term indicates otherwise), is a leading provider of high-performance modular memory subsystems serving customers in diverse industries that require superior memory performance to empower critical business decisions. The Company has a long history of introducing disruptive new products, such as one of the first load-reduced dual in-line memory modules ("LRDIMM") based on its distributed buffer architecture, which has been adopted by the industry for DDR4 LRDIMM. The Company was also one of the first to bring NAND flash memory ("NAND flash") to the memory channel with its NVvault® non-volatile dual in-line memory modules ("NVDIMM") using software-intensive controllers and merging dynamic random access memory integrated circuits ("DRAM ICs" or "DRAM") and NAND flash to solve data bottleneck and data retention challenges encountered in high-performance computing environments. The Company recently introduced a new generation of storage class memory products called HybriDIMM™ to address the growing need for real-time analytics in Big Data applications and in-memory databases.

Due to the ground-breaking product development of its engineering teams, Netlist has built a robust portfolio of over 100 issued and pending U.S. and foreign patents, many seminal, in the areas of hybrid memory, storage class memory, rank multiplication and load reduction. Since its inception, the Company has dedicated substantial resources to the development and protection of technology innovations essential to its business. The Company's early pioneering work in these areas has been broadly adopted in industry-standard LRDIMM and in NVDIMM. Netlist's objective is to continue to innovate in its field and invest further in its intellectual property portfolio, with the goal of monetizing its intellectual property through a combination of product revenues and licensing, royalty or other revenue-producing arrangements, which may result from joint development or similar partnerships or defense of our patents through enforcement actions against parties we believe are infringing them.

Netlist was incorporated in June 2000 and is headquartered in Irvine, California. In 2007, the Company established a manufacturing facility in the People's Republic of China (the "PRC"), which became operational in July 2007 upon the successful qualification of certain key customers.

Liquidity

The Company incurred net losses of $3.8 million and $7.2 million for the three and six months ended July 1, 2017, respectively, and $11.2 million and $20.5 million for the fiscal years ended December 31, 2016 and January 2, 2016, respectively. The Company has historically financed its operations primarily through issuances of equity and debt securities and revenues generated from operations, including product revenues and a non-recurring engineering ("NRE") fee from its Joint Development and License Agreement ("JDLA") with Samsung Electronics Co., Ltd. ("Samsung"), discussed below. The Company has also funded its operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with certain of its legal proceedings and, to a lesser extent, equipment leasing arrangements (see Notes 4, 5 and 7).

On November 12, 2015, the Company entered into the JDLA with Samsung, pursuant to which the Company and Samsung have agreed to work together to jointly develop new storage class memory technologies including a standardized product interface for NVDIMM-P memory modules in order to facilitate broad industry adoption of this new technology. The JDLA also includes comprehensive cross-licenses to the Company's and Samsung's patent portfolios for the purpose of developing this product interface, grants Samsung a right of first refusal to acquire the Company's HybriDIMM technology before it offers the technology to a third party, and grants the Company access to competitively priced DRAM and NAND flash raw materials. The Company believes Samsung represents an important strategic partner with a high level of technical capability in memory that can facilitate bringing its HybriDIMM technology to market. In connection with the JDLA, the Company received an $8.0 million NRE fee from Samsung for the joint development and received gross proceeds of $15.0 million for its issuance of a Senior Secured Convertible Note

("SVIC Note") and Stock Purchase Warrant ("SVIC Warrant") to SVIC No. 28 New Technology Business Investment L.L.P., an affiliate of Samsung Venture Investment Co. ("SVIC") (see Note 5).

On September 23, 2016, the Company completed a registered firm commitment underwritten public offering (the "2016 Offering"), pursuant to which it sold 9,200,000 shares of its common stock at a price to the public of $1.25 per share. The net proceeds to the Company from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

Inadequate working capital would have a material adverse effect on the Company's business and operations and could cause the Company to fail to execute its business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require the Company to significantly modify its business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of its ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. While the Company's estimates of its operating revenues and expenses and working capital requirements could be incorrect and the Company may use its cash resources faster than it anticipates, management believes the Company's existing cash balance, together with cash provided by the Company's operations and borrowing availability under a bank credit facility (see Note 4) and taking into account cash expected to be used in operations and the funding to be received for certain litigation expenses (see Note 7), will be sufficient to meet the Company's anticipated cash needs for at least the next 12 months.

Note 2—Summary of Significant Accounting Policies

Significant Accounting Policies

Basis of Presentation

The accompanying interim unaudited condensed consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP") for interim financial information and the instructions to the Securities and Exchange Commission's ("SEC") Form 10-Q and Article 8 of the SEC's Regulation S-X. These condensed consolidated financial statements do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. Therefore, these unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes thereto as of and for the year ended December 31, 2016, included in the Company's Annual Report on Form 10-K filed with the SEC on March 31, 2017.

The accompanying condensed consolidated financial statements as of and for the three and six months ended July 1, 2017 are unaudited; however, they contain all normal recurring accruals and adjustments that, in the opinion of the Company's management, are necessary to present fairly the condensed consolidated financial position of the Company and its wholly-owned subsidiaries as of July 1, 2017 and the condensed consolidated statements of operations and statements of cash flows for the six months ended July 1, 2017 and July 2, 2016. The results of operations for the three and six months ended July 1, 2017 are not necessarily indicative of the results to be expected for any full year or any other interim period.

Principles of Consolidation

The accompanying condensed consolidated financial statements include the accounts of Netlist, Inc. and its wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated in consolidation.

Fiscal Year

The Company operates under a 52 or 53-week fiscal year ending on the Saturday closest to December 31. For 2017, the Company's fiscal year is scheduled to end on December 30, 2017 and will consist of 52 weeks, and each of the Company's quarters within such fiscal year will be comprised of 13 weeks.

Use of Estimates

The preparation of the accompanying condensed consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the condensed consolidated financial statements, and the reported amounts of net revenues and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. Significant estimates made by management include, among others, provisions for uncollectible receivables and sales returns, warranty liabilities, valuation of inventories, fair value of financial instruments, recoverability of long-lived assets, valuation of stock-based transactions, estimates for completion of NRE revenue milestones, and realization of deferred tax assets. The Company bases its estimates on its historical experience, knowledge of current conditions and the Company's belief of what could occur in the future considering available information. The Company reviews its estimates on an on-going basis. Actual results may differ materially from these estimates which may result in material adverse effects on the Company's consolidated operating results and financial position.

The Company believes the following critical accounting policies involve its more significant assumptions and estimates used in the preparation of the accompanying condensed consolidated financial statements: provisions for uncollectible receivables and sales returns; warranty liabilities; valuation of inventories; fair value of financial instruments; recoverability of long-lived assets; valuation of stock-based transactions; estimates for completion of NRE and other revenue milestones; and realization of deferred tax assets.

Revenue Recognition

The Company generates revenue from sales of products and performance of engineering services.

Net Product Revenues

Net product revenues primarily consist of sales of high-performance modular memory subsystems to original equipment manufacturers ("OEMs"), Hyperscale data center operators and storage vendors.

The Company recognizes revenues in accordance with Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 605. Accordingly, the Company recognizes revenues when there is persuasive evidence that an arrangement exists, product delivery and acceptance have occurred, the sales price is fixed or determinable, and collectability of the resulting receivable is reasonably assured.

The Company generally uses customer purchase orders and/or contracts as evidence of an arrangement. Delivery occurs when goods are shipped for customers with shipping point terms and upon receipt for customers with destination terms, at which time title and risk of loss transfer to the customer. Shipping documents are used to verify delivery and customer acceptance. The Company assesses whether the sales price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund. Customers are generally allowed limited rights of return for up to 30 days, except for sales of excess component inventories, which contain no right-of-return privileges. Estimated returns are provided for at the time of sale based on historical experience or specific identification of an event necessitating a reserve. The Company offers a standard product warranty to its customers and has no other post-shipment obligations. The Company assesses collectability based on the creditworthiness of the customer as determined by credit checks and evaluations, as well as the customer's payment history.

All amounts billed to customers related to shipping and handling are classified as net product revenues, while all costs incurred by the Company for shipping and handling are classified as cost of sales.

Engineering Services

The Company provides engineering services to its customers. The Company recognizes revenue from these services when all of the following conditions are met: (1) evidence existed of an arrangement with the customer, typically consisting of a purchase order or contract; (2) the Company's services were performed and risk of loss passed to the customer; (3) the Company completed all of the necessary terms of the contract; (4) the amount of revenue to which the Company was entitled was fixed or determinable; and (5) the Company believed it was probable that it would be able to collect the amount due from the customer. To the extent that one or more of these conditions has not been satisfied, the Company defers recognition of revenue.

Deferred Revenue

From time-to-time the Company receives pre-payments from its customers related to future services. Engineering development fee revenues, including NRE fees, are deferred and recognized ratably over the period the engineering work is completed.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and short-term investments with original maturities of three months or less.

Restricted Cash

Restricted cash consists of cash to secure standby letters of credit. Restricted cash was $3.1 million as of both July 1, 2017 and December 31, 2016, and related to two standby letters of credit.

Fair Value of Financial Instruments

The Company's financial instruments consist principally of cash and cash equivalents, restricted cash, accounts receivable, accounts payable, accrued expenses and debt instruments. The fair value of the Company's cash equivalents is determined based on quoted prices in active markets for identical assets or Level 1 inputs. The Company recognizes transfers between Levels 1 through 3 of the fair value hierarchy at the beginning of the reporting period. The Company believes that the carrying values of all other financial instruments approximate their current fair values due to their nature and respective durations.

Allowance for Doubtful Accounts

The Company performs credit evaluations of our customers' financial condition and limits the amount of credit extended to its customers as deemed necessary, but generally requires no collateral. The Company evaluates the collectability of accounts receivable based on a combination of factors. In cases where the Company is aware of circumstances that may impair a specific customer's ability to meet its financial obligations subsequent to the original sale, the Company will record an allowance against amounts due, and thereby reduce the net recognized receivable to the amount the Company reasonably believes will be collected. For all other customers, the Company records allowances for doubtful accounts based primarily on the length of time the receivables are past due based on the terms of the originating transaction, the current business environment, and its historical experience. Uncollectible accounts are charged against the allowance for doubtful accounts when all cost-effective commercial means of collection have been exhausted. Generally, the Company's credit losses have been within expectations and the provisions established. However, the Company cannot guarantee that it will continue to experience credit loss rates similar to those experienced in the past.

The Company's accounts receivable are highly concentrated among a small number of customers, and a significant change in the liquidity or financial position of one of these customers could have a material adverse effect on the collectability of the Company's accounts receivable, liquidity and future operating results.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist principally of cash and cash equivalents, and accounts receivable.

The Company invests its cash equivalents primarily in money market mutual funds. Cash equivalents are maintained with high quality institutions, the composition and maturities of which are regularly monitored by management. At times, deposits held with financial institutions may exceed the amount of insurance provided by the Federal Deposit Insurance Corporation and the Securities Investor Protection Corporation.

The Company's trade accounts receivable are primarily derived from sales to OEMs in the server, high-performance computing and communications markets, as well as from sales to storage customers, appliance customers, system builders and cloud and datacenter customers. The Company performs credit evaluations of its customers' financial condition and limits the amount of credit extended when deemed necessary, but generally requires no collateral. The Company believes that the concentration of credit risk in its trade receivables is moderated by its credit evaluation process, relatively short collection terms, a high level of credit worthiness of its customers (see Note 3), foreign credit insurance, and letters of credit issued in its favor. Reserves are maintained for potential credit losses, and such losses historically have not been significant and have been within management's expectations.

Inventories

Inventories are valued at the lower of actual cost to purchase or manufacture the inventory or the net realizable value of the inventory. Cost is determined on an average cost basis which approximates actual cost on a first-in, first-out basis and includes raw materials, labor and manufacturing overhead. Net realizable value is the estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal, and transportation. At each balance sheet date, the Company evaluates its ending inventory quantities on hand and on order and records a provision for excess quantities and obsolescence. Among other factors, the Company considers historical demand and forecasted demand in relation to the inventory on hand, competitiveness of product offerings, market conditions and product life cycles when determining obsolescence and net realizable value. In addition, the Company considers changes in the market value of components in determining the net realizable value of its inventory. Once established, lower of cost or market write-downs are considered permanent adjustments to the cost basis of the excess or obsolete inventories.

Property and Equipment

Property and equipment are recorded at cost and depreciated on a straight-line basis over their estimated useful lives, which generally range from three to seven years. Leasehold improvements are recorded at cost and amortized on a straight-line basis over the shorter of their estimated useful lives or the remaining lease term. Expenditures for repairs and maintenance are expensed as incurred. Upon retirement or sale, the cost and related accumulated depreciation and amortization of disposed assets are removed from the accounts and any resulting gain or loss is included in other expense, net.

Deferred Financing Costs, Debt Discount and Detachable Debt-Related Warrants

Costs incurred to issue debt are deferred and recorded as a reduction to the debt balance in the accompanying condensed consolidated balance sheets. The Company amortizes debt issuance costs over the expected term of the related debt using the effective interest method. Debt discounts relate to the relative fair value of warrants issued in conjunction with the debt and are also recorded as a reduction to the debt balance and accreted over the expected term of the debt to interest expense using the effective interest method.

Impairment of Long-Lived Assets

The Company evaluates the recoverability of the carrying value of long-lived assets held and used by the Company in its operations for impairment on at least an annual basis or whenever events or changes in circumstances indicate that their carrying value may not be recoverable. When such factors and circumstances exist, the Company compares the projected undiscounted future net cash flows associated with the related asset or group of assets over their estimated useful lives against their respective carrying amount. These projected future cash flows may vary significantly over time as a result of increased competition, changes in technology, fluctuations in demand, consolidation of the Company's customers and reductions in average selling prices. If the carrying value is determined not to be recoverable from future operating cash flows, the asset is deemed impaired and an impairment loss is recognized to the extent the carrying value exceeds the estimated fair value of the asset. The fair value of the asset or asset group is based on market value when available, or when unavailable, on discounted expected cash flows. The Company's management believes there is no impairment of long-lived assets as of July 1, 2017. However, market conditions could change or demand for the Company's products could decrease, which could result in future impairment of long-lived assets.

Warranty Liability

The Company offers product warranties generally ranging from one to three years, depending on the product and negotiated terms of any purchase agreements with its customers. Such warranties require the Company to repair or replace defective product returned to the Company during the warranty period at no cost to the customer. Warranties are not offered on sales of excess component inventory. The Company records an estimate for warranty related costs at the time of sale based on its historical and estimated future product return rates and expected repair or replacement costs (see Note 3). While such costs have historically been within management's expectations and the provisions established, unexpected changes in failure rates could have a material adverse impact on the Company, requiring additional warranty reserves and could adversely affect the Company's gross profit and gross margins.

Stock-Based Compensation

The Company accounts for equity issuances to non-employees in accordance with FASB ASC Topic 505. All transactions in which goods or services are the consideration received for the issuance of equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable. The measurement date used to determine the estimated fair value of the equity instrument issued is the earlier of the date on which the third-party performance is complete or the date on which it is probable that performance will occur.

In accordance with FASB ASC Topic 718, employee and director stock-based compensation expense recognized during the period is based on the value of the portion of stock-based payment awards that is ultimately expected to vest during the period. Given that stock-based compensation expense recognized in the accompanying condensed consolidated statements of operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures. The Company estimates its forfeitures at the time of grant and revises such estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The Company's estimated average forfeiture rates are based on historical forfeiture experience and estimated future forfeitures.

The estimated fair value of common stock option awards to employees and directors is calculated using the Black-Scholes option pricing model. The Black-Scholes model requires subjective assumptions regarding future stock price volatility and expected time to exercise, along with assumptions about the risk-free interest rate and expected dividends, all of which affect the estimated fair values of the Company's common stock option awards. The expected term of options granted is calculated as the average of the weighted vesting period and the contractual expiration date of the option. This calculation is based on the safe harbor method permitted by the Securities and Exchange Commission ("SEC") in instances where the vesting and exercise terms of options granted meet certain conditions and where limited historical exercise data is available. The expected volatility is based on the historical volatility of the Company's common stock. The risk-free rate selected to value any particular grant is based on the U.S. Treasury rate that corresponds to the expected term of the grant effective as of the date of the grant. The expected dividend assumption is based on the Company's history and management's expectation regarding dividend payouts. Compensation expense for

common stock option awards with graded vesting schedules is recognized on a straight-line basis over the requisite service period for the last separately vesting portion of the award, provided that the accumulated cost recognized as of any date at least equals the value of the vested portion of the award.

The Company recognizes the fair value of restricted stock awards issued to employees and outside directors as stock-based compensation expense on a straight-line basis over the vesting period for the last separately vesting portion of the awards. Fair value is determined as the difference between the closing price of the Company's common stock on the grant date and the purchase price of the restricted stock award, if any, reduced by expected forfeitures.

If there are any modifications or cancellations of the underlying vested or unvested stock-based awards, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense, or record additional expense for vested stock-based awards. Future stock-based compensation expense and unearned stock-based compensation may increase to the extent that the Company grants additional common stock options or other stock-based awards.

Income Taxes

Deferred tax assets and liabilities are recognized to reflect the estimated future tax effects, calculated at currently effective tax rates, of future deductible or taxable amounts attributable to events that have been recognized on a cumulative basis in the accompanying condensed consolidated financial statements. A valuation allowance related to a net deferred tax asset is recorded when it is more likely than not that some portion of the deferred tax asset will not be realized. Deferred tax liabilities, deferred tax assets and valuation allowances are classified as non-current in the accompanying condensed consolidated balance sheets.

ASC Topic 740 prescribes a recognition threshold and measurement requirement for the financial statement recognition of a tax position that has been taken or is expected to be taken on a tax return and also provides guidance on de-recognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. Under ASC Topic 740 the Company may only recognize or continue to recognize tax positions that meet a "more likely than not" threshold.

The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty. Tax laws and regulations may change as a result of changes in fiscal policy, changes in legislation, the evolution of regulations and court rulings. Therefore, the actual liability for U.S. or foreign taxes may be materially different from the Company's estimates, which could require the Company to record additional tax liabilities or to reduce previously recorded tax liabilities, as applicable.

Research and Development Expenses

Research and development expenditures are expensed in the period incurred.

Interest Expense

Interest expense consists primarily of interest associated with our debt instruments, including fees related to the term loans, accretion of debt discounts and amortization of debt issuance costs. The Company recognizes the accretion of debt discounts and the amortization of interest costs using the effective interest method.

Risks and Uncertainties

The Company is subject to a number of risks and uncertainties, including its ability to achieve profitable operations due to the Company's history of losses and accumulated deficits, the Company's dependence on a small number of customers for a substantial portion of its net product revenues, risks related to intellectual property matters, market acceptance of and demand for the Company's products, and the risks described below. These risks could have a material adverse effect on the Company's condensed consolidated financial position, results of operations and cash flows.

The Company has dedicated substantial resources to the development and protection of technology innovations essential to its business, and the Company expects these activities to continue for the foreseeable future. The Company also intends to aggressively pursue monetization avenues for its intellectual property portfolio, potentially including licensing, royalty or other revenue-producing arrangements. However, the Company's revenues are currently generated by its product revenues, and it may never be successful in generating a revenue stream from its intellectual property, in which case the Company's investments of time, capital and other resources into its intellectual property portfolio may not provide adequate, or any, returns.

The Company also dedicates substantial resources to protecting its intellectual property, including its pending patent infringement litigation and U.S. International Trade Commission ("ITC") proceedings against SK hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"), and its efforts to defend its patents against challenges made by way of reexamination and review proceedings at the U.S. Patent and Trademark Office ("USPTO") and Patent Trial and Appeal Board ("PTAB") (see Note 7). The Company expects these activities to continue for the foreseeable future, without any guarantee that any ongoing or future patent protection or litigation activities will be successful. The Company is also subject to litigation based on claims that it has infringed the intellectual property rights of others, against which the Company intends to defend itself vigorously. Moreover, any litigation, regardless of its outcome, would involve a significant dedication of resources, including time and costs, would divert management's time and attention and could negatively impact the Company's results of operations. As a result, any current or future infringement claims by or against third parties could materially adversely affect the Company's business, financial condition or results of operations.

The Company has also invested significant research and development time and costs into the design of application-specific integrated circuit ("ASIC") and hybrid devices, including its NVvault family of products and most recently its next-generation HybriDIMM memory subsystem. The Company believes that market acceptance of these products or derivative products that incorporate its core memory subsystem technology is critical to its success. However, these products are subject to increased risks as compared to the Company's legacy products. For example, the Company is dependent on a limited number of suppliers for the DRAM and ASIC devices that are essential to the functionality of these products and in the past it has experienced supply chain disruptions and shortages of DRAM and NAND flash required to create its NVvault family of products, and the Company's products are generally subject to a product approval and qualification process with customers before purchases are made and the Company has experienced a longer qualification cycle than anticipated with some of these products, including its HyperCloud memory subsystems. These and other risks attendant to the production of the Company's memory subsystem products could impair its ability to obtain customer or market acceptance of these products or obtain such acceptance in a timely manner, which would reduce the Company's achievable revenues from these products and limit the Company's ability to recoup its investments in the products.

The Company's manufacturing operations in the PRC are subject to various political, geographic and economic risks and uncertainties inherent to conducting business in the PRC. These include, among others, (i) volatility and other potential changes in economic conditions in the region, (ii) managing a local workforce and overcoming other practical barriers, such as language and cultural differences, that may subject the Company to uncertainties or unfamiliar practices or regulatory policies, (iii) risks imposed by the geographic distance between the Company's headquarters and its PRC operations, including difficulties maintaining the desired amount of control over production capacity and timing, inventory levels, product quality, delivery schedules, manufacturing yields and costs, (iv) the Company's limited experience creating and overseeing foreign operations generally, (v) changes in the laws and policies of the Chinese government that affect business practices generally or restrict local operations by foreign companies, and (vi) changes in the laws and policies of the U.S. government regarding the conduct of business in foreign countries generally or in the PRC in particular, which may be more uncertain following the results of the 2016 U.S. presidential election. Additionally, the Chinese government controls the procedures by which its local currency, the Chinese Renminbi ("RMB"), is converted into other currencies, which generally requires government consent, and imposes legal and regulatory restrictions on the movement of funds outside of the PRC. As a result, RMB may not be freely convertible into other currencies at all times and the Company may need to comply with regulatory procedures to repatriate funds from its Chinese operations. Any changes to currency conversion requirements or any failure by the Company to comply with repatriation procedures and regulations could adversely affect its operating results, liquidity and financial condition.

In addition, fluctuations in the exchange rate between RMB and U.S. dollars may adversely affect the Company's expenses and results of operations, the value of its assets and liabilities and the comparability of its period-to-period results. The liabilities of the Company's subsidiary in the PRC exceeded its assets as of July 1, 2017 and July 2, 2016.

Foreign Currency Remeasurement

The functional currency of the Company's foreign subsidiaries is the U.S. dollar. Local currency financial statements are remeasured into U.S. dollars at the exchange rate in effect as of the balance sheet date for monetary assets and liabilities and the historical exchange rate for nonmonetary assets and liabilities. Expenses are remeasured using the average exchange rate for the period, except items related to nonmonetary assets and liabilities, which are remeasured using historical exchange rates. All remeasurement gains and losses are included in determining net loss. Transaction gains and losses were not significant during the three and six months ended July 1, 2017 and July 2, 2016.

Net Loss Per Share

Basic net loss per share is calculated by dividing net loss by the weighted-average common shares outstanding during the period, excluding unvested shares issued pursuant to restricted share awards under the Company's share-based compensation plans. Diluted net loss per share is calculated by dividing the net loss by the weighted-average shares and dilutive potential common shares outstanding during the period. Dilutive potential shares consist of dilutive shares issuable upon the exercise or vesting of outstanding stock options, warrants and restricted stock awards, respectively, computed using the treasury stock method and shares issuable upon conversion of the SVIC Note (see Note 5). In periods of losses, basic and diluted loss per share are the same, as the effect of stock options and unvested restricted share awards on loss per share is anti-dilutive.

Going Concern

In accordance with ASC Subtopic 205-40, *Presentation of Financial Statements-Going Concern* , management evaluates whether relevant conditions and events, when considered in the aggregate, indicate that it is probable the Company will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued. When relevant conditions or events, considered in the aggregate, initially indicate that it is probable that the Company will be unable to meet its obligations as they become due within one year after the date that the financial statements are issued (and therefore they raise substantial doubt about the Company's ability to continue as a going concern), management evaluates whether its plans that are intended to mitigate those conditions and events, when implemented, will alleviate substantial doubt about the Company's ability to continue as a going concern. Management's plans are considered only to the extent that (1) it is probable that the plans will be effectively implemented and (2) it is probable that the plans will mitigate the conditions or events that raise substantial doubt about the Company's ability to continue as a going concern. See the discussion under *"Liquidity"* in Note 1 for information about the Company's liquidity position.

Recently Adopted Accounting Standards

In July 2015, the FASB issued Accounting Standards Update ("ASU") No. 2015-11, *Simplifying the Measurement of Inventory* ("ASU 2015-11"), which requires entities to measure inventory at the lower of cost or net realizable value. Current guidance requires inventory to be measured at the lower of cost or market, with market defined as replacement cost, net realizable value, or net realizable value less a normal profit margin. This ASU simplifies the subsequent measurement of inventory by replacing the lower of cost or market test with a lower of cost or net realizable value test. The Company adopted this guidance in the first quarter of 2017 and there was no material impact on its consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation-Stock Compensation (Topic 718) Improvements to Employee Share-Based Payment Accounting* ("ASU 2016-09"), which is intended to simplify several aspects of the accounting for share-based payment award transactions. ASU 2016-09 is effective for fiscal years beginning after December 15, 2016, including interim periods. The Company adopted this guidance in the first quarter of 2017 and

elected to continue to estimate forfeitures expected to occur to determine the amount of compensation cost to be recognized in each period; as a result there was no material impact on its consolidated financial statements.

Recent Accounting Pronouncements

In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers* ("ASU 2014-09"), which was subsequently amended by ASUs 2015-14, 2016-08, 2016-10, 2016-12, and 2016-20. ASU 2014-09, as amended, supersedes the revenue recognition requirements in ASC Topic 605, *Revenue Recognition,* and creates a new ASC Topic 606 (ASC 606). ASU 2014-9, as amended, implements a five-step process for customer contract revenue recognition that focuses on transfer of control, as opposed to transfer of risk and rewards. The amendment also requires enhanced disclosures regarding the nature, amount, timing and uncertainty of revenues and cash flows from contracts with customers. Other major provisions include the capitalization and amortization of certain contract costs, ensuring the time value of money is considered in the transaction price, and allowing estimates of variable consideration to be recognized before contingencies are resolved in certain circumstances. Entities can transition to the standard either retrospectively or as a cumulative-effect adjustment as of the date of adoption. ASC 606 is effective for public entities for annual periods beginning after December 15, 2017 (fiscal year 2018 for the Company), and interim periods within the year of adoption . The Company has not yet selected a transition method and is currently assessing the impact the adoption of ASC 606 will have on its consolidated financial statements and disclosures.

In February 2016, the FASB issued ASU No. 2016-02 *, Leases* ("ASU 2016-02"). Under ASU 2016-02, lessees will be required to recognize the following for all leases (with the exception of short-term leases) at the commencement date: a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis; and a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term. ASU 2016-02 is effective for fiscal years beginning after December 15, 2018 (fiscal year 2019 for the Company), including interim periods within those fiscal years. Early application is permitted. Lessees must apply a modified retrospective transition approach for leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements. The modified retrospective approach would not require any transition accounting for leases that expired before the earliest comparative period presented. Lessees may not apply a full retrospective transition approach. The Company is currently evaluating the impact of adopting ASU 2016-02 on its consolidated financial statements and disclosures.

In August 2016, the FASB issued ASU No. 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments* ("ASU 2016-15"), which is intended to reduce the existing diversity in practice in how certain cash receipts and cash payments are classified in the statement of cash flows. ASU 2016-15 is effective for fiscal years beginning after December 15, 2017 (fiscal year 2018 for the Company), including interim periods within those fiscal years with early adoption permitted, provided that all of the amendments are adopted in the same period. The Company is currently evaluating the impact of adopting ASU 2016-15 on its consolidated financial statements and disclosures.

In October 2016, the FASB issued ASU No. 2016-16, *Income Taxes (Topic 740), Intra-Entity Transfers of Assets Other Than Inventory* ("ASU 2016-16"), which requires entities to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. This amends current U.S. GAAP which prohibits recognition of current and deferred income taxes for all types of intra-entity asset transfers until the asset has been sold to an outside party. ASU 2016-16 is effective for fiscal years beginning after December 15, 2017 (fiscal year 2018 for the Company), including interim periods therein with early application permitted. Upon adoption, the Company must apply a modified retrospective transition approach through a cumulative-effect adjustment to retained earnings as of the beginning of the period of adoption. The Company is currently evaluating the impact of this new standard on its consolidated financial statements and disclosures, as well as its planned adoption date.

In November 2016, the FASB issued ASU No. 2016-18, *Statement of Cash Flows (Topic 230), Restricted Cash* ("ASU 2016-18"), which enhances and clarifies the guidance on the classification and presentation of restricted cash in the statement of cash flows. ASU 2016-18 is effective for fiscal periods beginning after December 15, 2018 (fiscal year 2019 for the Company), including interim periods therein with early application permitted. The Company is currently evaluating the impact of this standard on its consolidated financial statements and disclosures.

Note 3—Supplemental Financial Information

Inventories

Inventories consisted of the following as of the dates presented:

	July 1, 2017	December 31, 2016
	(in thousands)	
Raw materials	$ 1,242	$ 884
Work in process	62	47
Finished goods	3,604	2,229
	$ 4,908	$ 3,160

Warranty Liabilities

The following table summarizes activity related to warranty liabilities in the periods presented:

	Six Months Ended	
	July 1, 2017	July 2, 2016
	(in thousands)	
Beginning balance	$ 100	$ 122
Estimated cost of warranty claims charged to cost of sales	14	22
Cost of actual warranty claims	(1)	(86)
Ending balance	113	58
Less current portion	(68)	(35)
Long-term warranty liability	$ 45	$ 23

The allowance for warranty liabilities expected to be incurred within one year is included as a component of accrued expenses and other current liabilities in the accompanying condensed consolidated balance sheets. The allowance for warranty liability expected to be incurred after one year is classified as long-term warranty liability in the accompanying condensed consolidated balance sheets.

Computation of Net Loss Per Share

The following table sets forth the computation of basic and diluted net loss per share, including the numerator and denominator used in the calculation of basic and diluted net loss per share, for the periods presented:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
	(in thousands, except per share data)			
Basic and diluted net loss per share:				
Numerator: Net loss	$ (3,847)	$ (1,494)	$ (7,189)	$ (2,907)
Denominator: Weighted-average common shares outstanding, basic and diluted	61,844	51,080	61,763	50,723
Basic and diluted net loss per share	$ (0.06)	$ (0.03)	$ (0.12)	$ (0.06)

The table below sets forth potentially dilutive common share equivalents, consisting of shares issuable upon the exercise or vesting of outstanding stock options and restricted stock awards, respectively, and the exercise of warrants, computed using the treasury stock method, and shares issuable upon conversion of the SVIC Note (see Note 5) using the

"if converted" method. These potential common shares have been excluded from the diluted net loss per share calculations above as their effect would be anti-dilutive for the periods presented:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
	(in thousands)		(in thousands)	
Common share equivalents	13,006	12,976	13,155	12,892

The above common share equivalents would have been included in the calculation of diluted net loss per share had the Company reported net income for the periods presented.

Major Customers and Products

The Company's product revenues have historically been concentrated in a small number of customers. The following table sets forth the percentage of the Company's net product revenues made to customers that each comprise 10% or more of the Company's net product revenues in the periods presented:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
Customer:				
Customer A	* %	* %	* %	12 %
Customer B	* %	47 %	* %	35 %
Customer C	* %	* %	11 %	* %
Customer D	16 %	* %	* %	* %
Customer E	* %	11 %	* %	* %

* less than 10% of net product revenues during the period.

The Company's accounts receivable are concentrated with one customer at July 1, 2017, representing 33% of aggregate gross receivables. At December 31, 2016, two customers represented 27% and 11% of aggregate gross receivables, respectively. The loss of any of the Company's significant customers or a reduction in sales to or difficulties collecting payments from any of these customers could significantly reduce the Company's net product revenues and adversely affect its operating results. The Company tries to mitigate risks associated with foreign receivables by purchasing comprehensive foreign credit insurance.

The Company resells certain Samsung products that it purchases under the terms of the JDLA with Samsung to certain end-customers that are not reached in Samsung's distribution model, including storage customers, appliance customers, system builders and cloud and datacenter customers. In the three and six months ended July 1, 2017 and July 2, 2016, resales of these products represented approximately 91%, 91%, 34% and 21%, respectively, of the Company's net product revenues.

Cash Flow Information

The following table sets forth supplemental disclosures of cash flow information and non-cash financing activities for the periods presented:

	Six Months Ended	
	July 1, 2017	July 2, 2016
	(in thousands)	
Supplemental disclosure of non-cash financing activities:		
Debt financing of insurance	$ 220	$ 224
Acquisition of equipment through capital lease	$ -	$ 179
Issuance of shares for cashless warrant exercise	$ -	$ 1

Note 4—Credit Agreement

SVB Credit Agreement

On October 31, 2009, the Company and Silicon Valley Bank ("SVB") entered into a credit agreement (as amended, the "SVB Credit Agreement"). Pursuant to the terms of the SVB Credit Agreement, the Company is eligible to borrow, in a revolving line of credit, up to the lesser of (i) 80% of its eligible accounts receivable, or (ii) $5.0 million, subject to certain adjustments as set forth in the SVB Credit Agreement. The SVB Credit Agreement requires letters of credit to be secured by cash, which is classified as restricted cash in the accompanying condensed consolidated balance sheets. As of July 1, 2017, and December 31, 2016, (i) letters of credit were outstanding in the amount of $3.1 million (ii) the Company had outstanding borrowings of $1.3 million and $0.7 million, respectively, and (iii) availability under the revolving line of credit was $0.3 million and $0.8 million, respectively.

On January 29, 2016, the Company and SVB entered into an amendment to the SVB Credit Agreement to, among other things, adjust the rate at which advances under the SVB Credit Agreement accrue interest to the Wall Street Journal "prime rate" plus 2.75% (prior to such amendment, advances accrued interest at a rate equal to SVB's most recently announced "prime rate" plus 2.75%).

On March 27, 2017, the Company and SVB entered into another amendment to the SVB Credit Agreement to, among other things, (i) extend the maturity date of advances under the SVB Credit Agreement to April 1, 2018, (ii) modify the Company's financial covenants under the SVB Credit Agreement to remove all prior financial standards and replace them with a liquidity ratio standard, (iii) remove or amend certain termination, anniversary and unused facility fees payable by the Company under the SVB Credit Agreement, and (iv) make certain other administrative changes. On April 12, 2017, the Company and SVB entered into a further amendment to the SVB Credit Agreement to, among other things, obtain SVB's consent in connection with the Company's rights agreement with Computershare Trust Company, N.A., as rights agent (see Note 8), and make certain administrative changes in connection with the Company's funding arrangement with TR Global Funding V, LLC, an affiliate of TRGP Capital Management, LLC ("TRGP") (see Note 7).

As of April 2, 2017, the beginning of the quarterly period covered by this report, all obligations under the SVB Credit Agreement were secured by a first priority security interest in the Company's tangible and intangible assets, other than its patent portfolio, which was subject to a first priority security interest held by SVIC (see Note 5). Certain of these lien priorities were modified by certain intercreditor agreements entered into in May 2017 in connection with the Company's establishment of a funding arrangement with TRGP for certain of the Company's litigation expenses in connection with its legal proceedings against SK hynix. On May 3, 2017, TRGP entered into an intercreditor agreement with each of SVIC and SVB, and on April 20, 2017 SVIC and SVB entered into an intercreditor agreement with each other (such intercreditor agreements, collectively, the "Intercreditor Agreements"). Pursuant to the terms of the Intercreditor Agreements, SVB's security interests in the Company's assets have been modified as follows: SVB has a first priority security interest in all of the Company's tangible and intangible assets other than its patent portfolio and its claims underlying and any proceeds it may receive from the SK hynix proceedings; a second priority security interest in the Company's patent portfolio other than the patents that are the subject of the SK hynix proceedings; and a third

priority security interest in the Company's patents that are the subject of the SK hynix proceedings. See Note 7 for additional information about the funding arrangement with TRGP, the Intercreditor Agreements and the Company's legal proceedings against SK hynix.

The SVB Credit Agreement subjects the Company to certain affirmative and negative covenants, including financial covenants with respect to the Company's liquidity and restrictions on the payment of dividends. As of July 1, 2017 the Company was in compliance with its covenants under the SVB Credit Agreement.

Note 5—Debt

The Company's debt consisted of the following as of the dates presented:

	July 1, 2017	December 31, 2016
	(in thousands)	
Convertible promissory note, SVIC, net of debt discount of $976 and $1,084 in 2017 and 2016, respectively	$ 14,024	$ 13,916
Accrued interest on convertible promissory note with SVIC	485	335
Notes payable and capital lease obligation	141	151
	$ 14,650	$ 14,402
Less current portion	(141)	(151)
	$ 14,509	$ 14,251

On November 18, 2015, in connection with entering into the JDLA with Samsung, the Company sold to SVIC the SVIC Note and the SVIC Warrant. The SVIC Note has an original principal amount of $15.0 million, accrues interest at a rate of 2.0% per year, is due and payable in full on December 31, 2021, and is convertible into shares of the Company's common stock at a conversion price of $1.25 per share, subject to certain adjustments, on the maturity date of the SVIC Note. Upon a change of control of the Company prior to the maturity date of the SVIC Note, the SVIC Note may, at the Company's option, be assumed by the surviving entity or be redeemed upon the consummation of such change of control for the principal and accrued but unpaid interest as of the redemption date. The SVIC Warrant grants SVIC a right to purchase 2,000,000 shares of the Company's common stock at an exercise price of $0.30 per share, subject to certain adjustments, is only exercisable in the event the Company exercises its right to redeem the SVIC Note prior to its maturity date, and expires on December 31, 2025.

The SVIC Warrant was valued at $1,165,000, based on its relative fair value, and was recorded as a debt discount. The Company also recorded $154,000 as a debt discount for professional service fees rendered in connection with the transaction. These amounts are being amortized over the term of the SVIC Note using the effective interest method. For the three and six months ended July 1, 2017 and July 2, 2016, the Company amortized $54,000, $108,000, $54,000 and $108,000, respectively, to interest expense in the accompanying condensed consolidated statements of operations.

In connection with the SVIC Note, SVIC was granted a first priority security interest in the Company's patent portfolio and a second priority security interest in all of the Company's other tangible and intangible assets. Upon issuance of the SVIC Note, the Company, SVB and SVIC entered into an Intercreditor Agreement pursuant to which SVB and SVIC agreed to their relative security interests in the Company's assets. In May 2017, SVIC, SVB and TRGP entered into additional Intercreditor Agreements to modify certain of these lien priorities (see Note 7). Additionally, upon issuance of the SVIC Note and the SVIC Warrant, the Company and SVIC entered into a Registration Rights Agreement pursuant to which the Company is obligated to register with the SEC, upon demand by SVIC, the shares of the Company's common stock issuable upon conversion of the SVIC Note or upon exercise of the SVIC Warrant.

The SVIC Note subjects the Company to certain affirmative and negative operating covenants. As of July 1, 2017 the Company was in compliance with its covenants under the SVIC Note.

Capital Lease and Notes Payable

The Company has purchased computer equipment through a capital lease. As of July 1, 2017, the lease requires monthly payments of approximately $12,000 and matures in December 2017.

The Company finances certain of its insurance policies. As of July 1, 2017, required payments are approximately $29,000 per month and the related financing agreements mature at various dates through September 2017.

Interest expense, including amortization of debt discounts and debt issuance costs, net of interest income, was as follows during the periods presented:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
	(in thousands)		(in thousands)	
Interest expense:				
SVB	$ 8	$ 7	$ 21	$ 18
SVIC	129	129	258	258
Others	4	1	16	2
	141	137	295	278
Interest income	(3)	(5)	(9)	(9)
	$ 138	$ 132	$ 286	$ 269

Note 6—Income Taxes

The following table sets forth the Company's provision for income taxes, along with the corresponding effective tax rates, for the periods presented:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2015
	(in thousands)		(in thousands)	
Provision for income taxes	$ -	$ -	$ -	$ 1
Effective tax rate	- %	- %	- %	(0.03)%

The Company evaluates whether a valuation allowance should be established against its deferred tax assets based on the consideration of all available evidence using a "more likely than not" standard. In making such judgments, significant weight is given to evidence that can be objectively verified. Due to uncertainty of future utilization, the Company has provided a full valuation allowance as of July 1, 2017 and December 31, 2016. Accordingly, no benefit has been recognized for net deferred tax assets. The Company's effective tax rate differs from the federal statutory tax rate of 34% for the six months ended July 1, 2017 and July 2, 2016 due to providing the full valuation allowance against net deferred tax assets.

The Company did not have any unrecognized tax benefits as of July 1, 2017 and December 31, 2016.

Note 7—Commitments and Contingencies

TRGP Agreement and Related Intercreditor Agreements

On May 3, 2017, the Company and TRGP entered into an investment agreement (the "TRGP Agreement"), which generally provides that TRGP will directly fund the costs incurred by or on behalf of the Company in connection with its legal proceedings against SK hynix (see " *Litigation and Patent Reexaminations* " in this Note 7 below), including costs incurred since January 1, 2017 and costs to be incurred in the future (all such funded costs, collectively, the "Funded Costs"). In exchange for such funding, the Company has agreed that, if the Company recovers any proceeds

in connection with the SK hynix proceedings, it will pay to TRGP the amount of the Funded Costs paid by TRGP plus an escalating premium based on when any such proceeds are recovered, such that the premium will equal a specified low-to-mid double-digit percentage of the amount of the Funded Costs and such percentage will increase by a specified low double-digit amount each quarter after a specified date until any such proceeds are recovered. In addition, pursuant to the terms of a separate security agreement between the Company and TRGP dated May 3, 2017 (the "Security Agreement"), the Company has granted to TRGP (i) a first priority lien on, and security in, the claims underlying the SK hynix proceedings and any proceeds that may be received by the Company in connection with these proceedings, and (ii) a second priority lien on, and security in, the Company's patents that are the subject of the SK hynix proceedings.

The TRGP Agreement does not impose financial covenants on the Company. Termination events under the TRGP Agreement include, among others, any failure by the Company to make payments to TRGP thereunder upon receipt of recoveries in the SK hynix proceedings; the occurrence of certain bankruptcy events; certain breaches by the Company of its covenants under the TRGP Agreement or the related Security Agreement; and the occurrence of a change of control of the Company. If any such termination event occurs, subject to certain cure periods for certain termination events, TRGP would have the right to terminate its obligations under the TRGP Agreement, including its obligation to make any further payments of Funded Costs after the termination date. In the event of any such termination by TRGP, the Company would continue to be obligated to pay TRGP the portion of any proceeds the Company may recover in connection with the SK hynix proceedings that TRGP would have been entitled to receive absent such termination, as described above, and TRGP may also be entitled to seek additional remedies pursuant to the dispute resolution provisions of the TRGP Agreement.

In connection with the TRGP Agreement, in May 2017, TRGP, SVIC and SVB entered into the Intercreditor Agreements. Pursuant to the terms of the Intercreditor Agreements, TRGP, SVB and SVIC have agreed to their relative security interest priorities in the Company's assets, such that: (i) TRGP has a first priority security interest in the Company's claims underlying the SK hynix proceedings and any proceeds that may be received by the Company in connection with these proceedings, and a second priority security interest in the Company's patents that are the subject of the SK hynix proceedings, (ii) SVIC has a first priority security interest in the Company's complete patent portfolio and a second priority security interest in all of the Company's other tangible and intangible assets (other than the Company's claims underlying and any proceeds it may receive from the SK hynix proceedings), and (iii) SVB has a first priority security interest in all of the Company's tangible and intangible assets other than its patent portfolio and its claims underlying and any proceeds it may receive from the SK hynix proceedings, a second priority security interest in the Company's patent portfolio other than the patents that are the subject of the SK hynix proceedings, and a third priority security interest in the Company's patents that are the subject of the SK hynix proceedings. The Company consented and agreed to the terms of each of the Intercreditor Agreements.

Legal expenses incurred by the Company but paid by TRGP pursuant to the terms of the TRGP Agreement are excluded from the Company's consolidated financial statements in each period in which the TRGP Agreement remains in effect. In the six months ended July 1, 2017, the Company excluded legal expenses of $6.0 million as a result of TRGP's payment of these expenses under the TRGP Agreement. Any settlement or other cash proceeds the Company may recover in the future in connection with the SK hynix proceedings would be reduced by the aggregate amount of legal expenses excluded by the Company as a result of TRGP's payment of these expenses under the TRGP Agreement, plus the premium amount due to TRGP under the terms of the TRGP Agreement at the time of any such recovery.

Litigation and Patent Reexaminations

The Company owns numerous patents and continues to seek to grow and strengthen its patent portfolio, which covers different aspects of the Company's technology innovations with various claim scopes. The Company plans to pursue avenues to monetize its intellectual property portfolio, in which it would generate revenue by selling or licensing its technology, and it intends to vigorously enforce its patent rights against alleged infringers of such rights. The Company dedicates substantial resources to protecting its intellectual property, including its efforts to defend its patents against challenges made by way of reexamination proceedings at the PTAB or USPTO. These activities are likely to continue for the foreseeable future, without any guarantee that any ongoing or future patent protection and litigation activities will be successful, or that the Company will be able to monetize its intellectual property portfolio. The

Company is also subject to litigation claims that it has infringed on the intellectual property of others, against which the Company intends to defend itself vigorously.

Litigation, whether or not eventually decided in the Company's favor or settled, is costly and time-consuming and could divert management's attention and resources. Thus, because of the nature and inherent uncertainties of litigation, even if the outcome of any proceeding is favorable, the Company's business, financial condition, results of operations or cash flows could be materially and adversely affected. Additionally, the outcome of pending litigation, and related patent reexaminations, as well as any delay in their resolution, could affect the Company's ability to continue to sell its products, protect against competition in the current and expected markets for its products or license its intellectual property in the future.

Google Litigation

On December 4, 2009, the Company filed a patent infringement lawsuit against Google, Inc. ("Google") in the U.S. District Court for the Northern District of California (the "Northern District Court"), seeking damages and injunctive relief based on Google's alleged infringement of the Company's U.S. Patent No. 7,619,912 (the "'912 patent"), which relates generally to technologies to implement rank multiplication. In February 2010, Google answered the Company's complaint and asserted counterclaims against the Company seeking a declaration that the patent is invalid and not infringed, and claiming that the Company committed fraud, negligent misrepresentation and breach of contract based on the Company's activities in the Joint Electron Device Engineering Council ("JEDEC") standard-setting organization. The counterclaim seeks unspecified compensatory damages. Accruals have not been recorded for loss contingencies related to Google's counterclaim because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated. In October 2010, Google requested and was later granted an *Inter Partes* Reexamination of the '912 patent by the USPTO. The reexamination proceedings are described below. In connection with the reexamination request, the Northern District Court granted the Company's and Google's joint request to stay the '912 patent infringement lawsuit against Google until the completion of the reexamination proceedings.

Inphi Litigation

On September 22, 2009, the Company filed a patent infringement lawsuit against Inphi Corporation ("Inphi") in the U.S. District Court for the Central District of California (the "Central District Court"). The complaint, as amended, alleges that Inphi is contributorily infringing and actively inducing the infringement of U.S. patents owned by the Company, including the '912 patent, U.S. Patent No. 7,532,537 (the "'537 patent"), which relates generally to memory modules with load isolation and memory domain translation capabilities, and U.S. Patent No. 7,636,274 (the "'274 patent"), which is related to the '537 patent and relates generally to load isolation and memory domain translation technologies. The Company is seeking damages and injunctive relief based on Inphi's use of the Company's patented technology. Inphi denied infringement and claimed that the three patents are invalid. In June 2010, Inphi requested and was later granted *Inter Partes* Reexaminations of the '912, '537 and '274 patents by the USPTO. The reexamination proceedings are described below (except for the reexamination proceeding related to the '537 patent, which have concluded with the confirmation of all of the claims of such patent). In connection with the reexamination requests, Inphi filed a motion to stay the patent infringement lawsuit with the Central District Court until completion of the reexamination proceedings, which was granted.

'912 Patent Reexamination

As noted above, in April 2010, June 2010 and October 2010, Google and Inphi submitted requests for an *Inter Partes* Reexamination of the '912 patent by the USPTO, claiming that the '912 patent is invalid and requesting that the USPTO reject the patent's claims and cancel the patent. Additionally, in October 2010, Smart Modular, Inc. ("Smart Modular") submitted another such reexamination request. On January 18, 2011, the USPTO granted such reexamination requests, and in February 2011, the USPTO merged the Inphi, Google and Smart Modular '912 patent reexaminations into a single proceeding. On March 21, 2014, the USPTO issued an Action Closing Prosecution ("ACP"), an office action that states the USPTO examiner's position on patentability and closes further prosecution, and on June 18, 2014 the USPTO issued a Right of Appeal Notice ("RAN"), a notice that triggers the rights of the involved parties to file a notice of appeal to the ACP, each of which confirmed the patentability of 92 of the '912 patent's claims and rejected the

patent's 11 other claims. The parties involved filed various notices of appeal, responses and requests, and on November 24, 2015, the PTAB held a hearing on such appeals. On May 31, 2016, the PTAB issued a decision affirming certain of the examiner's decisions and reversing others. On February 9, 2017, the PTAB granted the Company's request to reopen prosecution before the USPTO examiner and remanded the consolidated proceeding to the Examiner to consider the patentability of certain of the pending claims in view of the PTAB's May 31, 2016 decision and comments from the parties. The Examiner will next issue a determination as to the patentability of the claims, at which point the proceeding will return to the PTAB for reconsideration and issuance of a new decision. Accruals have not been recorded for loss contingencies related to the '912 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

'627 Patent Reexamination

In September 2011, Smart Modular submitted a request for an *Inter Partes* Reexamination by the USPTO of the Company's U.S. Patent No. 7,864,627 (the "'627 patent"), related to the '912 patent, claiming that the '627 patent is invalid and requesting that the USPTO reject the patent's claims and cancel the patent. On November 16, 2011, the request was granted. On March 27, 2014 and June 27, 2014, the USPTO issued an ACP and a RAN, respectively, each of which rejected all of the '627 patent's claims. The parties involved filed various notices of appeal, responses and requests, and on November 24, 2015, the PTAB held a hearing on such appeals. On May 31, 2016, the PTAB issued a decision affirming the decisions of the examiner. On February 9, 2017, the PTAB granted the Company's request to reopen prosecution before the USPTO examiner and remanded the proceeding to the examiner to consider the patentability of certain of the pending claims in view of the PTAB's May 31, 2016 decision and comments from the parties. The examiner will next issue a determination as to the patentability of the claims, at which point the proceeding will return to the PTAB for reconsideration and issuance of a new decision. Accruals have not been recorded for loss contingencies related to the '627 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

'274 Patent Reexamination

As noted above, in April 2010 and June 2010, Inphi submitted requests for an *Inter Partes* Reexamination of the '274 patent by the USPTO. On August 27, 2010, the request was granted. In March 2012 and June 2012, the USPTO issued an ACP and a RAN, respectively, each of which confirmed the patentability of many of the '274 patent's claims. The parties involved filed various notices of appeal, responses and requests, and on November 20, 2013, the PTAB held a hearing on such appeals. On January 16, 2014, the PTAB issued a decision affirming the examiner in part, but reversing the examiner on new grounds and rejecting all of the patent's claims. On September 11, 2015, the USPTO examiner issued a determination rejecting the amended claims. On January 23, 2017, the USPTO granted-in-part the Company's petition to enter comments in support of its positions in the proceeding. On May 9, 2017, the PTAB issued a decision on appeal affirming the rejection of all claims. Netlist requested rehearing of the PTAB's decision and expects a rehearing decision later in 2017. Accruals have not been recorded for loss contingencies related to the '274 patent reexamination proceedings because it is not probable that a loss has been incurred and the amount of any such loss cannot be reasonably estimated.

Smart Modular '295 Patent Litigation and Reexamination

In September 13, 2012, Smart Modular, Inc. ("Smart Modular") filed a patent infringement lawsuit against the Company in the U.S. District Court for the Eastern District of California (the "Eastern District Court"). The complaint alleges that the Company willfully infringes and actively induces the infringement of certain claims of U.S. Patent No. 8,250,295 ("the '295 patent") issued to Smart Modular and seeks damages and injunctive relief. The Company answered Smart Modular's complaint in October 2012, denying infringement of the '295 patent, asserting that the '295 patent is invalid and unenforceable, and asserting counterclaims against Smart Modular.

On December 7, 2012, the USPTO granted the Company's request for the reexamination of the '295 patent. On April 29, 2014, the USPTO examiner issued an ACP confirming some claims and rejecting others, and on August 4, 2015, the examiner issued a RAN confirming all pending claims. On September 4, 2015, the Company appealed to the PTAB. The parties involved filed various notices of appeal, responses and requests, and on September 22, 2016, the PTAB held a hearing on such appeals. On November 14, 2016, the PTAB issued a decision reversing the examiner and

rejected all of the pending claims. On January 23, 2017, Smart Modular filed a request to reopen prosecution. The parties will next have the opportunity present evidence and arguments and the examiner will then issue a new determination. The examiner's determination will then go back to the PTAB for another decision.

On May 30, 2013, the Eastern District Court issued an order granting the Company's motion to stay pending completion of the reexamination of the '295 patent and denied Smart Modular's motion for preliminary injunction. On May 5, 2016, Smart Modular filed a motion to lift the stay which was granted by the Eastern District Court on September 21, 2016. On February 15, 2017, the Company filed a new motion to stay pending completion of the reexamination of the '295 patent, which was denied by the Eastern District Court on June 26, 2017.

Smart Modular and SanDisk Litigation

On July 1 and August 23, 2013, the Company filed complaints against Smart Modular, Smart Storage Systems ("Smart Storage") (which was subsequently acquired by SanDisk Corporation ("SanDisk")), Smart Worldwide Holdings ("Smart Worldwide") and Diablo Technologies ("Diablo") in the Central District Court, seeking, among other things, damages and other relief for alleged infringement of several of the Company's patents by the defendants based on the manufacture and sale of the ULLtraDIMM memory module, alleged antitrust violations by Smart Modular and Smart Worldwide, and alleged trade secret misappropriation and trademark infringement by Diablo. The trade secret misappropriation and trademark infringement claims against Diablo were fully adjudicated on August 17, 2016 and are no longer pending.

On August 23, 2013, Smart Modular and Diablo each filed a complaint in the San Francisco Division of the Northern District Court seeking declaratory judgment of non-infringement and invalidity of the patents asserted in the Company's complaint. Based on various motions filed by the parties, on November 26, 2013, the Central District Court severed and transferred the patent claims related to the ULLtraDIMM memory module to the Northern District Court.

On February 12, 2014, the Northern District Court granted the parties' joint stipulation dismissing Smart Modular without prejudice. Between June 18, 2014 and August 23, 2014, SanDisk, Diablo, and Smart Modular filed numerous petitions in the USPTO requesting *Inter Partes* Review of the Company's asserted patents. All of the reviews associated with U.S. Patent Nos. 8,516,187; 8,301,833; 8,516,185 have been resolved in the Company's favor and are no longer pending. The reviews associated with U.S. Patent Nos. 8,001,434; 8,359,501; 7,881,150; and 8,081,536 have concluded before the PTAB and the parties have appealed the decisions in these reviews to the Court of Appeals for the Federal Circuit and are awaiting decisions. On April 9, 2015, the Northern District Court stayed the infringement proceedings as to the Company's patents asserted against the ULLtraDIMM pending resolution of the patent review decisions on appeal.

SK hynix Litigation

On September 1, 2016, the Company filed legal proceedings for patent infringement against SK hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"), in the U.S. International Trade Commission ("ITC") and the Central District Court. The proceedings are based on the alleged infringement by SK hynix's registered dual in-line memory module ("RDIMM") and load reduced dual in-line memory module ("LRDIMM") enterprise memory products of six of the Company's U.S. patents. In the ITC proceedings, the Company is seeking an exclusion order that directs U.S. Customs and Border Protection to stop allegedly infringing SK hynix RDIMM and LRDIMM products from entering the United States. In the Central District Court proceedings, the Company is primarily seeking damages.

On October 3, 2016, the ITC instituted an investigation of the trade practices of SK hynix and certain of its subsidiaries related to its importation, sale for importation, and/or sale after importation of RDIMM and LRDIMM enterprise memory products. On November 10, 2016, the ITC set a 16-month target date of February 7, 2018, for the investigation with a final initial determination being filed no later than October 10, 2017. Based on this target date, the ITC scheduled a hearing on the merits of the investigation which began on May 8, 2017 and concluded on May 11, 2017. On January 4, 2017, the Central District Court issued a scheduling order setting various dates including a trial date of July 10, 2018.

On October 5, 2016 and October 28, 2016, SK hynix filed motions in the Central District Court and the ITC, respectively, to disqualify the Company's litigation counsel. The Company opposed both motions. On December 5, 2016, the Central District Court granted SK hynix's motion to disqualify. On December 8, 2016, the Company's substitute counsel entered appearances in the ITC and the Central District Court.

Between December 30, 2016 and January 20, 2017, SK hynix filed numerous petitions in the USPTO requesting *Inter Partes* Review of certain of the Company's patents, including the patents asserted in the ITC and Central District Court. In a series of decisions issued in May, June and July, 2017, the PTAB instituted reviews of certain of these patents, including the patents currently asserted in the ITC and Central District Court, the last of which is scheduled to conclude no later than July 2018. On July 17, 2017, the Central District court granted in part SK hynix's request to stay the infringement proceedings pending further order of the court, and ordered the parties to file a joint status report shortly after the ITC issues its final initial determination.

On July 11, 2017, the Company filed legal proceedings for patent infringement against SK hynix, and certain of its distributors in the courts of Germany and China based on the alleged infringement by SK hynix's LRDIMM of the Company's patents in those jurisdictions. The courts in Germany and China are currently handling service of process and have not yet issued a schedule in either jurisdiction.

Morgan Joseph Litigation

On March 31, 2016, Morgan Joseph Triartisan LLC ("Morgan Joseph") filed a complaint in the Supreme Court of the State of New York against the Company and certain of its officers for breach of contract and related causes of action. The complaint alleges that the Company refused to honor its payment obligations under a written agreement with Morgan Joseph related to the provision of financial advisory and investment banking services. Morgan Joseph is seeking compensatory damages in the amount of $1,012,500, plus punitive damages in an amount not less than $1 million, together with pre-judgment interest, costs, and fees.

On September 15, 2016, the Company filed a motion to dismiss Morgan Joseph's complaint for failure to state a claim. On February 15, 2017, the court granted the Company's motion to dismiss as to all causes of action brought by Morgan Joseph.

Other Contingent Obligations

In the ordinary course of its business, the Company has made certain indemnities, commitments and guarantees pursuant to which it may be required to make payments in relation to certain transactions. These include: (i) intellectual property indemnities to the Company's customers and licensees in connection with the use, sale and/or license of Company products; (ii) indemnities to vendors and service providers pertaining to claims based on the Company's negligence or willful misconduct; (iii) indemnities involving the accuracy of representations and warranties in certain contracts; (iv) indemnities to directors and officers of the Company to the maximum extent permitted under the laws of the State of Delaware; (v) indemnities to SVIC and SVB pertaining to all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with transactions contemplated by the applicable loan documents; and (vi) indemnities or other claims related to certain real estate leases, under which the Company may be required to indemnify property owners for environmental and other liabilities or may face other claims arising from the Company's use of the applicable premises. The duration of these indemnities, commitments and guarantees varies and, in certain cases, may be indefinite. The majority of these indemnities, commitments and guarantees do not provide for any limitation of the maximum potential for future payments the Company could be obligated to make. Historically, the Company has not been obligated to make significant payments as a result of these obligations, and no liabilities have been recorded for these indemnities, commitments and guarantees in the accompanying condensed consolidated balance sheets.

Note 8—Stockholders' Equity

Serial Preferred Stock

The Company's authorized capital stock includes 10,000,000 shares of serial preferred stock, with a par value of $0.001 per share. No shares of preferred stock were outstanding at July 1, 2017 or December 31, 2016.

On April 17, 2017, the Company entered into a rights agreement (the "Rights Agreement") with Computershare Trust Company, N.A., as rights agent. In connection with the adoption of the Rights Agreement and pursuant to its terms, the Company's board of directors authorized and declared a dividend of one right (each, a "Right") for each outstanding share of the Company's common stock to stockholders of record at the close of business on May 18, 2017 (the "Record Date"), and authorized the issuance of one Right for each share of the Company's common stock issued by the Company (except as otherwise provided in the Rights Agreement) between the Record Date and the Distribution Date (as defined below).

Each Right entitles the registered holder, subject to the terms of the Rights Agreement, to purchase from the Company, when exercisable and subject to adjustment, one unit consisting of one one-thousandth of a share (a "Unit") of Series A Preferred Stock of the Company (the "Preferred Stock"), at a purchase price of $6.56 per Unit, subject to adjustment. Subject to the provisions of the Rights Agreement, including certain exceptions specified therein, a distribution date for the Rights (the "Distribution Date") will occur upon the earlier of (i) 10 business days following a public announcement that a person or group of affiliated or associated persons (an "Acquiring Person") has acquired or otherwise obtained beneficial ownership of 15% or more of the then-outstanding shares of the Company's common stock, and (ii) 10 business days (or such later date as may be determined by the Company's board of directors) following the commencement of a tender offer or exchange offer that would result in a person or group becoming an Acquiring Person. The Rights are not exercisable until the Distribution Date and, unless earlier redeemed or exchanged by the Company pursuant to the terms of the Rights Agreement, will expire on the earlier of (i) the close of business on April 17, 2018, the first anniversary of the adoption of the Rights Agreement, and (ii) the date of any settlement, adjudication, dismissal with prejudice, abandonment by the Company or other conclusive and final resolution of the Company's legal proceedings against SK hynix (see Note 7).

In connection with the adoption of the Rights Agreement, the Company's board of directors approved a Certificate of Designation of the Series A Preferred Stock (the "Certificate of Designation") designating 1,000,000 shares of the Company's serial preferred stock as Series A Preferred Stock and setting forth the rights, preferences and limitations of the Preferred Stock. The Company filed the Certificate of Designation with the Secretary of State of the State of Delaware on April 17, 2017.

Common Stock

On May 31, 2017, the Company's stockholders approved an amendment to the Company's Restated Certificate of Incorporation to increase the number of shares of the Company's common stock that it is authorized to issue from 90,000,000 to 150,000,000.

On September 23, 2016, the Company completed the 2016 Offering, pursuant to which it sold 9,200,000 shares of its common stock at a price to the public of $1.25 per share. The net proceeds to the Company from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by the Company.

Stock-Based Compensation

The Company has stock-based compensation awards outstanding pursuant to its Amended and Restated 2006 Equity Incentive Plan, as re-approved by the Company's stockholders on June 8, 2016 (the "Amended 2006 Plan"), under which a variety of stock-based awards, including stock options, may be granted to employees and non-employee service providers of the Company. In addition to awards granted pursuant to the Amended 2006 Plan, the Company

periodically grants equity-based awards outside the Amended 2006 Plan to certain new hires as an inducement to enter into employment with the Company.

Subject to certain adjustments, as of July 1, 2017, the Company was authorized to issue a maximum of 10,205,566 shares of its common stock pursuant to awards granted under the Amended 2006 Plan. Pursuant to the terms of the Amended 2006 Plan, the maximum number of shares of common stock subject to the plan automatically increased on the first day of each calendar year from January 1, 2007 through January 1, 2016, by the lesser of (i) 5.0% of the number of shares of common stock issued and outstanding as of the first day of the applicable calendar year, and (ii) 1,200,000 shares of common stock, subject to adjustment for certain corporate actions. Beginning January 1, 2017, the automatic annual increase to the number of shares of common stock that may be issued pursuant to awards granted under the Amended 2006 Plan is equal to the lesser of (i) 2.5% of the number of shares of common stock issued and outstanding as of the first day of the applicable calendar year, and (ii) 1,200,000 shares of common stock, subject to adjustment for certain corporate actions. As of July 1, 2017, the Company had 651,159 shares of common stock available for issuance pursuant to future awards to be granted under the Amended 2006 Plan. Stock options granted under the Amended 2006 Plan generally vest at a rate of at least 25% per year over four years and expire 10 years from the date of grant.

The following table summarizes the Company's stock option activity in the six months ended July 1, 2017:

	Options Outstanding	
	Number of Shares	Weighted-Average Exercise Price
	(in thousands)	
Options outstanding at December 31, 2016	8,798	$ 1.46
Options granted	1,230	1.04
Options exercised	(217)	0.72
Options expired/forfeited	(534)	1.13
Options outstanding at July 1, 2017	9,277	$ 1.40

The intrinsic value of stock options exercised in the six months ended July 1, 2017 was $60,000.

The following table presents the assumptions used to calculate the weighted-average grant date fair value of stock options granted by the Company during the periods presented:

	Six Months Ended	
	July 1, 2017	July 2, 2016
Expected term (in years)	6.3	6.2
Expected volatility	87 %	113 %
Risk-free interest rate	2.06 %	1.58 %
Expected dividends	-	-
Weighted-average grant date fair value per share	$ 0.76	$ 0.80

As of July 1, 2017, the amount of unearned stock-based compensation estimated to be expensed from the Company's 2017 fiscal year through the Company's 2019 fiscal year related to unvested stock options is approximately $2.2 million, net of estimated forfeitures. The weighted-average period over which the unearned stock-based compensation is expected to be recognized is approximately 2.5 years. If there are any modifications or cancellations of the underlying unvested awards, the Company may be required to accelerate, increase or cancel any remaining unearned stock-based compensation expense or calculate and record additional expense. Future stock-based compensation expense and unearned stock-based compensation expense will increase to the extent the Company grants additional stock options or other stock-based awards.

Warrants

The following is a summary of the Company's warrant activity for the year ended December 31, 2016 and the six months ended July 1, 2017:

	Number of Shares (in thousands)	Weighted Average Exercise Price
Warrants outstanding - January 2, 2016	7,633	$ 0.59
Warrant granted	-	-
Warrants exercised	(2,709)	0.47
Warrants outstanding - December 31, 2016	4,924	$ 0.66
Warrant granted	-	-
Warrants exercised	-	-
Warrants outstanding - July 1, 2017	4,924	$ 0.66

Note 9—Segment and Geographic Information

The Company operates in one reportable segment, which is the design and manufacture of high-performance memory subsystems for the server, high-performance computing and communications markets. The Company evaluates financial performance on a Company-wide basis.

At July 1, 2017 and December 31, 2016, approximately $62,000 and $64,000, respectively, of the Company's long-lived assets, net of depreciation and amortization, were located in the PRC. Substantially all other long-lived assets were located in the United States.

Note 10—Subsequent Events

The Company has evaluated subsequent events through the filing date of the Quarterly Report on Form 10-Q in which these condensed consolidated financial statements are included and has determined that no subsequent events have occurred that would require recognition in the condensed consolidated financial statements or disclosures in the notes thereto, other than as discussed elsewhere in these notes.

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

The following discussion and analysis of our financial condition and results of operations *(the "MD&A")* should be read *together* with our unaudited condensed consolidated financial statements and the related notes *included* in Part I, Item 1 of this report *, as well as the MD&A included in* our Annual Report on Form 10-K for *our* fiscal year ended December 31, *2016, including the audited consolidated financial statements and related notes included in such report (the "2016 Annual Report"), which was filed with the Securities and Exchange Commission (the "SEC") on March 31, 2017. In preparing this MD&A* , we presume that readers have access to and have read the *MD&A included in the 2016 Annual Report,* pursuant to Instruction 2 to paragraph (b) of Item 303 of Regulation S-K promulgated by the SEC.

Unless the context indicates otherwise, all references to "Netlist," the "Company," "we," "us," or "our" in this *MD&A* and elsewhere in this report refer to Netlist, Inc., together with its majority and wholly owned subsidiaries.

Forward-Looking Statements

This discussion and analysis includes "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Forward-looking statements are statements other than historical facts and often address future events and our future performance. Words such as "anticipate," "estimate," "expect," "project," "intend," "may," "will," "might," "plan," "predict," "believe," "should," "could" and similar words or expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Forward-looking statements contained in this discussion and analysis include statements about, among other things: our plans relating to our intellectual property, including our strategy for monetizing, licensing, expanding, and defending our patent portfolio; our expectations with respect to strategic partners, including our relationship with Samsung Electronics Co., Ltd. ("Samsung") and the potential for commercial licensing agreements; our expectations and strategies regarding outstanding legal proceedings and patent reexaminations relating to our intellectual property portfolio, including our pending proceedings against SK hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"); our beliefs regarding the market and demand for our products or the component products we resell to customers directly; and our expectations regarding our strategy, business plans and objectives, our future operations and financial position, including future revenues, costs and prospects, and our liquidity and capital resources, including cash flows, sufficiency of cash resources, efforts to reduce expenses and the potential for future financings. All forward-looking statements reflect management's present expectations regarding future events and are subject to known and unknown risks, uncertainties and assumptions that could cause actual results to differ materially from those expressed in or implied by any forward-looking statements. These risks and uncertainties include those described under "Risk Factors" in Part II, Item 1A of this report. Given these risks, uncertainties and other important factors, you should not place undue reliance on these forward-looking statements. These forward-looking statements represent our estimates and assumptions only as of the date made, and except as required by law, we undertake no obligation to revise or update any forward-looking statements for any reason.

Overview

We are a leading provider of high-performance modular memory subsystems serving customers in diverse industries that require superior memory performance to empower critical business decisions. We have a long history of introducing disruptive new products, such as one of the first load reduced dual in-line memory modules ("LRDIMM") based on our distributed buffer architecture, which has been adopted by the industry for DDR4 LRDIMM. We were also one of the first to bring NAND flash memory ("NAND flash") to the memory channel with our NVvault non-volatile dual in-line memory modules ("NVDIMM") using software-intensive controllers and merging dynamic random access memory integrated circuits ("DRAM ICs" or "DRAM") and NAND flash to solve data bottleneck and data retention challenges encountered in high-performance computing environments. We recently introduced a new generation of storage class memory products called HybriDIMM to address the growing need for real-time analytics in Big Data applications and in-memory databases.

Due to the ground-breaking product development of our engineering teams, we have built a robust portfolio of over 100 issued and pending U.S. and foreign patents, many seminal, in the areas of hybrid memory, storage class memory, rank multiplication and load reduction. Since our inception in 2000, we have dedicated substantial resources to

the development and protection of technology innovations essential to our business. Our early pioneering work in these areas has been broadly adopted in industry-standard LRDIMM and in NVDIMM. Our objective is to continue to innovate in our field and invest further in our intellectual property portfolio, with the goal of monetizing our intellectual property through a combination of product revenues and licensing, royalty or other revenue-producing arrangements, which may result from joint development or similar partnerships or defense of our patents through enforcement actions against parties we believe are infringing them.

In November 2015, we entered into a joint development and license agreement ("JDLA") pursuant to which we and Samsung have agreed to work together to jointly develop new storage class memory technologies including a standardized product interface for NVDIMM-P memory modules in order to facilitate broad industry adoption of this new technology. The JDLA also includes comprehensive cross-licenses to our and Samsung's patent portfolios for the purpose of developing this product interface, grants Samsung a right of first refusal to acquire our HybriDIMM technology before we offer the technology to a third party, and grants us access to competitively priced DRAM and NAND flash raw materials. The JDLA also provided for an $8.0 million non-recurring engineering ("NRE") fee that we received from Samsung for the joint development and calls for potential marketing collaboration and for the exchange of potential monetary consideration as progress is made towards commercialization of our storage class memory product. Moreover, we believe Samsung represents an important strategic partner with a high level of technical capability in memory that can facilitate bringing our HybriDIMM technology to market. In connection with the JDLA, we also received gross proceeds of $15.0 million for our issuance of a Senior Secured Convertible Note ("SVIC Note") and Stock Purchase Warrant ("SVIC Warrant") to SVIC No. 28 New Technology Business Investment L.L.P., an affiliate of Samsung Venture Investment Co. ("SVIC"). See Note 5 to the condensed consolidated financial statements included in this report for additional information about the SVIC Note and the SVIC Warrant.

Further, in September 2016, we took action to protect and defend our innovations by filing legal proceedings for patent infringement against SK hynix and two of its subsidiaries in the U.S. International Trade Commission ("ITC") and in district court. We are seeking an exclusion order in the ITC that directs U.S. Customs and Border Protection to stop allegedly infringing SK hynix RDIMM and LRDIMM products from entering the United States. The evidentiary hearing in the ITC investigations will occur in May 2017, with a final initial determination expected to be issued by the ITC in October 2017. In the district court proceedings, we are primarily seeking damages. Our patents involved in the proceedings cover key features of RDIMM and LRDIMM, which we believe are strategic product lines for SK hynix that together account for a significant portion of SK hynix's total revenue and profits. We have recently taken steps to solidify our position and strategy in connection with our proceedings against SK hynix, including establishing a funding arrangement for our legal costs associated with these proceedings and adopting a rights agreement to implement a standard "poison pill," which are discussed further below. See Notes 7 and 8 to the condensed consolidated financial statements included in this report for additional information about our proceedings against SK hynix, the related funding arrangement and our poison pill implementation.

We recorded total net revenues of $11.4 million, $20.8 million, $6.9 million and $11.5 million for the three and six months ended and July 1, 2017 and July 2, 2016, respectively, and $19.7 million and $8.0 million for the years ended December 31, 2016 and January 2, 2016, respectively. We also incurred net losses of $3.8 million, $7.2 million, $1.5 million and $2.9 million for the three and six months ended July 1, 2017 and July 2, 2016, respectively, and $11.2 million and $20.5 million for the fiscal years ended December 31, 2016 and January 2, 2016, respectively. We have historically financed our operations primarily through issuances of equity and debt securities and revenues generated from operations, including product revenues and NRE revenues from the JDLA. We have also funded our operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with our legal proceedings against SK hynix and, to a lesser extent, equipment leasing arrangements. See "Liquidity and Capital Resources" below for further information.

Recent Developments

Amendments to SVB Credit Agreement

On March 27, 2017 and April 12, 2017, we entered into amendments to our credit agreement (as amended, the "SVB Credit Agreement") with Silicon Valley Bank ("SVB"). The amendments extend the maturity date of advances

under the SVB Credit Agreement to April 1, 2018; modify our financial covenants under the SVB Credit Agreement to remove all prior financial standards and replace them with a liquidity ratio standard; remove or amend certain termination, anniversary and unused facility fees payable by us under the SVB Credit Agreement; and make certain other administrative changes.

Establishment of Funding Arrangement and Rights Agreement in connection with SK hynix Proceedings

In April and May of 2017, we established a funding arrangement and a rights agreement in connection with our strategy for our proceedings against SK hynix, each of which is described below.

TRGP Agreement

On May 3, 2017, we entered into an investment agreement (the "TRGP Agreement") with TR Global Funding V, LLC, an affiliate of TRGP Capital Management, LLC ("TRGP"), which generally provides that TRGP will directly fund the costs incurred by us or on our behalf in connection with our proceedings against SK hynix, including costs previously incurred since January 1, 2017 and costs to be incurred in the future. In exchange for such funding, we have agreed that, if we recover any proceeds in connection with the SK hynix proceedings, we will pay to TRGP the amount of its funding plus an escalating premium based on when any such proceeds are recovered, such that the premium will equal a specified low-to-mid double-digit percentage of the amount of TRGP's funding and such percentage will increase by a specified low double-digit amount each quarter after a specified date until any such proceeds are recovered. In addition, we have granted to TRGP a first priority security interest in the claims underlying the SK hynix proceedings and any proceeds we may receive in connection with these proceedings, and a second priority security interest in our patents that are the subject of these proceedings. We have established this funding arrangement in order to provide us with increased security that we will be able to vigorously pursue our claims against SK hynix through their final resolution.

Rights Agreement

On April 17, 2017, we adopted a short-term rights agreement to implement a standard "poison pill." In general terms, for so long as the rights issued under the rights agreement are outstanding, which is expected to be no longer than 12 months, the rights agreement prevents any person or group from acquiring a significant percentage of our outstanding capital stock or attempting a hostile takeover of our Company by significantly diluting the ownership percentage of such person or group. As a result, the rights agreement has a significant anti-takeover effect. Our board of directors approved the rights agreement as part of our strategy in connection with our proceedings against SK hynix, with the intent of disconnecting our market capitalization from the damages calculations and any settlement negotiations that may develop in connection with these proceedings.

Key Business Metrics

The following describes certain line items in our condensed consolidated statements of operations that are important to management's assessment of our financial performance:

Net Product Revenues

Net product revenues consist of resales of certain component products, including NAND flash, and sales of our high-performance memory subsystems, net of a provision for estimated returns under our right of return policies, which generally range up to 30 days. We do not have long-term agreements with any of our customers. Instead, sales are made primarily pursuant to standard purchase orders. Purchase orders generally have no cancellation or rescheduling penalty provisions. We often ship products to our customers' international manufacturing sites. All of our sales to date, however, are denominated in U.S. dollars.

The component products we resell include products we purchase from Samsung and certain alternative suppliers for the purpose of resale, and excess component inventory we purchase for, but do not use in, our memory subsystems. We purchase certain products, including primarily NAND flash, from Samsung under the terms of our JDLA with Samsung in order to resell these products to end-customers that are not reached in Samsung's distribution model,

including storage customers, appliance customers, system builders and cloud and datacenter customers. We have also sourced these products from alternative suppliers to the extent sufficient product is not available from Samsung to meet customer demand. In the three and six months ended July 1, 2017 and July 2, 2016, resales of these products represented 91% ,91%, 34% and 21% of our net product revenues, respectively, and we expect resales of these products may continue to increase over time. We also resell excess component inventory to distributors and other users of memory integrated circuits, but these sales have historically been, and we expect will continue to be, a relatively small percentage of our net product revenues.

With respect to sales of our memory subsystems, our original equipment manufacturer ("OEM") customers typically provide us with non-binding forecasts of future product demand over specific periods of time, but they generally place orders with us no more than two weeks in advance of the desired delivery date. Selling prices are typically negotiated monthly, based on competitive market conditions and the current price of key product components, including DRAM ICs and NAND flash. Sales of our memory subsystem products have declined in recent periods due in large part to the rapid decline in sales of our first-generation NVvault products following the loss of our former most significant NVvault customer, Dell, beginning in 2012, and the rate and degree of customer adoption of our next generation NVvault product extensions, which has been slower and smaller than expected to date. We expect these declines could continue in future periods unless and until our next-generation products gain significantly greater customer and market acceptance.

Engineering Services

Pursuant to the terms of our JDLA with Samsung, we provided certain engineering services for Samsung and received a NRE fee as compensation for these services. These fees from Samsung are the only such fees for engineering services that we have received to date, although we may in the future receive additional fees of this type, from Samsung or other customers, depending on the terms of the relationships we may develop.

Cost of Sales

Our cost of sales includes the cost of materials, labor and other manufacturing costs, depreciation and amortization of equipment expenses, inventory valuation provisions, stock-based compensation expenses, occupancy costs and other allocated fixed costs.

For resales of component products, our cost of sales also includes the cost of the products we purchase for resale from Samsung under the terms of the JDLA or from alternative suppliers on the terms we negotiate with these suppliers. As a result, our gross margin on the resale of component products, including Samsung products and excess component inventory, is significantly lower than our gross margin on sales of our own products. Accordingly, increased resales of component products as a percentage of our total product revenues have a significant negative impact on our gross margin. In addition, to the extent we are not able to procure sufficient component products for resale from Samsung under the terms of the JDLA to satisfy customer orders for these products, we would need to seek to procure these products from alternative suppliers, which may not be available on terms comparable to those we have negotiated with Samsung under the JDLA. As a result, any inability to source sufficient component products from Samsung could increase our cost of sales associated with resales of these products if we are forced to pay higher prices to obtain these products from other suppliers.

With respect to sales of our memory subsystem products, the DRAM ICs and NAND flash incorporated into these products constitute a significant portion of our cost of sales for the products, and thus our cost of sales will fluctuate based on the cost of DRAM ICs and NAND flash. We attempt to pass through these DRAM IC and NAND flash cost fluctuations to our memory subsystem customers by frequently renegotiating pricing prior to the placement of their purchase orders. However, the sales prices of our memory subsystems can also fluctuate due to competitive conditions in our key customer markets that are unrelated to the cost of DRAM ICs and NAND flash, which affects our gross margin. In addition, we have in the past experienced supply chain disruptions and shortages of DRAM and NAND flash required to create our HyperCloud, NVvault and Planar X VLP products, which can cause fluctuations in our net product revenues and gross profits associated with memory subsystem sales.

Any significant decrease in demand for our products or the component products we resell could result in an increase in the amount of excess inventory quantities on hand. In addition, our estimates of future product demand may prove to be inaccurate, in which case we may understate or overstate the provision required for excess and obsolete inventory. In the future, if our inventories are determined to be overvalued, we would be required to recognize additional expense in our cost of sales at the time of such determination. Conversely, if our inventories are determined to be undervalued, we may have over-reported our costs of sales in previous periods and would be required to recognize additional gross profit at the time such inventories are sold. In addition, should the market value of DRAM ICs, NAND flash or other component products decrease, we may be required to lower the selling prices of our memory subsystems or component product resales to reflect the lower cost of these materials. If such price decreases reduce the net realizable value of our inventories to less than our cost, we would be required to recognize additional expense in our cost of sales in the same period. Although we make every reasonable effort to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand, technological developments or the market value of DRAM ICs, NAND flash or other component products could have a material effect on the value of our inventories and our reported operating results.

Research and Development

Research and development expenses consist primarily of employee and independent contractor compensation and related costs, stock-based compensation expenses, NRE fees, computer-aided design software license costs, reference design development costs, depreciation or rental of evaluation equipment expenses, and occupancy and other allocated overhead costs. Also included in research and development expenses are the costs of materials and overhead related to the production of engineering samples of new products under development or products used solely in the research and development process. Our customers typically do not separately compensate us for design and engineering work involved in developing application-specific products for them. All research and development costs are expensed as incurred. We anticipate that research and development expenditures will increase in future periods as we seek to expand new product opportunities, increase our activities related to new and emerging markets and continue to develop additional proprietary technologies.

Intellectual Property Legal Fees

Intellectual property legal fees consist of legal fees incurred for patent filings, protection and enforcement. Although we anticipate that intellectual property legal fees will generally increase over time as we continue to protect and seek to expand our patent portfolio, we expect that our intellectual property legal fees may decrease or increase at a slower rate in the near term due to the impact of the TRGP Agreement on our expense related to our proceedings against SK hynix. The legal expenses we incur that are paid by TRGP pursuant to the terms of the TRGP Agreement are excluded from our financial statements in each period in which the TRGP Agreement remains in effect. In the six months ended July 1, 2017, we excluded legal expenses of $6.0 million as a result of TRGP's payment of these expenses under the TRGP Agreement. Pursuant to the TRGP Agreement, any settlement or other cash proceeds we may recover in the future in connection with the SK hynix proceedings would be reduced by the aggregate amount of legal expenses we exclude as a result of TRGP's payment of these expenses under the TRGP Agreement, plus the premium amount due to TRGP under the terms of the TRGP Agreement at the time of any such recovery. As a result, we expect our intellectual property legal fees would be significantly higher in the period in which any such recovery occurs.

Selling, General and Administrative

Selling, general and administrative expenses primarily consist of employee compensation and related costs, stock-based compensation expenses, independent sales representative commissions, professional service fees, promotional and other selling and marketing expenses, and occupancy and other allocated overhead costs. A significant portion of our selling effort is directed at building relationships with OEMs and other customers and working through the product approval and qualification process with them. Therefore, the cost of material and overhead related to products manufactured for qualification is included in selling expenses.

Provision for Income Taxes

The federal statutory tax rate was 34% for the six months ended July1, 2017 and July 2, 2016. Our effective tax rate differs from the statutory rate because we provide a full valuation allowance against net deferred tax assets, and accordingly we did not recognize an income tax benefit related to losses incurred for the six months ended July 1, 2017 and July 2, 2016.

Factors Affecting Our Performance and Business Risks and Uncertainties

Our performance, financial condition and prospects are affected by a number of factors and are exposed to a number of risks and uncertainties. See the discussion of certain major factors affecting our performance in the MD&A included in our 2016 Annual Report, and see the discussion of certain risks that we face under "Risk Factors" in Part II, Item 1A of this report.

Critical Accounting Policies and Use of Estimates

The preparation of our condensed consolidated financial statements included in this report in conformity with accounting principles generally accepted in the United States requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the condensed consolidated financial statements and the reported amounts of net revenues and expenses during the reporting period. By their nature, these estimates and assumptions are subject to an inherent degree of uncertainty. We base our estimates on our historical experience, knowledge of current conditions and belief of what could occur in the future considering available information. We review our estimates on an on-going basis. Actual results may differ from these estimates, which may result in material adverse effects on our consolidated operating results and financial position. We believe the following critical accounting policies involve our more significant assumptions and estimates used in the preparation of our condensed consolidated financial statements included in this report: provisions for uncollectible receivables and sales returns; warranty liabilities; valuation of inventories; fair value of financial instruments; recoverability of long-lived assets; valuation of stock-based transactions; estimates for completion of NRE and other revenue milestones; and realization of deferred tax assets.

Our critical accounting policies and estimates are discussed in Note 2 to the condensed consolidated financial statements included in this report and the MD&A included in our 2016 Annual Report. For the six months ended July 1, 2017, there were no material changes to our critical accounting policies.

Results of Operations

The following table presents each line item of our condensed consolidated statement of operations as a percentage of total net revenues for the three and six months ended July 1, 2017 compared to three and six months ended July 2, 2016:

	Three Months Ended		Six Months Ended	
	July 1, 2017	July 2, 2016	July 1, 2017	July 2, 2016
Net product revenues	100 %	51 %	100 %	41 %
NRE revenues	-	49	-	59
Total net revenues	100	100	100	100
Cost of sales	94	47	94	38
Gross profit	6	53	6	62
Operating expenses:				
Research and development	13	26	14	30
Intellectual property legal fees	8	15	7	16
Selling, general and administrative	17	31	19	38
Total operating expenses	38	72	40	85
Operating loss	(33)	(20)	(33)	(23)
Other expense, net:				
Interest expense, net	(1)	(2)	(1)	(2)
Other income (expense), net	-	-	-	-
Total other expense, net	(1)	(2)	(1)	(2)
Loss before provision for income taxes	(34)	(22)	(35)	(25)
Provision for income taxes	-	-	-	-
Net loss	(34)%	(22)%	(35)%	(25)%

Net Product Revenues, NRE Revenues, Cost of Sales and Gross Profit

The following tables present net product revenues, NRE revenues, cost of sales and gross profit for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Net product revenues	$ 11,404	$ 3,500	$ 7,904	226 %
NRE revenues	-	3,428	(3,428)	(100)%
Total net revenues	11,404	6,928	4,476	65 %
Cost of sales	10,760	3,267	7,493	229 %
Gross profit	$ 644	$ 3,661	$ (3,017)	(82)%
Gross margin	5.6%	52.8%	(47.2)%	

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Net product revenues	$ 20,830	$ 4,671	$ 16,159	346 %
NRE revenues	-	6,857	(6,857)	(100)%
Total net revenues	20,830	11,528	9,302	81 %
Cost of sales	19,506	4,416	15,090	342 %
Gross profit	$ 1,324	$ 7,112	$ (5,788)	(81)%
Gross margin	6.4%	61.7%	(55.3)%	

Net Product Revenues

The increase in our net product revenues for the three months ended July 1, 2017 as compared to the three months ended July 2, 2016 resulted primarily from increases of $5.5 million in sales of NAND flash, primarily sourced from Samsung under our JDLA, and $2.2 million in sales of other small outline dual in-line memory module ("SODIMM") and registered dual in-line memory module ("RDIMM") products. The increase in our net product revenues for the six months ended July 1, 2017 as compared with the six months ended July 2, 2016 resulted primarily from increases of $11.4 million in sales of NAND flash, also primarily sourced from Samsung under our JDLA, and $4.8 million of other SODIMM and RDIMM sales. Our product revenues in all periods presented were impacted by fluctuating customer concentrations. Our two largest customers in the three and six months ended July 2, 2016, which respectively accounted for 47% and 11%, and 35% and 12% of our net product revenues in the respective periods, made significantly fewer purchases and together contributed less than 2.5% of our net product revenues in the six months ended July 1, 2017. Our largest customers in the three and six months ended July 1, 2017, one of which accounted for 16% of our net product revenues in the three month period and the other of which accounted for 11% of our net product revenues in the six month period, were each relatively new customers that made no purchases and contributed no net product revenues in the three or six months ended July 2, 2016.

NRE Revenues

The decrease in NRE revenues for the three and six months ended July 1, 2017 as compared to the three and six months ended July 2, 2016 resulted from the recognition of revenues from the NRE fee for engineering services performed under our JDLA with Samsung in the 2016 period due to our completion of the engineering services required under the initial phase of the agreement in 2016.

Cost of Sales, Gross Profit and Gross Margin

The increase in our cost of sales for the three and six months ended July 1, 2017 as compared to the three and six months ended July 2, 2016 resulted primarily from increased costs associated with our increased product revenues. The decrease in our gross margin in the three and six months ended July 1, 2017 as compared to the three and six months ended July 2, 2016 resulted primarily from the decrease of NRE revenues from the JDLA, partially offset by increased product revenues. Our gross margin is also impacted by the mix of products that we sell, as resales of NAND flash and other components, including resales of Samsung products, result in significantly lower gross margins than sales of our memory subsystems and other specialty DIMM products. Because our resales of these component products accounted for the vast majority of our product revenues in the 2017 periods, our gross margin was negatively impacted in these periods by this product mix.

Research and Development

The following tables present research and development expenses for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Research and development	$ 1,487	$ 1,831	$ (344)	(19)%

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Research and development	$ 2,983	$ 3,477	$ (494)	(14)%

The decrease in research and development expenses in the three months ended July 1, 2017 as compared to the three months ended July 2, 2016 of $0.3 million resulted primarily from decreases of (i) $0.2 million in headcount, overhead and travel expenses and (ii) $0.1 million in product research expenses.

The decrease in research and development expenses in the six months ended July 1, 2017 as compared to the six months ended July 2, 2016 of $0.5 million resulted primarily from decreases of (i) $0.3 million in headcount, overhead and travel expenses (ii) $0.05 million in product research expenses and (iii) $0.1 million in professional and outside service fees.

Intellectual Property Legal Fees

The following tables present intellectual property legal fees for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Intellectual property legal fees	$ 915	$ 1,023	$ (108)	(11)%

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Intellectual property legal fees	$ 1,381	$ 1,846	$ (465)	(25)%

The decrease in intellectual property legal fees for the three and six months ended July 1, 2017 as compared to the three and six months ended July 2, 2016 resulted primarily from a decrease between periods in legal fees incurred for certain trade secret litigation and our establishment of the TRGP Agreement to finance the legal fees and costs incurred in the 2017 period in connection with our legal proceedings against SK hynix.

Selling, General and Administrative

The following tables present selling, general and administrative expenses for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Selling, general and administrative	$ 1,951	$ 2,159	$ (208)	(10)%

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Selling, general and administrative	$ 3,865	$ 4,424	$ (559)	(13)%

The decrease in selling, general and administrative expenses for the three months ended July 1, 2017 as compared to the three months ended July, 2016 resulted primarily from decreases of $0.3 million in sales and marketing headcount costs and related overhead and travel expenses and $0.05 million in advertising and product evaluation costs, partially offset by a $0.1 million increase in fees for outside services.

The decrease in selling, general and administrative expenses for the six months ended July 1, 2017 as compared to the three months ended July, 2016 resulted primarily from decreases of $0.7 million in sales and marketing headcount costs and related overhead and travel expenses and $0.1 million in advertising and product evaluation costs, partially offset by a $0.2 million increase in fees for outside services.

Other Expense, Net

The following tables present other expense, net for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Interest expense, net	$ (138)	$ (132)	$ 6	5 %
Other expense, net	-	(10)	(10)	(100)%
Total other expense, net	$ (138)	$ (142)	$ (4)	(3)%

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Interest expense, net	$ (286)	$ (269)	$ 17	6 %
Other income (expense), net	2	(2)	(4)	(200)%
Total other expense, net	$ (284)	$ (271)	$ 13	5 %

Interest expense, net, for the three and six months ended July 1, 2017 and 2016 consisted primarily of interest payments under the SVIC Note and the SVB Credit Agreement, and the increase between periods resulted primarily from increased borrowings under the SVB Credit Agreement in the first quarter of 2017.

The increase in other income (expense), net, was not significant between periods.

Provision for Income Taxes

The following tables present the provision for income taxes for the three and six months ended July 1, 2017 and July 2, 2016:

	Three Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Provision for income taxes	$ -	$ -	$ -	- %

	Six Months Ended			
	July 1, 2017	July 2, 2016	Change	% Change
	(in thousands, except percentages)			
Provision for income taxes	$ -	$ 1	$ (1)	(100)%

The federal statutory rate was 34% for the three and six months ended July 1, 2017 and July 2, 2016. In all periods presented, we continued to provide a full valuation allowance against our net deferred tax assets, which consist primarily of net operating loss carryforwards. In these periods, our effective tax rate differed from the statutory rate primarily due to the valuation allowance on newly generated loss carryforwards.

Liquidity and Capital Resources

Liquidity generally refers to the ability to generate adequate amounts of cash to meet our cash needs. We require cash to fund our operating expenses and working capital requirements, to make required payments of principal and interest under our outstanding debt instruments and, to a lesser extent, to fund capital expenditures.

Working Capital and Cash and Cash Equivalents

The following table presents working capital and cash and cash equivalents as of July 1, 2017 and December 31, 2016:

	July 1, 2017	December 31, 2016
	(in thousands)	
Working capital	$ 7,001	$ 13,043
Cash and cash equivalents(1)	$ 4,496	$ 9,476

(1) Included in working capital.

Our working capital decreased for the six months ended July 1, 2017, primarily as a result of a $5.0 million decrease in cash and cash equivalents attributable to our use of cash to fund our operations, including a $1.7 million increase in inventory costs to support the increase in our product revenues and a $2.6 million increase in our accounts payable, and a $0.7 million increase in our borrowings under the SVB Credit Agreement to fund the purchase of additional inventory and to otherwise fund our operations.

Cash Flows

The following table summarizes our cash flows for the six months ended July 1, 2017 and July 2, 2016:

	Six Months Ended	
	July 1, 2017	July 2, 2016
	(in thousands)	
Net cash provided by (used in):		
Operating activities	$ (5,510)	$ (8,517)
Investing activities	(53)	(274)
Financing activities	583	(90)
Net change in cash and cash equivalents	$ (4,980)	$ (8,881)

Operating Activities

Net cash used in operating activities for the six months ended July 1, 2017 was primarily the result of a net loss of $7.2 million, partially offset by (i) $1.0 million of net non-cash operating expenses, which primarily consisted of stock-based compensation, depreciation and amortization, interest accrued on convertible debt and amortization of debt discounts, and (ii) $0.6 million of net cash provided by operating activities due to changes in operating assets and liabilities, which were primarily from a $2.6 million increase in accounts payable partially offset by a $1.7 million increase in inventory and a $0.3 million decrease in accrued payroll and related liabilities. The increase in accounts payable between periods was primarily due to increased purchases of inventory. The increase in inventories between periods was primarily due to our purchase of additional inventory to support the increase in our product revenues. The decrease in accrued payroll and related liabilities between periods was primarily due to reduction in the number of employees.

Net cash used in operating activities for the six months ended July 2, 2016 was primarily the result of a net loss of $2.9 million and $6.6 million in net cash used in operating activities due to changes in operating assets and liabilities, which were primarily from changes in deferred revenue, inventories, accounts receivable, prepaid expenses and other assets and accounts payable, partially offset by $1.0 million in net non-cash operating expenses, which primarily consisted of depreciation and amortization, amortization of debt discounts and stock-based compensation.

Investing Activities

Net cash used in investing activities for six months ended July 1, 2017 and July 2, 2016 was the result of our purchases of property and equipment during the periods.

Financing Activities

Net cash provided by financing activities for the six months ended July 1, 2017 was primarily the result of $0.7 million in net borrowings under the SVB Credit Agreement and $0.2 million in net proceeds from the exercise of equity awards, partially offset by $0.2 million in payments of outstanding debt. Net cash used in financing activities for the six months ended July 2, 2016 was primarily the result of $0.2 million in payments of outstanding debt, partially offset by $0.05 million in net proceeds from the exercise of equity awards.

Capital Resources

Our sources of cash have historically consisted of proceeds from issuances of equity and debt securities and revenues generated from operations, including product revenues and NRE revenues from our JDLA with Samsung. We have also funded our operations with a revolving line of credit and term loans under a bank credit facility, a funding arrangement for costs associated with our legal proceedings against SK hynix and, to a lesser extent, equipment leasing arrangements.

SVB Credit Agreement

On October 31, 2009, we entered into the SVB Credit Agreement, which provides that we may borrow up to the lesser of (i) 80% of eligible accounts receivable, or (ii) $5.0 million, subject to certain adjustments as set forth in the SVB Credit Agreement. The SVB Credit Agreement expires April 1, 2018.

As of July 1, 2017, we had outstanding borrowings under the SVB Credit Agreement of $1.3 million. We made no borrowings under the SVB Credit Agreement in the six months ended July 2, 2016. As of July 1, 2017 and December 31, 2016, we had borrowing availability under the SVB Credit Agreement of $0.3 million and $0.8 million, respectively.

SVIC Note and SVIC Warrant

On November 18, 2015, we issued to SVIC the SVIC Note and the SVIC Warrant. The SVIC Note has an original principal amount of $15.0 million, accrues interest at a rate of 2.0% per year, is due and payable in full on December 31, 2021, and is convertible into shares of our common stock at a conversion price of $1.25 per share, subject to certain adjustments, on the maturity date of the SVIC Note. The SVIC Warrant grants SVIC a right to purchase up to 2,000,000 shares of our common stock at an exercise price of $0.30 per share, subject to certain adjustments, is only exercisable in the event we exercise our right to redeem the SVIC Note prior to its maturity date, and expires on December 31, 2025. Proceeds from the SVIC Note were used to repay a former loan from a different lender.

2016 Offering

On September 23, 2016, we completed a registered firm commitment underwritten public offering (the "2016 Offering"), pursuant to which we sold 9,200,000 shares of our common stock at a price to the public of $1.25 per share. The net proceeds to us from the 2016 Offering were $10.3 million, after deducting underwriting discounts and commissions and offering expenses paid by us.

TRGP Agreement

On May 3, 2017, we entered into the TRGP Agreement, which generally provides that TRGP will directly fund the costs incurred by us or on our behalf in connection with our legal proceedings against SK hynix, including costs previously incurred since January 1, 2017 and costs to be incurred in the future. In the six months ended July 1, 2017, TRGP directly paid $6.0 million of legal expenses we incurred in connection with the SK hynix proceedings.

Equipment Leasing Arrangements

We have in the past utilized equipment leasing arrangements to finance certain capital expenditures. Although equipment leases did not contribute material cash during the periods covered by this report, they continue to be a financing alternative that we may pursue in the future.

Sufficiency of Cash Balances and Potential Sources of Additional Capital

We believe our existing cash balance, together with cash provided by our operations and borrowing availability under the SVB Credit Agreement, and taking into account cash expected to be used in our operations and the funding to be received under the TRGP Agreement, will be sufficient to meet our anticipated cash needs for at least the next 12 months. Our capital requirements will depend on many factors, including, among others: the acceptance of, and demand for, our products and the component products we resell to customers directly; our levels of net product revenues and any other revenues we may receive, including NRE, license, royalty or other fees; the extent and timing of any investments in developing, marketing and launching new or enhanced products or technologies; the costs of developing, improving and maintaining our internal design, testing and manufacturing processes; the costs associated with defending and enforcing our intellectual property rights; and the nature and timing of acquisitions and other strategic transactions in which we participate, if any.

Although we expect to be able to rely in the near term on our existing cash balance, cash provided by our operations, payments under the TRGP Agreement and borrowing availability under the SVB Credit Agreement, our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate. Further, some or all of our ongoing or planned investments may not be successful and could result in further losses. Until we can generate sufficient revenues to finance our cash requirements from our operations, which we may never do, we may need to increase our liquidity and capital resources by one or more measures, which may include, among others, reducing operating expenses, restructuring our balance sheet by negotiating with creditors and vendors, entering into strategic partnerships or alliances, raising additional financing through the issuance of debt, equity or convertible securities or pursuing alternative sources of capital, such as through asset or technology sales or licenses or other alternative financing arrangements. Further, even if our near-term liquidity expectations prove correct, we may still seek to raise capital through one or more of these financing alternatives. However, we may not be able to obtain capital when needed or desired, on terms acceptable to us or at all.

Inadequate working capital would have a material adverse effect on our business and operations and could cause us to fail to execute our business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require us to significantly modify our business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of our ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. Modification of our business model and operations could result in an impairment of assets, the effects of which cannot be determined. Furthermore, if we continue to issue equity or convertible debt securities to raise additional funds, our existing stockholders may experience significant dilution, and the new equity or debt securities may have rights, preferences and privileges that are superior to those of our existing stockholders. If we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization or have other material consequences. If we pursue asset or technology sales or licenses or other alternative financing arrangements to obtain additional capital, our operational capacity may be limited and any revenue streams or business plans that are dependent on the sold or licensed assets may be reduced or eliminated. Moreover, we may incur substantial costs in pursuing any future capital-raising transactions, including investment banking, legal and accounting fees, printing and distribution expenses and other similar costs, which would reduce the benefit of the capital received from the transaction.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditure or capital resources that is material to investors.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

Our management carried out an evaluation, under the supervision and with the participation of our principal executive officer and principal financial officer, of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act")) as of the end of the period covered by this report. Based upon this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of July 1, 2017. Our disclosure controls and procedures are designed to provide reasonable assurance that information required to be disclosed by us in reports that we file or submit under the Exchange Act (i) is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission ("SEC")and (ii) is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate to allow timely decisions regarding required disclosures.

Changes *in Internal Control over Financial Reporting*

During our fiscal quarter ended July 1, 2017, there were no changes in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Inherent Limitations on Controls

A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple errors. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and any design may not succeed in achieving its stated goals under all potential conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

In addition, projections of any evaluation of effectiveness to future periods are subject to risks that controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with the controls.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

The information under "Litigation and Patent Reexaminations" in Note 7 to the condensed consolidated financial statements included in Part I, Item 1 of this report is incorporated herein by reference.

Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. Before making any investment decision with respect to our securities, you should carefully consider each of the following risk factors and the other information in this report. Each of these risk factors, either alone or together, could adversely affect our business, operating results, financial condition, ability to access capital resources and future growth prospects, as well as the value of an investment in our common stock. As a result, you could lose some or all of any investment you have made or may make in our common stock. In assessing these risks, you should also refer to the other information contained or incorporated by reference in this report, including our condensed consolidated financial statements and the related notes. The risks described below are not the only ones we face. Additional risks of which we are not presently aware or that we currently believe are immaterial may also impair our business operations and financial position.

Risks Related to Our Business

We have historically incurred losses and may continue to incur losses.

Since the inception of our business in 2000, we have only experienced one fiscal year (2006) with profitable results. In order to regain profitability, or to achieve and sustain positive cash flows from operations, we must reduce operating expenses and/or increase our revenues and gross margins. Although we have in the past engaged in a series of cost reduction actions, such expense reductions alone may not make us profitable or allow us to sustain profitability if it is achieved and eliminating or reducing strategic initiatives could limit our opportunities and prospects. Our ability to achieve profitability will depend on increased revenue growth from, among other things, monetization of our intellectual property, increased demand for our memory subsystems and other product offerings and our ability to expand into new

and emerging markets. We may not be successful in any of these pursuits and we may never achieve profitability or sustain profitability if achieved.

We may not have sufficient working capital to fund our planned operations and, as a result, we may need to raise additional capital in the future, which may not be available when needed, on acceptable terms or at all.

We believe that, taking into account our planned activities and our sources of capital, we have sufficient cash resources to satisfy our capital needs for at least the next 12 months. However, our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate. Further, some or all of our ongoing or planned investments may not be successful and could result in further losses.

Our capital requirements will depend on many factors, including, among others:

- the acceptance of, and demand for, our products and the component products we resell to customers directly;
- our success, and that of our strategic partners, in developing and selling products derived from our technology;
- the extent and timing of any investments in developing, marketing and launching new or enhanced products or technologies;
- the costs of developing, improving and maintaining our internal design, testing and manufacturing processes;
- the costs associated with defending and enforcing our intellectual property rights;
- our results of operations, including our levels of net product revenues and any other revenues we may receive, including non-recurring engineering ("NRE"), license, royalty or other fees;
- the amount and timing of vendor payments and the collection of receivables, among other factors affecting our working capital;
- our receipt of cash proceeds from the exercise of outstanding stock options or warrants to acquire our common stock;
- the nature and timing of acquisitions and other strategic transactions in which we participate, if any; and
- the costs associated with the continued operation, and any future growth, of our business.

We expect to rely in the near term on cash provided by our operations, funds raised pursuant to recent issuances of debt and equity securities, such as our November 2015 issuance of convertible debt to an affiliate of Samsung Venture Investment Co., Samsung Venture Investment Co. ("SVIC"), and our September 2016 public offering of common stock, our new funding arrangement with TR Global Funding V, LLC, an affiliate of TRGP Capital Management, LLC ("TRGP"), for costs associated with certain of our legal proceedings, and borrowing availability under our credit facility with Silicon Valley Bank ("SVB"). However, our estimates of our operating revenues and expenses and working capital requirements could be incorrect, and we may use our cash resources faster than we anticipate. Further, some or all of our ongoing or planned investments may not be successful and could result in further losses. Until we can generate sufficient revenues to finance our cash requirements from our operations, which we may never do, we may need to increase our liquidity and capital resources by one or more measures, which may include, among others, reducing operating expenses, restructuring our balance sheet by negotiating with creditors and vendors, entering into strategic partnerships or

alliances, raising additional financing through the issuance of debt, equity or convertible securities or pursuing alternative sources of capital, such as through asset or technology sales or licenses or other alternative financing arrangements. Further, even if our near-term liquidity expectations prove correct, we may still seek to raise capital through one or more of these financing alternatives. However, we may not be able to obtain capital when needed or desired, on terms acceptable to us or at all.

Inadequate working capital would have a material adverse effect on our business and operations and could cause us to fail to execute our business plan, fail to take advantage of future opportunities or fail to respond to competitive pressures or customer requirements. A lack of sufficient funding may also require us to significantly modify our business model and/or reduce or cease our operations, which could include implementing cost-cutting measures or delaying, scaling back or eliminating some or all of our ongoing and planned investments in corporate infrastructure, research and development projects, business development initiatives and sales and marketing activities, among other activities. Modification of our business model and operations could result in an impairment of assets, the effects of which cannot be determined. Furthermore, if we continue to issue equity or convertible debt securities to raise additional funds, our existing stockholders may experience significant dilution, and the new equity or debt securities may have rights, preferences and privileges that are superior to those of our existing stockholders. If we incur additional debt, it may increase our leverage relative to our earnings or to our equity capitalization or have other material consequences. If we pursue asset or technology sales or licenses or other alternative financing arrangements to obtain additional capital, our operational capacity may be limited and any revenue streams or business plans that are dependent on the sold or licensed assets may be reduced or eliminated. Moreover, we may incur substantial costs in pursuing any future capital-raising transactions, including investment banking, legal and accounting fees, printing and distribution expenses and other similar costs, which would reduce the benefit of the capital received from the transaction.

We have incurred a material amount of indebtedness to fund our operations, the terms of which have required us to pledge substantially all of our assets as security. Our level of indebtedness and the terms of such indebtedness could adversely affect our operations and liquidity.

We have incurred debt under our convertible note issued to SVIC, our credit facility with SVB, and our new funding arrangement with TRGP. In connection with these debt and other arrangements, we have granted security interests to SVIC, SVB and TRGP in our various assets, such that all of our tangible and intangible assets, including our complete patent portfolio, are subject to one or more outstanding liens held by one or more of these parties. The SVIC and SVB debt instruments and the TRGP investment agreement contain customary representations, warranties and indemnification provisions, as well as affirmative and negative covenants that, among other things, restrict our ability to:

- incur additional indebtedness or guarantees;
- incur liens;
- make investments, loans and acquisitions;
- consolidate or merge;
- sell or exclusively license assets, including capital stock of subsidiaries;
- alter our business;
- change any provision of our organizational documents;
- engage in transactions with affiliates;
- make certain decisions regarding certain of our outstanding legal proceedings without consulting with or obtaining consent from certain of these parties; and

- pay dividends or make distributions.

The SVIC and SVB debt instruments and the TRGP investment agreement also include events of default, including, among other things, payment defaults, any breach by us of representations, warranties or covenants, certain bankruptcy events and certain material adverse changes. If an event of default were to occur under any of these instruments or agreements and we were unable to obtain a waiver for the default, the counterparties could, among other remedies, accelerate our obligations under the debt instrument or other agreement and exercise their rights to foreclose on their security interests, which would cause substantial harm to our business and prospects.

Additionally, incurrence and maintenance of this or other debt could have material adverse consequences on our business and financial condition, such as:

- requiring us to dedicate a portion of our cash flows from operations and other capital resources to debt service, thereby reducing our ability to fund working capital, capital expenditures and other cash requirements;
- increasing our vulnerability to adverse economic and industry conditions;
- limiting our flexibility in planning for or reacting to changes and opportunities in our business and industry, which may place us at a competitive disadvantage; and
- limiting our ability to incur additional debt when needed, on acceptable terms or at all.

We are and expect to continue to be involved in costly legal and administrative proceedings to enforce or protect our intellectual property rights and to defend against claims that we infringe the intellectual property rights of others.

As is common in the semiconductor industry, we have experienced substantial litigation regarding patent and other intellectual property rights. We are currently involved in litigation and proceedings at the U.S. Patent and Trademark Office ("USPTO") and Patent Trial and Appeal Board ("PTAB") based on alleged third-party infringement of our patents, and lawsuits claiming that we are infringing others' intellectual property rights also have been and may in the future be brought against us.

The process of obtaining and protecting patents is inherently uncertain. In addition to the patent issuance process established by law and the procedures of the USPTO, we must comply with administrative procedures of the Joint Electron Device Engineering Council ("JEDEC") to protect our intellectual property within its industry standard-setting process. These procedures evolve over time, are subject to variability in their application and may be inconsistent with each other. Failure to comply with the USPTO's or JEDEC's administrative procedures could jeopardize our ability to claim that our patents have been infringed.

Our business strategy includes litigating claims against others, such as our competitors, customers and former employees, to enforce our intellectual property, contractual and commercial rights including, in particular, our patent portfolio and our trade secrets, as well as to challenge the validity and scope of the proprietary rights of others. This or other similar proceedings could also subject us to counterclaims or countersuits against us, or the parties we sue could seek to invalidate our patents or other intellectual property rights through reexamination or similar processes at the USPTO or similar bodies. Moreover, any legal disputes with customers could cause them to cease buying or using our products or the component products we resell to customers directly or delay their purchase of these products and could substantially damage our relationship with them.

Making use of new technologies and entering new markets increases the likelihood that others might allege that our products or the component products we resell infringe on their intellectual property rights. The likelihood of this type of lawsuit may also be increased due to the limited pool of experienced technical personnel that we can draw upon to meet our hiring needs. As a result, a number of our existing employees have worked for our existing or potential

competitors at some point during their careers, and we anticipate that a number of our future employees will have similar work histories. Moreover, lawsuits of this type may be brought, even if there is no merit to the claim, as a strategy to prevent us from hiring qualified candidates, drain our financial resources and divert management's attention away from our business.

Litigation is inherently uncertain. An adverse outcome in existing or any future litigation could force us to, among other things:

- relinquish patents or other protections of our technologies if they are invalidated, which would enable our competitors and others to freely use this technology;
- compete with products that rely upon technologies and other intellectual property rights that we have developed and that we believe we have the right to protect from third-party use;
- accept terms of an arrangement to license our technologies to a third party that are not as favorable as we might expect;
- cease manufacturing and/or selling products or using certain processes that are claimed to be infringing a third party's intellectual property;
- pay damages (which in some instances may be three times actual damages), including royalties on past or future sales, if we are found to infringe a third party's intellectual property;
- seek a license from a third -party intellectual property owner to use its technology in our products or the component products we resell, which may not be available on reasonable terms or at all; or
- redesign any products that are claimed to be infringing a third party's intellectual property, which may not be possible to do in a timely manner, without incurring significant costs or at all.

Moreover, any litigation, regardless of its outcome, would involve a significant dedication of resources, including time and costs, would divert management's time and attention and could negatively impact our results of operations. As a result, any current or future infringement claims by or against third parties could materially adversely affect our business, financial condition or results of operations.

We are and expect to continue to be involved in legal proceedings at the ITC and related enforcement actions to stop allegedly infringing SK hynix RDIMM and LRDIMM products from entering the United States, as well as legal proceedings in district court to seek damages for the alleged patent infringement. Our involvement in these proceedings, as well as steps we have taken to implement certain of our strategies in connection with these proceedings, subject us to a number of risks.

On September 1, 2016, we took action to protect and defend our innovations by filing legal proceedings for patent infringement against SK hynix Inc., a South Korean memory semiconductor supplier ("SK hynix"), and two of its subsidiaries in the U.S. International Trade Commission ("ITC") and in district court. We are seeking an exclusion order in the ITC that directs U.S. Customs and Border Protection to stop allegedly infringing SK hynix registered dual in-line memory module ("RDIMM") and load reduced dual in-line memory modules ("LRDIMM") products from entering the United States. ITC investigations typically proceed on an expedited basis. The evidentiary hearing in the ITC investigation occurred in May 2017, with a final initial determination expected to be issued by the ITC in October 2017, but there can be no guarantee that our proceedings will follow such a timeline.

Intellectual property litigation is expensive and time-consuming, regardless of the merits of any claim, and could divert management's attention from operating our business. Even if we are successful at the ITC, we would then need to enforce the order which is expensive, time consuming and could divert management's attention from operating our business. In addition, lawsuits in the ITC and in district courts are subject to inherent uncertainties due to the complexity of the technical issues involved, and we may not be successful in our actions. Moreover, if we are

countersued by SK hynix and lose the suit, we could be required to pay substantial damages or lose some of our intellectual property protections. Furthermore, we may not be able to reach a settlement with SK hynix to license our patent portfolio, and even if we are able to reach a settlement, the terms of the arrangement may not be as favorable as we anticipated. Any of the foregoing could cause us to incur significant costs, decrease the perceived value of our intellectual property and materially adversely affect our business, financial condition or results of operations.

We have recently taken steps to solidify our position and strategy in connection with our proceedings against SK hynix. In May 2017, we established a funding arrangement with TRGP, which generally provides that TRGP will directly fund the costs incurred by us or on our behalf in connection with the SK hynix proceedings, and in exchange for such funding, we have agreed to pay to TRGP the amount of its funding plus an escalating premium starting at a low-to-mid double-digit percentage of the amount of its funding if and when we recover any proceeds from the proceedings, and we have granted to TRGP a first priority lien on the claims underlying the proceedings and any proceeds received from the proceedings and a second priority lien on our patents that are the subject of the proceedings. We established this funding arrangement in order to provide us with increased security that we will be able to vigorously pursue our claims against SK hynix through their final resolution, but the arrangement also involves certain risks, including, among others, our obligation to use a portion of any proceeds we may receive from these proceedings to repay the funded amounts at a premium, which premium would increase the longer the proceedings remain unresolved, and our obligation to consult with or obtain consent from TRGP in connection with certain decisions or other matters relating to the SK hynix proceedings.

In addition, in April 2017, we adopted a short-term rights agreement to implement a standard “poison pill.” In general terms, for so long as the rights issued under the rights agreement are outstanding, which is expected to be no longer than 12 months, the rights agreement prevents any person or group from acquiring a significant percentage of our outstanding capital stock or attempting a hostile takeover of our Company by significantly diluting the ownership percentage of such person or group. As a result, the rights agreement has a significant anti-takeover effect. Our board of directors approved the rights agreement as part of our strategy in connection with our proceedings against SK hynix, with the intent of disconnecting our market capitalization from the damages calculations and any settlement negotiations that may develop in connection with these proceedings. However, the rights agreement may not have the intended, or any, impact on these proceedings or any related settlement negotiations, but would have the anti-takeover effect of any standard “poison pill” and thus would involve the risks associated with these anti-takeover effects, which are described elsewhere in these risk factors.

We may be unsuccessful in monetizing our intellectual property portfolio.

We have dedicated substantial resources to the development and protection of technology innovations essential to our business, and we expect these activities to continue for the foreseeable future. We also intend to aggressively pursue monetization avenues for our intellectual property portfolio, potentially including licensing, royalty or other revenue-producing arrangements. However, our revenues are currently generated by resales of component products and sales of our products and we may never be successful in generating a revenue stream from our intellectual property, in which case our investments of time, capital and other resources into our intellectual property portfolio may not provide adequate, or any, returns.

Although we may pursue agreements with third parties to commercially license certain of our products or technologies, we may never successfully enter into any such agreement. Further, the terms of any such agreements that we may reach with third-party licensees are uncertain and may not provide sufficient royalty or other licensing revenues to us to justify our costs of developing and maintaining the licensed intellectual property or may otherwise include terms that are not favorable to us. Additionally, the pursuit of licensing arrangements would require by its nature that we relinquish certain of our rights to our technologies and intellectual property that we license to third parties, which could limit our ability to base our own products on such technologies or could reduce the economic value that we receive from such technologies and intellectual property. Additionally, the establishment of arrangements to monetize our intellectual property may be more difficult or costly than expected, may require additional personnel and investments and may be a significant distraction for management. In connection with any monetization avenues we may develop, our licenses and royalty revenue may be uncertain from period to period and we may be unable to attract sufficient licensing customers, which would materially and adversely affect our results of operations.

Our ability to establish licensing, royalty or similar revenues, and maintain or increase any such revenues we are able to establish, depends on a variety of factors, including the novelty, utility, performance, quality, breadth, depth and overall perceived value of our intellectual property portfolio, all as compared to that of our competitors, as well as our sales and marketing capabilities. If secured, licensing or royalty revenues may also be negatively affected by factors within and outside our control, including reductions in our customers' sales prices, sales volumes and the terms of the license arrangements. If we are not successful in monetizing our intellectual property portfolio, we may never recoup the costs associated with developing, maintaining, defending and enforcing this portfolio and our financial condition and prospects would be harmed.

The vast majority of our revenues in recent periods have been generated from resales of component products, including products sourced from Samsung, and any decline in our resales of these products could significantly harm our performance.

The vast majority of our revenues in recent periods have been generated from resales of component products, including primarily NAND flash that we purchase for the purpose of resale from Samsung and alternative suppliers. For our fiscal year ended December 31, 2016 and the six months ended July 1, 2017, resales of these component products accounted for approximately 21% and 91% of our net product revenues, respectively. We purchase many of these products, including primarily NAND flash, from Samsung Electronics Co., Ltd. ("Samsung") under the terms of our Joint Development and License Agreement ("JDLA") with Samsung in order to resell these products to end-customers that are not reached in Samsung's distribution model, including storage customers, appliance customers, system builders and cloud and datacenter customers. We have also sourced these products from alternative suppliers to the extent sufficient product is not available from Samsung to meet customer demand.

These component product resales are subject to a number of risks. For example, demand for these products could decline at any time for a number of reasons, including, among others, product obsolescence, introduction of more advanced or otherwise superior competing products by our competitors, the ability of our customers to obtain these products or substitute products from alternate sources, customers reducing their need for these products generally, or the other risk factors described in this Item 1A. Further, we have no long-term purchase agreements or other commitments with respect to sales of these or any of our other products. As a result, demand for these products from us could decline at any time, and any reduced sales of these products could materially adversely impact our revenues. In addition, increased resales of component products as a percentage of our total product revenues have a significant negative impact on our gross margin, as the cost of the component products we purchase for resale from Samsung or alternative suppliers is added to our cost of sales for these products. As a result, our gross margin on the resale of component products is significantly lower than our gross margin on sales of our own products. Further, to the extent we are not able to procure sufficient component products for resale from Samsung under the terms of the JDLA to satisfy customer orders for these products, we would need to seek to procure these products from alternative suppliers, which may not be available on terms comparable to those we have negotiated with Samsung under the JDLA and may be subject to other supply and manufacturing risks discussed elsewhere in these risk factors. As a result, any inability to source sufficient component products from Samsung could increase our cost of sales associated with resales of these products if we are forced to pay higher prices to obtain these products from other suppliers. The occurrence of any one or more of these risks could cause our performance to materially suffer.

Our performance has historically been substantially dependent on sales of NVvault, and we may never be able to replace the revenues lost from the rapid decline in NVvault sales in recent periods.

We have historically been substantially dependent on sales of our NVvault non-volatile dual in-line memory modules ("NVDIMM") used in cache-protection and data-logging applications, including our NVvault battery-free, the flash-based cache system. For our fiscal years ended December 27, 2014 and January 2, 2016, sales of NVvault accounted for 44% and 20% of total net product revenues, respectively. However, we have experienced a sharp decline in NVvault sales in recent periods, and sales of NVvault accounted for only 1% and 0.2% of total net product revenues in our fiscal year ended December 31, 2016 and the six months ended July 1, 2017, respectively. This rapid decline has been due in large part to the loss of our former most significant NVvault customer, Dell, beginning in 2012. We recognized no NVvault sales to Dell in the year ended December 31, 2016 or the six months ended July 1, 2017, and we

expect no future demand from Dell for these products. In order to leverage our NVvault technology and secure one or more new key customers, we continue to pursue additional qualifications of NVvault with other original equipment manufacturers ("OEMs") and to target new customer applications, such as online transaction processing, virtualization, Big Data analytics, high speed transaction processing, high-performance database applications and in-memory database applications. We also introduced EXPRESSvault in March 2011 and the next-generation of EXPRESSvault (EV3) in July 2015, and we continue to pursue qualification of the next-generation DDR3 NVvault and DDR4 NVvault with customers. Our future operating results will depend on our ability to commercialize these NVvault product extensions, as well as our other products such as HybriDIMM and other high-density and high-performance solutions. However, HybriDIMM is still under development and may require additional investment and the services and attention of key employees who have competing demands on their available time. Further, although we believe our JDLA with Samsung may advance the development of our HybriDIMM product, our partnership with Samsung and any other steps we take to further the development of this or any of our other products could fail. Moreover, the rate and degree of customer adoption of our NVvault product extensions and other next-generation products has been slower and smaller than expected to date, and these products may never gain significant customer or market acceptance. If we are not successful in expanding our qualifications or marketing any new or enhanced products, we may never be able to secure revenues sufficient to replace lost NVvault revenues and our results of operations and prospects could be materially harmed.

We are subject to risks relating to our focus on developing our HybriDIMM and NVvault products and a lack of market diversification.

We have historically derived a substantial portion of our revenues from sales of our high-performance modular memory subsystems to OEMs in the server, high-performance computing and communications markets, as well as from sales of component products to storage customers, appliance customers, system builders and cloud and datacenter customers. Although we expect these memory subsystems to continue to account for a portion of our revenues, we have experienced declines in sales of these products in recent periods and these declines could continue or intensify in the future. We believe that market acceptance of these products or derivative products that incorporate our core memory subsystem technology is critical to our success, and any continued decline in sales of these products could have a material adverse impact on our performance and long-term prospects.

We have invested significant research and development time and costs into the design of application-specific integrated circuits ("ASIC") and hybrid devices, including our NVvault family of products and most recently our next-generation HybriDIMM memory subsystem. These products are subject to increased risks as compared to our legacy products. For example:

- we are dependent on a limited number of suppliers for the dynamic random access memory integrated circuits ("DRAM ICs" or "DRAM"), NAND flash memory ("NAND flash") and ASIC devices that are essential to the functionality of these products, and in the past we have experienced supply chain disruptions and shortages of DRAM and NAND flash required to create our NVvault family of products as a result of issues that are specific to our suppliers or the industry as a whole;
- our products are generally subject to a product approval and qualification process with customers before purchases are made and we have experienced a longer qualification cycle than anticipated with some of these products, including our HyperCloud memory subsystems;
- our NVvault products or other new products such as HybriDIMM may contain currently undiscovered flaws, the correction of which could result in increased costs and time to market; and
- we are required to demonstrate the quality and reliability of our products to and qualify them with our customers, which requires a significant investment of time and resources prior to the receipt of any revenues from these customers.

These and other risks attendant to the production of our memory subsystem products could impair our ability to obtain customer or market acceptance of these products or obtain such acceptance in a timely manner, which would reduce our achievable revenues from these products and limit our ability to recoup our investments in the products.

Additionally, if the demand for servers deteriorates or if the demand for our products to be incorporated in servers continues to decline, our operating results would be adversely affected, and we would be forced to diversify our product portfolio and our target markets in order to replace revenues lost from decreased sales of these products. We may not be able to achieve this diversification, and our inability to do so may adversely affect our business, operating performance and prospects.

Sales to a small number of varying customers represent a significant portion of our net product revenues, and the loss of, or a significant reduction in sales to, any one of these customers could materially harm our business.

Sales to a small number of customers represent a substantial portion of our net product revenues. Approximately 16% of our net product revenues in the three months ended July 1, 2017 were to one customer, which was a new customer in the second quarter of 2016 and approximately 11% of our net product revenues in the six months ended July 1, 2017 were to a different customer, which was a new customer in the fourth quarter of 2016. Additionally, in the three and six months ended July 2, 2016, approximately 47% and 11%, and 35% and 12% of our net product revenues in the respective periods were to two customers, neither of which purchased many products or contributed a meaningful portion of our revenues in the corresponding 2017 periods. The composition of major customers and their respective contributions to our net product revenues have varied and will likely continue to vary from period to period as our existing and prospective customers progress through the life cycle of the products they produce and sell.

We do not have long-term agreements with any of our customers and, as result, any or all of them could decide at any time to discontinue, decrease or delay their purchase of our products or the component products we resell to these customers directly. In addition, the prices that customers pay for these products could change at any time. Further, we may not be able to sell some of our products developed for one customer to a different customer because our products are often customized to address specific customer requirements, and even if we are able to sell these products to another customer, our margin on these products may be reduced. Additionally, although customers are generally allowed only limited rights of return after purchasing our products or the component products we resell, we may determine that it is in our best interest to accept returns from certain large or key customers even if we are not contractually obligated to accept them in order to maintain good relations with these customers. Any returns beyond our expectations could negatively impact our operating results. Moreover, because a few customers account for a substantial portion of our net product revenues, the failure of any one of these customers to pay on a timely basis would negatively impact our cash flows. As a result, the loss of any of our customers or a reduction in sales to or difficulties collecting payments from any of them could significantly reduce our net product revenues and adversely affect our operating results.

Our ability to maintain or increase our net product revenues to our key customers depends on a variety of factors, many of which are beyond our control. These factors include our customers' continued sales of servers and other computing systems that incorporate our memory subsystems and our customers' continued incorporation of our products or the component products we resell to these customers directly into their systems. Because of these and other factors, sales to these customers may not continue and the amount of such sales may not reach or exceed historical levels in any future period.

We are subject to risks of disruption in the supply of component products.

Our ability to fulfill customer orders for or produce qualification samples of our products is dependent on a sufficient supply of field-programmable gate arrays ("FPGAs"), ASICs, DRAM ICs and NAND flash, which are essential components of our memory subsystems. In addition, we purchase some of these component products from Samsung under the terms of the JDLA and from alternative suppliers for the purpose of resale to end-customers that are not reached in Samsung's distribution model. We have no long-term supply contracts for any of these component products. Further, there are a relatively small number of suppliers of these components and we typically purchase from only a subset of these suppliers. As a result, our inventory purchases have historically been concentrated in a small number of suppliers, including an affiliate of Samsung, from which we obtained a large portion of our total inventory purchases in 2016 and the first six months of 2017. We also use consumables and other components, including printed circuit boards ("PCBs"), to manufacture our memory subsystems, which we sometimes procure from single or limited sources to take advantage of volume pricing discounts.

From time to time, shortages in DRAM ICs and NAND flash have required some suppliers to limit the supply of these components. In the past, we have experienced supply chain disruptions and shortages of DRAM and NAND flash required to create our HyperCloud, NVvault and Planar X VLP products, and we have been forced to procure component products that we resell to customers directly from alternative suppliers to the extent we are not able to procure from Samsung sufficient quantities of these products g to satisfy customer orders. We are continually working to secure adequate supplies of the components necessary to fill customers' orders in a timely manner. If we are unable to obtain a sufficient supply of DRAM ICs, NAND flash or other essential components to avoid interruptions in the delivery of our products as required by our customers or the delivery of these components to customers to whom we resell them directly, these customers may reduce future orders for these products or not purchase these products from us at all, which would cause our net product revenues to decline and harm our operating results. In addition, our reputation could be harmed due to failures to meet our customers' demands and, even assuming we are successful in resolving supply chain disruptions, we may not be able to replace any lost business and we may lose market share to our competitors. Further, if our suppliers are unable to produce qualification samples of our products on a timely basis or at all, we could experience delays in the qualification process with existing or prospective customers, which could have a significant impact on our ability to sell our products. Moreover, if we are not able to obtain these components in the amounts needed on a timely basis and at commercially reasonable prices, we may not be able to develop or introduce new products, we may experience significant increases in our cost of sales if we are forced to procure these components from alternative suppliers and are not able to negotiate favorable terms with these suppliers, or we may be forced to cease our resales of components we sell to customers directly.

Our dependence on a small number of suppliers and the lack of any guaranteed sources for the essential components of our products and the components we resell to customers directly expose us to several risks, including the inability to obtain an adequate supply of these components, increases in their costs, delivery delays and poor quality. Additionally, our customers qualify certain of the components provided by our suppliers for use in their systems. If one of our suppliers experiences quality control or other problems, it may be disqualified by one or more of our customers. This would disrupt our supplies of these components, and would also reduce the number of suppliers available to us and may require that we qualify a new supplier, which we may not be able to do.

Declines in customer demand for our products in recent periods have caused us to reduce our purchases of DRAM ICs and NAND flash for use as components in our products. Such declines or other fluctuations could continue in the future. If we fail to maintain sufficient purchase levels with some suppliers, our ability to obtain supplies of these raw materials may be impaired due to the practice of some suppliers to allocate their products to customers with the highest regular demand.

Frequent technology changes and the introduction of next-generation versions of these component products may also result in the obsolescence of our inventory on-hand, which could involve significant time and costs to replace, reduce our net product revenues and gross margin and adversely affect our operating performance and financial condition.

Our customers require that our products undergo a lengthy and expensive qualification process without any assurance of sales.

Our prospective customers generally test and evaluate our memory subsystems before purchasing our products and integrating them into their systems. This extensive qualification process involves rigorous reliability testing and evaluation of our products, which may continue for nine months or longer and is often subject to delays. In addition to qualification of specific products, some of our customers may also require us to undergo a technology qualification if our product designs incorporate innovative technologies that the customer has not previously encountered. Such technology qualifications often take substantially longer than product qualifications and can take over a year to complete. Qualification by a prospective customer does not ensure any sales to that prospective customer, in which case we would receive no or limited revenues in spite of our investment of time and other resources in this qualification process, which could adversely affect our operating results.

Even after successful qualification and sales of our products to a customer, because the qualification process is both product-specific and platform-specific, our existing customers sometimes require us to re-qualify our products or to

qualify our new products for use in new platforms or applications. For example, as our OEM customers transition from prior generation architectures to current generation architectures, we must design and qualify new products for use by these customers. In the past, this design and qualification process has taken up to nine months to complete, during which time our net product revenues to these customers declined significantly. Additionally, after our products are qualified with existing or new customers, the customer may take several months to begin purchasing the product or may decide not to purchase the product at all.

Likewise, changes in our products, our manufacturing facilities, our production processes or our component suppliers may require a new qualification process. For example, when our memory and NAND flash component vendors discontinue production of components, it may be necessary for us to design and qualify new products for our customers. As a result, some customers may require us, or we may decide, to purchase an estimated quantity of discontinued memory components necessary to ensure a steady supply of existing products until products with new components can be qualified. Purchases of this nature may affect our liquidity. Additionally, our estimation of quantities required during the transition may be incorrect, which could adversely impact our results of operations through lost revenue opportunities or charges related to excess and obsolete inventory.

We must devote substantial resources, including design, engineering, sales, marketing and management efforts, to qualify our products with prospective customers in anticipation of sales. Significant delays or other difficulties in the qualification process could result in an inability to keep up with rapid technology change or new, competitive products. If we delay or do not succeed in qualifying a product with an existing or prospective customer, we would not be able to sell that product to that customer, which may result in our holding excess and obsolete inventory and could reduce our net product revenues and customer base, any of which could materially harm our operating results and business.

If we are unable to timely and cost-effectively develop new or enhanced products that meet our customers' requirements and achieve market acceptance or technologies that we can monetize, our revenues and prospectus could be materially harmed.

Our industry is characterized by rapid technological change, evolving industry standards and rapid product obsolescence. As a result, continuous development of new technology, processes and product innovations is necessary in order to be successful. We believe that the continued and timely development of new products and improvement of existing products are critical to our business and prospects for growth.

In order to develop and introduce new or enhanced products and technologies, we need to:

- retain and continue to attract new engineers with expertise in high-performance modular memory subsystems and our key technology competencies;
- identify and adjust to the changing requirements of our existing and potential future customers;
- identify and adapt to emerging technological trends and evolving industry standards in our markets;
- continue to develop and enhance our design tools, manufacturing processes and other technologies that allow us to produce attractive and competitive products;
- design and introduce cost-effective, innovative and performance-enhancing features that differentiate our products and technologies from those of our competitors;
- secure licenses to enable us to use any technologies, processes or other rights essential to the manufacture or use of any new products we may design, which licenses may not be available when needed, on acceptable terms or at all;
- maintain or develop new relationships with suppliers of components required for any new or enhanced products and technologies;

- qualify any new or enhanced products for use in our customers' products; and
- develop and maintain effective marketing strategies.

We may not be successful at any of these activities. As a result, we may not be able to successfully develop new or enhanced products or we may experience delays in this process. Failures or delays in product development and introduction could result in the loss of, or delays in generating, net products sales or other revenues and the loss of key customer relationships. Even if we develop new or enhanced products or technologies, they may not meet our customers' requirements or gain market acceptance, as our product development efforts are inherently risky due to the challenges of foreseeing changes or developments in technology or anticipating the adoption of new standards. Moreover, we have invested significant resources in our product development efforts, which would be lost if we fail to develop successful products. If any if these risks were to occur, our net product revenues, prospects and reputation could be materially adversely affected.

We face intense competition in our industry, and we may not be able to compete successfully in our target markets.

Our products are primarily targeted to OEMs in the server, high-performance computing and communications markets. In addition, we resell certain component products to storage customers, appliance customers, system builders and cloud and datacenter customers. These markets are intensely competitive, as numerous companies vie for business opportunities at a limited number of large OEMs and other customers. We face competition from DRAM suppliers, memory module providers and logic suppliers for many of our products, including EXPRESSvault, NVvault and HybriDIMM. We also face competition from the manufacturers and distributors of the component products we resell to customers, as these manufacturers and distributors could decide at any time to sell these component products to these customers directly. Additionally, if and to the extent we enter new markets or pursue licensing arrangements to monetize our technologies and intellectual property portfolio, we may face competition from a large number of competitors that produce solutions utilizing similar or competing technologies.

Some of our customers and suppliers may have proprietary products or technologies that are competitive with our products or the components we resell to them, or could develop internal solutions or enter into strategic relationships with, or acquire, other high-density memory module or component providers. Any of these actions could reduce our customers' demand for our products or the component products we resell. Some of our significant suppliers of memory integrated circuits may be able to manufacture competitive products at lower costs by leveraging internal efficiencies, or could choose to reduce our supply of memory integrated circuits, which could adversely affect our ability to manufacture our memory subsystems on a timely basis, if at all.

Certain of our competitors have substantially greater financial, technical, marketing, distribution and other resources, broader product lines, lower cost structures, greater brand recognition and longer standing relationships with customers and suppliers. Some of our competitors may also have a greater ability to influence industry standards than we do. Additionally, some of our competitors may have more extensive or more established patent portfolios than we do. We may not be able to compete effectively against any of these organizations.

Our ability to compete in our current target markets and future markets will depend in large part on our ability to successfully develop, introduce and sell new and enhanced products or technologies on a timely and cost-effective basis and to respond to changing market requirements. We expect our competitors to continue to improve the performance of their current products and potentially reduce their prices. In addition, our competitors may develop future generations and enhancements of competitive products or new or enhanced technologies that may offer greater performance and improved pricing or render our technologies obsolete. If we are unable to match or exceed the improvements made by our competitors, our market position and prospects could deteriorate and our net product revenues could decline.

A limited number of relatively large potential customers dominate the markets for the products we sell.

Our target markets are characterized by a limited number of large companies. Consolidation in one or more of our target markets may further increase this industry concentration. As a result, we anticipate that sales of our products

and the component products we resell will continue to be concentrated among a small number of large customers in the foreseeable future. We believe that our financial results will depend in significant part on our success in establishing and maintaining relationships with and effecting substantial sales to these potential customers. Even if we establish and successfully maintain these relationships, our financial results will be largely dependent on these customers' sales and business results.

If a standardized memory solution that addresses the demands of our customers is developed, our net product revenues and market share may decline.

Many of our memory subsystems are specifically designed for our OEM customers' high-performance systems. In a drive to reduce costs and assure supply of their memory module demand, our OEM customers may endeavor to design JEDEC standard DRAM modules into their new products. Although we also manufacture JEDEC modules, this trend could reduce the demand for our higher-priced customized memory solutions, which would have a negative impact on our operating results. In addition, the adoption of a JEDEC standard module instead of a previously custom module might allow new competitors to participate in a share of our customers' memory module business that previously belonged to us.

If our OEM customers were to adopt JEDEC standard modules, our future business may be limited to identifying the next generation of high-performance memory demands of OEM customers and developing solutions that address these demands. Until fully implemented, any next generation of products may constitute a significantly smaller market, which could reduce our revenues and harm our competitive position.

If we fail to protect our proprietary rights, our customers or our competitors might gain access to our proprietary designs, processes and technologies, which could adversely affect our operating results.

We rely on a combination of patent protection, trade secret laws and restrictions on disclosure to protect our intellectual property rights. We have submitted a number of patent applications regarding our proprietary processes and technology. It is not certain when or if any of the claims in our patent applications will be allowed. As of July 1, 2017, we had 68 U.S. and foreign patents issued, one German utility model and 40 pending patent applications worldwide. Although we intend to continue filing patent applications with respect to the new processes and technologies that we develop, patent protection may not be available for some of these processes or technologies, in which case they may remain unprotected from use by third parties, including our competitors.

Our efforts to protect our intellectual property rights may not:

- prevent challenges to or the invalidation or circumvention of our intellectual property rights;
- keep our competitors or other third parties from independently developing similar products or technologies, duplicating, reverse engineering or otherwise using our products or technologies without our authorization or designing around any patents that may be issued to us;
- prevent disputes with third parties regarding ownership of our intellectual property rights;
- prevent disclosure of our trade secrets and know-how to third parties or into the public domain;
- result in valid patents, including international patents, from any of our pending or future applications; or
- otherwise adequately protect our intellectual property rights.

Monitoring for any unauthorized use of our technologies is costly, time-consuming and difficult. This is particularly true in foreign countries, such as the People's Republic of China ("PRC"), where we have established a manufacturing facility and where the laws may not protect our proprietary rights to the same extent as applicable U.S. laws.

If some or all of the claims in our patent applications are not allowed or if any of our intellectual property protections are limited in scope by the USPTO, a court or applicable foreign authorities or are circumvented by third parties, we could face increased competition for our products and be unable to execute on our strategy of monetizing our intellectual property. Any of these outcomes could significantly harm our business, operating results and prospects.

Our operating results may be adversely impacted by worldwide economic and political uncertainties and specific conditions in the markets we address and in which we or our strategic partners or competitors do business, including the cyclical nature of and volatility in the memory market and semiconductor industry.

Adverse changes in domestic and global economic and political conditions have made it extremely difficult for our customers, our vendors and us to accurately forecast and plan future business activities, and these conditions have caused and could continue to cause U.S. and foreign businesses to slow or decrease spending on our products and services and the products we resell to customers directly. For instance, the current political instability in Korea could impact our operations and financial condition as a result of our dependence on Samsung, a South Korean based company, as a key supplier and strategic partner, and our ongoing legal proceedings against SK hynix. In addition, sales of our products and the products we resell to customers directly are dependent upon demand by OEMs in the server, high-performance computing and communications markets, as well as by storage customers, appliance customers, system builders and cloud and datacenter customers. These markets are characterized by wide fluctuations in product supply and demand. Additionally, these markets have been cyclical and have experienced significant downturns, often connected with or in anticipation of maturing product cycles, reductions in technology spending and declines in general economic conditions. During these downturns, product demand diminishes, production capacity exceeds demand, inventory levels increase and average selling prices decline, all of which would materially adversely impact our business and operating results. Additionally, such a downturn could decrease the perceived value of our intellectual property portfolio and result in reduced ability to pursue our goal of monetizing this portfolio.

We may experience substantial period-to-period fluctuations in our operating results due to factors affecting the markets in which we operate. A decline or significant shortfall in demand in any of these markets could have a material adverse effect on demand for our products and the products we resell to customers directly and, consequently, on our net product revenues. In addition, because many of our costs and operating expenses are relatively fixed, if we are unable to control our expenses adequately in response to reduced product revenues, our gross margins, operating income and cash flows would be negatively impacted.

During challenging economic times our customers may face issues gaining timely access to sufficient credit, which could impair their ability to make timely payments to us. This may impair our liquidity and cash flows and require us to increase our allowance for doubtful accounts. Furthermore, our vendors may face similar issues gaining access to credit, which may limit their ability to supply components or provide trade credit to us. We cannot predict the timing, strength or duration of any economic slowdown or subsequent economic recovery, either generally or in our markets. If the economy or markets in which we operate experience such a slowdown, our business, financial condition and results of operations could be materially and adversely affected. Additionally, the combination of our lengthy sales cycle coupled with any challenging macroeconomic conditions could compound the negative impact of any such downturn on the results of our operations.

Our lack of a significant backlog of unfilled orders and the difficulty inherent in estimating customer demand makes it difficult to forecast our short-term requirements, and any failure to optimally calibrate our production capacity and inventory levels to meet customer demand could adversely affect our revenues, gross margins and earnings.

We make significant decisions regarding the levels of business we will seek and accept, production schedules, component procurement, personnel needs and other resource requirements based on our estimates of customer demand. We do not have long-term agreements with any of our customers. Instead, sales are made primarily pursuant to standard purchase orders that we often receive no more than two weeks in advance of the desired delivery date and that may be rescheduled or cancelled on relatively short notice. The short-term nature of the commitments by many of our customers and the fact that our customers may cancel or defer purchase orders for any reason reduces our backlog of firm orders and our ability to accurately estimate future customer requirements for our products or the component products we resell to customers directly. This fact, combined with the quick turn-around times that apply to most orders, makes it difficult

to forecast our production and inventory needs and allocate production capacity efficiently. As a result, we attempt to forecast the demand for the components needed to manufacture our products and to resell to customers directly, but any such forecasts could turn out to be wrong. Further, lead times for components vary significantly and depend on various factors, such as the specific supplier and the demand and supply for a component at a given time.

Our production expense and component purchase levels are to a large extent fixed in the short term. As a result, we may be unable to adjust spending on a timely basis to compensate for any unexpected shortfall in customer orders. If we overestimate customer demand, we may have excess inventory of components, which may not be able to be used in other products or resold and may become obsolete before any such use or resale. If there is a subsequent decline in the prices of these components, the value of our inventory would fall. As a result, we may need to write-down the value of our component inventory, which may result in a significant decrease in our gross margin and financial condition. Also, to the extent that we order components or manufacture our products in anticipation of future demand that does not materialize or in the event a customer cancels or reduces outstanding orders, we could experience an unanticipated increase in our component or finished goods inventory. In the past, we have had to write-down inventory due to obsolescence, excess quantities and declines in market value below our costs. Any significant shortfall of customer orders in relation to our expectations could hurt our operating results, cash flows and financial condition.

Conversely, any rapid increases in demand by our customers could strain our resources and reduce our margins. If we underestimate customer demand, we may not have sufficient inventory of necessary components on hand to meet that demand. We also may not have sufficient manufacturing capacity at any given time to meet any demands for rapid increases in production of our products. These shortages of inventory and capacity could lead to delays in the delivery of our products or the component products we resell, which may force us to forego sales opportunities, reduce our net product revenues and damage our customer relationships.

Declines in our average sales prices, driven by volatile prices for components and other factors, may result in declines in our revenues and gross profit.

Our industry is competitive and historically has been characterized by declines in average sales price, based in part on market prices for DRAM ICs, NAND flash and other component products, which historically have constituted a substantial portion of the total cost of our memory subsystems and in recent periods have constituted the vast majority of the cost of resales of these products to customers directly. Our average sales prices may decline due to several factors, including overcapacity in the worldwide supply of these components, increased manufacturing efficiencies, implementation of new manufacturing processes and expansion of manufacturing capacity by component suppliers.

Once our prices with a customer are negotiated, we are generally unable to revise pricing with that customer until our next regularly scheduled price adjustment. As a result, if market prices for essential components increase, we generally cannot pass the price increases on to our customers for products purchased under an existing purchase order. Consequently, we are exposed to the risks associated with the volatility of prices for these components and our cost of sales could increase and our gross margins could decrease in the event of price increases. Alternatively, if there are declines in the prices of these components, we may need to reduce our selling prices for subsequent purchase orders, which may result in a decline in our net product revenues.

In addition, since a large percentage of our product revenues are to a small number of customers, these customers have exerted, and we expect they will continue to exert, pressure on us to make price concessions. If not offset by increases in volume of sales or the sales of newly-developed products with higher margins, decreases in average sales prices could have a material adverse effect on our business and operating results.

Our manufacturing operations involve significant risks.

We maintain a manufacturing facility in the PRC at which we produce most of our products. This internal manufacturing process allows us to utilize our own materials and processes, protect our intellectual property and develop the technology for manufacturing. However, our manufacturing activities require significant resources to maintain. For instance, we must continuously review and improve our manufacturing processes in order to maintain satisfactory manufacturing yields and product performance, try to lower our costs and otherwise remain competitive. As we

manufacture more complex products, the risk of encountering delays, difficulties or higher costs increases. The start-up costs associated with implementing new manufacturing technologies, methods and processes, including the purchase of new equipment and any resulting manufacturing delays and inefficiencies, could negatively impact our results of operations.

Additionally, we could experience a prolonged disruption, material malfunction, interruption or other loss of operations at our manufacturing facility or we may need to add manufacturing capacity to satisfy any increased demand for our products. Under these circumstances, we may be forced to rely on third parties for our manufacturing needs, which could increase our manufacturing costs, decreases our profit margin, decrease our control over manufacturing processes, limit our ability to meet customer demand and delay new product development until we could secure a relationship with a third-party manufacturer, which we may not be able to do in a timely manner, on acceptable terms or at all. If any of these risks were to occur, our operations, performance and customer relationships could be severely harmed. In addition, we may need to expand our existing manufacturing facility or establish a new facility. Any need to expand or replace our manufacturing facility would be expensive and time-consuming and could also subject us to factory audits by our customers that could themselves result in delays, unexpected costs or customer losses if we cannot meet the standards of any such audits. Further, we may not be able to replace or increase our manufacturing capacity at all. The occurrence of any of these events could have a material adverse effect on our business, financial condition and results of operations.

We depend on third parties to design and manufacture custom components for some of our products and the component products we resell to customers directly, which exposes us to risks.

Significant customized components, such as ASICs, that are used in HyperCloud and some of our other products, as well as all of the component products we resell, are designed and manufactured by third parties. The ability and willingness of third parties to enter into these engagements with us and perform in accordance with these engagements is largely outside of our control. If one or more of our design or manufacturing partners experiences a manufacturing disruption, fails to dedicate adequate resources to the production of our products or the components we purchase for resale, experiences financial instability or otherwise fails to perform its obligations to us in a timely manner or at satisfactory quality levels, our ability to bring products to market or deliver products to our customers, as well as our reputation, could suffer and our business and prospects could be materially harmed. In the event of any failure by our component manufacturers, we may have no readily available alternative source of supply for these components, since, in our experience, the lead time needed to establish a relationship with a new design or manufacturing partner is substantial, and the time for our OEM customers to re-qualify our products with components from a new vendor is also significant. Additionally, if we need to replace one of our component manufacturers, we may not be able to do so in a timely manner, on acceptable terms or at all. Further, we may not be able to redesign the customized components used in our products to be manufactured by a new manufacturer, in which case we could infringe on the intellectual property of our current design or manufacturing partner when we redesign the custom components. Such an occurrence could force us to stop selling certain of our products or the component products we resell or could expose us to lawsuits, license payments or other liabilities.

Our dependence on third-party manufacturers exposes us to many other risks, including, among others: reduced control over delivery schedules, quality, manufacturing yields and costs; the potential lack of adequate capacity during periods of excess demand; limited warranties on products supplied to us; and potential misappropriation of our intellectual property or the intellectual property of others. We are dependent on our manufacturing partners to manufacture components with acceptable quality and manufacturing yields, to deliver these components to us on a timely basis and to allocate a portion of their manufacturing capacity sufficient to meet our needs. However, these component manufacturers may not be able to achieve or maintain acceptable yields or deliver sufficient quantities of components on a timely basis or at an acceptable cost. Additionally, our manufacturing partners may not continue to devote adequate resources to produce our products or the component products we resell, or continue to advance the process design technologies on which the qualification and manufacturing of our products or the component products we resell are based. Further, we could be exposed to liability if component manufacturers are found to infringe the intellectual property rights of others and we are held responsible for any such infringement. Any of these risks could limit our ability to meet customer demand and materially adversely affect our business and operating results.

If our products or the component products we resell do not meet quality standards or are defective or used in defective systems, we may be subject to quality holds, warranty claims, recalls or liability claims.

Our customers require our products and the component products we resell to meet strict quality standards. If these products do not meet these standards, our customers may discontinue purchases from us until we are able to resolve the quality issues that are causing us to not meet the standards, which we may not be able to do. These "quality holds" could be costly and time-consuming to resolve and could have a significant adverse impact on our revenues and operating results.

If these products are defectively manufactured, contain defective components or are used in defective or malfunctioning systems, we could be subject to warranty and product liability claims, product recalls, safety alerts or advisory notices.

Although we generally attempt to contractually limit our exposure to incidental and consequential damages, if these contract provisions are not enforced or if liabilities arise that are not effectively limited, we could incur substantial costs in defending or settling product liability claims. While we currently have product liability insurance coverage, it may not provide coverage under certain circumstances and it may not be adequate to satisfy claims made against us. We also may be unable to maintain insurance in the future at satisfactory rates or in adequate amounts.

Warranty and product liability claims, product recalls, safety alerts or advisory notices, regardless of their coverage by insurance or their ultimate outcome, could have a material adverse effect on our business, financial condition and ability to attract and retain customers.

We may become involved in non-patent related litigation and administrative proceedings that may materially adversely affect us.

From time to time, we may become involved in various legal proceedings relating to matters incidental to the ordinary course of our business, including commercial, employment, class action, whistleblower and other litigation and claims, as well as governmental and other regulatory investigations and proceedings. Such matters can be time-consuming, divert management's attention and resources and cause us to incur significant expenses. Furthermore, because litigation is inherently unpredictable, the results of these actions could subject us to monetary damages or other liabilities and have a material adverse effect on our business, results of operations and financial condition.

Our indemnification obligations for the infringement by our products of the intellectual property rights of others could require us to pay substantial damages.

As is common in our industry, we have a number of agreements in which we have agreed to defend, indemnify and hold harmless our customers and suppliers from damages and costs that may arise from the infringement by our products of third-party patents, trademarks or other proprietary rights. The scope of these indemnities varies, but may, in some instances, include indemnification for damages and expenses, including attorneys' fees. The term of these indemnification obligations is generally perpetual after execution of an agreement and the maximum potential amount of future payments we could be required to make under these indemnification obligations is often unlimited. Any indemnification claims by customers could require us to incur significant legal fees and could potentially result in our payment of substantial damages, and our insurance generally would not cover these fees or damages. As a result, the occurrence of any of these risks could result in a material adverse effect on our business and results of operations.

We depend on a few key employees, and our business could be harmed if we lose the services of any of these employees or are unable to attract and retain other qualified personnel.

To date, we have been highly dependent on the experience, relationships and technical knowledge of certain key employees. We believe that our future success will be dependent on our ability to retain the services of these key employees, develop their successors and properly manage the transition of their roles should departures occur. The loss of these key employees or their inability to provide their services could delay the development and introduction of new or enhanced products, negatively impact our ability to sell our existing products, limit our ability to pursue our other business goals and strategies and otherwise harm our business. We do not have employment agreements with any of

these key employees other than Chun K. Hong, our President, Chief Executive Officer and Chairman of our board of directors. We maintain "Key Man" life insurance on Mr. Hong, but we do not carry "Key Man" life insurance on any of our other key employees.

Our future success also depends on our ability to attract, retain and motivate highly skilled engineering, manufacturing and other technical and sales personnel. Competition for experienced personnel is intense. We may not be successful in attracting new engineers or other technical personnel or in retaining or motivating our existing personnel. If we are unable to hire and retain engineers with the skills necessary to keep pace with the evolving technologies in our markets, our ability to continue to provide our existing products and to develop new or enhanced products will be negatively impacted, which would harm our business. In addition, a general shortage of experienced engineers could lead to increased recruiting, relocation and compensation costs to attract such engineers, which may exceed our expectations and resources. These increased costs may make hiring new engineers difficult or may increase our operating expenses.

A significant portion of our workforce consists of contract personnel. We invest considerable time and expense to train these contract personnel; however, they typically may terminate their relationships with us at any time. As a result, we may experience high turnover rates in this contract personnel workforce, which may require us to expend additional resources to attract, train and retain replacements. Additionally, if we convert any of these contract personnel into permanent employees, we may have to pay finder's fees to the contract agency. These risks associated with our contract personnel workforce may involve increased costs or delays or failures in meeting customer requirements or developing new or enhanced products, any of which could materially adversely affect our business and operating performance.

We rely on our internal and third-party sales representatives to market and sell our products and the component products we resell, and any failure by these representatives to perform as expected could reduce our sales.

We primarily market and sell our products and the component products we resell to customers directly through a direct sales force and a network of independent sales representatives. We have expended significant resources to build our internal sales and marketing function, but compared to many of our competitors, we have relatively little experience creating a sales and marketing platform and developing a team to implement it. We may be unsuccessful in these efforts.

These sales representatives generally may terminate their relationships with us at any time. As a result, our performance depends in part on our ability to retain existing and attract additional sales representatives that will be able to market and support our products or the component products we resell effectively, especially in markets in which we have not previously distributed these products. Our efforts to attract, train and retain these sales representatives to be knowledgeable about our industry, products and technologies are costly and time-consuming. If these efforts fail, our investments in these sales representatives may not produce the expected benefits and our ability to market and sell our products or the component products we resell may be limited, which could materially harm our financial condition and operating results. Further, our reliance upon independent sales representatives subjects us to risks, as we have very little control over their activities and they are generally free to market and sell other, potentially competing products. As a result, these independent sales representatives could devote insufficient time or resources to marketing our products or the component products we resell, could market them in an ineffective manner or could otherwise be unsuccessful in selling adequate quantities of these products.

Economic, geographic and political and other risks associated with our international sales and operations expose us to significant risks.

Part of our growth strategy involves making sales to foreign corporations and delivering products to facilities located in foreign countries. To facilitate this process and to meet the long-term projected demand for our products, we have established a manufacturing facility in the PRC, which performs most of our worldwide manufacturing activities. Selling and manufacturing in foreign countries subjects us to additional risks not present with our domestic operations, as we are operating in business and regulatory environments in which we have limited experience. Further, the geographic distance from our headquarters in Irvine, California, compounds the difficulties of running a manufacturing operation in the PRC. For instance, we may not be able to maintain the desired amount of control over production capacity and timing, inventory levels, product quality, delivery schedules, manufacturing yields and costs. Moreover, we will need to continue to overcome language and cultural barriers to effectively conduct these international operations. Our failure to meet applicable regulatory requirements or overcome cultural barriers could result in legal consequences or production delays and increased turnaround times, which would adversely affect our business. In addition, changes to the labor laws of the PRC could increase the cost of employing the local workforce. The increased industrialization of the PRC, as well as general economic and political conditions in the PRC, could also increase the cost of local labor or the other costs of doing business in the PRC. Any of these factors could negatively impact the cost savings we experience from locating our manufacturing facility in the PRC. Additionally, our management has limited experience creating or overseeing foreign operations, and the ongoing management of our PRC facility may require our management team to divert substantial amounts of their time and attention, particularly if we encounter operational, legal or cultural difficulties or disruptions at our PRC facility.

To date, all of our net product revenues have been denominated in U.S. dollars. In the future, however, some of our net product revenues may be denominated in Chinese Renminbi ("RMB"). The Chinese government controls the procedures by which RMB is converted into other currencies, which generally requires government consent. As a result, RMB may not be freely convertible into other currencies at all times. If the Chinese government institutes changes in currency conversion procedures or imposes additional restrictions on currency conversion, our operations and our operating results could be negatively impacted. In addition, Chinese law imposes restrictions on the movement of funds outside of the PRC. If we need or decide to repatriate funds from our Chinese operations, we would be required to comply with the procedures and regulations of applicable Chinese law. Any failure to comply with these procedures and regulations could adversely affect our liquidity and financial condition. Further, if we are able to repatriate funds from our Chinese operations, these funds would be subject to U.S. corporate income tax. In addition, fluctuations in the exchange rate between RMB and U.S. dollars may adversely affect our expenses and results of operations, the value of our assets and liabilities and the comparability of our period-to-period results.

In addition, international turmoil and the threat of future terrorist attacks, both domestically and internationally, have contributed to an uncertain political and economic climate, both in the United States and globally, and have negatively impacted the worldwide economy. The economies of the PRC and other countries in which we make sales have been highly volatile in the recent past, resulting in significant fluctuations in local currencies and other instabilities. These conditions could continue or worsen, which could adversely affect our foreign operations and some of our customers or suppliers and our performance.

Our international sales are subject to a number of additional risks, including regulatory risks, timing and availability of export licenses, difficulties in accounts receivable collections, difficulties in managing distributors, lack of a significant local sales presence, difficulties in obtaining governmental approvals, compliance with a wide variety of complex foreign laws and treaties and potentially adverse tax consequences. In addition, the United States or foreign countries may implement quotas, duties, tariffs, taxes or other charges or restrictions upon the importation or exportation of our products or the products we resell to customers directly, leading to a reduction in sales and profitability in that country. This risk of increased trade barriers or charges has become more pronounced following the results of the recent U.S. presidential election, as the trade policies of the current U.S. presidential administration, including withdrawal from the Trans-Pacific Partnership and proposed revision to the North American Free Trade Agreement, could threaten or otherwise have a significant negative effect on our ability to continue to conduct our international operations in the manner and at the costs as we have in the past. Any increased costs or regulatory obstacles with respect to our

international operations, including our manufacturing facility in the PRC and our international sales, could have a material adverse effect on our business, financial condition and prospects for growth.

Our operations could be disrupted by power outages, natural disasters or other factors.

Due to the geographic concentration of our manufacturing operations in our PRC facility and our small number of component suppliers, including Samsung for the majority of the component products we resell to customers directly, a disruption resulting from equipment or power failures, quality control issues, human errors, government intervention or natural disasters, including earthquakes and floods, could require significant costs to repair and could interrupt or interfere with the manufacture of our products or the component products we resell to customers directly and cause significant delays in product shipments, which could harm our customer relationships, financial condition and results of operations. In July 2014, our PRC facility suffered water damage as a result of heavy rain and floods, which forced us to temporarily halt manufacturing at the facility while necessary repairs or replacements were made to the facility and to certain of our manufacturing equipment. This incident caused us to incur additional expenses, as we shifted our manufacturing activities to a third-party facility in the PRC to mitigate the disruption in product shipments to our customers. While we believe we were able to contain this disruption, we may not be able to secure alternative manufacturing capabilities if manufacturing at the PRC facility is disrupted in the future, in which case our relationships with our customers could be materially harmed. Additionally, while we were able to favorably resolve our claim with our insurance carrier with respect to the damage to our facility cause by the July 2014 incident, we may not experience the same outcome if a similar event occurs in the future, in which case we would be forced to bear the significant costs to repair any damage to our manufacturing equipment and facility.

Difficulties with our global information technology systems, including any unauthorized access, could harm our business.

Any failure or malfunctioning of our global information technology systems, errors or misuse by system users, difficulties in migrating stand-alone systems to our centralized systems or inadequacy of the systems in addressing the needs of our operations could disrupt our ability to timely and accurately manufacture and ship products, divert management's and key employees' attention away from other business matters and involve significant costs and other resources to repair or otherwise resolve, any of which could have a material adverse effect on our business, financial condition and results of operations. Any such event could also disrupt our ability to timely and accurately process, report and evaluate key operating metrics and key components of our results of operations, financial position and cash flows and could adversely affect our ability to complete other important business process, such as maintenance of our disclosure controls and procedures and evaluation of our internal control over financial reporting.

We store data about our business, including certain customer data, information about our and our customer's intellectual property and other proprietary information, on our global information technology systems. While our systems includes security measures designed to prevent unauthorized access, third parties may circumvent these measures and gain unauthorized access to our systems. This unauthorized access could be the result of employee error, employee malfeasance or other causes, including intentional misconduct by computer hackers. Because the techniques used to gain unauthorized access to information technology systems evolve frequently and generally are not recognized until successful, we may be unable to anticipate these techniques or to implement adequate preventative measures. Any security breach could result in disruption to our business, misappropriation or loss of data, significant resources to correct, loss of confidence in us by our customers, damage to our reputation, legal liability and a negative impact on our performance.

Our failure to comply with environmental and other applicable laws and regulations could subject us to significant fines and liabilities or cause us to incur significant costs.

We are subject to various and frequently changing U.S. federal, state and local and foreign laws and regulations relating to the protection of the environment, including laws governing the discharge of pollutants into the air and water, the management and disposal of hazardous substances and wastes and the clean-up of contaminated sites. In particular, some of our manufacturing processes may require us to handle and dispose of hazardous materials from time to time. For example, in the past our manufacturing operations have used lead-based solder in the assembly of our products. Today,

we use lead-free soldering technologies in our manufacturing processes, as this is required for products entering the European Union. We could incur substantial costs, including clean-up costs, civil or criminal fines or sanctions and third-party claims for property damage or personal injury, as a result of violations of or noncompliance with these and other environmental laws and regulations. Although we have not incurred significant costs to date to comply with these laws and regulations, new laws or changes to current laws and regulations to make them more stringent could require us to incur significant costs to remain in compliance.

We are also subject to a variety of laws and regulations relating to other matters, including workplace health and safety, labor and employment, foreign business practices, public reporting and taxation, among others. It is difficult and costly to manage the requirements of every authority having jurisdiction over our various activities and to comply with their varying standards. Any changes to existing regulations or adoption of new regulations may result in significant additional expense to us and our customers. Further, our failure to comply with any applicable laws and regulations may result in a variety of administrative, civil and criminal enforcement measures, including monetary penalties or imposition of sanctions or other corrective requirements, any of which could materially adversely affect our reputation and our business.

Regulations related to "conflict minerals" may cause us to incur additional expenses and could limit the supply and increase the cost of certain metals used in manufacturing our products.

In August 2012, the SEC adopted rules requiring disclosure of specified minerals, known as conflict minerals, that are necessary to the functionality or production of products manufactured or contracted to be manufactured by public companies. The rules require companies to verify and disclose whether or not such minerals, as used in a company's products or their manufacture, originate from the Democratic Republic of Congo or an adjoining country. Because our products contain certain conflict minerals and we or our manufacturers use these conflict minerals in the manufacture of our products, we are required to comply with these disclosure rules. To comply with the rules, we are required to conduct a reasonable country of origin inquiry each year and, depending on the results of that inquiry, we may be required to exercise due diligence on the source and chain of custody of conflict minerals contained in or used to manufacture our products. Such due diligence must conform to a nationally or internationally recognized due diligence framework. We are also required to file a disclosure report with the SEC of each year relating to our conflict mineral use.

The due diligence activities required to determine the source and chain of custody of minerals contained in our products or used in their manufacture are time -consuming and may result in significant costs. Due to the size and complexity of our supply chain, we face significant challenges in verifying the origins of the minerals used in our products. Further, these rules could affect the availability in sufficient quantities and at competitive prices of certain minerals used in our products and their manufacture, which could result in increased material and component costs and additional costs associated with potential changes to our products, processes or sources of supply. Additionally, if we are unable to sufficiently verify the origin of the minerals used in our products through the due diligence measures that we implement, we may not be able to satisfy customers who require that our products be certified as "conflict-free," which could place us at a competitive disadvantage.

Our internal control over financial reporting may not be effective, which could have a significant and adverse effect on our business.

Section 404 of the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the SEC, which we collectively refer to as Section 404, require us to evaluate our internal control over financial reporting and require management to report on the effectiveness of this internal control as of the end of each year. Effective internal control is necessary for us to produce reliable financial reports and is important in our effort to prevent financial fraud. In the course of our Section 404 evaluations, we or our independent registered public accounting firm may identify significant deficiencies or material weaknesses in our internal control over financial reporting. If we fail to maintain an effective system of internal control over financial reporting or if management or our independent registered public accounting firm discover material weaknesses, we may be unable to produce reliable financial reports or prevent fraud, which could harm our financial condition and results of operations, result in a loss of investor confidence and negatively impact our stock price. Further, our Section 404 evaluations may lead us to conclude that enhancements, modifications or changes to our internal control over financial reporting are necessary or desirable. Implementing any such changes would divert the attention of management, could involve significant time and costs and may negatively impact our financial results.

If we do not effectively manage any future growth we may experience, our resources, systems and controls may be strained and our results of operations may suffer.

Any future growth we may experience could strain our resources, management, information and telecommunication systems and operating and financial controls. To manage future growth effectively, including any expansion of volume in our manufacturing facility in the PRC, we must be able to improve and expand our systems and controls. We may not be able to do this in a timely or cost-effective manner. In addition, our officers have relatively limited experience in managing a rapidly growing business. As a result, they may not be able to manage any future growth we may experience. Any failure to manage any growth we may experience or improve or expand our existing systems and controls, or unexpected difficulties in doing so, could harm our business.

If we acquire businesses or technologies or pursue other strategic transactions in the future, these transactions could disrupt our business and harm our operating results and financial condition.

We evaluate opportunities to acquire businesses or technologies or pursue other strategic transactions, including collaboration or joint development arrangements such as our JDLA with Samsung that might complement our current product offerings or enhance our intellectual property portfolio or technical capabilities. We have no experience acquiring other businesses or technologies. Acquisitions and other strategic transactions entail a number of risks that could adversely affect our business and operating results, including, among others:

- difficulties in integrating the operations, technologies or products of acquired companies or working with third parties with which we may partner on joint development or collaboration relationships;
- the diversion of management's time and attention from the daily operations of the business;
- insufficient increases in revenues to offset increased expenses associated with an acquisition or strategic transaction;
- difficulties retaining business relationships with our existing suppliers and customers or the suppliers and customers of an acquired company;
- overestimation of potential synergies or a delay in realizing these synergies;
- entering markets in which we have no or limited experience and in which competitors have stronger market positions;
- the potential loss of key employees of our Company or an acquired company;
- exposure to contingent liabilities of an acquired company;
- depletion of cash resources to fund an acquisition or other strategic transaction, or dilution of existing stockholders or increased leverage relative to our earnings or to our equity capitalization if we issue debt or equity securities to fund the transaction;
- adverse tax consequences; and
- incurrence of material charges, such as depreciation, deferred compensation charges, in-process research and development charges, the amortization of amounts related to deferred stock-based compensation expense and identifiable purchased intangible assets or impairment of goodwill.

If any of these risks were to occur, we may not be able to realize the intended benefits of an acquisition or strategic transaction and our operating results, financial condition and business prospects could be materially negatively affected.

Risks Related to Our Common Stock

Our results of operations fluctuate significantly and are difficult to predict, and any failure to meet investor or analyst expectations could cause the price of our common stock to decline.

Our operating results have fluctuated significantly in the past, and we expect they will continue to fluctuate from quarter-to-quarter and year-to-year in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these quarterly and annual fluctuations include, among others, the other risk factors described in this Item 1A. Due to the various factors described herein and others, the results of any prior quarterly or annual periods should not be relied upon as an indication of our future operating performance. If our quarterly results of operations fall below the expectations of securities analysts or investors, the price of our common stock could decline substantially. As a result of the significant fluctuations of our operating results in prior periods, period-to-period comparisons of our operating results may not be meaningful and investors in our common stock should not rely on these comparisons.

Our principal stockholders have significant voting power and may take actions that may not be in the best interest of our other stockholders.

As of August 10, 2017, 8.1% of our outstanding common stock was held by our directors and officers, including 7.8% held by Chun K. Hong, our Chief Executive Officer and Chairman of our board of directors. As a result, Mr. Hong has the ability to exert substantial influence over all matters requiring approval by our stockholders, including the election and removal of directors, any proposed merger, consolidation or sale of all or substantially all of our assets and other significant corporate transactions. This concentration of control could be disadvantageous to other stockholders with interests different from those of Mr. Hong.

Anti-takeover provisions under our charter documents and Delaware law, as well as our recently adopted rights agreement, could delay or prevent a change of control and could also limit the market price of our common stock.

Our certificate of incorporation and bylaws contain provisions that could delay or prevent a change of control of our Company or changes in our board of directors that our stockholders might consider favorable. In addition, these anti-takeover provisions could limit the price that investors would be willing to pay for shares of our common stock. The following are examples of the anti-takeover provision that are included in our certificate of incorporation and bylaws as currently in effect:

- our board of directors is authorized, without prior stockholder approval, to designate and issue preferred stock, commonly referred to as “blank check” preferred stock, which may have rights senior to those of our common stock;
- stockholder action by written consent is prohibited;
- nominations for election to our board of directors and the submission of matters to be acted upon by stockholders at a meeting are subject to advance notice requirements; and
- our board of directors is expressly authorized to make, alter or repeal our bylaws.

In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which may prohibit certain business combinations with stockholders owning 15% or more of our outstanding voting stock. Further, in April 2017, we adopted a rights agreement that would, under certain specified circumstances and for so long as the rights issued under the rights agreement are outstanding, give the holders of our common stock the right to acquire additional shares of our capital stock, which would make it more difficult for a third party to acquire a significant

percentage of our outstanding capital stock or attempt a hostile takeover of our Company. These and other provisions in our certificate of incorporation and bylaws and of Delaware law, as well as the existence of our rights agreement, could make it more difficult for stockholders or potential acquirers to obtain control of our board of directors or initiate actions that are opposed by our board of directors, including a merger, tender offer, proxy contest or other change of control transaction involving our Company. Any delay or prevention of a change of control transaction or changes in our board of directors could prevent the consummation of a transaction in which our stockholders could receive a substantial premium over the then-current market price for our common stock.

The price and trading volume of our common stock has and may continue to fluctuate significantly.

Our common stock has been publicly traded since November 2006. The price and trading volume of our common stock are volatile and have in the past fluctuated significantly. This volatility could continue, in which case an active trading market in our common stock may never be sustained and stockholder may not be able to sell their shares at the desired time or the desired price. The market price at which our common stock trades may be influenced by many factors, including, among others, the following:

- our operating and financial performance and prospects, including our ability to achieve and sustain profitability in the future;
- investor perception of us and the industry in which we operate;
- the availability and level of research coverage of and market-making in our common stock;
- changes in earnings estimates or buy/sell recommendations by analysts;
- any financial projections we may provide to the public, any changes to these projections or our failure to meet these projections;
- our announcement of significant strategic transactions or relationships or the initiation of legal proceedings, including patent infringement actions;
- the results of legal proceedings in which we are involved;
- sales of newly issued common stock or other securities or the perception that such sales may occur; and
- general political, economic and market conditions, including volatility or uncertainty in these conditions.

In addition, shares of our common stock and the public stock markets in general have experienced, and may continue to experience, extreme price and trading volume volatility, at times irrespective of the state of the business of any particular company. These fluctuations may adversely affect the market price of our common stock.

In 2007, following a drop in the market price of our common stock, securities litigation was initiated against us. Given the historic volatility of our securities and securities in our industry, we may become engaged in this type of litigation again in the future. Securities litigation, like other types of litigation, is expensive and time-consuming and could subject us to unfavorable results.

We do not currently intend to pay dividends on our common stock, and any return to investors is expected to come, if at all, only from potential increases in the price of our common stock.

We intend to use all available funds to finance our operations. Accordingly, while payment of dividends rests within the discretion of our board of directors, no cash dividends on our common shares have been declared or paid by us in the past and we have no intention of paying any such dividends in the foreseeable future. Any return to investors is expected to come, if at all, only from potential increases in the price of our common stock.

We may not be able to maintain our NASDAQ listing.

During 2015 and into early 2016, as well as during April and early May of 2017, there have been periods in which we were not compliant with various applicable continued listing standards of the NASDAQ Stock Market ("NASDAQ"), including NASDAQ's rule requiring that the bid price of our common stock close at or above a minimum of $1.00 per share. Although we received compliance letters from NASDAQ notifying us that we had regained compliance with the applicable continued listing requirements and we believe we are currently in compliance with all such requirements for the NASDAQ Capital Market, we may again fail to comply with these requirements in the future. In that case, we would receive additional deficiency letters from NASDAQ and our common stock could be delisted from trading on the NASDAQ Capital Market. Such a delisting could cause our common stock to be classified as a "penny stock," among other potentially detrimental consequences, any of which could significantly impact our stockholders' ability to sell their shares of our common stock or to sell these shares at a price that a stockholder may deem acceptable.

Item 6. Exhibits.

The information required by this Item 6 is set forth on the Exhibit Index that immediately follows the signature page to this report and is incorporated herein by reference.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 15, 2017

NETLIST, INC.
a Delaware corporation
(Registrant)

By: /s/ Chun K. Hong

Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

By: /s/ Gail M. Sasaki

Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit No.	Description
3.1+	Restated Certificate of Incorporation of Netlist, Inc.
3.1.1+	Certificate of Amendment to the Restated Certificate of Incorporation of Netlist, Inc.
3.1.2+	Certificate of Designation of the Series A Preferred Stock of Netlist, Inc.
3.2	Amended and Restated Bylaws of Netlist, Inc. (incorporated by reference to exhibit number 3.1 of the registrant's Current Report on Form 8-K filed with the SEC on December 20, 2012).
4.1	Rights Agreement, dated as of April 17, 2017, by and between the Company and Computershare Trust Company, N.A., as rights agent (incorporated by reference to exhibit number 4.1 of the registrant's Current Report on Form 8-K filed with the SEC on April 17, 2017).
10.1+	Amendment to Loan and Security Agreement, dated April 12, 2017, by and between Netlist, Inc. and Silicon Valley Bank.
10.2+§	Investment Agreement, dated May 3, 2017, by and between Netlist, Inc. and TR Global Funding V, LLC.
10.3+	Security Agreement, dated May 3, 2017, by and between Netlist, Inc. and TR Global Funding V, LLC.
10.4+	Intercreditor Agreement, dated May 3, 2017, by and between SVIC No. 28 New Technology Business Investment L.L.P. and TR Global Funding V, LLC and consented and agreed to by Netlist, Inc.
10.5+	Intercreditor Agreement, dated May 3, 2017, by and between Silicon Valley Bank and TR Global Funding V, LLC and consented and agreed to by Netlist, Inc.
10.6+	Intercreditor Agreement, dated April 20, 2017, by and between SVIC No. 28 New Technology Business Investment L.L.P and Silicon Valley Bank and consented and agreed to by Netlist, Inc.
31.1+	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2+	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities and Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32*	Certification by Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS+	XBRL Instance Document
101.SCH+	XBRL Taxonomy Extension Schema Document
101.CAL+	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB+	XBRL Taxonomy Extension Label Linkbase Document
101.PRE+	XBRL Taxonomy Extension Presentation Linkbase Document
101.DEF+	XBRL Taxonomy Extension Definition Linkbase Document

+ Filed herewith.
* Furnished herewith.

§ Confidential treatment has been requested with respect to portions of this exhibit pursuant to Rule 24b-2 under the Exchange Act, and these confidential portions have been redacted from the version of this agreement that is filed with this report. A complete copy of this exhibit, including the redacted portions, has been separately furnished to the SEC.

Exhibit 3.1

RESTATED CERTIFICATE OF INCORPORATION
OF
NETLIST, INC.
a Delaware corporation

Netlist, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), hereby certifies as follows:

1. That the corporation was originally incorporated on June 12, 2000 under the name Netlist, Inc. pursuant to the DGCL.

2. This Restated Certificate of Incorporation has been duly adopted by the corporation's board of directors (the "Board of Directors") and stockholders in accordance with the applicable provisions of Section 242 and 245 of the DGCL. In accordance with Section 103(d) of the DGCL, this Restated Certificate of Incorporation is not to become effective until November [ ], 2006.

3. The text of the Certificate of Incorporation of this corporation is hereby amended and restated in its entirety to read as follows:

ARTICLE I

The name of the corporation is: Netlist, Inc.

ARTICLE II

The address of the corporation's registered office in the State of Delaware is 1209 Orange Street, Wilmington, DE 19808, New Castle County. The name of its registered agent at such address is the Corporation Trust Company.

ARTICLE III

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

(A) *Classes of Stock.* The corporation is authorized to issue two classes of stock to be designated, respectively, "Serial Preferred Stock" and "Common Stock." The total number of shares of stock which the corporation is authorized to issue is One Hundred Million (100,000,000) shares consisting of Ten Million (10,000,000) shares of Serial Preferred Stock, with a par value of $0.001 per share, and Ninety Million (90,000,000) shares of Common Stock, with a par value of $0.001 per share.

(B) *Rights, Preferences and Restrictions of Serial Preferred Stock.* The Serial Preferred Stock may be issued from time to time in one or more series. The Board of Directors is authorized to fix the number of shares and to determine or (so long as no shares of such series are then outstanding) alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares (a "Preferred Stock Designation") and as may be permitted by the DGCL. The rights, privileges, preferences and restrictions of any such additional series may be subordinated to, *pari passu* with, or senior to any of those of any present or future class or series of capital stock of the corporation. The Board of Directors is also authorized to decrease the number of shares of any series, prior or subsequent to the issue of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting any decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

(C) *Rights, Preferences and Restrictions of Common Stock.* The rights, preferences, privileges, and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. *Dividend Rights.* Subject to the rights of each series of Serial Preferred Stock which may from time to time come into existence, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of the corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

2. *Liquidation Rights.* Upon the liquidation, dissolution or winding up of the corporation, subject to the rights of each series of Serial Preferred Stock which may from time to time come into existence, the holders of Common Stock shall receive all of the remaining assets of the corporation.

3. *Voting Rights.* Each holder of Common Stock shall have the right to one vote per share of Common Stock and shall be entitled to vote upon such matters and in such manner as may be provided by law.

4. *Redemption.* The Common Stock is not redeemable. This Section 4 is not intended to, and shall not, prohibit the purchase of shares of Common Stock from the holder thereof pursuant to an agreement with such holder.

ARTICLE V

The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Restated Certificate of Incorporation or the Bylaws of the corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation. The election of directors need not be by written ballot, unless the Bylaws so provide.

ARTICLE VI

Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

ARTICLE VII

To the fullest extent permitted by the DGCL, as the same exists or may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Each person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to, or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such person is or was a director or executive officer of the corporation or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, shall be indemnified and held harmless by the corporation to the fullest extent permitted by the DGCL.

The corporation shall have the power to indemnify and hold harmless, to the extent permitted by the DGCL, as the same exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the corporation or is or was serving at the request of the corporation as a

director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or non-profit entity, including service with respect to employee benefit plans, against all liability and loss suffered and expenses reasonably incurred by such person in connection with any such proceeding.

The rights and authority conferred in this Article VII shall not be exclusive of any other right which any person may otherwise have or hereafter acquire. Any repeal or modification of the foregoing provisions of this Article VII shall not adversely affect any right or protection of a director of the corporation existing at the time of, or increase the liability of any director of the corporation with respect to any acts or omissions occurring prior to, such repeal or modification.

ARTICLE VIII

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, repeal, rescind, alter or amend in any respect the Bylaws, and to confer in the Bylaws powers and authorities upon the directors of the corporation in addition to the powers and authorities expressly conferred upon them by statute.

ARTICLE IX

The corporation reserves the right to adopt, repeal, rescind, alter or amend in any respect any provision contained in this Restated Certificate of Incorporation in the manner now or hereafter prescribed by applicable law, and all rights conferred on stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the corporation has caused this Restated Certificate of Incorporation to be signed by Chun K. Hong, its President, Chief Executive Officer and Chairman of the Board of Directors, as of this day of November, 2006.

Chun K. Hong
President, Chief Executive Officer and
Chairman of the Board of Directors

Exhibit 3.1.1

CERTIFICATE OF AMENDMENT
TO THE
RESTATED CERTIFICATE OF INCORPORATION
OF
NETLIST, INC.

Netlist, Inc., a corporation organized and existing under the laws of the State of Delaware (the " Corporation "), does hereby certify as follows:

1. The original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 12, 2000 and the Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on November 20, 2006.

2. Section (A) of Article IV of the Restated Certificate of Incorporation of the Corporation is amended and restated to read in its entirety to read as follows:

(A) *Classes of Stock.* The corporation is authorized to issue two classes of stock to be designated, respectively, "Serial Preferred Stock" and "Common Stock." The total number of shares of stock which the corporation is authorized to issue is One Hundred Sixty Million (160,000,000) shares consisting of Ten Million (10,000,000) shares of Serial Preferred Stock, with a par value of $0.001 per share, and One Hundred Fifty Million (150,000,000) shares of Common Stock, with a par value of $0.001 per share.

3. This Certificate of Amendment to the Restated Certificate of Incorporation has been duly approved by the Board of Directors and the stockholders of this Corporation in accordance with Sections 141 and 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Restated Certificate of Incorporation to be executed on June 9, 2017.

NETLIST, INC.

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: Vice President, Chief Financial Officer

CERTIFICATE OF DESI GNATION
OF THE
SERIES A PREFERRED STOCK
OF
NETLIST, INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

The undersigned officers of Netlist, Inc., a Delaware corporation (the " Corporation "), DO HEREBY CERTIFY:

That, pursuant to the authority conferred upon the Board of Directors of the Corporation by its Restated Certificate of Incorporation as currently in effect (the " Certificate of Incorporation "), the said Board of Directors, at a duly called meeting held on April 10, 2017, at which a quorum was present and acted throughout, adopted the following resolution, which resolution remains in full force and effect on the date hereof, creating a series of Preferred Stock having a par value of $0.001 per share, designated as Series A Preferred Stock (the " Series A Preferred Stock "), out of the Corporation's authorized shares of preferred stock of the par value of $0.001 per share (the " Preferred Stock "):

RESOLVED, that, pursuant to the authority granted to and vested in the Board of Directors in accordance with applicable law and the provisions of the Certificate of Incorporation, the Board of Directors hereby creates, authorizes and provides for 1,000,000 shares of the Corporation's authorized Preferred Stock to be designated and issued as the " Series A Preferred Stock ," having the relative rights, preferences and limitations that are set forth as follows:

1. Dividends and Distributions .

(A) Subject to the prior and superior rights of the holders of any shares of any other series of Preferred Stock or any other shares of stock of the Corporation ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, each holder of one one-thousandth (1/1,000) of a share (a " Unit ") of Series A Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for that purpose, (i) quarterly dividends payable in cash on the last day of February, May, August and November in each year (each such date being a " Quarterly Dividend Payment Date "), commencing on the first Quarterly Dividend Payment Date after the first issuance of a Unit of Series A Preferred Stock, in an amount per Unit (rounded to the nearest cent) equal to the greater of (a) $0.01 or (b) subject to the provision for adjustment hereinafter set forth, the aggregate per share amount of all cash dividends declared on shares of the Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock, and (ii) subject to the provision for adjustment hereinafter set forth, quarterly distributions (payable in kind) on each Quarterly Dividend Payment Date in an amount per Unit equal to the aggregate per share amount of all non-cash dividends or other distributions (other than a dividend payable

in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise) declared on shares of Common Stock since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a Unit of Series A Preferred Stock. In the event that the Corporation shall at any time after April 17, 2017 (the " Rights Declaration Date ") (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the amount to which the holder of a Unit of Series A Preferred Stock was entitled immediately prior to such event under clause (i) (b) or clause (ii) of the preceding sentence shall be adjusted by multiplying such amount by a fraction (y) the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and (z) the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on Units of Series A Preferred Stock as provided in paragraph (A) above immediately after it declares a dividend or distribution on the shares of Common Stock (other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock, by reclassification or otherwise); provided , however , that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $0.01 per Unit on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and shall be cumulative on each outstanding Unit of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issuance of a Unit of Series A Preferred Stock, unless the date of issuance of such Unit is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such Unit shall begin to accrue from the date of issuance of such Unit, or unless the date of issuance is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of Units of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on Units of Series A Preferred Stock in an amount less than the aggregate amount of all such dividends at the time accrued and payable on such Units shall be allocated pro rata on a Unit-by-Unit basis among all Units of Series A Preferred Stock at the time outstanding. The Board of Directors may fix a record date for the determination of holders of Units of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

2. Voting Rights . The holders of Units of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each Unit of Series A Preferred Stock shall entitle the holder thereof to one vote on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall, at any time after

the Rights Declaration Date, (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock or (iii) combine the outstanding shares of Common Stock into a smaller number of shares, then in each such case the number of votes per Unit to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction (y) the numerator of which shall be the number of shares of Common Stock outstanding immediately after such event and (z) the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in the Certificate of Incorporation or the Bylaws of the Corporation or as required by law, the holders of Units of Series A Preferred Stock and the holders of shares of Common Stock shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

3. Certain Restrictions .

(A) Whenever quarterly dividends or other dividends or distributions payable on Units of Series A Preferred Stock as provided herein are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on outstanding Units of Series A Preferred Stock shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends on, or make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of junior stock;

(ii) declare or pay dividends on, or make any other distributions on, any shares of parity stock, except dividends paid ratably on Units of Series A Preferred Stock and shares of all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of such Units and all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any parity stock, provided , however , that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any junior stock; or

(iv) redeem or purchase or otherwise acquire for consideration any Units of Series A Preferred Stock, or any shares of parity stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such Units and shares of parity stock upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series and classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation, unless the Corporation could, under paragraph (A) of this Section 3, purchase or otherwise acquire such shares at such time and in such manner.

4. Reacquired Shares . Any Units of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such Units shall, upon their cancellation, become authorized but unissued shares (or fractions of shares) of Preferred Stock and may be reissued as part of a new series of Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

5. Liquidation, Dissolution or Winding Up .

(A) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made (i) to the holders of shares of junior stock, unless the holders of Units of Series A Preferred Stock shall have received, subject to adjustment as hereinafter provided in paragraph (B), the greater of either (a) $0.01 per Unit plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not earned or declared, to the date of such payment, or (b) the amount equal to the aggregate per share amount to be distributed to holders of shares of Common Stock, or (ii) to the holders of shares of parity stock, unless simultaneously therewith distributions are made ratably on Units of Series A Preferred Stock and all other shares of such parity stock in proportion to the total amounts to which the holders of Units of Series A Preferred Stock are entitled under clause (i)(a) of this sentence and to which the holders of shares of such parity stock are entitled, in each case upon such liquidation, dissolution or winding up.

(B) In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding shares of Common Stock into a smaller number of shares, then in each such case the aggregate amount to which holders of Units of Series A Preferred Stock were entitled immediately prior to such event pursuant to clause (i)(b) of paragraph (A) of this Section 5 shall be adjusted by multiplying such amount by a fraction (y) the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after such event and (z) the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

6. Consolidation, Merger, *etc* . In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or converted into other stock or securities, cash and/or any other property, then in any such case Units of Series A Preferred Stock shall at the same time be similarly exchanged for or converted into an amount per Unit (subject to the provision for adjustment hereinafter set forth) equal to the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is converted or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on outstanding shares of Common Stock payable in shares of Common Stock, (ii) subdivide outstanding shares of Common Stock, or (iii) combine outstanding Common Stock into a smaller number of shares, then in each such case the amount set forth in the immediately preceding sentence with respect to the exchange or conversion of Units of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction (y) the numerator of which shall be the number of shares of Common Stock that are outstanding immediately after

such event and (z) the denominator of which shall be the number of shares of Common Stock that were outstanding immediately prior to such event.

7. Redemption. The Units of Series A Preferred Stock and shares of Series A Preferred Stock shall not be redeemable.

8. Ranking. The Units of Series A Preferred Stock and shares of Series A Preferred Stock shall rank junior to all other series of the Preferred Stock and to any other class of Preferred Stock that hereafter may be issued by the Corporation as to the payment of dividends and the distribution of assets, unless the terms of any such series or class shall provide otherwise.

9. Fractional Shares. The Series A Preferred Stock may be issued in Units or other fractions of a share, which Units or other fractions shall entitle the holder, in proportion to such holder's Units or other fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

10. Amendment. At any time when any Units of Series A Preferred Stock are outstanding, neither the Certificate of Incorporation of the Corporation nor this Certificate of Designation shall be amended in any manner which would materially alter or change the powers, preferences or special rights of the Units of Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Units of Series A Preferred Stock, voting separately as a class.

11. Certain Definitions. As used in this resolution with respect to the Series A Preferred Stock, the following terms shall have the following meanings:

(A) The term "Common Stock" shall mean the class of stock designated as the common stock, par value $0.001 per share, of the Corporation at the date hereof or any other class of stock resulting from successive changes or reclassification of the common stock.

(B) The term "junior stock" (i) as used in Section 3, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series A Preferred Stock has preference or priority as to dividends and (ii) as used in Section 5, shall mean the Common Stock and any other class or series of capital stock of the Corporation over which the Series A Preferred Stock has preference or priority in any liquidation, dissolution or winding up of the Corporation.

(C) The term "parity stock" (i) as used in Section 3, shall mean any class or series of capital stock of the Corporation hereafter authorized or issued ranking *pari passu* with the Series A Preferred Stock as to dividends and (ii) as used in Section 5, shall mean any class or series of capital stock of the Corporation ranking *pari passu* with the Series A Preferred Stock in any liquidation, dissolution or winding up.

IN WITNESS WHEREOF, Netlist, Inc. has caused this Certificate of Designation to be signed by its Chief Executive Officer and its Secretary this April 17, 2017.

NETLIST, INC.

By: /s/ Chun K. Hong
Name: Chun K. Hong
Title: Chief Executive Officer

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: Secretary

Exhibit 10.1

AMENDMENT
TO
LOAN AND SECURITY AGREEMENT

THIS **AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this "Amendment") is entered into as of April 12, 2017, by and between SILICON VALLEY BANK ("Bank" or "Silicon") and NETLIST, INC., a Delaware corporation ("Borrower"). Borrower's chief executive office is located at 175 Technology Drive, Suite 150, Irvine, CA 92618.

RECITALS

A. Bank and Borrower are parties to that certain Loan and Security Agreement with an Effective Date of October 31, 2009 (as the same may from time to time be amended, modified, supplemented or restated, the "Loan Agreement").

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has advised Bank that Borrower intends to enter into a rights agreement, pursuant to which Borrower's Board of Directors will (i) authorize and declare a dividend of one right (each, a "Right") for each outstanding share of Borrower's common stock to stockholders of record at the close of business on a specified record date, and (ii) authorize the issuance of one Right for each share of Borrower's common stock that may be issued by Borrower after the record date but before the expiration of the term of the Rights, which is expected to be no more than 12 months (collectively, the "Rights Transaction"). Each Right will entitle the registered holder to purchase from Borrower, when exercisable upon the occurrence of certain triggering events, one unit consisting of one one-thousandth of a share of Series A Preferred Stock of Borrower at a specified purchase price (the "Series A Transaction"). The Rights Transaction and the Series A Transaction are collectively referred to herein as the "Dividend Transaction".

D. Borrower has requested that Bank consent to the Dividend Transaction.

E. Borrower has also requested that Bank amend the Loan Agreement to make certain other revisions to the Loan Agreement as more fully set forth herein.

F. Bank has agreed to so amend certain provisions of the Loan Agreement and to provide its consent, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE , in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows, effective as of the date hereof:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Consent and Amendments to Loan Agreement.

2.1 Consent and Conditions Precedent to Consent.

2.1.1 Consent. Subject to the terms of Section 11 below, and the conditions precedent set forth in Section 2.1.2 below, Bank hereby consents to the Dividend Transaction and agrees that the Dividend Transaction shall not, in and of itself, constitute an "Event of Default" under Section 7.7 of the Loan Agreement. The foregoing consent, however, does not constitute a consent to any Change in Control that may result from the Dividend Transaction, and if a Change in Control will result from the Dividend Transaction, Borrower will be required to request and obtain Bank's consent thereto as provided for in the Loan Agreement.

2.1.2 Conditions Precedent. As a condition precedent to the effectiveness of Bank's consent in Section 2.1.1 above, Borrower shall have provided Bank with the execution version of the documentation evidencing the Dividend Transaction and such documentation shall be satisfactory to Bank, in its discretion, insofar as such documentation evidences the Dividend Transaction as previously described to Bank in writing.

2.2 Modified Definition of EBDA. The definition of "EBDA" defined in the Minimum Liquidity Ratio Financial Covenant set forth in Section 6.9(a) of the Loan Agreement that currently reads as follows:

> As used herein, the term "EBDA" means, as of any date of determination and with respect to Borrower, Borrower's net income plus depreciation plus amortization minus the gross margins associated with deferred NRE revenue (determined in accordance with GAAP).

is hereby deleted in its entirety and replaced with the following effective as of the month ending February 28, 2017:

> As used herein, the term "EBDA" means, as of any date of determination and with respect to Borrower, Borrower's net income plus depreciation plus amortization (including amortizing debt discount) plus non-cash expenses related to stock compensation plus non-cash expenses (or minus non-cash income) related to the accounting of the "Creditor Investment Documents" (as defined in the Intercreditor Agreement, dated on or about April 12, 2017, between Bank and TRGP Capital Partners, L.P. or an affiliate thereof) plus SK hynix Litigation expenses funded under the Creditor Investment Documents if not already excluded from net income (loss) minus the gross margins associated with deferred NRE revenue (determined in accordance with GAAP).

2.3 Modified Definition of Eligible Accounts. Subclause (c) of the definition of "Eligible Accounts" (identifying what does not constitute an Eligible Account) set forth in Section 13.1 of the Loan Agreement that currently reads as follows:

(c) [intentionally omitted];

is hereby deleted in its entirety and replaced with the following:

(c) Until such time as all Indebtedness owed by Borrower to TRGP has been paid in full, Accounts in which TRGP has a priority payment position vis-à-vis Bank or in which TRGP has a priority Lien vis-à-vis Bank's Lien;

2.4 Modified Addition of Definition of SK hynix Litigation. The definition of the term "SK hynix Litigation" is hereby added, in alphabetical order, to Section 13.1 of the Loan Agreement and shall read as follows:

" **SK hynix Litigation** " is, collectively, the Borrower's prosecution of the complaint filed on behalf of Borrower with the U.S. International Trade Commission on September 1, 2016 (and supplemented on September 22, 2016 and September 23, 2016), under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and the related U.S. International Trade Commission Investigation No. 337-TA-1023.

3. Limitation of Consents and Amendments.

3.1 The consents and amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into thisAmendment, Borrower hereby **represents** and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Documents, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on the

Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Documents, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Release by Borrower . Borrower hereby agree as follows:

5.1 FOR GOOD AND VALUABLE CONSIDERATION , Borrower hereby forever relieves, releases, and discharges Bank and its present or former employees, officers, directors, agents, representatives, attorneys, and each of them, from any and all claims, debts, liabilities, demands, obligations, promises, acts, agreements, costs and expenses, actions and causes of action, of every type, kind, nature, description or character whatsoever, whether known or unknown, suspected or unsuspected, absolute or contingent, arising out of or in any manner whatsoever connected with or related to facts, circumstances, issues, controversies or claims existing or arising from the beginning of time through and including the date of execution of this Amendment (collectively " **Released Claims** "). Without limiting the foregoing, the Released Claims shall include any and all liabilities or claims arising out of or in any manner whatsoever connected with or related to the Loan Documents, the Recitals hereto, any instruments, agreements or documents executed in connection with any of the foregoing or the origination, negotiation, administration, servicing and/or enforcement of any of the foregoing.

5.2 In furtherance of this release, Borrower expressly acknowledges and waives any and all rights under Section 1542 of the California Civil Code, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." (Emphasis added.)

5.3 By entering into this release, Borrower recognizes that no facts or representations are ever absolutely certain and it may hereafter discover facts in addition to or different from those which it presently knows or believes to be true, but that it is the intention of Borrower hereby to fully, finally and forever settle and release all matters, disputes and differences, known or unknown, suspected or unsuspected; accordingly, if Borrower should subsequently discover that any fact that it relied upon in entering into this release was untrue, or that any understanding of the facts was incorrect, Borrower shall not be entitled to set aside this release by reason thereof, regardless of any claim of mistake of fact or law or any other circumstances whatsoever. Borrower acknowledges that it is not relying upon and has not relied upon any representation or statement made by Bank with respect to the facts underlying this release or with regard to any of such party's rights or asserted rights.

5.4 This release may be pleaded as a full and complete defense and/or as a cross-complaint or counterclaim against any action, suit, or other proceeding that may be instituted, prosecuted or attempted in breach of this release. Borrower acknowledges that the release contained herein constitutes a material inducement to Bank to enter into this Amendment, and that Bank would not have done so but for Bank's expectation that such release is valid and enforceable in all events.

5.5 Borrower hereby represents and warrants to Bank, and Bank is relying thereon, as follows:

(a) Except as expressly stated in this Amendment, neither Bank nor any agent, employee or representative of Bank has made any statement or representation to Borrower regarding any fact relied upon by Borrower in entering into this Amendment.

(b) Borrower has made such investigation of the facts pertaining to this Amendment and all of the matters appertaining thereto, as it deems necessary.

(c) The terms of this Amendment are contractual and not a mere recital.

(d) This Amendment has been carefully read by Borrower, the contents hereof are known and understood by Borrower, and this Amendment is signed freely, and without duress, by Borrower

(e) Borrower represents and warrants that it is the sole and lawful owner of all right, title and interest in and to every claim and every other matter which it releases herein, and that it has not heretofore assigned or transferred, or purported to assign or transfer, to

any person, firm or entity any claims or other matters herein released. Borrower shall indemnify Bank, defend and hold it harmless from and against all claims based upon or arising in connection with prior assignments or purported assignments or transfers of any claims or matters released herein

6. Ratification of Intellectual Property Security Agreement . Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of October 31, 2009 between Borrower and Bank, and acknowledges, confirms and agrees that said Intellectual Property Security Agreement (a) contains an accurate and complete listing of all Intellectual Property Collateral (as defined therein) and (b) shall remain in full force and effect.

7. Ratification of Perfection Certificate . Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated as of January 25, 2017, and acknowledges, confirms and agrees that the disclosures and information Borrower provided to Bank in such Perfection Certificate have not changed, as of the date hereof.

8. Integration . This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

9. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

10. Bank Expenses. Borrower shall pay to Bank, when due, all Bank Expenses (including reasonable attorneys' fees and expenses), when due, incurred in connection with or pursuant to this Amendment.

11. Effectiveness . This Amendment shall be deemed effective upon the due execution and delivery to Bank of this Amendment by each party hereto. The above-mentioned fee shall be fully earned and payable concurrently with the execution and delivery of this Amendment and shall be non-refundable and in addition to all interest and other fees payable to Bank under the Loan Documents. Bank is authorized to charge such fees to Borrower's loan account.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BANK	**BORROWER**
Silicon Valley Bank	Netlist, Inc.
By: /s/ Andrew Skalitzky	By: /s/ Gail Sasaki
Name: Andrew Skalitzky	Name: Gail Sasaki
Title: VP	Title: CFO, VP, Secretary

Exhibit 10.2

CONFIDENTIAL TREATMENT REQUESTED BY NETLIST, INC.

NETLIST, INC.

INVESTMENT AGREEMENT

Dated May 3, 2017

TR GLOBAL FUNDING V, LLC

as Investor

TABLE OF CONTENTS

INVESTMENT AGREEMENT

This Agreement (" Agreement "), effective as of May 3, 2017 (the " Effective Date "), is entered into by and between (a) TR Global Funding V, LLC, a Delaware limited liability company managed by TR Global Associates V, LLC (together with its successors and assigns, " Investor ") and (b) Netlist, Inc., a Delaware corporation (together with its successors and assigns, " Plaintiff ").

RECITALS

WHEREAS, at all times prior to and on the Effective Date, Plaintiff believes that it has valid and substantial claims against SK hynix Inc. and its Affiliates (collectively, the " Defendant ") arising from Defendant's infringement of one or more claims of U.S. Patent Nos. 8,756,364, 8,516,185, 8,001,434, 8,359,501, 8,689,064, and 8,489,837 (collectively, the " Original Patents ") and 9,535,623, and 9,606,907 (the " Continuation Patents " and, together with the Original Patents, the " Patents ") based on Defendant's manufacture, use, sale, offer for sale, importation, lease or other disposal of products that make unauthorized use of the technology described in the Patents; and

WHEREAS, the Patents are owned in their entirety by Plaintiff; and

WHEREAS, Plaintiff already has filed litigation in the International Trade Commission (" ITC ") and the U.S. District Court for Central District of California (" CDCA ") against Defendant alleging that Defendant's products infringe the Original Patents; and

WHEREAS, Plaintiff intends to add the Continuation Patents to the litigation currently pending in the CDCA; and

WHEREAS, Defendant has commenced the Funded IPR Proceedings (as defined herein) against Plaintiff, six of which relate to the Patents; and

WHEREAS, Plaintiff seeks funding so that it may vigorously pursue the Litigation against Defendant and defend the Funded IPR Proceedings without having to bear the economic burden and risks of potentially expensive and uncertain litigation; and

WHEREAS, Plaintiff wishes to secure from Investor an investment to vigorously pursue the Litigation against Defendant, including the defense of any Funded IPR Proceeding or other claim or counterclaim involving the enforceability of the Patents; and

WHEREAS, Plaintiff and Investor are committed to fully cooperating with one another in connection with Plaintiff's prosecution and resolution of the Litigation with the intention of reasonably maximizing Recoveries; and

WHEREAS, Plaintiff and Investor wish to cooperate in connection with the prosecution and resolution of the Litigation and to share the Recoveries, under the terms and conditions set forth below, if the Litigation is successfully resolved, whether through a litigated resolution, settlement, a corporate transaction or otherwise; and

WHEREAS, Investor is willing to provide an investment on a nonrecourse basis, such that it will be entitled to no payment on account of the Claims if there are no Recoveries, but provided that Investor will be secured by the Collateral to the extent of its rights to and interests in such Recoveries.

NOW, THEREFORE, Plaintiff and Investor agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 . **Definitions** . Capitalized terms have the meanings ascribed herein, whether in the preamble, the Recitals, the Definitions or otherwise.

" Affiliate " means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the board of directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. For the avoidance of doubt, Investor shall not be considered an "Affiliate" of Plaintiff.

" Agreement " has the meaning ascribed to such term in the preamble.

" Applicable Law " means all laws, rules, regulations and governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

" Business Day " means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, New York.

" Cash Recovery " has the meaning set forth in Section 6.5.1 .

" Cause " means the removal by Plaintiff of Litigation Counsel or IPR Counsel as a result of Litigation Counsel's or IPR Counsel's willful malfeasance, gross negligence, willful neglect, breach of any duty or responsibility owed by counsel to its client under the applicable rules of ethics or professional conduct or bad faith in the performance of its duties to Plaintiff.

" Change of Control " means (i) the sale, lease or transfer (other than as a Permitted Lien), in one or a series of related transactions, of all or substantially all the assets of the Plaintiff and its Affiliates, taken as a whole, to a Person; or (ii) the acquisition by any Person or "group" (within the meaning of Sections 13(d)(3), 13(d)(5), or Section 14(d)(2) of the Exchange Act, or any successor provision), including any group acting for the purpose of acquiring, holding or disposing of securities (within the meaning of Rule 13d-5(b)(1) under the Exchange Act, or any successor provision) in a single transaction or in a related series of transactions, by way of merger, consolidation, amalgamation or other business combination or purchase of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act, or any successor provision), of more than 25% or more on a fully diluted basis of the voting and/or economic interest in the equity

securities of Plaintiff or (b) shall have obtained the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of Plaintiff.

" Claim " means the Litigation, all settlement efforts arising from or related to the Litigation or the Patents, and any other proceeding within the scope of the Litigation Counsel Fee Agreement; provided , however , that Claim shall not include the Funded IPR Proceedings, any third party claim against Plaintiff and any claim Defendant or any third party may assert against Plaintiff unrelated to the Patents, such as, without limitation, a claim that Plaintiff infringes Defendant's patent(s) or other intellectual property.

" Collateral " means the collateral provided to secure the obligations of Plaintiff under this Agreement, as described in the Security Agreement.

" Common Interest Material " means any Document or Communication relating to the Claim or the Funded IPR Proceedings, including any evaluation thereof or negotiation with respect thereto, whether written or oral, between or among any of the Plaintiff, Litigation Counsel, IPR Counsel and Investor to the extent that such Document or Communication was intended to be protected by attorney-client privilege between Litigation Counsel and the Plaintiff, IPR Counsel and the Plaintiff, the work-product doctrine or any other privilege, immunity or protection from involuntary disclosure to another. Notwithstanding the foregoing, information is not Common Interest Material if it (a) was or becomes generally available to the public other than by breach of this Agreement or a confidentiality agreement between or among any of Plaintiff, Litigation Counsel, IPR Counsel and Investor; or (b) is required to be disclosed by law, regulation or legal process.

" Communication " means any oral, written or electronic transmission of information between entities and/or persons, including meetings, discussions, conversations, email messages (including attachments), text messages, voice mail messages, chat messages, instant messages, telephone calls, memoranda, notes, letters, telecopies, telexes, conferences or seminars.

" Conclusion of the Claim " means the final resolution of the Claim, whether by settlement, the entry of a non-appealable final judgment against Plaintiff, the mutual agreement of the Parties to abandon the Claim, the enforcement of a final, non-appealable judgment in favor of Plaintiff or for any other means.

" Confidential Information " means:

(i) the Common Interest Material;

(ii) this Agreement, including any discussions and negotiations related to this Agreement, term sheets related to the subject matter of this Agreement and drafts of such term sheets and of this Agreement;

(iii) to the extent not already covered as Common Interest Material, (a) Plaintiff's, Litigation Counsel's, IPR Counsel's or Investor's strategies, tactics, analyses or expectations regarding the Claim, the Litigation, or the Funded IPR Proceedings; (b) any professional work product relating to the Claim, the Litigation, or the Funded IPR Proceedings, whether prepared for Plaintiff, Litigation Counsel, IPR Counsel or Investor; and (c) any other material prepared by or

for Plaintiff, Litigation Counsel, IPR Counsel or Investor with the expectation that such material would be maintained as confidential from others.

(iv) all Documents and Communications provided between or among any of Plaintiff, Litigation Counsel, IPR Counsel and Investor pursuant to a confidentiality agreement.

Notwithstanding the foregoing, information is not Confidential Information if it (a) was or becomes generally available to the public other than by breach of this Agreement or a confidentiality agreement between or among any of Plaintiff, Litigation Counsel, IPR Counsel and Investor; (b) was, as documented by the written records of the receiving Party, known by the receiving Party at the time of disclosure to it or was developed by the receiving Party or its representatives without using Confidential Information or information derived from Confidential Information; (c) was disclosed to the receiving Party in good faith by a third party who has an independent right to disclose such subject matter and information; or (d) is required to be disclosed by law, regulation or legal process.

" Continuation Patents " has the meaning set forth in the Recitals.

" Costs " means, collectively, Litigation Costs and IPR Costs.

" Debt " means, with respect to any Person, (i) all obligations (whether secured or unsecured) of such Person for money borrowed or with respect to deposits or advances of any kind and all other obligations (contingent or otherwise) of such Person with respect to surety bonds, letters of credit and bankers' acceptances, whether or not matured; (ii) all obligations of such Person evidenced by notes, bonds, debentures, loan agreements, reimbursement agreements, note subscription agreements or similar instruments (including senior, mezzanine and junior borrowings); (iii) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (iv) all capital lease obligations of such Person; (v) all obligations in respect of derivative instruments to the extent required to be reflected as a liability on a balance sheet of such Person under GAAP; (vi) all indebtedness referred to in clause (i), (ii), (iii) or (iv) above secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness; and (vii) all Debt of others guaranteed by such Person or for which such Person has otherwise assumed responsibility on, before or after the date such indebtedness is incurred.

" Defendant " has the meaning set forth in the Recitals.

" Disclosing Party " has the meaning set forth in Section 4.3 .

" Document " means any recorded information (whether printed, typed, photocopied, handwritten, recorded, electronically stored, produced or reproduced or created by any other process), tangible thing or any other compilation of information that is within Plaintiff's possession, custody or control, including any and all:

(a) accountants' work papers, advertising, circulars, advisories, agreements, appointment books, articles, bills, binders, books, brochures, bulletins, cables, calendars, charts, checks, circulars, compilations, computer printouts, confirmations, contracts, correspondence, desk pads, diaries, drafts, drawings, exhibits, facsimiles, financial statements, ledgers, forecasts, graphs, guidelines, invoices, instructions, letters, lists, logs, manuals, memoranda, messages, microfiche, microfilm, minutes of meetings, notebooks, notes, outlines, pamphlets, periodicals and clippings from periodicals, placement slips, pleadings, policies, post-it notes, projections, prospectuses, questionnaires, receipts, records, reports, rules, schedules, statements, studies, subscription agreements or pages, summaries, tables, telecopies, telefaxes, telegrams, telephone messages, telexes, translations, treaties, wire messages and worksheets;

(b) graphic or audio records or representations of any kind, including photographs, charts, drawings, graphs, microfiche, microfilm, videotapes, recordings and motion pictures;

(c) electric, electronic, magnetic, mechanical and optical records or representations of any kind, including e-mails, tapes, cassettes, computer discs, recordings, computer memories or other electronic data compilations;

(d) final versions and all drafts; and

(e) all originals, as well as copies that vary from the original in any respect, including variations due to handwritten notes, editing, interlineations, blind copies and other alterations.

" Effective Date " has the meaning set forth in the preamble.

" Equity Interests " means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

" Exchange Act " means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

" Existing Financing Documents " means (i) all "Loan Documents" as defined in the Loan and Security Agreement, dated as of October 21, 2009, between Silicon Valley Bank and Plaintiff (as the same has been amended), and (ii) all "Transaction Documents" as defined in the Note Agreement.

" Final Order " means an order or judgment of a court of competent jurisdiction that has been entered on the docket maintained by the clerk of such court and has not been reversed, vacated, or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new

trial, reargument, or rehearing has expired and no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing is then pending or, (ii) if an appeal, writ of certiorari, new trial, reargument, or rehearing thereof has been sought, (a) such order or judgment has been affirmed by the highest court to which such order was appealed, certiorari has been denied, or a new trial, reargument, or rehearing has been denied or resulted in no modification of such order and (b) the time to take any further appeal, petition for certiorari, or move for a new trial, reargument, or rehearing has expired; provided , however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure may be filed relating to such order shall not prevent such order from being a Final Order, except as provided in the Federal Rules of Appellate Procedure.

" Funded IPR Proceeding " and " Funded IPR Proceedings " means [*****]

" Funding Date " means, individually and collectively, the Initial Funding Date and each Subsequent Funding Date.

" Governmental Authority " means any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, or other entity or officer exercising executive, legislative, judicial, regulatory or administrative functions for any governmental, judicial, investigative, regulatory or self-regulatory authority.

" Indemnitees " has the meaning set forth in Section 17.1 .

" Indemnified Matters " has the meaning set forth in Section 17.1 .

" Initial Funding Date " has the meaning ascribed to such term in Section 7.1 .

" Insolvency Proceeding " means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its property; or (c) an assignment for the benefit of creditors.

" Intercreditor Agreement " means, collectively, each of (i) the Intercreditor Agreement, dated as of the Effective Date (the " SVB Intercreditor Agreement "), among Investor, Silicon Valley Bank, and Plaintiff, in form and substance satisfactory to Investor, a copy of which is attached hereto as **Exhibit A-1** , and (ii) the Intercreditor Agreement, dated as of the Effective Date (the " SVIC Intercreditor Agreement "), among Investor, SVIC and Plaintiff, in form and substance satisfactory to Investor, a copy of which is attached hereto as **Exhibit A-2** .

" Investment " means sums advanced by Investor to pay Costs hereunder.

" Investment Facility " means the investment facility established hereunder for Investments by Investor.

" Investment Facility Documents " means this Agreement, any Security Documents, the Intercreditor Agreement and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing or securing any Investment or any other Obligation.

" Investment Request " means (a) a request for payment of Litigation Costs provided by Litigation Counsel to Investor in substantially the form annexed as **Exhibit B1** , which shall be accompanies by a certification from Plaintiff in substantially the form annexed as **Exhibit B2** , and (b) a request for payment of IPR Costs provided by Plaintiff to Investor, in each case to request an Investment, in substantially the form annexed as **Exhibit B3** . Each Investment Request shall have attached to it the invoices that are to be paid by Investor pursuant to the terms of this Agreement.

" Investor " has the meaning set forth in the preamble.

" Investor Billing Guidelines " means the Investor Litigation Management and Billing Guidelines for Retained Counsel Effective as of January 1, 2017 (as the same may be amended or modified from time to time).

" Investor Termination Event " has the meaning set forth in Section 9.1 .

" IPR Costs " means the costs properly incurred in defending the Funded IPR Proceedings from and after January 1, 2017 by or on behalf of Plaintiff, including the professional fees and expenses (including travel expenses) incurred by IPR Counsel in accordance with the IPR Counsel Fee Agreement and, subject to the terms of this Agreement: (i) professional fees and expenses for advisors, experts or witnesses retained by IPR Counsel, (ii) fees and expenses for trial preparation and presentation support services, (iii) fees and expenses for third-party document collection, storage and management fees, and (iv) fees due to the court or other costs within the scope of the IPR Counsel Fee Agreement, which costs shall not exceed the IPR Fee Cap.

" IPR Counsel " means, collectively, Morrison & Foerster LLP and McAndrews Held and Malloy Ltd. and, subject to Investor's rights pursuant to Section 3.1.5 , any successor counsel retained by Plaintiff to defend the Claim.

" IPR Counsel Fee Agreement " has the meaning set forth in Section 5.5 .

" IPR Fee Cap " means [*****]; provided, that in no event shall (a) fees paid to IPR Counsel incurred in connection with any individual Funded IPR Proceeding exceed [*****] and (b) expenses incurred in connection with any individual Funded IPR Proceeding exceed [*****].

" ITC " has the meaning set forth in the Recitals.

" Lien " means any mortgage, deed of trust, pledge, lien (common law, statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including, without limitation, any conditional sale or title retention arrangement,

any capitalized lease and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

" Litigation " means, collectively, the investigation pending in the ITC Inv. No. 337-TA-1023 alleging that Defendant's products infringe the Original Patents and the lawsuit Plaintiff filed against Defendant in the U.S. District Court for Central District of California Case No. 8-16-cv-1605, alleging that Defendant's products infringe the Patents. For the avoidance of doubt, consistent with Section I of the Litigation Counsel Fee Agreement (Scope of Engagement), "Litigation" does not include any appeal taken from a decision or adjudication reached or issued in either of Inv. No. 337-TA-1023 or Case No. 8-16-cv-1605, or any other litigation or adversarial proceeding.

" Litigation Costs " means the costs properly incurred in prosecuting the Claim from and after January 1, 2017 by or on behalf of Plaintiff, including the professional fees and expenses (including travel expenses) incurred by Litigation Counsel in accordance with the Litigation Counsel Fee Agreement and, subject to the terms of this Agreement: (i) professional fees and expenses for advisors, experts or witnesses retained by Litigation Counsel, (ii) fees and expenses for trial preparation and presentation support services, (iii) fees and expenses for third-party document collection, storage and management fees, and (iv) fees due to the court, ITC or other costs within the scope of the Litigation Counsel Fee Arrangement; provided , that, Investor shall not pay fees in excess of the ITC Fee Cap or the District Court Fee Cap (each as defined in the Litigation Counsel Fee Agreement). For avoidance of doubt, Litigation Costs does not include costs incurred in connection with any patent other than the Patents or any matter not within the scope of the Litigation.

" Litigation Counsel " means Mintz Levin; any additional counsel Mintz Levin reasonably determines to associate; and, subject to Investor's rights pursuant to Section 3.1.5 , any successor counsel retained by Plaintiff to prosecute the Claim.

" Litigation Counsel Fee Agreement " has the meaning set forth in Section 5.4 .

" Material Adverse Change " means a material adverse change, as determined by the Investor in good faith, in or on (i) the ability of the Plaintiff to perform its obligations under this Agreement or any other Investment Document, (ii) Investor's right, title and interest in the Collateral or on the material rights and remedies of Investor under any Investment Document, (iii) the validity or enforceability of this Agreement or any other Investment Document, or (iv) the business, financial position, assets or properties of Plaintiff or its Affiliates. For the avoidance of doubt, a Material Adverse Change does not include a material adverse change to the likelihood of the success of the prosecution of the Claim.

" Mintz Levin " means Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

" Note Agreement " means the Senior Secured Convertible Promissory Note and Warranty Purchase Agreement, dated as of November 18, 2015, between SVIC, Plaintiff, and each Subsidiary party thereto, as the same has been amended, restated, or otherwise modified.

“ Obligations ” means (a) the obligation of Plaintiff to pay to Investor from the Recoveries pursuant to the terms of this Agreement, (b) the obligations of Plaintiff under Section 17.1 , and (c) any other obligation of Plaintiff to pay money to Investor under this Agreement.

“ Original Patents ” has the meaning set forth in the Recitals.

“ Parties ” means Investor and Plaintiff, each of which, alone, is a “ Party .”

“ Patents ” has the meaning set forth in the Recitals.

“ Payment Procedures ” has the meaning set forth in Section 6.1 .

“ Permitted Liens ” means (i) Liens securing the Obligations, and (ii) Liens permitted under the Existing Financing Documents.

“ Person ” means an individual, partnership, limited liability company, trust, estate, corporation, custodian, nominee or any other individual or entity acting on its own or in any representative capacity.

“ Plaintiff ” has the meaning set forth in the preamble.

“ Plaintiff Termination Event ” has the meaning set forth in Section 10.1 .

“ Pre-Effective Date NDA ” means the Nondisclosure Agreement, dated January 28, 2017, between the Plaintiff and Investor Capital Management, LLC.

“ Proceeds Account ” means an account established as described in Section 13.1 .

“ Recoveries ” means any and all consideration and value received by Plaintiff (prior to any netting, offset, reduction or deduction of any fees, costs, expenses, payment of taxes or payment of any other amounts) in partial or complete resolution of the Claim or the Litigation, including: (a) any and all gross, pre-tax monetary awards, damages, recoveries, judgments or other property or value awarded to, recovered by or on behalf of (or reduced to a debt owed to) Plaintiff or Investor on account or as a result or by virtue (directly or indirectly) of the Claim, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or pursuant to a corporate transaction of any nature, or otherwise, and includes all of the Plaintiff’s legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise, plus (b) any recovered interest, penalties, attorneys’ fees and costs in connection with any of the foregoing (including, without limitation, post-judgment interest, costs and fees), plus (c) any consequential, actual, punitive, exemplary or treble damages awarded or recovered on account thereof, plus (d) any interest awarded or later accruing on any of the foregoing (including, without limitation, post-judgment interest), plus (e) any recoveries against attorneys, accountants, experts or officers in connection with any of the foregoing or the pursuit of the Claim.

“ Reference Entity ” means, individually and collectively, the Defendants and any other parties listed as defendants or counterclaim defendants in the Litigation, jointly and severally, and including their Affiliates, and any other person or entity added or joined to the Litigation from

time to time as a defendant or indemnitor or against whom proceedings are asserted or threatened even if such person or entity is not named or served.

" Representatives " has the meaning set forth in Section 16.4.1 .

" Security Agreement " has the meaning set forth in Section 8.1 .

" Security Documents " means this Agreement and all other agreements, instruments and other documents delivered by or on behalf of Plaintiff that create or perfect any Lien on any property of Plaintiff.

" Special Damages " has the meaning set forth in Section 17.2 .

" Subsequent Funding Date " has the meaning set forth in Section 1.1.

" SVIC " means SVIC No. 28 New Technology Business Investment L.L.P.

" Tax Returns " has the meaning set forth in Section 2.1.7 .

" Termination Date " means the earlier to occur of (a) the date of termination of this Agreement by written consent of the Parties pursuant to Sections 11 and 12 of this Agreement, (b) the date of termination of this Agreement by Plaintiff or Investor pursuant to Sections 9 , 10 and 12 of this Agreement, or (c) the date by which (i) all of the Litigation has been resolved by Final Order or settlement among the parties, (ii) all of the Funded IPR Proceedings have been resolved by Final Order or settlement among the parties, (iii) Plaintiff has remitted to Investor the Gross Recoveries, and (iv) all Obligations have been indefeasibly paid in full.

" Termination Event " has the meaning set forth in Section 10.2 .

1.2 . **Certain Matters of Construction** . The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "include," "includes," and "including" shall mean "including, without limitation" and, for purposes of each Investment Facility Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Investment Facility Document. All references to (a) laws or statutes include all related rules, regulations, interpretations, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Investment Facility Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person includes successors and permitted assigns of such Person; (f) time of day means time of day at Investor's notice address as specified in Section 18.3 ; or (g) discretion of a Person means the sole and absolute discretion of such Person. The Definitions to this Agreement are a material part of this Agreement having the same force and effect as a mutual representation, warranty and covenant of the Parties.

References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

SECTION 2. REPRESENTATIONS AND WARRANTIES.

2.1. Plaintiff's Representations and Warranties. To induce Investor to enter into this Agreement and to make the Investments, Plaintiff represents and warrants on the Effective Date, and each Funding Date that:

2.1.1 Common Interest/Confidentiality. Plaintiff has received advice from legal counsel of its choosing regarding the common interest doctrine and confidentiality in the context of and in connection with this Agreement.

2.1.2 Full Disclosure. Plaintiff has (a) taken all reasonable efforts to provide Investor all material information related to the Claim and the Funded IPR Proceedings, other than any information protected solely by the attorney-client privilege, and (b) not intentionally withheld from Investor any non-privileged material information related to the Claim and the Funded IPR Proceedings; provided, as to both (a) and (b), that such information was reasonably necessary for Investor to evaluate the merits and value of, and the ability of Plaintiff to collect on, the Claim. There is no information in the knowledge, possession or control of Plaintiff or any of its Representatives that is or is likely to be material to Investor's assessment of the Claim and the Funded IPR Proceedings that has not been disclosed to Investor, and Plaintiff believes (and does not have, and has not been informed by any of its Representatives of, any belief to the contrary) that the Claim and the Funded IPR Proceedings are meritorious and Plaintiff is likely to prevail.

2.1.3 No Impairment.

(a) Plaintiff has not taken any action (including executing documents), or failed to take any action, the result of which would be to (i) adversely affect the Claim and the Funded IPR Proceedings, or (ii) except as set forth in the Existing Financing Documents, give any Person other than Plaintiff, Litigation Counsel, and Investor an interest in the Recoveries.

(b) Except for the Litigation and the proceedings listed on Schedule 2.1.11, Plaintiff has not instituted any action, suit or arbitration concerning the Claim and will not institute any action, suit or arbitration concerning the Claim other than with the express written authorization of Investor until after the Conclusion of the Claim.

2.1.4 Right to Bring the Litigation. Plaintiff represents that it has the full right, title and authority to bring the Litigation and that no Person other than the Plaintiff has the right, title and authority to assert the Claim. Plaintiff represents that no Person other than the Plaintiff has the right, title and authority to claim any right to or interest in the Claim or Recoveries, other than as provided in this Agreement. Other than financing statements filed in favor of holders of Permitted Liens, no effective financing statement, notice of tax lien or other instrument similar in effect under any applicable law covering all or any part of the Collateral is on file in any filing office with respect to a valid Lien.

2.1.5 Completeness and Accuracy. (a) All material information Plaintiff has provided, or caused to be provided, to Investor, Litigation Counsel and/or IPR Counsel is to the

best of Plaintiff's knowledge and belief true and correct in all material respects, and (b) all Plaintiff's representations and warranties in this Agreement are to the best of Plaintiff's knowledge and belief true and correct in all material respects.

2.1.6 Liens of Investor . All Liens granted to Investor in the Collateral are duly perfected (subject to the Perfection Requirements, as defined in the Security Agreement) (a) first priority Liens with respect to the Collateral other than the Patents, and (b) second Priority Liens with respect to the Patents. Plaintiff has not transferred any interest in or created any Lien upon the Claim or Plaintiff's right to any proceeds thereof (except Permitted Liens).

2.1.7 Taxes . Plaintiff has filed all federal, state, local and non-U.S. tax returns and other reports (" Tax Returns ") that it is required by Applicable Law to file. All such Tax Returns were correct and complete in all material respects. All taxes due and owing by the Plaintiff (whether or not shown on any Tax Return) have been paid. There are no Liens for taxes (other than taxes not yet due and payable or taxes that are being contested in good faith to the extent reflected on Plaintiff's financial statements) upon any Property of Plaintiff.

2.1.8 Brokers . There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Investment Facility Documents.

2.1.9 Compliance with Laws . Plaintiff has duly complied in all material respects with all Applicable Law. To the best of Plaintiff's knowledge, there have been no citations, notices or orders of material noncompliance issued to Plaintiff under any Applicable Law.

2.1.10 Litigation . Except for the Litigation, the Funded IPR Proceedings, and the proceedings or investigations listed on Schedule 2.1.10, there are no proceedings or investigations pending or threatened against Plaintiff.

2.1.11 Patent Litigation . The Litigation, the Funded IPR Proceedings and the proceedings listed on Schedule 2.1.11 represent all currently pending litigation or other proceedings regarding the Patents.

2.1.12 No Defaults . No event or circumstance has occurred or exists that constitutes an Investor Termination Event.

2.1.13 Defendant/Samsung . To the best of Plaintiff's knowledge, Defendant is not an Affiliate or otherwise related to Samsung Electronics Co., Ltd. or any of its Affiliates.

2.1.14 Litigation Counsel . Litigation Counsel has agreed that it will comply with (a) the provisions that relate to Litigation Counsel herein, including the Payment Procedures set forth on **Exhibit E** , and (b) the Investor Billing Guidelines, a copy of which Plaintiff has provided to Litigation Counsel.

2.1.15 IPR Counsel . Each IPR Counsel has agreed that it will comply with (a) the provisions that relate to IPR Counsel herein, including the Payment Procedures set forth on **Exhibit E** , and (b) the Investor Billing Guidelines, a copy of which Plaintiff has provided to IPR Counsel.

2.2. No Representation or Warranty Regarding Assets or Litigation. Nothing in this Agreement shall be construed to be (and Plaintiff expressly disclaims making) any representation or warranty regarding the merits or potential outcome of the Litigation or the Funded IPR Proceedings.

2.3. Investor's Representations. Investor hereby represents and warrants on the Effective Date that:

2.3.1 Funds. Investor has and will continue to have sufficient funds available to fulfill its financial obligations under this Agreement.

2.3.2 Fully Informed. Investor has reviewed all the information about the Claim and Funded IPR Proceedings provided to it.

2.3.3 No Conflicts of Interest.

(a) Investor has not: (a) paid a referral fee to any party, including Litigation Counsel, in connection with the Claim, Plaintiff or this Agreement; (b) entered any transaction with Litigation Counsel that has or would make Litigation Counsel a part owner of Investor; (c) contracted with any other party or potential party to the Claim; or (d) engaged in negotiations with any other party or potential party to the Claim.

(b) Investor will not: (a) pay a referral fee to any party, including Litigation Counsel, in connection with the Claim, Plaintiff or this Agreement; (b) transfer or agree to transfer any ownership in Investor to Litigation Counsel; or (c) contract with any other party or potential party to the Claim without full disclosure to Plaintiff.

(c) Investor does not have a duty or contractual or other obligation to monetize its interest in the Claim within any particular time frame.

2.3.4 No Waiver of Privilege. Investor has not disclosed any Common Interest Material to anyone without the prior written consent of Plaintiff.

2.3.5 Secondary Market Financing.

(a) Investor has not sold or entered negotiations to sell any or all of its interest in the Claim or the Recoveries to anyone.

(b) Investor will not securitize its interest in the Claim or the Recoveries.

2.4. Mutual Representations.

2.4.1 Organization and Qualification. Each Party is duly organized and validly existing under the laws of the State of Delaware and has all the requisite power and authority to own, lease and operate its assets, to execute, deliver and perform the Investment Facility Documents and to carry on its business as now conducted.

2.4.2 Power and Authority . Each Party represents that it has expressly authorized its undersigned representative to execute this Agreement on the Party's behalf as its duly authorized agent. Each Party is duly authorized to perform its obligations under the Investment Facility Documents and no other authorization, approval or other action by, or notice to, any Governmental Authority or any other Person is required in connection with the due execution, delivery and performance of the Investment Facility Documents. The execution, delivery and performance of the Investment Facility Documents do not violate or contravene any Applicable Law or any contract or other agreement to which each Party is a party, or any order or decree directly binding on it.

2.4.3 Enforceability . Each Investment Facility Document is a legal, valid and binding obligation of Plaintiff, enforceable in accordance with its terms. Each Party represents that the making and performance of this Agreement will not violate any provision of the Party's articles of incorporation, membership agreement, charter, bylaws or other governing documents or any other agreement or instrument to which such Party is bound. Each Party has had the opportunity to consult with legal counsel of its choosing with respect to the terms and effect of the Investment Facility Documents.

SECTION 3. COVENANTS.

3.1. Covenants of Plaintiff .

3.1.1 Reporting . Plaintiff covenants that all representations and warranties as to statements of fact shall, to the best of its knowledge and belief, remain true throughout the term of this Agreement and that it will promptly inform Investor if it determines that any such representation and warranty is not true. Plaintiff further will use its best efforts to provide or cause to be provided to Investor and Litigation Counsel all material information relating to the merits and value of, and the ability of Plaintiff to collect on, the Claim, other than (with respect to Investor only) any information protected solely by the attorney-client privilege. Notwithstanding the foregoing, nothing in this Section 3.1.1 shall affect the obligations of Plaintiff or Litigation Counsel to comply with the requirements of any protective order. Plaintiff shall promptly provide to Investor copies of any reports regarding the Litigation and the Funded IPR Proceedings made publicly available after the Effective Date.

3.1.2 Duty to Cooperate and Pursuit of Litigation . Plaintiff covenants to diligently and in good faith cooperate in and pursue the prosecution of the Claim, and the defense of the Funded IPR Proceedings. Plaintiff shall: (a) pursue the Claim and all of the Plaintiff's legal and equitable rights arising in connection with such Claim; (b) use its best efforts to bring about the reasonable monetization of the Claim; and (c) collect and enforce any settlement, final judgment or award; provided , however, that nothing in this Agreement shall require Plaintiff to continue to prosecute the Claim to the extent that Plaintiff reasonably determines that the Claim no longer has merit. Plaintiff will promptly and fully assist Litigation Counsel and IPR Counsel, as applicable, as reasonably necessary to efficiently conduct and successfully conclude prosecution of the Claim and the Funded IPR Proceedings. Notwithstanding the foregoing, Plaintiff agrees not to discontinue prosecution of the Claim or defense of the Funded IPR Proceedings without providing thirty days' written notice to Investor and without giving good faith consideration to Investor's response, if any; provided , further, that if Plaintiff proceeds to discontinue prosecution of the Claim

or defense of the Funded IPR Proceedings over Investor's objection, Investor shall have the right to immediately cease funding hereunder and terminate this Agreement in accordance with Sections 9 and 12. For the avoidance of doubt, such cooperation includes all actions any party to litigation can usually be expected to take, including, (a) making Documents and witnesses reasonably available to Litigation Counsel and IPR Counsel, as applicable; (b) responding to and participating in the discovery process to the full extent reasonably requested by Litigation Counsel and IPR Counsel, as applicable, including the production of all responsive Documents as directed by Litigation Counsel and IPR Counsel, as applicable; (c) submitting to examination, whether in deposition, at evidentiary hearings or otherwise; (d) verifying statements under oath; (e) appearing at any proceedings; and (f) making decisions concerning litigation and settlement strategy in a prompt and reasonable manner. The examples in the preceding sentence are illustrative and do not limit Plaintiff's duty to cooperate in any way.

3.1.3 Pursuit of Claim. Plaintiff shall not do anything to prejudice any benefits, rights or causes of action sought or advanced in connection with, or the general pursuit of, the Claim.

3.1.4 Duty to Inform. Subject to other subsections in this Section 3.1, Plaintiff agrees and undertakes to keep Investor informed or to cause Investor to be informed about the Claim and the Funded IPR Proceedings at all times and to provide all information regarding the Claim and the Funded IPR Proceedings, including at Investor's request. Without limiting the generality of the foregoing, Plaintiff acknowledges and agrees as follows:

(a) Non-Privileged Information. Pursuant to the Litigation Counsel Fee Agreement and the IPR Counsel Fee Agreement, Plaintiff has instructed Litigation Counsel and IPR Counsel, and if further instructions are needed, will use its best efforts to timely instruct Litigation Counsel and IPR Counsel, to provide Investor with all material non-privileged information relating to the Claim as soon as practicable, regardless of the information's source, confidentiality or form, unless to do so would be a breach of an obligation to a third party, an order of a court or other governmental authority, or Investor already possesses or controls such information.

(b) Work Product. Acknowledging that this Agreement contains provisions requiring each Party to protect the confidentiality of any Confidential Information disclosed to it and that some such information is protected by the work product doctrine, Plaintiff has instructed Litigation Counsel, as set forth in the Litigation Counsel Fee Agreement, and IPR Counsel, as set forth in the IPR Counsel Fee Agreement, and if further instructions are needed, will use its best efforts to timely instruct Litigation Counsel and IPR Counsel, to provide Investor with all material work product relating to the Claim and the Funded IPR Proceedings as soon as practicable, regardless of the information's source, confidentiality or form, unless to do so would be a breach of an obligation to a third party or an order of a court or other governmental authority, or Investor already possesses or controls such information, or unless Plaintiff in good faith and in consultation with Litigation Counsel or IPR Counsel, as applicable, concludes that such disclosure would create a substantial risk of waiver of the protections of the work product doctrine; provided, however, that in the event any Party has any concerns that the disclosure of any work product will in any way prejudice the outcome of the Litigation, the Claim, or the Funded IPR Proceedings, such Party shall consult in good faith with the other Party.

(c) Attorney–Client Privileged Information . Relying on the Parties' recognition and agreement that they share a common legal interest and that communicating attorney-client privileged information to Investor in the furtherance of that interest does not waive the attorney-client privilege, Plaintiff may undertake to share such information on a topic-by-topic basis, but only if (i) Plaintiff has discussed with Litigation Counsel, IPR Counsel, and/or legal counsel of Plaintiff's choosing the information to be shared, the reason for sharing it and the likely consequences if the sharing is ultimately held to waive the privilege; (ii) Plaintiff has given written consent to such information sharing; and (iii) Investor is advised of the nature of the privileged information in sufficient detail that Investor can make its own risk assessment in determining whether to accept receipt of such privileged information and then accepts receipt of such information. For avoidance of doubt, even if Plaintiff determines to provide such information to Investor, Investor may decline to accept receipt of such information.

3.1.5 No Change in Litigation Counsel or IPR Counsel Without Investor Notice . Plaintiff agrees and undertakes that it will not seek to replace Litigation Counsel or IPR Counsel without thirty days' prior written notice to Investor and without giving good faith consideration to Investor's response, if any; provided , that, if Plaintiff proceeds to retain a replacement law firm or any supplemental counsel over Investor's objections, Investor shall have the right to immediately cease funding hereunder and terminate this Agreement in accordance with Sections 9 and 11 . In addition, Plaintiff agrees not to remove Mintz Levin as Litigation Counsel for the purposes of avoiding making the payments otherwise due to Mintz Levin under the Litigation Counsel Fee Agreement.

3.1.6 Investor Consultation Rights Regarding Settlement .

(a) Plaintiff will immediately notify Investor upon receiving a settlement offer, informing Investor of the complete details of the offer. Plaintiff will consult with Investor regarding the settlement offer before responding thereto, provided , that, Investor communicates its views within three Business Days of receiving notice of the offer, and, provided , further, that Plaintiff shall have no obligation to follow Investor's advice.

(b) Plaintiff will consult with Investor before making any settlement offer. Investor shall communicate its views concerning such potential settlement offer within three Business Days of Plaintiff's request for consultation, but Plaintiff shall have no obligation to follow Investor's advice.

3.1.7 Good Faith Dealings . Plaintiff agrees it will act reasonably and in good faith toward Investor in every action Plaintiff takes in relation to the Claim and Plaintiff's performance under this Agreement. Plaintiff shall not consent to any request by SVIC to sell, transfer, assign or hypothecate the Note or any of its rights under the Transaction Documents (as each of those terms is defined in the Note Agreement) to any party that is not an Affiliate of SVIC without the prior written approval of Investor. If the Conclusion of the Claim has not occurred on or before April 1, 2018, then, at Investor's request, Plaintiff will amend the Investment Documents to provide Investor with any additional reasonable protections proposed by Investor to protect Investor's ability to realize on its investment.

3.1.8 Compliance with the Investment Facility Documents. Until the Termination Date, Plaintiff shall comply with the Investment Facility Documents, including the reporting requirements and payment of the Obligations as set forth therein.

3.1.9 Required Actions. Until the Termination Date, promptly after Investor's request to do so, Plaintiff shall deliver such instruments and agreements, and take such actions, to create, evidence or perfect Investor's Liens on any Collateral, or otherwise necessary to give effect to the terms of this Agreement.

3.1.10 Compliance with Laws. Plaintiff shall comply with all Applicable Laws.

3.1.11 Existence. Plaintiff shall maintain and preserve its existence.

3.1.12 Books and Records. Plaintiff shall keep and maintain books and records currently in its possession or control and essential to the prosecution of the Litigation and defense of the Funded IPR Proceedings.

3.1.13 Payment of Taxes. Plaintiff shall pay and discharge all taxes due and owing by Plaintiff on a timely basis prior to the date on which any penalties may attach thereto.

3.1.14 Permitted Liens. Plaintiff shall not create or suffer to exist any Lien upon any of the Collateral, including the Recoveries, the Claim, the Litigation, or the Proceeds Account, except Permitted Liens.

3.1.15 Distributions to Creditors. Plaintiff shall not declare or make any distribution (a) from the Recoveries until such time as Investor has been paid therefrom pursuant to the terms of this Agreement, or (b) from any other asset of Plaintiff that is subject to Liens in favor of Investor if at the time of any such proposed distribution any Obligations under this Agreement are outstanding.

3.1.16 Fundamental Changes. Plaintiff shall not change its name or conduct business under any fictitious name; change its tax, charter or other organizational identification number (except to the extent required by Applicable Law, in which case such information shall be provided to Investor prior to the making of such change); change its form or state of organization; wind-up, liquidate or dissolve, or merge, combine, consolidate or amalgamate with any Person, in each case, whether in a single transaction or in a series of related transactions.

3.2. Waiver. Upon written request of Plaintiff, Investor may waive, in writing, compliance with any covenant described in Section 3.1.

3.3. Covenants of Investor.

3.3.1 No Waiver of Privilege. Notwithstanding any other provision of this Agreement, Investor shall not disclose any Common Interest Material to any third party without the prior written consent of Plaintiff. For the avoidance of doubt, this prohibition prevents disclosure without Plaintiff's prior written consent to Investor's investors. If consent is given, Investor shall enter into an agreement with such secondary recipients to preserve the confidentiality of the Common Interest Material on terms no less restrictive than those set forth in

this Agreement for Confidential Information. This provision shall survive the termination of this Agreement.

3.3.2 Good Faith Dealings. Investor agrees it will act reasonably and in good faith toward Plaintiff in every action Investor takes in relation to the Claim and Investor's performance under this Agreement. For the avoidance of doubt, and without limiting the foregoing, pressuring Plaintiff to negotiate or accept a settlement that Plaintiff believes is not in its best interests shall violate this covenant. Notwithstanding the previous sentence, Investor's exercise of its right to provide input to litigation and settlement strategy and its right to terminate funding for cause pursuant to Sections 9 and 12 shall not constitute breach of this covenant.

3.3.3 Settlement and Cooperation Investor will cooperate with Plaintiff, Litigation Counsel and IPR Counsel to the extent reasonably requested by Plaintiff. Investor agrees that, upon request of Plaintiff, it will make itself reasonably available to assist with settlement strategy related to any mediation proceeding or otherwise, provided that Investor further agrees it will not directly or indirectly impede or interfere with the orderly progress of any such mediation or settlement discussions.

3.3.4 No Present Interest in Patents. Subject to Section 9.1(g) hereof and the terms of the Security Agreement, nothing in this Agreement provides or is intended to provide Investor with a right or opportunity to control or to make binding or final decisions of any kind regarding the licensing, enforcement, or resolution of Plaintiff's Claim and Patents, including Plaintiff's sole settlement authority, and Investor hereby disclaims and waives all such rights.

SECTION 4. COMMON INTEREST AND CONFIDENTIAL INFORMATION.

4.1. Common Interest. The Parties agree that they share a common legal interest and, to the degree necessary to further their common legal interest, agree to share Common Interest Material in accordance with the provisions of Sections 2.1.1 and 4.1. Plaintiff and Investor agree that Plaintiff would not share such material with Investor in the absence of their common legal interest in the successful prosecution of the Claim. No waiver of the attorney-client privilege, work product doctrine or any other privilege or immunity from compelled disclosure is or shall be implied by the exchange or disclosure of any information or documents in connection with this Agreement. Neither an inadvertent disclosure nor a purposeful disclosure pursuant to this Agreement or in connection with the transactions contemplated hereby shall constitute a waiver of any privilege or protection of any Party.

4.2. Non-Disclosure Generally. The recipient of Confidential Information shall not disclose, use or make available, directly or indirectly, any Confidential Information to anyone, except as needed to perform its obligations under this Agreement or as the disclosing Party otherwise authorizes in writing. When disclosing, using or making Confidential Information available in connection with the performance of its obligations under this Agreement or as permitted by the other Party hereto, the disclosing Party shall cause the recipient of such Confidential Information to enter into an agreement with the disclosing Party to preserve the confidentiality of the Confidential Information on terms no less restrictive than as set forth in this Agreement. The recipient agrees that neither the execution of this Agreement nor the provision of Confidential Information hereto enables the recipient to use the Confidential Information for any

purpose or in any way other than as specified in this Agreement; provided , however, that (a) Investor may disclose Confidential Information (including a copy of this Agreement), other than information protected as work product or attorney-client privileged, to Investor's investors and (b) any Party may disclose Confidential Information, other than information protected as work product or attorney-client privileged, to the Party's accountants and auditors to the minimum extent necessary to the performance of their duties.

4.3. Potentially Enforceable Disclosure Requests . In the event that any Party (the " Disclosing Party ") is requested or required by a governmental authority or otherwise pursuant to other legal process to disclose any Confidential Information, such Disclosing Party shall, to the extent permitted by applicable law, give the other Party prompt written notice of such request or requirement so that the other Party may seek an appropriate order or other remedy protecting the Confidential Information from disclosure, and the Disclosing Party will cooperate with the other Party to obtain such protective order or other remedy. If such notice to the other Party is not permitted by applicable law, the Disclosing Party shall use good faith efforts to contest such disclosure. In the event that a protective order or other remedy is not obtained or the other Party waives its right to seek such an order or other remedy, the Disclosing Party may, without liability under this Agreement, furnish only that portion of the Confidential Information that, in the written opinion of the Disclosing Party's counsel, the Disclosing Party is legally required to disclose; provided , that, to the extent permitted under applicable law, such Disclosing Party shall give written notice of the Confidential Information to be disclosed as far in advance of its disclosure as practicable and use its best efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information.

SECTION 5. RETENTION OF COUNSEL.

5.1. Retention of Litigation Counsel and IPR Counsel . Subject to the terms of this Agreement, Investor and Plaintiff acknowledge and agree that Plaintiff is free to select counsel of its choosing in the Litigation and the Funded IPR Proceedings. Investor acknowledges and accepts that Plaintiff has retained Mintz Levin in connection with the Litigation, and Investor enters into this Agreement in reliance on that selection of counsel (among other things) pursuant to the terms set forth in the Litigation Counsel Fee Agreement. In the event Plaintiff seeks to replace Litigation Counsel and/or IPR Counsel, Investor shall have the right to (a) approve in advance any new counsel retained to replace Litigation Counsel and/or IPR Counsel and (b) participate in the negotiation of fee arrangements with such other counsel. Investor also shall have the right to approve and negotiate fee arrangements with vendors and other service providers to be retained in connection with the Litigation, the Funded IPR Proceedings and the Claim.

5.2. Litigation Counsel . Plaintiff has instructed Litigation Counsel to remit all invoices in connection with the Litigation and the Claims directly to Investor. Litigation Counsel shall submit all of its invoices directly to Investor by email addressed to Billing@trgpcap.com. Notwithstanding that Investor will be responsible for payment of Litigation Counsel's fees and expenses as and to the extent set forth herein, the Parties understand and agree that Litigation Counsel's exclusive duties shall be owed to Plaintiff and not to Investor.

5.3. IPR Counsel . Plaintiff has instructed IPR Counsel to remit all invoices in connection with the Funded IPR Proceedings directly to Plaintiff and not to Investor. Investor

shall pay IPR Counsel's fees and expenses as and to the extent set forth in this Agreement within 45 days of the date of Investor's receipt of IPR Counsel's invoice from Plaintiff. Plaintiff agrees to submit all such invoices to Investor by email addressed to Billing@trgpcap.com. Notwithstanding that Investor will be responsible for payment of IPR Counsel's fees and expenses as and to the extent set forth herein, the Parties understand and agree that IPR Counsel's exclusive duties shall be owed to Plaintiff and not to Investor.

5.4. **Compensation of Litigation Counsel**. Plaintiff and Mintz Levin are party to an engagement letter, dated as of the Effective Date, regarding Mintz Levin's retention as Litigation Counsel (the " Litigation Counsel Fee Agreement "), a copy of which is attached hereto as **Exhibit C**. The Litigation Counsel Fee Agreement amends a prior engagement letter entered into between Plaintiff and Mintz Levin, dated December 8, 2016. Investor acknowledges that it has reviewed and understands, and further consents and agrees to, the terms of the Litigation Counsel Fee Agreement.

5.5. **Compensation of IPR Counsel**. Each IPR Counsel has agreed, as set forth in the correspondence attached hereto as **Exhibit D** , that it will comply with (a) the provisions that relate to IPR Counsel herein, including without limitation, the provisions set forth in Exhibit E , and (b) the Investor Billing Guidelines, a copy of which Plaintiff has provided to IPR Counsel.

5.6. **Removal of Litigation Counsel**. In the event Plaintiff removes Litigation Counsel, (a) Investor shall pay to Mintz Levin (or whomever is the approved Litigation Counsel at that time) the amounts owed to Litigation Counsel as of the date of such termination solely in accordance with the terms of the Litigation Counsel Fee Agreement; and (b) Plaintiff shall pay any additional amounts deemed to be due to Litigation Counsel under the Litigation Counsel Fee Agreement, on the basis of *quantum meruit* or otherwise.

5.7. **Removal of IPR Counsel**. In the event Plaintiff removes IPR Counsel, Investor shall pay to Morrison & Foerster LLP and McAndrews Held and Malloy Ltd. (or whomever is the approved IPR Counsel at that time) the amounts owed to IPR Counsel as of the date of such termination solely in accordance with the terms of the IPR Counsel Fee Agreement and the provisions of this Agreement, including Section 5.3 .

SECTION 6. FUNDING TERMS.

6.1. **Initial Investments**. Subject to all terms and conditions set forth in this Agreement, Investor agrees to pay (a) all Litigation Costs submitted by Plaintiff or Litigation Counsel to Investor incurred between January 1, 2017 and the Initial Funding Date and (b) all IPR Costs up to the IPR Fee Cap submitted by Plaintiff to Investor incurred between January 1, 2017 and the Initial Funding Date in accordance with this Agreement pursuant to the procedures set forth on **Exhibit E** (the " Payment Procedures ").

6.2. **Post-Closing Investments**. Subject to all of the terms and conditions set forth herein, Investor agrees to pay all Litigation Costs and IPR Costs up to the IPR Fee Cap submitted by Plaintiff to Investor incurred between the Initial Funding Date until the Termination Date in accordance with the Payment Procedures, provided , that, Investor shall not have any obligation to make an Investment more frequently than monthly.

6.3. **Counsel Fees** . From and after the Effective Date, Investor, and not Plaintiff, shall be responsible for making, on behalf of Plaintiff, all payments due to Litigation Counsel under the Litigation Counsel Fee Agreement and all payments due to IPR Counsel, up to the IPR Fee Cap, under the IPR Counsel Fee Agreement, and such other Litigation Costs and IPR Costs within the scope of this Agreement, including without limitation Sections 5.6 and 5.5 .

6.4. **Review and Approval of Fee Arrangements** .

6.4.1 Investor Review and Approval . Investor shall have the right to approve in advance all financial arrangements, including staffing, rates and fee discounts, for all law firms, experts, consultants, vendors and other service providers that Plaintiff, Litigation Counsel and/or IPR Counsel seeks to retain or employ in connection with the Claim and the Funded IPR Proceedings, which approval shall not be unreasonably withheld or delayed. Plaintiff or, as applicable, Litigation Counsel or IPR Counsel, shall instruct Litigation Counsel, IPR Counsel, vendors and other service providers to provide Investor (directly or, as appropriate, through Litigation Counsel or IPR Counsel, as applicable) with quarterly budgets relating to anticipated fees and expenses (including, in the case of Litigation Counsel, the anticipated expenses for experts and consultants); provide advance notice to Investor of expenditures to the extent practicable; give Investor the opportunity to participate in the selection of vendors and other service providers and to participate in the negotiation of pricing with experts, vendors and other service providers unless otherwise agreed; and submit all bills to Investor for review and approval. Plaintiff, Litigation Counsel and IPR Counsel in all events shall endeavor to retain and use experts, consultants and vendors in the most cost-effective means possible in view of the demands of the Claim and the Funded IPR Proceedings.

6.5. **Recoveries** .

6.5.1 Resolution with Defendant . Upon receipt by Plaintiff of (A) Recoveries payable to Plaintiff in the form of cash or cash equivalents, or (B) cash or cash equivalents from any Reference Entity that acquires a controlling interest in Plaintiff (in either case, a " Cash Recovery "), then such Cash Recovery shall be paid directly into the Proceeds Account and distributed as follows:

(a) First , upon a Cash Recovery at any time, to Investor in an amount equal to 1.0 times its Investment; then

(b) Second , upon a Cash Recovery at any time, to Litigation Counsel in an amount equal to the True-Up Payment (as defined in the Litigation Counsel Fee Agreement); then

(c) Third , (i) upon a Cash Recovery on or before [*****] , to Investor in an amount equal to [*****] times its Investment, in which case Investor shall be entitled to no further compensation; or (ii) upon a Cash Recovery after [*****] , an amount equal to [*****] times its Investment plus an additional [*****] times its Investment added on the first day of the calendar quarter commencing on [*****] and each calendar quarter thereafter (*e.g.* , a [*****] multiple as of [*****] , a [*****] multiple as of [*****] , a [*****] multiple as of [*****] , etc.); provided , however ,

that in no event shall Investor be entitled to an aggregate distribution equal to more than [*****] times its Investment; then

(d) Fourth , to Litigation Counsel in an amount equal to the Fee Premium (as defined in the Litigation Counsel Fee Agreement); then

(e) Fifth, as to all remaining Recoveries, to Plaintiff.

6.5.2 Recoveries in Forms Other Than Cash . In the event there are Recoveries payable to Plaintiff in a form other than Cash Recoveries, and Investor has not been indefeasibly paid in full the Obligations owed to it pursuant to Section 6.5.1 , then the Parties (including any successor to Plaintiff) shall negotiate in good faith to determine the fair market value of such Recoveries in any form, including (a) an acquisition of the Patents by any Person, (b) a merger or other corporate transaction between Plaintiff and any Person, (c) securities, (d) cash payments to be made in installments or (e) payments in the form of other property other than cash or cash equivalents, shall be determined by generally recognized accounting and appraisal standards. Plaintiff shall promptly provide to Investor all documents reflecting the financial terms of (i) an acquisition of the Patents by any Person, (ii) a merger or other corporate transaction between Plaintiff and any Person, (iii) securities, (iv) cash payments to be made in installments, or (v) payments in the form of other property not entirely cash or cash equivalents. If the Parties (including any successor to Plaintiff) are unable to agree on the fair market value of such Recoveries, then the fair market value shall be determined in accordance with the dispute resolution procedures set forth in Section 14 of this Agreement. All Recoveries in a form other than Cash Recoveries shall be made directly to Investor, which shall hold such Recoveries in trust for the Parties pending a determination of their fair market value pursuant to this Section 6.5.2 . After a determination has been made of the fair market value of such Recoveries, then such Recoveries shall be promptly distributed pursuant to Section 6.5.1 .

6.5.3 Transaction Prior to Conclusion of Claim . If, prior to the Conclusion of the Claim, Plaintiff sells or assigns (including by way of foreclosure of the Patents) any interest in the Patents or the Claim to any Person, or enters into a transaction with any Person that results in a Change of Control or in any way impairs the value of the Patents or the Claim, then Investor shall be entitled to the maximum payment that could be due to it under Section 6.5.1(c) (i.e., [*****] the amount of its Investment as of the date of the closing of the Change of Control), which payment shall be indefeasibly paid to Investor in cash within five Business Days after such closing. Without limiting the generality of the foregoing, and solely by means of example, if Defendant or SVIC were to purchase 25% or more on a fully diluted basis of the voting and/or economic interests in the equity securities of Plaintiff, thus resulting in a Change of Control, then Investor shall be entitled to receive [*****] times its Investment, which payment shall be indefeasibly paid to Investor in cash within five Business Days after the effective date of such Change of Control.

6.5.4 Conditions to Change of Control or Impairment of Claim . Plaintiff shall not enter into any transaction with any Person that would result in a Change of Control of Plaintiff or in any way impair the value of the Patents or the Litigation unless, as a condition of such transaction,: (a) Plaintiff's counterparty or Plaintiff makes the payment to Investor required under Section 6.5.3 within five Business Days after the effective date of such Change of Control, and (b)

Plaintiff's counterparty assumes the Plaintiff's rights and obligations under the Investment Documents (with the prior written consent of the Investor) and agrees to (i) continue to pursue the Claims pursuant to the terms of the Investment Documents, and (ii) make all payments at any time required to be made to Investor under Section 6.5.1 of this Agreement.

6.5.5 No Commitment for Additional Investment . Plaintiff acknowledges and agrees that Investor has not made any representation, undertaking, commitment or agreement to provide or assist Plaintiff in obtaining any financing, investment or other assistance, other than the Investments set forth herein. In addition, Plaintiff acknowledges and agrees that (a) no statements, whether written or oral, made by Investor on or after the Effective Date shall create an obligation, commitment or agreement to provide or assist Plaintiff in obtaining any financing or investment; (b) Plaintiff shall not rely on any such statement by Investor; and (c) an obligation, commitment or agreement to provide or assist Plaintiff in obtaining any financing or investment may only be created by a written agreement, signed by Investor and Plaintiff, setting forth the terms and conditions of such financing or investment and stating that the Parties intend for such writing to be a binding obligation or agreement.

SECTION 7. CONDITIONS PRECEDENT.

7.1. Conditions Precedent to Initial Investments . Investor shall not be required to make the requested initial Investment to Plaintiff pursuant to Section 6 until the date that each of the following conditions precedent has been (a) satisfied or (b) waived by Investor in its sole discretion (the " Initial Funding Date "):

7.1.1 Due Execution . Each Investment Facility Document has been duly executed and delivered to Investor by each of the signatories thereto, and Plaintiff shall be in compliance with all terms thereof.

7.1.2 No Dispositive Ruling . No dispositive ruling that is adverse to Plaintiff has been entered on the merits in the Litigation or the Funded IPR Proceedings.

7.1.3 Request . An Investment Request has been delivered on a timely basis to Investor in respect of the requested Initial Investment.

7.2. Conditions Precedent to All Investments . In addition to the conditions set forth in Section 7.1 , Investor shall not be required to fund any Investment to Plaintiff pursuant to Section 6 until the date that each of the additional conditions precedent are satisfied or waived by Investor (each, a " Subsequent Funding Date "):

7.2.1 No Default . No Event of Default or Investor Termination Event exists at the time of, or would result from, such funding, issuance or grant.

7.2.2 Representations and Warranties True and Correct . The representations and warranties of Plaintiff in the Investment Facility Documents are true and correct on and as of such date as though made on and as of the date of such Investment Request and on and as of the date for the making of such proposed Investment (except for representations and warranties that expressly relate to an earlier date, in which case such representations and warranties shall be true and correct on and as of such earlier date).

7.2.3 No Contravention . The making of the Investment shall not contravene any law, rule, or regulation.

7.2.4 Request . An Investment Request has been delivered on a timely basis to Investor in respect of the requested Investments.

SECTION 8. SECURITY.

8.1. Security Agreement . Plaintiff shall at all times provide Investor with sufficient security over the Collateral, in form and substance satisfactory to Investor, pursuant to a security agreement, dated as of the Effective Date, between Plaintiff, as grantor, and Investor, as secured party, in substantially the form of **Exhibit F** hereto (as the same may be amended, restated or modified after the date hereof in accordance with its terms, the " Security Agreement ").

8.2. Condition to Investment . The provision of security to comply with Section 8.1 is both a condition precedent and a continuing obligation on the part of Plaintiff and a condition of Investor's continued performance and is accordingly a condition of this Agreement, any breach of which shall entitle Investor to terminate this Agreement pursuant to Sections 9 and 12 .

8.3. Plaintiff Assistance in Perfection of Security . Plaintiff shall take all steps, and provide such assistance as Investor may reasonably request, for the purpose of perfecting Investor's security interests in the Collateral, including the making of any filings or notifications necessary or desirable in connection therewith.

8.4. Insolvency Proceeding . All Obligations of Plaintiff under the Investment Facility Documents are intended to survive an Insolvency Proceeding of Plaintiff.

SECTION 9. TERMINATION BY INVESTOR.

9.1. Investor Termination Events . Each of the following shall be an " Investor Termination Event " if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Plaintiff fails to remit the Recoveries to Investor as and when required hereunder;

(b) Plaintiff fails to take any steps with reasonable promptness (and in any event within fifteen days upon actual receipt of request from Investor) that are reasonably requested by Investor to create or perfect any security interest of Investor on any Collateral;

(c) any representation or warranty made by Plaintiff in this Agreement, any other Investment Facility Document or any certificate or other writing shall have been false in any material respect when made;

(d) any Material Adverse Change;

(e) Plaintiff becomes subject to an Insolvency Proceeding not dismissed within 10 days;

(f) Plaintiff fails to perform or comply with any covenant or agreement contained in Sections 2.1.2 (Full Disclosure), 2.1.3 (No Impairment), 2.1.4 (Right to Bring the Litigation), 2.1.5 (Completeness and Accuracy), 3.1.2 (Duty to Cooperate), 3.1.4 (Duty to Inform), 3.1.5 (No Change in Litigation Counsel or IPR Counsel Without Investor Notice), 3.1.6 (Consultation Rights Regarding Settlement), 3.1.7 (Good Faith Dealings) and 13.1 (Proceeds Account);

(g) Plaintiff fails to perform or comply with any covenant or agreement contained in Sections 2 and 3 (other than those listed in Section 9.1(f) of this Agreement) or in any other Section of this Agreement or in any other Investment Facility Document and such failure, if capable of being remedied, shall remain unremedied for fifteen days after the earlier of the date on which Plaintiff obtains actual knowledge of such failure or the date written notice of such failure is given by Investor to Plaintiff;

(h) an Event of Default under the Security Agreement;

(i) any material provision of any Investment Facility Document ceases at any time and for any reason (other than pursuant to the express terms thereof) to be valid and binding on or enforceable against Plaintiff, or the validity or enforceability thereof is contested by Plaintiff, or a proceeding is commenced by Plaintiff or any Governmental Authority having jurisdiction over Plaintiff, seeking to establish the invalidity or unenforceability thereof, or Plaintiff denies in writing that it has any liability or obligation created under any Investment Facility Document to Investor;

(j) any Lien or security interest granted to Investor under the Investment Facility Documents ceases for any reason (other than as a direct result of Investor's termination of, or failure to continue, its UCC-1 financing statement) to be a valid, perfected or first priority security interest;

(k) any event or condition shall occur which results in the acceleration of the maturity of any Debt (other than under the Investment Documents) of the Borrower which Debt or Debts in the aggregate are at least $1,000,000; or

(l) the occurrence of a Change of Control.

9.2. Investor Termination Event Procedure. Investor may terminate this Agreement upon delivery of written notice to Plaintiff in accordance with Section 18.14 of this Agreement at any time after the occurrence of, and during the continuation of, any of an " Investor Termination Event ").

9.3. Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Investor to require strict performance by Plaintiff with any terms of the Investment Facility Documents, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of an Investment during a Default (as defined in the Security Agreement), Investor Termination Event or other failure to satisfy any conditions precedent; or (c) acceptance by Investor of any payment or performance by Plaintiff under any Investment Facility Documents in a manner other than that specified therein.

9.4. Failure to Disclose Information Related to Claim .

9.4.1 **Non-Material Disclosures** . Notwithstanding Section 9.1(f) , failure to disclose material information about a Claim will not constitute a breach of Section 3.1.4 (Duty to Inform) if such information (a) supports or strengthens the Litigation, or (b) was not known by Plaintiff on the Effective Date, and at the time after the Effective Date it becomes known by Plaintiff, such information would not have effected Investor's decision to invest in the Litigation had such information been known and disclosed by Plaintiff to Investor prior to the Effective Date.

9.4.2 **Procedure to Adjudicate Disclosure** . If Investor disputes any assertion by Plaintiff made pursuant to Section 9.4.1 that a failure by Plaintiff to disclose information required by Section 3.1.4 does not constitute a material breach of the Agreement, then the Parties shall submit such dispute to private, confidential arbitration pursuant to JAMS' Streamlined Arbitration Rules and Procedures in accordance with Section 14 .

9.5. No Control of Litigation or Funded IPR Proceedings . Notwithstanding the occurrence of an Investor Termination Event or the enforcement of remedies in consequence thereof, in connection with their enforcement of Liens upon the Collateral, Investor will not be authorized to become the owner of (by strict foreclosure or otherwise), or to sell or otherwise transfer (by public sale or otherwise) any right, title or interest in, any civil action, contested matter or other Litigation that is an asset of Plaintiff's, or to control the prosecution or settlement of any such civil action, contested matter or other Litigation unless and until abandoned in writing by Plaintiff.

9.6. Retention of Documents . Notwithstanding anything to the contrary herein, following termination, Investor shall be entitled, in order to protect its own interest in relation to this Agreement, to keep copies of the documentation relating to the Litigation, the Claim, and the Funded IPR Proceedings, including Confidential Information provided to it by Plaintiff, Litigation Counsel or by IPR Counsel pursuant to instructions given to Litigation Counsel or IPR Counsel by Plaintiff hereunder, provided , that it adheres to the confidentiality requirements set forth in Section 4 .

9.7. Survival . Notwithstanding the foregoing, the following Sections of this Agreement shall survive any termination of this Agreement and shall remain in full force and effect: Section 2.3.3 (Conflicts of Interest), Section 2.3.4 (No Waiver of Privilege), Section 3.1.4 (Duty to Inform), Section 3.1.6 (Consultation Rights Regarding Settlement), Section 4 (Common Interest and Confidential Information), and Section 14 (Dispute Resolution).

SECTION 10. TERMINATION BY PLAINTIFF.

10.1. Plaintiff Termination Events . Each of the following shall be a " Plaintiff Termination Event " if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) any representation or warranty made by Investor in this Agreement, any other Investment Facility Document or any certificate or other writing shall have been false in any material respect when made; or

(b) Investor fails to fund any Cost pursuant to the terms of this Agreement and the Payment Procedures, and such failure shall remain unremedied for forty-five days after the earlier of the date on which Plaintiff obtains actual knowledge of such failure or the date written notice of such failure is given by Plaintiff to Investor.

10.2. Plaintiff Termination Procedure. Plaintiff may terminate this Agreement upon delivery of written notice to Investor in accordance with Section 18.3 of this Agreement at any time after the occurrence of, and during the continuation of, any of a " Plaintiff Termination Event " (together with the Investor Termination Events, the " Termination Events ," and each, a " Termination Event ").

SECTION 11. MUTUAL TERMINATION EVENT.

11.1. Mutual Termination. This Agreement may be terminated by mutual agreement between the Parties.

SECTION 12. TERMINATION.

12.1. Remedies Upon Investor Termination Event. Upon an Investor Termination Event, Investor may, in its sole discretion, immediately cease further funding under this Agreement; provided , however, that Investor will be responsible to pay all Costs otherwise due under this Agreement to the extent properly incurred as of the date of such Termination Event.

12.2. Remedies Upon Plaintiff Termination Event. Upon a Plaintiff Termination Event, Investor nevertheless shall be entitled to receive from, and only from, Recoveries the repayment of amounts it would have been entitled to receive pursuant to Section 6.5 had the Conclusion of the Claim occurred on such date.

12.3. Payments to Investor Upon Termination Event. Upon a Termination Event, notwithstanding that it ceased funding, Investor shall be entitled to receive from any Recoveries an amount equal to all Recoveries that would have been due to Investor pursuant to Section 6.5 in the absence of such Termination Event. In the event Investor, in its sole discretion, determines that such amounts are insufficient to compensate it for the consequences of such Termination Event, Investor may seek additional remedies under the provisions of Section 14 . After a Termination Event, Cash Recoveries shall be paid directly into the Proceeds Account, and Recoveries in a form other than cash and cash equivalents shall be made to Investor and distributed pursuant to Section 6.5.2 .

12.4. Remedies Cumulative. All agreements, warranties, guaranties, indemnities and other undertakings of either Party under the Investment Facility Documents are cumulative and not in derogation of each other. The rights and remedies of either Party are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise, including remedies that either Party has under this Agreement pursuant to Section 14 .

12.5. Non-Performance. In no event shall any termination of this Agreement relieve a Party from (a) liability for its breach or non-performance of its obligations under this Agreement prior to the date of such termination, and (b) obligations under this Agreement which by their terms

expressly survive a Termination Event; provided , however, that, notwithstanding anything to the contrary contained in this Agreement, any Termination Event (including any automatic termination) may be waived in accordance with Section 18.8 of this Agreement, in which case such Termination Event so waived shall be deemed not to have occurred, this Agreement consequently shall be deemed to continue in full force and effect, and the rights and obligations of the Parties shall be restored, subject to any condition of such waiver.

SECTION 13. PROCEEDS ACCOUNT.

13.1. Proceeds Account . Investor shall establish a deposit account in its own name to be known as the "Proceeds Account." Only funds expressly required by the terms of the Investment Facility Documents to deposited into the Proceeds Account shall be so deposited, and no other funds shall be commingled in the Proceeds Account. Plaintiff shall direct that all Cash Recoveries be paid directly into the Proceeds Account. Investor shall be entitled to make distributions from the Proceeds Account in accordance with Section 6.5 of this Agreement. Pursuant to the Litigation Counsel Fee Agreement, Plaintiff has instructed and, if further instructions are needed, shall instruct, Litigation Counsel to transfer any Cash Recoveries to the Proceeds Account within one Business Day of the day on which any such Recoveries are received by Litigation Counsel. If any Cash Recoveries are paid directly to Plaintiff, then Plaintiff shall transfer such Cash Recoveries to the Proceeds Account within one Business Day of Plaintiff's receipt of such Cash Recoveries. Plaintiff shall further provide that all such funds shall be held by Litigation Counsel or Plaintiff, as the case may be, in trust for Investor, segregated from other funds of said recipient until transferred to the Proceeds Account.

SECTION 14. DISPUTE RESOLUTION.

14.1. Procedure . All disputes, controversies and Claim arising out of or relating to this Agreement shall be resolved by the Parties pursuant to this Section 14 .

14.1.1 Informal Settlement Meeting . The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of a dispute not resolved in the normal course of business. Within 14 days after delivery of such notice, the receiving Party shall submit a written response. The notice and response shall include with reasonable particularity (a) a statement of each Party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent the relevant Party. Within 28 days after delivery of any such notice, the executives of the Parties shall meet, telephonically or at a mutually acceptable time and place.

14.1.2 Confidential . All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by or on behalf of any of the Parties are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

14.1.3 Statute of Limitations. All applicable statutes of limitation and defenses based on the passage of time shall be tolled while the procedures specified in Section 14 are pending and for 14 days thereafter. The Parties will take such action, if any, required to effectuate such tolling.

14.2. Arbitration. At any time after the passage of 45 days after delivery of notice of dispute, any Party may initiate arbitration proceedings. Any dispute, controversy or claim arising out of or relating to this Agreement, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined through a private, confidential arbitration in accordance with Rule 12 of the JAMS Streamlined Arbitration Rules. The place of arbitration will be New York, New York, unless the Parties otherwise agree in writing. The language to be used in the arbitral proceedings will be English. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

14.2.1 Arbitral Confidentiality. The parties shall maintain the confidential nature of the arbitration proceeding and the award, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement or unless otherwise required by law or judicial decision.

14.2.2 Damages. The arbitrator shall be entitled to award damages to the prevailing party, including damages for lost profits and interest as allowed under New York law.

14.2.3 Attorneys' Fees. The arbitrator shall have discretion to award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration. If the arbitrator determines a party to be the prevailing party under circumstances where the prevailing party won on some but not all of the issues, the arbitrator may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the issue(s) on which the party prevailed in the arbitration.

14.2.4 Federal Arbitration Act. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in this Agreement with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C. Secs. 1-16).

SECTION 15. RIGHT OF FIRST REFUSAL.

15.1. Further Litigations. Investor shall have the right of first refusal to provide financing for any other litigation Plaintiff or its Affiliates may bring against any other Person for infringement relating to, arising under, or in connection with the technology that is the subject of this Agreement.

SECTION 16. CONFIDENTIALITY.

16.1. Information Disclosed Prior to the Effective Date. The Parties understand that all information relating to the Litigation and/or the Funded IPR Proceedings provided to Investor

by Plaintiff prior to the Effective Date has been provided pursuant to the Pre-Effective Date NDA. The Parties acknowledge and agree that, on the Effective Date, the Parties' communications shall be subject to the confidentiality provisions set forth hereunder, and the Pre-Effective Date NDA shall terminate and be of no further force and effect; provided, that, the Parties' confidentiality obligations set forth in the Pre-Effective Date NDA shall survive its termination.

16.2. Information Disclosed From and After the Effective Date. The Parties agree that all further communications from or on behalf of Plaintiff with Investor concerning any non-public information relating to the Litigation and/or the Funded IPR Proceedings, including information about litigation strategy, settlement strategy, drafts of briefs and otherwise, shall be provided to Investor and maintained by Investor in strict confidence and shall not be used by Investor for any purpose other than in connection with its rights and obligations under this Agreement; provided, however, that, under conditions of confidentiality, Investor may disclose this Agreement to its investors and each Party may disclose the Agreement to its lawyers, accountants and auditors; provided, further, that if the Litigation and/or any Funded IPR Proceeding is settled, the Parties may disclose the fact of the settlement, the settlement amount and such other terms to the extent reasonably necessary and appropriate to implement this Agreement.

16.3. Confidentiality of Investor's Information. Plaintiff agrees that all information Investor has provided to Plaintiff concerning Investor's business, including the financial terms Investor offered to Plaintiff at any time, are confidential and proprietary to Investor, and that Investor would suffer irreparable harm if any such information were disclosed without Investor's express, written permission. Investor shall be entitled to relief, including injunctive and other equitable relief, in the event of a breach of Investor's confidentiality.

16.4. Agreement Confidentiality.

16.4.1 Strict Confidence. The Parties shall maintain in strict confidence the existence and terms of the Investment Facility Documents, and the Parties' discussions, negotiations, and exchanges of the terms of the Investment Facility Documents, in accordance with the terms of this Agreement; provided, however, that the existence and terms of the Investment Facility Documents may be disclosed: (a) to any affiliates, investors, prospective investors (including lenders and prospective lenders), employees, directors, officers, agents, advisors, counsel, auditors, representatives, officers and outside advisors (collectively, the " Representatives ") of such Party (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and agree in writing to keep such information confidential in accordance with this Section 16.4.1), (b) as permitted by Section 16.4.2 of this Agreement, (c) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Representatives (including any self-regulatory authority), (d) to the extent required by applicable laws or regulations, (e) in connection with the exercise of any remedies hereunder or under any other Investment Facility Document or any action or proceeding relating to this Agreement or any other Investment Facility Document or the enforcement of rights hereunder or thereunder, or (f) subject to an agreement containing provisions substantially the same as those of this Section 16.4.1 . Each Party will be responsible for any breach of this Agreement by its Representatives.

16.4.2 Disclosure to Court . In the event either Party is required by any court of competent jurisdiction or any competent judicial, governmental, supervisory, or regulatory entity or by subpoena to disclose any of the existence and terms of the Investment Facility Documents or information related thereto, each Party may disclose that portion of the existence and terms of the Investment Facility Documents or information that, in the opinion of such Party's counsel, such Party is required to disclose. Each Party agrees to notify the other promptly in the event of a request for such disclosure or receipt of a subpoena requesting such disclosure (unless such notification shall be prohibited by applicable law or legal process) and cooperate with the other Party in any attempt it may make to obtain a protective order or other appropriate assurance prior to such disclosure.

SECTION 17. INDEMNIFICATION.

17.1. Plaintiff Indemnification . Plaintiff hereby agrees to defend, protect, indemnify and hold harmless Investor and its officers, directors and employees and Investor's attorneys, consultants and agents engaged at any time in respect of the transactions contemplated by the Investment Facility Documents (collectively, the " Indemnitees ") from and against any and all losses, damages, liabilities, obligations, penalties, fees, reasonable costs and expenses (including reasonable attorneys' fees, costs and expenses) incurred by such Indemnitees, from and after the Effective Date as a result of any claim, litigation, investigation or proceeding relating to the transactions contemplated by the Investment Facility Documents, whether or not any Indemnitee is a party thereto (collectively, the " Indemnified Matters "); provided , however, that Plaintiff shall not have any obligation to any Indemnitee under this Section for any Indemnified Matters (i) caused by the gross negligence or willful misconduct of such Indemnitee, as determined by a Final Order, or (ii) that relates to or arises out of any action, suit or other proceeding instituted by Plaintiff against Investor to enforce any Investment Facility Documents.

17.2. Limitation of Liability for Certain Damages . No Party shall assert, and each Party hereby waives, any claim against the other Party and its officers, directors and employees and such Party's attorneys, consultants and agents engaged at any time in respect of the transactions contemplated by this Agreement, for Special Damages (as defined below), as opposed to general or direct damages (on any theory of liability and whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement), that arises out of, in connection with, as a result of, or in any way related to, any Investment Facility Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, or any act or omission or event occurring in connection therewith, and each party hereby waives, releases and agrees not to sue upon any such claim for such Special Damages or seek to recover any such Special Damages, whether or not accrued and whether or not known or suspected to exist in its favor. As used herein, the term " Special Damages " means any special, indirect, consequential or punitive damages.

SECTION 18. MISCELLANEOUS.

18.1. Governing Law . This agreement shall be governed by the law of the State of New York, exclusive of that jurisdiction's conflicts of law principles.

18.2. **Jury Trial Waiver**. To the fullest extent permitted by Applicable Law, each of the Parties waives the right to trial by jury in any proceeding or dispute of any kind relating in any way to any Investment Facility Documents, Obligations or Collateral, and each Party acknowledges that the foregoing waiver is a material inducement to the other Party to enter into this Agreement. Each Party has reviewed the foregoing waiver with its legal counsel and has knowingly and voluntarily waived its jury trial right following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

18.3. **Entire Agreement**. This Agreement sets forth the entire agreement between and among the Parties and fully supersedes any and all prior agreements and understandings, written or oral, between the Parties pertaining to the subject matter hereof. Except as explicitly set forth in this Agreement or any other agreement contemplated herein, there are no representations, warranties, promises or inducements, whether oral, written, expressed or implied, that in any way affect or condition the validity of this Agreement or alter or supplement its terms. Any statements, promises or inducements, whether made by any Party or the agent of any Party, that are not contained in this Agreement shall not be valid or binding. This Agreement shall have perpetual existence, except as otherwise provided herein.

18.4. **Informed Consent and Knowledge**. The Parties expressly warrant and represent that (a) they have had the benefit of the professional advice of attorneys of their own choosing, (b) they have fully considered in consultation with such counsel the terms of the Investment Facility Documents, including those related to attorney-client privilege and work product issues and (c) they are fully satisfied with such advice and have decided to enter into the Investment Facility Documents. The Parties also represent and acknowledge that, in executing the Investment Facility Documents, they do not rely and have not relied on any representation or statement made by the other Party or any of its agents, representatives or attorneys with regard to the subject matter, basis or effect of the Investment Facility Documents or otherwise, other than as specifically stated in this Agreement.

18.5. **Expenses of the Parties**. Each Party shall bear its own expenses incurred in the negotiation and execution of this Agreement.

18.6. **Cooperation**. Each Party agrees to take such steps and to execute any documents as may be reasonably necessary or proper to effectuate the purpose and intent of this Agreement and to preserve its validity and enforceability. In the event that any action or proceeding of any type whatsoever is commenced or prosecuted by any person not a Party hereto to invalidate, interpret or prevent the validation, enforcement or carrying out of all or any of the provisions of this Agreement, the Parties mutually agree, represent, warrant and covenant to cooperate in opposing such action or proceeding.

18.7. **Waiver and Amendment**. No provision of or rights under this Agreement may be waived or modified unless in writing and signed by the Party whose rights are thereby waived or modified. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein (whether similar or not), nor shall such waiver constitute a continuing waiver unless otherwise expressly so provided. This Agreement may not be amended except through an instrument in writing signed by the Parties hereto.

18.8. **Construction**. The Investment Facility Documents are the jointly drafted product of good faith arms'-length negotiations between the Parties with the benefit of advice from their own respective legal counsel and each of them has had sufficient opportunities to propose and negotiate changes to each Investment Facility Document prior to its execution. As such, no Party will claim that any ambiguity in any Investment Facility Document shall be construed against the other Party by reason of its identity as a drafter.

18.9. **Successors and Assigns**. Except as expressly provided in this Agreement, neither this Agreement nor any of the rights and obligations set forth herein shall be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, that Investor may assign its rights and obligations hereunder to TRGP Capital Partners, L.P. or an Affiliate thereof without the prior consent of Plaintiff.

18.10. **Severability**. If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement.

18.11. **Relationship of the Parties**.

18.11.1 Investor. The Investor and certain of its Affiliates are engaged in a capital provision and advisory business principally focused on assets connected to litigation, arbitration or mediation. The Investor and its Affiliates are not law firms and are not engaged in the practice of law with respect to any Claim or the Plaintiff. The Plaintiff may not, and shall not, rely on any of the Investor or their Affiliates for legal advice.

18.11.2 No Fiduciary Relationship. Nothing in this Agreement or any other Investment Document shall give rise to or be construed to create a fiduciary, lawyer-client, lender-borrower, agency or other non-contractual relationship between the Parties.

18.11.3 No Partnership. Neither this Agreement nor any other Investment Document shall create or be construed to create any joint venture, partnership or any other type of affiliation between the Parties, nor does this Agreement or any other Investment Document create a joint interest in any Claim for any purpose, including for U.S. federal, state and local income tax purposes.

18.12. **No Rights of Third Parties**. The provisions of this Agreement are solely for the benefit of the Parties, Litigation Counsel and IPR Counsel. The Parties hereby acknowledge that each of Litigation Counsel and IPR Counsel is a third-party beneficiary of, and may enforce directly, the provisions of (a), in the case of Litigation Counsel, Sections 5.6, and 6.5.1 - 6.5.3 of this Agreement and (b) in the case of IPR Counsel, Section 5.5 of this Agreement. The Parties agree that, except as set forth in the prior sentence or otherwise expressly set forth in this Agreement, there are no intended third-party beneficiaries to this Agreement.

18.13. **Notice to Parties**. Unless another person is designated in writing for receipt of notices hereunder, notices to the respective Parties shall be sent to the following persons designated below. All notices shall be sent by both email and either (a) overnight mail or (b) certified mail.

Notice to Plaintiff:

Netlist, Inc.
175 Technology
Irvine, CA 92618
Attn. Gail Sasaki
Chief Financial Officer
Direct: (949) 679-0113
Cell: (714) 337-2155
Fax: (949) 435-0031
Email: gsasaki@netlist.com

Notice to Investor:

TR Global Funding V, LLC
c/o TRGP Capital Management, LLC
777 3rd Avenue, 31st Floor
New York, New York 10017
Attention: Michael K. Rozen
Work: (212) 527-9605
Cell: (917) 414-1385
Email: mrozen@trgpcap.com

18.14. Counterparts. This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument. This Agreement may be executed and delivered by email (via .pdf file), which shall be deemed the same as originals.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each of the undersigned Parties has approved and executed this Agreement as of the date first written above.

PLAINTIFF

NETLIST, INC.

/s/ Gail Sasaki
By: Gail Sasaki
Title: CFO, VP, Secretary

INVESTOR

TR GLOBAL FUNDING V, LLC

By: TR Global Associates V, LLC,
its managing member

/s/ Michael K. Rozen
By: Michael K. Rozen
Title: Managing Member

EXHIBIT A1
TO
INVESTMENT AGREEMENT

SVB Intercreditor Agreement

(Filed as Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended July 1, 2017)

EXHIBIT A2
TO
INVESTMENT AGREEMENT

SVIC Intercreditor Agreement

(Filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended July 1, 2017)

EXHIBIT B1
TO
INVESTMENT AGREEMENT

Form of Litigation Counsel Investment Request

[MINTZ LEVIN LETTERHEAD]

[Date:]

TR Global Funding V, LLC
c/o TRGP Capital Management, LLC
777 Third Avenue, 31st Floor
New York, NY 10017
E-Mail: Billing@trgpcap.com

Re: Investment Request – Netlist, Inc.

Gentlemen:

The undersigned, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (" Mintz Levin "), refers to the Investment Agreement, dated [●], 2017 (as from time to time amended, the " Investment Agreement ," the terms defined therein being used herein as therein defined), between Netlist, Inc. and TR Global Funding V, LLC (together with its successors and assigns, " Investor "), and hereby gives you notice, irrevocably, pursuant to [Section 6.1] [FOR INITIAL INVESTMENT] [Section 6.2] [FOR SUBSEQUENT INVESTMENT] of the Investment Agreement, that the undersigned hereby requests an Investment under the Investment Agreement, and in that regard sets forth below the information relating to such Funding (the " Proposed Investment "):

(i) The amount of the Proposed Investment is $_____.

(ii) The account to which proceeds of the Proposed Borrowing should be deposited is _____.

Copies of all invoices supporting the Proposed Investment are attached hereto.

Very truly yours,

cc: Netlist, Inc. (via e-mail)

EXHIBIT B2
TO
INVESTMENT AGREEMENT

Form of Certification for Litigation Counsel Investment Request

[NETLIST INC. LETTERHEAD]

[Date:]

TR Global Funding V, LLC
c/o TRGP Capital Management, LLC
777 Third Avenue, 31st Floor
New York, NY 10017
E-Mail: Billing@trgpcap.com

Re: Investment Request – Netlist, Inc.

Gentlemen:

The undersigned, Netlist, Inc. (" Plaintiff "), refers to (1) the Investment Agreement dated [●], 2017 (as from time to time amended, the " Investment Agreement ," the terms defined therein being used herein as therein defined), between Plaintiff and TR Global Funding V, LLC (together with its successors and assigns, " Investor "), and (2) the Investment Request, dated [●], by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. (the " Mintz Levin Investment Request "). Plaintiff has reviewed the Mintz Levin Investment Request and copies of all invoices supporting the Proposed Investment (as defined in the Mintz Levin Investment Request).
The undersigned hereby certifies that the following statements are true on the date hereof and will be true on the date of the Proposed Investment:

(A) the representations and warranties contained in Section 2 of the Investment Agreement are true and correct on the Effective Date and on and as of the date hereof as if made on the date hereof (except to the extent any such representation or warranty speaks as of any earlier date, in which case they shall be true and correct as of such earlier date), and immediately after giving effect to the Proposed Investment and to the application of the proceeds therefrom; and

(B) no event has occurred and is continuing, or would result from such Proposed Investment or from the application of the proceeds therefrom, which constitutes an Investor Termination Event under the Investment Agreement or Event of Default under the Security Agreement.

This Mintz Levin Investment Request is also a representation and warranty by Borrower that all other conditions specified in [Section 7.1 and Section 7.2] [Section 7.2] will be satisfied on and as of the date of the Proposed Investment.

Very truly yours,

cc: Mintz Levin (via e-mail)

EXHIBIT B3
TO
INVESTMENT AGREEMENT

Form of Plaintiff Investment Request

[NETLIST, INC. LETTERHEAD]

[Date:]

TR Global Funding V, LLC
c/o TRGP Capital Management, LLC
777 Third Avenue, 31st Floor
New York, NY 10017
E-Mail: Billing@trgpcap.com

Re: Investment Request – Netlist, Inc.

Gentlemen:

The undersigned, Netlist, Inc. (" Plaintiff "), refers to the Investment Agreement dated [●], 2017 (as from time to time amended, the " Investment Agreement ," the terms defined therein being used herein as therein defined), between Plaintiff and TR Global Funding V, LLC (together with its successors and assigns, " Investor "), and hereby gives you notice, irrevocably, pursuant to [Section 6.1] [FOR INITIAL INVESTMENT] [Section 6.2] [FOR SUBSEQUENT INVESTMENT] of the Investment Agreement, that the undersigned hereby requests an Investment under the Investment Agreement, and in that regard sets forth below the information relating to such Funding (the " Proposed Investment "):

(ii) The amount of the Proposed Investment is $_____.

(ii) The account to which proceeds of the Proposed Borrowing should be deposited is _____.

Copies of all invoices supporting the Proposed Investment are attached hereto.

The undersigned hereby certifies that the following statements are true on the date hereof and will be true on the date of the Proposed Investment:

(A) the representations and warranties contained in Section 2 of the Investment Agreement are true and correct on the Effective Date and on and as of the date hereof as if made on the date hereof (except to the extent any such representation or warranty speaks as of any earlier date, in which case they shall be true and correct as of such earlier date), and immediately after giving effect to the Proposed Investment and to the application of the proceeds therefrom; and

(B) no event has occurred and is continuing, or would result from such Proposed Investment or from the application of the proceeds therefrom, which constitutes an Investor Termination Event under the Investment Agreement or Event of Default under the Security Agreement.

This Investment Request is a representation and warranty by Borrower that all other conditions specified in [Section 7.1 and Section 7.2] [Section 7.2] will be satisfied on and as of the date of the Proposed Investment.

Very truly yours,

EXHIBIT C
TO
INVESTMENT AGREEMENT

Litigation Counsel Fee Agreement

[See Attached]

[*****]

EXHIBIT D
TO
INVESTMENT AGREEMENT

IPR Counsel Confirmations

[See Attached]

[*****]

EXHIBIT E
TO
INVESTMENT AGREEMENT

Payment Procedures

1. Litigation Counsel .

a. Litigation Counsel shall remit all Investment Requests simultaneously to Investor (by email addressed to Billing@trgpcap.com) and to Plaintiff.

b. The initial Investment Request shall be accompanied by invoices for all Litigation Costs incurred during period from January 1, 2017 through the last day of the month preceding the date of such Investment Request.

c. Each subsequent Investment Request shall be accompanied by invoices for all Litigation Costs incurred during the month preceding the date of such Investment Request.

d. Plaintiff shall review the Litigation Counsel invoices and submit a certification, in the form of **Exhibit B2** to Investor within 10 Business Days. Investor shall have no obligation to fund the Investment Request prior to receipt of such certification from Plaintiff.

d. Investor shall pay the Litigation Costs included in each Investment Request within 45 days of its receipt of such Investment Request.

2. IPR Counsel .

a. Each IPR Counsel shall remit invoices for all IPR Costs incurred during month preceding the date of such remission to Plaintiff and not to Investor.

b. Plaintiff shall submit Investment Requests for payment of IPR Costs directly to Investor by email addressed to Billing@trgpcap.com.

c. The initial Investment Request for payment of IPR Costs shall be accompanied by invoices for all IPR Costs incurred during period from January 1, 2017 through the last day of the month preceding the date of such Investment Request.

d. Each subsequent Investment Request shall be accompanied by invoices for all IPR Costs incurred during the month preceding the date of such Investment Request.

e. Investor shall pay the IPR Costs included in each Investment Request within 45 days of its receipt of such Investment Request.

3. Fees Generally . Plaintiff shall review all invoices submitted to it and use its best efforts to reconcile all fees, costs and expenses that are set forth therein. In the event that Plaintiff determines that there is a discrepancy in such invoice (*e.g.* , overbilling, non-compliance with the Investor Billing Guidelines, mathematical error, etc.), it shall promptly notify Investor and work

in good faith with Investor to rectify such discrepancy with Litigation Counsel or IPR Counsel (or the vendor or other Person on whose behalf Litigation Counsel or IPR Counsel submitted such invoice).

EXHIBIT F
TO
INVESTMENT AGREEMENT

Security Agreement

(Filed as Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarterly period ended July 1, 2017)

SCHEDULE 2.1.10
TO
INVESTMENT AGREEMENT

Litigation Related To The Asserted Patents

- The '185, the '434 and the '501 patents were the subject of a complaint filed by Netlist on August 23, 2013, in Netlist, Inc. v. Smart Modular Technologies, Inc., Civil Action 4:13-cv-05889, pending in the Northern District of California. On February 12, 2014, Netlist's claims against Smart Modular were dismissed pursuant to a stipulation based on Smart Modular's sworn statement that "SMART Modular does not and has not manufactured, used, sold, offered to sell, or imported the ULLtraDIMM storage product" and that "SMART Modular did not direct, finance, or otherwise participate in the development or production of the ULLtraDIMM line of products." The case was consolidated with Diablo Technologies, Inc. v. Netlist, Inc., Civil Action 4:13-cv-03901 on April 8, 2014. On April 9, 2015, the district court granted a motion to stay the case pending inter partes review. The case is stayed.

- The '185, the '434 and the '501 patents were also the subject of a declaratory judgment complaint filed by Smart Modular Technologies, Inc. on August 23, 2013, in Smart Modular Technologies, Inc. v. Netlist, Inc., Civil Action 4:13-cv-03916, previously pending in the Northern District of California. The case was dismissed on February 12, 2014, based on Smart Modular's sworn statement that "SMART Modular does not and has not manufactured, used, sold, offered to sell, or imported the ULLtraDIMM storage product" and that "SMART Modular did not direct, finance, or otherwise participate in the development or production of the ULLtraDIMM line of products."

- The '185, the '434 and the '501 patents were also the subject of a declaratory judgment complaint filed by Diablo Technologies, Inc. on August 23, 2013, in Diablo Technologies, Inc. v. Netlist, Inc., Civil Action 4:13-cv-03901, previously pending in the Northern District of California. The case was consolidated with Netlist, Inc. v. Smart Modular Technologies, Inc., Civil Action 4:13-cv-05889 on April 8, 2014, which is stayed.

SCHEDULE 2.1.11
TO
INVESTMENT AGREEMENT

Pending Litigation

- See Schedule 2.1.10
- The Litigation
- Smart Modular v. Netlist, filed 9/13/12; Civil Action 2:12-cv-02319-MCE-EFB, pending in the EDCA.
- Netlist v. Google, filed 12/4/09; Civil Action 4:09-cv-05718, pending in the NDCA (currently stayed pending completion of inter partes reexaminations)
- Netlist v. Inphi, filed 9/22/09; Civil Action 2:09-cv-06900, pending in the CDCA (currently stayed pending completion of inter partes reexaminations)

Exhibit 10.3

SECURITY AGREEMENT

SECURITY AGREEMENT (this " Agreement "), dated as of May 3, 2017, made by Netlist, Inc., a Delaware corporation (together with its successors and assigns, " Grantor "), in favor of TR Global Funding V, LLC, a Delaware limited liability company managed by TR Global Associates V, LLC (together with its successors and assigns, " Investor ").

RECITALS :

WHEREAS, reference is made to that certain Investment Agreement, dated as of the date hereof (as it may be amended, restated, supplemented or otherwise modified from time to time, the " Investment Agreement "), between Grantor and Investor; and

WHEREAS, it is a condition precedent to Investor making any Investment and providing any other financial accommodation to Grantor under the Investment Agreement that Grantor shall have executed and delivered this Agreement to Investor; and

WHEREAS, Grantor has determined that the execution, delivery and performance of this Agreement will directly benefit, and is in the best interests of, Grantor.

NOW, THEREFORE, in consideration of the premises and the agreements herein and in order to induce Investor to make and maintain the Investments and to provide other financial accommodations to Grantor pursuant to the Investment Agreement, the Grantor hereby agrees with Investor as follows:

SECTION 1. Definitions .

(a) Reference is hereby made to the Investment Agreement for a statement of the terms thereof. All capitalized terms used in this Agreement that are defined in the Investment Agreement or in Article 8 or 9 of the UCC and that are not otherwise defined herein shall have the same meanings herein as set forth therein; provided that terms used herein that are defined in the UCC on the date hereof shall continue to have the same meaning notwithstanding any replacement or amendment of such statute except as Investor may otherwise determine. If any conflict or inconsistency exists between this Agreement and the Investment Agreement, the Investment Agreement shall govern.

(b) The incorporation by reference of terms defined in the Investment Agreement shall survive any termination of the Investment Agreement until this Agreement is terminated.

(c) As used in this Agreement, the following terms shall have the following meanings, such meanings to be applicable equally to both the singular and plural forms of such terms:

" Agreement " has the meaning set forth in the preamble.

" Collateral " has the meaning set forth in Section 2 hereof.

“ Event of Default ” has the meaning set forth in Section 8(a) hereof.

" Grantor " has the meaning set forth in the Recitals hereto.

" Investment Agreement " has the meaning set forth in the Recitals hereto.

" Patent Licenses " means all licenses, contracts or other agreements, whether written or oral, (i) naming Grantor as licensor and providing for the grant of any right to manufacture, use, practice, offer for sale, sell, make, have made or import products or any invention, as the case may be, covered by any Patent or (ii) naming Grantor as licensee and providing for the grant of any right to manufacture, use, practice, offer for sale, sell, make, have made or import products or any invention, as the case may be, covered by any patent (other than the Patents), and granted in connection with the resolution of the Claim.

" Patents " means the patents and patent applications listed in Schedule A to the Patent Security Agreement attached as **Exhibit A** .

" Perfection Requirements " has the meaning set forth in Section 5(r) hereof.

" Reference Entity Debt " has the meaning set forth in Section 2(c) hereof.

" UCC " shall mean the Uniform Commercial Code as in effect from time to time in the State of New York; provided , however, that in the event that, by reason of mandatory provisions of law, any or all of the perfection or priority of, or remedies with respect to, any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such perfection, priority or remedies.

SECTION 2. Grant of Security Interest . As collateral security for the payment, performance and observance of all of the Obligations, Grantor hereby pledges and assigns to Investor (and its agents and designees), and grants to Investor (and its agents and designees) a continuing security interest in all of Grantor’s right, title and interest in, to and under the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired, (collectively, the " Collateral "):

(a) all Commercial Tort Claims set forth in Schedule 2(a) hereto (as such schedule may be updated from time to time);

(b) the Recoveries;

(c) the obligation of the Reference Entity to pay the Recoveries and any other amounts determined to be owing by the Reference Entity in respect of the Claim or the Litigation (collectively, the " Reference Entity Debt ");

(d) all Supporting Obligations (as defined in the UCC) relating to the Reference Entity Debt, including any bond posted to insure the payment thereof;

(e) the Patents;

(f) the Patent Licenses; and

(g) all Proceeds, including all Cash Proceeds and Noncash Proceeds (each as defined in the UCC), and products of any and all of the foregoing Collateral;

in each case, howsoever Grantor's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise). Without limiting the generality of the foregoing, the Collateral consists of all rights of Grantor in and to the Claim and all judgments, settlements and recoveries therein or other resolutions thereof. The foregoing grant includes all rights, powers and options (but none of the obligations, if any) of Grantor under any instrument included in the Collateral, including the immediate and continuing right to claim for, collect, receive and give receipt for payments in respect of the Collateral and all other monies payable under the Collateral, to give and receive notices and other communications, to exercise all rights and options, to bring proceedings in the name of Grantor or otherwise and generally to do and receive anything that Grantor is or may be entitled to do or receive under or with respect to the Collateral.

SECTION 3. Security for Obligations .

(a) The security interest created hereby in the Collateral constitutes continuing collateral security for all of the following obligations, whether now existing or hereafter incurred:

(i) the prompt and complete payment by Grantor, as and when due and payable (whether by declaration, demand or otherwise), of all amounts owing by Grantor in respect of the Investment Agreement and/or the other Investment Facility Documents, including, without limitation, (i) all Obligations and (ii) all indemnifications and all other amounts due or to become due under any Investment Facility Document; and

(ii) the prompt payment and due performance and observance by Grantor of all of its other obligations from time to time existing in respect of this Agreement and any other Investment Facility Document.

(b) Notwithstanding anything herein to the contrary, (i) Grantor shall remain liable for all obligations to third parties in respect of the Collateral, and nothing contained herein is intended or shall be a delegation of duties to Investor, (ii) Grantor shall remain liable under each agreement included in the Collateral to perform all of its obligations thereunder in accordance with, and pursuant to, the terms and provisions thereof, and Investor shall not have any obligation or liability under any such agreement by reason of, or arising out of, this Agreement or any other document related thereto prior to its acquisition thereof by enforcement of its rights under this Agreement or transfer in lieu of such enforcement, nor shall Investor have any obligation to make any inquiry as to the nature or sufficiency of any payment received by it or have any obligation to take any action to collect or enforce any rights under any agreement included in the Collateral, and (iii) the exercise by Investor of any of its rights hereunder shall not release Grantor from any of its

duties or obligations under the contracts and agreements included in the Collateral.

SECTION 4. [Reserved] .

SECTION 5. Representations and Warranties . Grantor represents and warrants as follows:

(a) Schedule 5(a) (as may be amended, supplemented or otherwise modified from time to time in accordance with the terms hereof) hereto sets forth a complete and accurate list as of the date hereof of (i) the exact legal name of Grantor, (ii) the jurisdiction of organization of Grantor, (iii) the type of organization of Grantor, (iv) the organizational identification number of Grantor (or states that no such organizational identification number exists), and (v) location of Grantor's chief place of business and chief executive office. As of the date hereof, except as provided on Schedule 5(a) , Grantor has not changed its name, principal residence or jurisdiction of organization, chief executive office or sole place of business, or its corporate structure in any way (*e.g.* , by merger, consolidation, change in corporate form or otherwise), in each case, within the past five years.

(b) Grantor is qualified to do business in each jurisdiction in which the nature of its business so requires. Grantor has not filed any certificates of dissolution or liquidation, any certificates of domestication, transfer or continuance in any other jurisdiction.

(c) [Reserved].

(d) [Reserved].

(e) [Reserved].

(f) [Reserved].

(g) Grantor has not set off or agreed to set off any amounts against the Claim or the Reference Entity Debt and no rights of set-off or similar rights against the Grantor exist which will permit any set-off of or counterclaim against the Claim and/or the Reference Entity Debt.

(h) Except as set forth in the Litigation, Grantor has not received any notice and is not otherwise aware that the Claim or the Reference Entity Debt or any portion thereof are subject to any impairment or are otherwise invalid or void.

(i) Grantor is not insolvent and has no Insolvency Proceedings threatened or outstanding against it.

(j) [Reserved].

(k) [Reserved].

(l) [Reserved].

(m) Schedule 5(m) hereto sets forth a complete and accurate list of all patents and patent applications, if any, applicable to the Claim. Each Patent is subsisting and in full force and effect, has not been adjudged invalid or unenforceable in a non-appealable final judgment, is, to the best of Grantor's knowledge, valid and enforceable and has not been abandoned in whole or in part. To the best of Grantor's knowledge, none of the Patents conflicts with the patent or other intellectual property rights of others and Grantor is not now infringing or in conflict with any such rights of others. Except as related to the Litigation, Grantor has not received any notice that it is violating or infringing or that it has violated or infringed, or that invites Grantor to take a license under, the patent rights or other intellectual property rights of any Person.

(n) [Reserved].

(o) Except as set forth in the Litigation, to the best of Grantor's knowledge: (i) no employee, independent contractor or agent of Grantor has (mis)appropriated any patents, patent rights or other intellectual property rights of any other Person in the course of the performance of his or her duties as an employee, independent contractor or agent of Grantor; and (ii) no employee, independent contractor or agent of Grantor is in default or breach of any term of any employment agreement, non-disclosure agreement, assignment of inventions agreement or similar agreement, or contract relating in any way to the protection, ownership, development, use or transfer of the Patents.

(p) The Grantor is and will be at all times the sole and exclusive owner of, or otherwise have and will have adequate rights in, the Collateral free and clear of any Liens except for the Permitted Liens. No effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any recording or filing office with respect to a valid Lien except such as may have been filed to perfect or protect any Permitted Lien.

(q) The exercise by Investor of any of its rights and remedies hereunder and pursuant to the Intercreditor Agreement, will not contravene any law or contractual obligation binding on or otherwise affecting Grantor or any of its properties and will not result in, or require the creation of, any Lien upon or with respect to any of its properties.

(r) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for (i) the due execution, delivery and performance by Grantor of this Agreement, or (ii) the grant by Grantor of the security interest purported to be created hereby in the Collateral. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other Person, is required for the perfection of the security interest purported to be created hereby in the Collateral, except (A) for the filing under the UCC as in effect in the applicable jurisdiction of the financing statements described in Schedule 5(r) hereto, all of which financing statements have been duly filed and are in full force and effect, (B) with respect to any action that may be necessary to obtain control of Collateral constituting Deposit Accounts the taking of such actions, and (C) Investor's having possession of Documents, Instruments and cash constituting Collateral (subclauses (A)-(C), each a " Perfection Requirement " and collectively, the " Perfection Requirements ").

(s) This Agreement creates a legal, valid and enforceable security interest in favor of Investor in the Collateral, as security for the Obligations. The Perfection

Requirements result in the perfection of such security interests. Such security interests are, or in the case of Collateral in which Grantor obtains rights after the date hereof, will be, perfected, first priority security interests, subject in priority only to the Permitted Liens, and the Perfection Requirements.

(t) Grantor owns the Collateral pledged by it and is the sole legal and beneficial owner of, and has good title to, all processes, applications, inventions, trade secrets, entitlements and other rights underlying the Claim and the Litigation free and clear of any and all Liens, rights or claims of all other persons, including Liens arising as a result of Grantor becoming bound (as a result of merger or otherwise) as debtor under a security agreement entered into by another Person (except for Permitted Liens).

SECTION 6. Covenants as to the Collateral . During the period from the Effective Date until the Termination Date, unless Investor shall otherwise consent in writing:

(a) Further Assurances . Grantor shall take such action and execute, acknowledge and deliver, at its sole cost and expense, such agreements, instruments or other documents as Investor may require from time to time in order (i) to perfect and protect, or maintain the perfection of, the security interest and Lien purported to be created hereby; (ii) to enable Investor to exercise and enforce its rights and remedies hereunder in respect of the Collateral; or (iii) otherwise to effect the purposes of this Agreement. Grantor shall not take or fail to take any action which could in any manner impair the validity or enforceability of Investor's security interest in and Lien on any Collateral.

(b Notices and Communications; Defense of Title; Amendments; Equity Issuances . Grantor shall, at Grantor's expense:

(i) [Reserved]; and

(ii) defend Investor's right, title and security interest in and t o the Collateral against the claims of any Person, keep the Collateral free from all Liens (except Permitted Liens), and not sell, exchange, transfer, assign, lease or otherwise dispose of the Collateral or any interest therein, except as permitted under the Investment Facility Documents .

(c) Further Duties .

(i) Except for the Permitted Liens, Grantor shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, and Grantor shall defend the Collateral against all persons at any time claiming any interest therein (other than Permitted Liens).

(ii) Promptly upon obtaining knowledge thereof, Grantor shall notify Investor in writing of any event that could reasonably be expected to have a material adverse effect on the value of the Collateral or any portion thereof, the ability of Grantor or Investor to dispose of the Collateral or any portion thereof, or the rights and remedies of Investor in relation thereto.

(iii) Patents . Grantor has duly executed and delivered the Patent Security Agreement in the form attached hereto as Exhibit A. Grantor will take all action necessary

to maintain all of the Patents and the Patent Licenses in full force and effect. Grantor will cause to be taken all necessary steps in any proceedings before the United States Patent and Trademark Office to maintain each Patent.

(iv) Grantor shall not challenge the validity, perfection or priority (as and to the extent provided in this Agreement) of the Liens granted to Investor.

(d) Status of Security Interest . Grantor shall maintain the security interest of Investor hereunder in all Collateral as a valid, perfected, first priority Lien, except for any Permitted Lien (provided that no filing by Investor of a UCC-3 financing statement amendment or failure of Investor to file a UCC continuation statement will be deemed to breach this covenant).

(e) Reliance .

(i) Grantor agrees and acknowledges that the duties contained in this Section 6 are a material inducement for Investor to enter into this Agreement, and that Investor may, if such covenants are breached, immediately exercise all of the remedies provided herein or under law. Grantor further agrees that a breach of any of the covenants contained in this Section 6 will cause irreparable injury to Investor, that Investor has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 6 shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of Investor hereunder.

(f) Records; Inspection and Reporting .

(i) Subject to attorney-client privilege, Investor shall at all times have full and free access during normal business hours upon three business days prior written notice to those of the books, correspondence and records of Grantor that relate to the Collateral, and Investor and its representatives may examine the same, take extracts there from and make photocopies thereof, and Grantor agrees to render to Investor, at Investor's cost and expense such clerical and other assistance as may be reasonably requested with regard thereto.

(ii) Grantor shall not, without at least ten Business Days' prior written notice to Investor, amend, modify or otherwise change its name, organizational identification number or FEIN, its jurisdiction of organization, and chief executive office as set forth in Schedule 5.1(a) hereto .

SECTION 7. Additional Provisions Concerning the Collateral .

(a) To the maximum extent permitted by applicable law, and for the purpose of taking any action that Investor may deem necessary or advisable to accomplish the purposes of this Agreement, Grantor hereby (i) authorizes Investor to execute any such agreements, instruments or other documents in Grantor's name and to file such agreements, instruments or other documents in Grantor's name and in any appropriate filing office,

(ii) authorizes Investor at any time and from time to time to file, one or more financing or continuation statements and amendments thereto, relating to the Collateral that (A) describes or identifies the Collateral by type or in any other manner as Investor may determine, regardless of whether any particular asset of Grantor falls within the scope of Article 9 of the UCC or whether any particular asset of Grantor constitutes part of the Collateral, and (B) contains any other information required by Part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement, continuation statement or amendment, including, without limitation, whether Grantor is an organization, the type of organization and any organizational identification number issued to Grantor), (iii) ratifies such authorization to the extent that Investor has filed any such financing statements, continuation statements, or amendments thereto, prior to the date hereof, and (iv) prepare, sign, and file for recordation in the proper registry, appropriate evidence of the lien and security interest granted herein in any Patent constituting Collateral in the name of Grantor as debtor, including the Patent Security Agreement. A photocopy or other reproduction of this Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(b) Grantor hereby irrevocably appoints Investor as its attorney-in-fact and proxy, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise, from time to time in Investor's discretion during the continuance of an Event of Default, to take any action and to execute any instrument that Investor may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, (i) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any Collateral, (ii) to receive, endorse, and collect any drafts or other Instruments, Documents and Chattel Paper in connection with clause (i) above, (iii) to file any claims or take any action or institute any proceedings which Investor may deem necessary or desirable for the collection of any Collateral or otherwise to enforce the rights of Investor with respect to any Collateral, (iv) to receive, endorse and collect all Instruments made payable to Grantor in respect of the Claim and to give full discharge for the same, (v) to execute assignments, licenses and other documents to enforce the rights of Investor with respect to any Collateral, and (vi) to pay or discharge taxes or Liens levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Investor (in its sole discretion), and such payments made by Investor shall constitute additional Obligations of Grantor to Investor, be due and payable immediately without demand. Grantor agrees to take all further acts that may be deemed necessary or advisable, in the reasonable judgment of Investor, to effectuate the purposes of this Section 7(b), including the execution of a power of attorney, effective under applicable law, providing for the authority to enter into the transactions described above in the name of Grantor. This power is coupled with an interest and is irrevocable until the Termination Date .

(c) [Reserved].

(d) If Grantor fails to perform any agreement or obligation contained herein, Investor may itself perform, or cause performance of, such agreement or obligation, in the name of Grantor or Investor, and the reasonable fees and expenses of Investor incurred in connection therewith shall be payable by the Grantor pursuant to Section 9 hereof constitute additional Obligations of the Grantor to Investor, and be due and payable immediately without demand.

(e) The powers conferred on Investor hereunder are solely to protect its interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Other than the exercise of reasonable care to assure the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, Investor shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against other parties or any other rights pertaining to any Collateral and shall be relieved of all responsibility for any Collateral in its possession upon surrendering it or tendering surrender of it to any of the Grantor (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct). Investor shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which Investor accords its own property.

(f) Anything herein to the contrary notwithstanding (i) Grantor shall remain liable under the Patent Licenses and otherwise in respect of the Collateral to the extent set forth therein to perform all of its obligations thereunder to the same extent as if this Agreement had not been executed, (ii) the exercise by Investor of any of its rights hereunder shall not release Grantor from any of its obligations under the Patent Licenses or otherwise in respect of the Collateral, and (iii) Investor shall not have any obligation or liability by reason of this Agreement under the Patent Licenses or otherwise in respect of the Collateral, nor shall Investor be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 8. Remedies Upon Default .

(a) If any of the following has occurred and is continuing: (x) a Investor Termination Event, (y) a breach by Grantor of Sections 6(b) through 6(e) hereof, or (z) any material representation or warranty of Grantor contained herein shall be incorrect in any material respect when made (each of the foregoing, an " Event of Default "), then Investor may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it at law or in equity, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) to collect, enforce or satisfy any Obligations then owing, whether by acceleration or otherwise, and also may pursue any of the following separately, successively or simultaneously:

(i) [Reserved];

(ii) subject to the terms of the Investment Agreement, Investor may be the purchaser of any or all of the Collateral at any public or private (to the extent the portion of the Collateral being privately sold is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations) sale in accordance with the UCC, and Investor shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such sale made in accordance with the UCC, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by Investor at such sale. Each purchaser at any such sale shall hold the property sold absolutely free from any claim or right on the part of Grantor, and Grantor hereby waives (to the extent permitted by applicable law) all rights of redemption, stay and/or appraisal which it now has or may at any time in the future have under any rule of law or statute now existing

or hereafter enacted. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. Investor shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Investor may adjourn any public or private sale from time to time by announcement at the time and place fixed there for, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Grantor agrees that it would not be commercially unreasonable for Investor to dispose of the Collateral or any portion thereof by using Internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capability of doing so, or that match buyers and sellers of assets. Grantor hereby waives any claims against Investor arising by reason of the fact that the price at which any Collateral may have been sold at such a private sale was less than the price which might have been obtained at a public sale. Nothing in this Section shall in any way limit the rights of Investor hereunder. Grantor further agrees that a breach of any of the covenants contained in this Section will cause irreparable injury to the Investor, that the Investor has no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section shall be specifically enforceable against Grantor, and Grantor hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no default has occurred giving rise to the Obligations becoming due and payable prior to their stated maturities. Nothing in this Section shall in any way limit the rights of the Investor hereunder.

(b) Any cash held by Investor (or its agent or designee) as Collateral and all Cash Proceeds received by Investor (or its agent or designee) in respect of any sale of or collection from, or other realization upon, all or any part of the Collateral, Investor may, in the discretion of Investor, be held by Investor (or its agent or designee) as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Investor pursuant to Section 10 hereof) in whole or in part by Investor against, all or any part of the Obligations in such order as Investor shall elect, consistent with the provisions of the Investment Agreement. Any surplus of such cash or Cash Proceeds held by Investor (or its agent or designee) and remaining after the Termination Date shall be paid over to whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct.

(c) Grantor hereby acknowledges that if Investor complies with any applicable requirements of law in connection with a disposition of the Collateral, such compliance will not adversely affect the commercial reasonableness of any sale or other disposition of the Collateral.

(d) Investor shall not be required to marshal any present or future collateral security (including, but not limited to, this Agreement and the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of Investor's rights hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights, however existing or arising. To the extent that Grantor lawfully may, Grantor shall not invoke any law relating to the marshalling of collateral which might cause delay in or impede the enforcement of Investor's rights under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured,

and, to the extent that it lawfully may, Grantor hereby irrevocably waives the benefits of all such laws.

SECTION 9. Indemnity . Grantor agrees to defend, protect, indemnify and hold harmless Investor and each other Indemnitee in accordance with Section 17.1 of the Investment Agreement.

SECTION 10. Notices, Etc. All notices and other communications provided for hereunder shall be given in accordance with the notice provision of the Investment Agreement.

SECTION 11. Security Interest Absolute .

(a) All rights of Investor, all Liens and all obligations of Grantor hereunder shall be absolute and unconditional irrespective of (i) any lack of validity or enforceability of the Investment Agreement or any other Investment Facility Document, (ii) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from the Investment Agreement or any other Investment Facility Document, (iii) any exchange or release of, or non-perfection of any Lien on any Collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations, or (iv) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any of the Grantor in respect of the Obligations. All authorizations and agencies contained herein with respect to any of the Collateral are irrevocable and powers coupled with an interest.

(b) Grantor hereby waives (i) promptness and diligence, (ii) notice of acceptance and notice of the incurrence of any Obligation by any Borrower, (iii) notice of any actions taken by Investor or any other Person under any Investment Facility Document or any other agreement, document or instrument relating thereto, (iv) all other notices, demands and protests, and all other formalities of every kind in connection with the enforcement of the Obligations, the omission of or delay in which, but for the provisions of this subsection (b), might constitute grounds for relieving Grantor of Grantor's obligations hereunder and (v) any requirement that Investor protect, secure, perfect or insure any security interest or other lien on any property subject thereto or exhaust any right or take any action against Grantor or any other Person or any collateral.

SECTION 12. Miscellaneous .

(a) No amendment of any provision of this Agreement (including any Schedule attached hereto) shall be effective unless it is in writing and signed by Grantor and Investor, and no waiver of any provision of this Agreement, and no consent to any departure by Grantor therefrom, shall be effective unless it is in writing and signed by Investor, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of Investor to exercise, and no delay in exercising, any right hereunder or under any other Investment Facility Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of Investor provided herein and in the other Investment Facility Documents are cumulative and are in addition

to, and not exclusive of, any rights or remedies provided by law. The rights of Investor under any Investment Facility Document against any party thereto are not conditional or contingent on any attempt by such Person to exercise any of its rights under any other Investment Facility Document against such party or against any other Person, including but not limited to, Grantor.

(c) This Agreement shall create a continuing security interest in the Collateral and shall (i) remain in full force and effect, subject to paragraph (e) below, until the Termination Date and (ii) be binding on Grantor all other Persons who become bound as debtor to this Agreement in accordance with Section 9-203(d) of the UCC, and shall inure, together with all rights and remedies of Investor hereunder, to the benefit of Investor and their respective successors, transferees and assigns. Without limiting the generality of clause (ii) of the immediately preceding sentence, Investor may assign or otherwise transfer its respective rights and obligations under this Agreement and any other Investment Facility Document to any other Person pursuant to the terms of the Investment Agreement, and such other Person shall thereupon become vested with all of the benefits in respect thereof granted to Investor herein or otherwise. Upon any such assignment or transfer, all references in this Agreement to Investor shall mean the assignee of Investor. For the avoidance of doubt, Investor may assign its rights and obligations hereunder to TRGP Capital Partners, L.P. or an Affiliate thereof without the prior consent of Grantor. None of the rights or obligations of Grantor hereunder may be assigned or otherwise transferred without the prior written consent of Investor, and any such assignment or transfer shall be null and void.

(d) After the occurrence of the Termination Date, (i) subject to paragraph (e) below, this Agreement and the security interests and licenses created hereby shall terminate and all rights to the Collateral shall revert to the Grantor, (ii) Investor agrees to file UCC amendments on or promptly after the Termination Date to evidence the termination of the Liens so released and (iii) Investor will, upon the Grantor's request and at the Grantor's cost and expense, (A) promptly return to the Grantor (or whomsoever shall be lawfully entitled to receive the same or as a court of competent jurisdiction shall direct) such of the Collateral as shall not have been sold or otherwise disposed of or applied pursuant to the terms hereof, and (B) promptly execute and deliver to the Grantor such documents and make such other filings as the Grantor shall reasonably request to evidence such termination, without representation, warranty or recourse of any kind. In addition, upon any sale or disposition of any item of Collateral in a transaction expressly permitted under the Investment Agreement, Investor agrees to execute a release of its security interest in such item of Collateral, and Investor shall, upon the reasonable request of the Grantor and at the Grantor' cost and expense, execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence such release, without representation, warranty or recourse of any kind.

(e) This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor for liquidation or reorganization under the United States Bankruptcy Code or similar insolvency, debtor relief or debt adjustment law, should Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment or performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such

payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

(f) **THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, EXCEPT (I) AS REQUIRED BY MANDATORY PROVISIONS OF LAW AND (II) TO THE EXTENT THAT THE VALIDITY AND PERFECTION OR THE PERFECTION AND THE EFFECT OF PERFECTION OR NON-PERFECTION OF THE SECURITY INTEREST CREATED HEREBY, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAW OF A JURISDICTION OTHER THAN THE STATE OF NEW YORK.**

(g) In addition to and without limitation of any of the foregoing, this Agreement shall be deemed to be an Investment Facility Document.

(h) Grantor irrevocably and unconditionally waives any right it may have to claim or recover in any legal action, suit or proceeding with respect to this Agreement any special, exemplary, punitive or consequential damages.

(i) If any provision of this Agreement is held invalid, illegal or unenforceable, the Parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the Parties in entering into this Agreement.

(j) Section headings herein are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

(k) This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which shall be deemed an original, but all of such counterparts taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart.

(l) For purposes of this Agreement, all references to each Schedule attached hereto shall be deemed to refer to each such Schedule as updated from time to time in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the date first above written.

GRANTOR:

NETLIST, INC.

By: /s/Gail Sasaki
Name:Gail Sasaki
Title:CFO, VP, Secretary

EXHIBIT A
TO
SECURITY AGREEMENT

Patent Security Agreement

-

Security Agreement
Signature Page

PATENT SECURITY AGREEMENT

This Patent Security Agreement (this " Patent Security Agreement ") is made as of [●], 2017, by Netlist, Inc. (" Grantor "), in favor of TR Global Funding V, LLC, a Delaware limited liability company managed by TR Global Associates V, LLC (together with its successors and assigns, " Grantee ").

WHEREAS, Grantor owns the patents listed on the attached Schedule A , which patents are issued or applied-for in the United States Patent and Trademark Office (the " Patents ");

WHEREAS, Grantor has entered into and agreed to be bound by all of the terms and provisions of a security agreement, dated [●], 2017 (as amended, restated, supplemented, modified or otherwise changed from time to time, the " Security Agreement "), in favor of Grantee;

WHEREAS, pursuant to the Security Agreement, Grantor has granted to Grantee, a continuing security interest in the Patents and all proceeds thereof, including, without limitation, any and all causes of action arising out of or relating to any infringement thereof and any and rights to recover from past, present and future violations thereof (collectively, the " IP Collateral "), as collateral security for the payment, performance and observance of the Obligations (as defined in the Security Agreement).

NOW, THEREFORE, as collateral security for the payment, performance and observance of all of the Obligations, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby pledges and grants to Grantee a continuing security interest in the IP Collateral.

All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement.

Grantor does hereby further acknowledge and affirm that the rights and remedies of Grantee with respect to the IP Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

This Patent Security Agreement may be executed in any number of counterparts and by different parties in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, Grantor has caused this Patent Security Agreement to be executed by a duly authorized officer of Grantor as of the date first set forth above.

NETLIST, INC.,
as Grantor

By: /s/ Gail Sasaki
Name: Gail Sasaki
Title: CFO, VP, Secretary

SCHEDULE A
TO
PATENT SECURITY AGREEMENT

Patents

Title	Patent/Application No.	Issue/Filing Date
A MULTIRANK DDR MEMORY MODUAL WITH LOAD REDUCTION	8756364	6/17/2014
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8001434	8/16/2011
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8359501	1/22/2012
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8689064	4/1/2014
SYSTEM AND METHOD UTILIZING DISTRIBUTED BYTE-WISE BUFFERS ON A MEMORY MODULE	8516185	8/20/2013
SYSTEMS AND METHODS FOR HANDSHAKING WITH A MEMORY MODULE	8489837	7/16/2013
MEMORY MODULE CAPABLE OF HANDSHAKING WITH A MEMORY CONTROLLER OF A HOST SYSTEM	9,535,623	1/3/2017
MEMORY MODULE WITH DISTRIBUTED DATA BUFFERS AND METHOD OF OPERATION	9,606,907	3/28/2017

SCHEDULE 2(a)
TO
SECURITY AGREEMENT

Commercial Tort Claims

The investigation pending in the ITC [Inv. No. 337-TA-1023] alleging that Defendant's products infringe the Original Patents and the lawsuit Plaintiff filed against Defendant in the U.S. District Court for Central District of California [Case No. 8-16-cv-1605], alleging that Defendant's products infringe the Patents.

The foregoing does not include any appeal taken from a decision or adjudication reached or issued in either of Inv. No. 337-TA-1023 or Case No. 8-16-cv-1605, or any other litigation or adversarial proceeding.

"ITC" means International Trade Commission

"Defendant" means SK hynix Inc. and its Affiliates.

"Original Patent" means U.S. Patent Nos. 8,756,364, 8,516,185, 8,001,434,8 8,359,501, 8,689,064, and 8,489,837

"Patent" means the Original Patents and U.S. Patent Nos. 9,535,623, and 9,606,907.

SCHEDULE 5(a)
TO
SECURITY AGREEMENT

Organizational Information

(i) Exact legal name of Grantor:

a. Netlist, Inc.

(ii) Jurisdiction of organization of Grantor:

a. Delaware

(iii) Type of organization of Grantor:

a. Corporation

(iv) Organizational identification number of Grantor (or statement that no such organizational identification number exists):

a. 3242099

(v) Address of Grantor's chief place of business and chief executive office:

a. 175 Technology
Irvine, CA 92618

(vi) Any different name, jurisdiction of organization, chief executive office or sole place of business used within the past five years:

a. None

(vii) Any merger, consolidation, change in corporate form within the past five years:

a. None

SCHEDULE 5(m)
TO
SECURITY AGREEMENT

Patents

Title	**Patent/Application No.**	**Issue/Filing Date**
A MULTIRANK DDR MEMORY MODUAL WITH LOAD REDUCTION	8756364	6/17/2014
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8001434	8/16/2011
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8359501	1/22/2012
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8689064	4/1/2014
SYSTEM AND METHOD UTILIZING DISTRIBUTED BYTE-WISE BUFFERS ON A MEMORY MODULE	8516185	8/20/2013
SYSTEMS AND METHODS FOR HANDSHAKING WITH A MEMORY MODULE	8489837	7/16/2013
MEMORY MODULE CAPABLE OF HANDSHAKING WITH A MEMORY CONTROLLER OF A HOST SYSTEM	9,535,623	1/3/2017
MEMORY MODULE WITH DISTRIBUTED DATA BUFFERS AND METHOD OF OPERATION	9,606,907	3/28/2017

SCHEDULE 5(n)
TO
SECURITY AGREEMENT

Patent Licenses

Joint Development License Agreement, dated as of November 12, 2015, between Grantor and Samsung Electronics Co., Ltd.

SCHEDULE 5(r)

TO

SECURITY AGREEMENT

UCC-1 Financing Statement Details

A UCC financing statement to be filed in the office of the Delaware Secretary of State naming Grantor as debtor, Investor as secured party, and the Collateral as collateral.

Exhibit 10.4

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated May 3, 2017, is entered into between SVIC NO. 28 NEW TECHNOLOGY BUSINESS INVESTMENT L.L.P. (" SVIC "), and TR GLOBAL FUNDING V, LLC, a Delaware limited liability company (" TRGP "). SVIC and TRGP are sometimes referred to herein as the " Secured Parties ."

RECITALS

A. Netlist, Inc., a Delaware corporation (" Borrower "), and SVIC have entered into the Security Agreement, dated as of November 18, 2015, a true copy of which is attached hereto as Exhibit A (as amended from time to time, the " SVIC Security Agreement "). The SVIC Security Agreement and the documents executed in connection therewith, including, without limitation, the Purchase Agreement and the Note (each as defined in the SVIC Security Agreement), each as amended from time to time, are referred to in this Agreement as the " SVIC Loan Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the SVIC Loan Documents are referred to in this Agreement collectively as the " SVIC Debt ."

B. Borrower and TRGP have entered into the Security Agreement, dated on or about April 20, 2017, a true copy of which is attached hereto as Exhibit B (as amended from time to time, the " TRGP Security Agreement "). The TRGP Security Agreement and the documents executed in connection therewith, including, without limitation, the Investment Agreement referred to in the TRGP Security Agreement and the other Investment Facility Documents (as defined therein), each as amended from time to time, are referred to in this Agreement as the " TRGP Investment Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the TRGP Investment Documents are referred to in this Agreement collectively as the " TRGP Obligations ." SVIC Debt and TRGP Obligations are referred to herein collectively as " Secured Party Obligations " and TRGP Investment Documents and the SVIC Loan Documents are referred to herein collectively as " Transaction Documents ."

The parties agree as follows:

1. Definitions . As used in this Agreement, the following terms have the following meanings:

" Bankruptcy Code " means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

" Claim " means, (i) in the case of TRGP, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of TRGP now or hereafter arising or existing under or relating to the TRGP Investment Documents, whether

joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination, and (ii) in the case of SVIC, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of SVIC now or hereafter arising or existing under or relating to the SVIC Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination.

" Collateral " means, collectively, SVIC Priority Collateral and TRGP Priority Collateral.

" Common Collateral " means all Collateral in which both TRGP and SVIC have a security interest.

" Enforcement Action " means, with respect to any Secured Party and with respect to any Claim of such Secured Party or any item of Collateral in which such Secured Party has or claims a security interest, lien, or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Claim or Collateral. The filing by any Secured Party of, or the joining in the filing by either Secured Party of, an involuntary bankruptcy or insolvency proceeding against Borrower also is an Enforcement Action.

" Event of Default " means an "Event of Default" under the TRGP Investment Documents or the SVIC Loan Documents or a "TRGP Termination Event" under the TRGP Investment Documents.

" Proceeds of Collection " means, collectively, the proceeds of all Collateral, or any part thereof, and the proceeds of any remedy with respect to such Collateral under the Transaction Documents after the occurrence and during the continuance of an Event of Default.

" SVIC Priority Collateral " means any and all properties, rights and assets of Borrower described on Schedule A , but excluding the TRGP Priority Collateral.

" TRGP Priority Collateral " has the meaning set forth on Schedule B .

" UCC " means the Uniform Commercial Code as in effect from time to time in the State of California or any other applicable jurisdiction.

2. Priorities .

(a) Notwithstanding any contrary priority established by the time or order of attachment or perfection of any security interest or the time or order of filing of any financing statements or other documents, or the giving of any notices of purchase money security interests or other notices, or possession or control of any Collateral, or any statutes, rules or law, or court decisions to the contrary, the Secured Parties agree that:

(i) all security interests now or hereafter acquired by SVIC in the SVIC Priority Collateral shall at all times be prior and superior to all security interests and other interests and claims now held or hereafter acquired by TRGP in SVIC Priority Collateral;

(ii) all security interests now or hereafter acquired by TRGP in the TRGP Priority Collateral shall at all times be prior and superior to all security interests and other interests or claims now held or hereafter acquired by SVIC in the TRGP Priority Collateral; and

(1) the proceeds resulting from any sale, transfer or other disposition of the Collateral shall be distributed as provided in Section 5 below.

(b) Each Secured Party hereby:

(i) acknowledges and consents to (A) Borrower granting to the other Secured Party a security interest in the Common Collateral of such other Secured Party, (B) the other Secured Party filing any and all financing statements and other documents as deemed necessary by the other Secured Party in order to perfect its security interest in its Common Collateral, and (C) Borrower's entry into the Transaction Documents to which the other Secured Party is a party; and

(ii) acknowledges and agrees that the other Secured Party's Claims, the Borrower's entry into the applicable Transaction Documents with the other Secured Party, and the security interests in the Common Collateral granted by Borrower to the other Secured Party shall be permitted under such Secured Party's Transaction Documents, notwithstanding any provision of such Secured Party's Transaction Documents to the contrary.

(c) If SVIC, for any reason, receives TRGP Priority Collateral and receives a written notice from TRGP that an Event of Default has occurred under the TRGP Investment Documents and a demand for possession of the TRGP Priority Collateral, SVIC shall promptly deliver any such TRGP Priority Collateral in SVIC's possession to TRGP. If TRGP, for any reason, receives SVIC Priority Collateral and receives a written notice from SVIC that an Event of Default has occurred under the SVIC Loan Documents and a demand for possession of the SVIC Priority Collateral, TRGP shall promptly deliver any such SVIC Priority Collateral in TRGP's possession to SVIC.

(d) Notwithstanding any lien or security interest that TRGP has with respect to the Patent Licenses, as defined in TRGP Security Agreement, TRGP shall not exercise any

right or remedy with respect to the Patent Licenses without SVIC's consent, given in its sole discretion.

3. [reserved] .

4. Secured Parties' Rights .

(a) Except as otherwise provided for in this Agreement, SVIC agrees that TRGP may at any time, and from time to time, without the consent of SVIC and without notice to SVIC, renew or extend any of the TRGP Obligations, accept partial payments of the TRGP Obligations, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the TRGP Obligations, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any TRGP Priority Collateral, or change, alter or vary any other terms or provisions of the TRGP Obligations, and take any other action or omit to take any other action with respect to its TRGP Obligations as it deems necessary or advisable in its sole discretion. No amendment of the TRGP Investment Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of TRGP's security interest or lien (if any) in the SVIC Priority Collateral.

(b) Except as otherwise provided for in this Agreement, TRGP agrees that SVIC may at any time, and from time to time, without the consent of TRGP and without notice to TRGP, renew or extend any of the SVIC Debt, accept partial payments of the SVIC Debt, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the SVIC Debt, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any SVIC Priority Collateral, or change, alter or vary any other terms or provisions of the SVIC Debt (other than any increase in the interest rate applicable to, or the maximum principal amount of the SVIC Debt, or any change in the dates on which payments are to be made with respect to the SVIC Debt (other than extensions of time)) and take any other action or omit to take any other action with respect to its SVIC Debt as it deems necessary or advisable in its sole discretion. No amendment of the SVIC Loan Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of SVIC's security interest or lien (if any) in the TRGP Priority Collateral.

(c) SVIC and TRGP each waive any right to require the other to marshal any Collateral or other assets in favor of it or against or in payment of any or all of its Secured Party Obligations.

(d) Except as otherwise provided for herein, prior to the payment in full in cash of the TRGP Obligations, the termination of TRGP's commitments or obligation to advance any further funds to Borrower under the TRGP Investment Documents, and the termination of all of the TRGP Investment Documents (such time, " TRGP Payment in Full "), TRGP shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of TRGP Priority Collateral except in accordance with the terms of the TRGP Obligations. TRGP agrees to use commercial reasonably efforts to provide SVIC with at least ten (10) days' prior written notice of any such sale, transfer or disposition of the TRGP Priority Collateral approved by TRGP; provided, that the failure to provide such notice shall not affect the relative Lien priorities set forth herein or the validity or effectiveness of any such notice as against

Borrower or such sale, transfer or disposition. Upon written notice from TRGP to SVIC of TRGP's agreement to release its lien on all or any portion of the TRGP Priority Collateral in connection with the sale, transfer or other disposition thereof by TRGP (or by Borrower with consent of TRGP), SVIC shall be deemed to have also, automatically and simultaneously, released its lien on the TRGP Priority Collateral, and SVIC shall, upon written request by TRGP, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied as provided in Section 5 below. If SVIC fails to release its lien as required hereunder, SVIC hereby appoints TRGP as attorney in fact for SVIC with full power of substitution to release SVIC's liens in the TRGP Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

(e) Except as otherwise provided for herein, prior to the payment in full in cash of the SVIC Debt, the termination of SVIC's commitments or obligation to advance any further funds to Borrower under the SVIC Loan Documents, and the termination of all of the SVIC Loan Documents (such time, " SVIC Payment in Full "), SVIC shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of SVIC Priority Collateral except in accordance with the terms of the SVIC Debt. SVIC agrees to use commercially reasonable efforts to provide TRGP with at least ten (10) days' prior written notice of any such sale, transfer or disposition of the SVIC Priority Collateral approved by SVIC; provided, that the failure to provide such notice shall not affect the relative Lien priorities set forth herein or the validity or effectiveness of any such notice as against Borrower or such sale, transfer or disposition.. Upon written notice from SVIC to TRGP of SVIC's agreement to release its lien on all or any portion of the SVIC Priority Collateral in connection with the sale, transfer or other disposition thereof by SVIC (or by Borrower with consent of SVIC), TRGP shall be deemed to have also, automatically and simultaneously, released its lien on the SVIC Priority Collateral, and TRGP shall, upon written request by SVIC, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied as provided in Section 5 below. If TRGP fails to release its lien as required hereunder, TRGP hereby appoints SVIC as attorney in fact for TRGP with full power of substitution to release TRGP's liens in the SVIC Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

5. Actions/Remedies .

(a) SVIC shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the SVIC Priority Collateral. In conducting any public or private sale under the UCC of the SVIC Priority Collateral, SVIC shall give TRGP such notice of such sale as may be required by the UCC. TRGP shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the TRGP Priority Collateral. In conducting any public or private sale under the UCC of the TRGP Priority Collateral, TRGP shall give SVIC such notice of such sale as may be required by the UCC.

(b) Whether or not an Event of Default has occurred, (i) SVIC shall not collect, take possession of, foreclose upon, or exercise any other rights or remedies with respect to the TRGP Priority Collateral, judicially or nonjudicially (including, without limitation, the exercise of any remedies with respect to TRGP Priority Collateral in any bankruptcy or insolvency proceeding

relating to Borrower), without the prior written consent of TRGP, until TRGP Payment in Full and (ii) TRGP shall not collect, take possession of, foreclose upon, or exercise any other rights or remedies with respect to the SVIC Priority Collateral, judicially or nonjudicially (including, without limitation, the exercise of any remedies with respect to SVIC Priority Collateral in any bankruptcy or insolvency proceeding relating to Borrower), without the prior written consent of SVIC, until SVIC Payment in Full.

(c) Notwithstanding anything to the contrary in the Transaction Documents, as among the Secured Parties, the Proceeds of Collection of all of the TRGP Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First, to the payment of then outstanding reasonable out-of-pocket costs and expenses of TRGP expended to preserve the value of the TRGP Priority Collateral, of foreclosure or suit with respect to TRGP Priority Collateral, if any, and of such sale with respect to the TRGP Priority Collateral;

(ii) Second, to TRGP in an amount up to TRGP's Claims until TRGP Payment in Full;

(iii) Third, to SVIC in an amount up to SVIC's Claims until SVIC Payment in Full if SVIC holds a lien against the TRGP Priority Collateral to which such Proceeds of Collection relate; and

(iv) Fourth, to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

(d) Notwithstanding anything to the contrary in the Transaction Documents, as among the Secured Parties, the Proceeds of Collection of all of the SVIC Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First, to the payment of then outstanding reasonable out-of-pocket costs and expenses of SVIC expended to preserve the value of the SVIC Priority Collateral, of foreclosure or suit with respect to SVIC Priority Collateral, if any, and of such sale with respect to the SVIC Priority Collateral;

(ii) Second, to SVIC in an amount up to SVIC's Claims until SVIC Payment in Full;

(iii) Third, to TRGP in an amount up to TRGP's Claims until TRGP Payment in Full if TRGP holds a lien against the SVIC Priority Collateral to which such Proceeds of Collection relate; and

(iv) Fourth, to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

(e) Notwithstanding anything contained herein, TRGP retains and may freely exercise and assert in any Insolvency Proceeding any rights, objections or claims that could be asserted by an unsecured creditor (regardless of whether TRGP actually holds any deficiency or

other unsecured claim). TRGP retains any rights which it may have in any Insolvency Proceeding to vote for or against, to file any pleading with respect thereto, or to assert any objections to, any proposed plan of reorganization (including any request for termination or extension of exclusivity and any disclosure statement related thereto), not otherwise in violation with the provisions of this Agreement.

6. No Commitment by Secured Parties . This Agreement shall in no way be construed as a commitment or agreement by SVIC or TRGP to provide financing to, or investments in, the Borrower or continue financing or investment arrangements with Borrower. SVIC and TRGP may terminate such arrangements at any time, in accordance with their agreements with Borrower.

7. [Reserved] .

8. Insurance . Subject to the terms of this Agreement, the Secured Party having a senior security interest or lien in applicable Collateral shall, subject to such Secured Party's rights under its agreements with Borrower, have the sole and exclusive right (but not the obligation), as against the other Secured Party, to adjust settlement of any insurance policy in the event of any loss affecting such Collateral. All proceeds of such policy shall be applied by the Secured Party having the senior security interest as set forth in Section 5 of this Agreement.

9. Bankruptcy .

(a) In the event of Borrower's insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, including, without limitation, any voluntary or involuntary bankruptcy, insolvency, receivership or other similar statutory or common law proceeding or arrangement involving Borrower, the readjustment of its liabilities, any assignment for the benefit of its creditors or any marshalling of its assets or liabilities (each, an " Insolvency Proceeding "), (a) this Agreement shall remain in full force and effect in accordance with Section 510(a) of the Bankruptcy Code, (b) the Collateral shall include, without limitation, all Collateral arising during or after any such Insolvency Proceeding, and (c) all payments and distributions of any kind or character, whether in cash or property or securities, in respect of the Secured Parties' Claims shall be distributed pursuant to the provisions of Section 5 hereof.

(b) [reserved]

(c) In addition to and without limiting the foregoing, if an Insolvency Proceeding occurs:

(i) neither Secured Party shall assert or approve, without the prior written consent of the other Secured Party, any claim, motion, objection or argument in respect of the Collateral in connection with any Insolvency Proceeding which could otherwise be asserted or raised in connection with such Insolvency Proceeding, including, without limitation, any claim, motion, objection or argument seeking adequate protection or relief from the automatic stay in respect of the Collateral, which is inconsistent with the terms of this Agreement;

(ii) (A) SVIC may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining

the consent of TRGP as (if applicable) holder of an interest in the SVIC Priority Collateral and, if use of cash collateral by Borrower is consented to by SVIC, TRGP shall not oppose such use of cash collateral on the basis that TRGP's interest in the SVIC Priority Collateral (if any) is impaired by such use or inadequately protected by such use, so long as (x) TRGP retains a lien on such SVIC Priority Collateral (including proceeds thereof arising after the commencement of such Insolvency Proceeding) with the same priority as existed prior to the commencement of the case under the Bankruptcy Code and (y) TRGP receives a replacement lien on post-petition assets to the same extent granted to SVIC, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code;

(B) TRGP may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining the consent of SVIC as (if applicable) holder of an interest in the TRGP Priority Collateral and, if use of cash collateral by Borrower is consented to by TRGP, SVIC shall not oppose such use of cash collateral on the basis that Bank's interest (if any) in the TRGP Priority Collateral is impaired by such use or inadequately protected by such use, so long as (x) SVIC retains a lien on such TRGP Priority Collateral (including proceeds thereof arising after the commencement of such Insolvency Proceeding) with the same priority as existed prior to the commencement of the case under the Bankruptcy Code and (y) SVIC receives a replacement lien on post-petition assets to the same extent granted to TRGP, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code,

(iii) SVIC shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the TRGP Priority Collateral, free and clear of security interests, liens and claims of any party, including SVIC, under Section 363 of the Bankruptcy Code or otherwise, on the basis that the interest of SVIC in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if TRGP has consented to, or supports, such sale or disposition of such assets, provided that to the extent the Proceeds of Collection of such Collateral are not applied to reduce the TRGP Obligations, SVIC shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement; and

(iv) TRGP shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the SVIC Priority Collateral, free and clear of security interests, liens and claims of any party, including TRGP, under Section 363 of the Bankruptcy Code or otherwise, on the basis that the interest of TRGP in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if SVIC has consented to, or supports, such sale or disposition of such assets, provided that, if TRGP has a lien on such Collateral at the commencement of the Insolvency Proceeding, to the extent the Proceeds of Collection of such Collateral are not applied to reduce the SVIC Debt, TRGP shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement.

(v) Each Secured Party agrees that it shall not provide debtor-in-possession financing under Section 364 of the Bankruptcy Code or consent to the use of cash collateral (as defined in Section 363(a) of the Bankruptcy Code) (A) that modifies the priorities of the security interests in and liens on the Collateral as set forth in this Agreement or (B) (I) in the case of SVIC, that is secured by a lien on or security interest in the TRGP Priority Collateral that

is *pari passu* with or has priority over any lien and security interest of TRGP in and to such TRGP Priority Collateral securing the TRGP Obligations, or (II) in the case of TRGP, when TRGP had a lien on the SVIC Priority Collateral at the commencement of the Insolvency Proceeding, that is secured by a lien on or security interest in the SVIC Priority Collateral that is *pari passu* with or has priority over any lien and security interest of SVIC in and to such SVIC Priority Collateral securing the SVIC Debt.

(d) Nothing in this Section 9 shall preclude either Secured Party from seeking to be the purchaser, assignee or other transferee of any Collateral in connection with any sale or other disposition of Collateral under the Bankruptcy Code. TRGP agrees that SVIC shall have the right to credit bid under Section 363(k) of the Bankruptcy Code with respect to the TRGP Priority Collateral (provided that, to the extent that SVIC seeks to purchase or credit bids on all or any portion of the TRGP Priority Collateral, the consideration offered or paid in connection with such purchase or bid shall include cash in an aggregate amount sufficient for the payment in full in cash of the TRGP Obligations and the proceeds from any such sale or bid shall be applied as provided in Section 5(d)), and SVIC agrees that TRGP shall have the right to credit bid under Section 363(k) of the Bankruptcy Code with respect to the SVIC Priority Collateral (provided that, to the extent that TRGP seeks to purchase or credit bids on all or any portion of the SVIC Priority Collateral, the consideration offered or paid in connection with such purchase or bid shall include cash in an aggregate amount sufficient for the payment in full in cash of the SVIC Debt and the proceeds from any such sale or bid shall be applied as provided in Section 5(d)).

10. Notice of Events of Default . Each Secured Party shall give the other Secured Party prompt written notice of the occurrence of an Event of Default under its Transaction Documents and shall, simultaneously with giving any notice of default to Borrower, provide such other Secured Party with a copy of any notice of default given to Borrower. Neither Secured Party will incur liability for negligently or inadvertently failing to provide such notice to the other Secured Party. SVIC acknowledges and agrees that any default or event of default under the SVIC Loan Documents shall be deemed to be a default and an event of default under the TRGP Investment Documents. TRGP acknowledges that SVIC and Borrower have agreed that any default or event of default under the TRGP Investment Documents shall be deemed to be a default and an event of default under the SVIC Loan Documents.

11. Revivor . If, after payment of any TRGP Obligations, Borrower thereafter becomes liable to TRGP on account of the TRGP Obligations, or any payment made on the TRGP Obligations shall for any reason be required to be returned or refunded by TRGP, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated TRGP Obligations, without the necessity of any further act or agreement between Secured Parties. If, after payment of any SVIC Debt, Borrower thereafter becomes liable to SVIC on account of the SVIC Debt, or any payment made on the SVIC Debt shall for any reason be required to be returned or refunded by SVIC, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated SVIC Debt, without the necessity of any further act or agreement between Secured Parties.

12. Notices . Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except informal documents which may be sent by first-class mail, postage

prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by facsimile, or by reputable overnight delivery service, to the Secured Parties, at their respective addresses or fax numbers set forth below:

If to SVIC: SVIC No. 28 New Technology Business Investment L.L.P.
29F, Samsung Electronics Building
1320-10, Seocho 2-dong, Seocho-gu
Seoul 137-857, Korea
Attention: Dr. Dong-su Kim, Vice President
Email: dongkim@samsung.com

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)
2000 University Avenue
Palo Alto, California 94303
Attention: Louis Lehot
Email: louis.lehot@dlapiper.com

If to TRGP: TRGP Capital Management, LLC
777 3rd Avenue, 31st Floor
New York, New York 10017
Attention: Michael K. Rozen
Work: (212) 527-9605
Cell: (917) 414-1385
Email: mrozen@trgpcap.com

with a copy to (which shall not constitute notice) to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Lawrence V. Gelber
Email: lawrence.gelber@srz.com

The Secured Parties may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

13. Relationship Of Parties . The relationship between the Secured Parties is, and at all times shall remain solely that of lenders and/or investors, as applicable, in relationship to Borrower. Secured Parties shall not under any circumstances be construed to be partners or joint venturers of one another; nor shall the Secured Parties under any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with one another, or to owe any fiduciary duty to one another. Secured Parties do not undertake or assume any responsibility or duty to one another to select, review, inspect, supervise, pass judgment upon or otherwise inform each other of any matter in connection with Borrower's property, any Collateral held by any

Secured Party or the operations of Borrower. Each Secured Party shall rely entirely on its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by any Secured Party in connection with such matters is solely for the protection of such Secured Party.

14. Governing Law; Jurisdiction; Jury Trial Waiver. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflicts of laws principles. SVIC and TRGP submit to the exclusive jurisdiction of the state and federal courts located in New York County, New York in any action, suit, or proceeding of any kind, against it which arises out of or by reason of this Agreement. SVIC AND TRGP WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

15. [reserved].

16. General. Each Secured Party shall execute all such documents and instruments and take all such actions as the other shall reasonably request in order to carry out the purposes of this Agreement, including, without limitation, (if requested by a Secured Party) appropriate amendments to financing statements in favor of the other Secured Party in order to refer to this Agreement (but this Agreement shall remain fully effective notwithstanding any failure to execute any additional documents, instruments, or amendments). Each Secured Party represents and warrants to the other that it has not heretofore transferred or assigned any financing statement naming Borrower as debtor and it as secured party, and that it will not do so without first delivering a copy of this Agreement to the proposed transferee or assignee, and any transfer or assignment shall be subject to all of the terms of this Agreement. This Agreement is solely for the benefit of Secured Parties and their successors and assigns, and neither the Borrower nor any other person (including any successor-in-interest) shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement. This Agreement sets forth in full the terms of agreement between the Secured Parties with respect to the subject matter hereof, and may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by the Secured Parties. In the event of any litigation between the parties based upon or arising out of this Agreement, the prevailing party shall be entitled to recover all of its reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) from the non-prevailing party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

17. Limited Agency for Perfection.

(a) TRGP acknowledges that applicable provisions of the UCC may require, in order to properly perfect SVIC's security interest in the Common Collateral securing the SVIC Debt, that SVIC possess or control certain of such Common Collateral. In order to help ensure that SVIC's security interest in such Common Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), TRGP agrees to hold both for itself and, solely for the purposes of perfection and without incurring any duties or obligations to SVIC as a result thereof or with respect thereto, for the benefit of SVIC, any such Common Collateral, and

agrees that SVIC's lien in such Common Collateral shall be deemed perfected in accordance with applicable law.

(b) SVIC acknowledges that applicable provisions of the UCC may require, in order to properly perfect TRGP's security interest in the Common Collateral securing the TRGP Obligations, that TRGP possess or control certain of such Common Collateral. In order to help ensure that TRGP's security interest in such Common Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), SVIC agrees to hold both for itself and, solely for the purposes of perfection and without incurring any additional duties or obligations to TRGP as a result thereof or with respect thereto, for the benefit of TRGP, any such Common Collateral, and agrees that TRGP's lien in such Common Collateral shall be deemed perfected in accordance with applicable law.

(c) Neither party shall have, or be deemed to have, by this Agreement or otherwise a fiduciary relationship in respect of the other party.

18. Other Intercreditor Agreements. Secured Parties acknowledge that (i) SVIC is party to the Amended and Restated Intercreditor Agreement, dated as of the date hereof, with Silicon Valley Bank (" Bank "), and (ii) TRGP is party to the Intercreditor Agreement, dated as of the date hereof, with Bank.

[Signature Page Follows]

TR GLOBAL FUNDING V, LLC

By /s/ Michael K. Rozen
Title: CEO

SVIC NO. 28 NEW TECHNOLOGY BUSINESS INVESTMENT L.L.P.

By /s/Young Jin Choi
Title: CFO

BORROWER'S CONSENT AND AGREEMENT

Borrower consents to the terms of this Intercreditor Agreement and agrees not to take any actions inconsistent therewith. Borrower agrees to execute all such documents and instruments and take all such actions as any Secured Party shall reasonably request in order to carry out the purposes of this Agreement. Borrower further agrees that, at any time and from time to time, the foregoing Agreement may be altered, modified or amended by the SVIC and TRGP without notice to or the consent of Borrower.

NETLIST, INC.

By /s/ Gail Sasaki
Title CFO, VP, Secretary

Exhibit A

SVIC Security Agreement

Exhibit B

TRGP Security Agreement

Schedule A

SVIC Priority Collateral

SVIC Priority Collateral consists of all of Borrower's right, title and interest in and to the following personal property, exclusive of TRGP Priority Collateral:

(a) all accounts (including health-care-insurance receivables), chattel paper (including tangible and electronic chattel paper), deposit accounts, documents (including negotiable documents), equipment (including all accessions and additions thereto), general intangibles (including payment intangibles and software), goods (including fixtures), instruments (including promissory notes), inventory (including all goods held for sale or lease or to be furnished under a contract of service, and including returns and repossessions), investment property (including securities and securities entitlements), letter of credit rights, money, and all of Borrower's books and records with respect to any of the foregoing, and the computers and equipment containing said books and records;

(b) all cash proceeds and/or noncash proceeds of any of the foregoing, including insurance proceeds, and all supporting obligations and the security therefor or for any right to payment.

All terms above have the meanings given to them in the New York Uniform Commercial Code, as amended or supplemented from time to time.

Notwithstanding the foregoing, the SVIC Priority Collateral does not include more than sixty-five percent (65%) of the voting securities of any Subsidiary organized in a jurisdiction outside of the United States.

Schedule B
TRGP Priority Collateral

TRGP Priority Collateral consists of all of the Borrower's right, title and interest in, to and under the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired:

(a) the Commercial Tort Claim referred to below;

(b) the Recoveries (as defined below);

(c) the obligation of the Reference Entity (as defined below) to pay the Recoveries and any other amounts determined to be owing by the Reference Entity in respect of the Claim (as defined below) or the Commercial Tort Claim (as defined below) (collectively, the " Reference Entity Debt ");

(d) all Supporting Obligations (as defined in the UCC) relating to the Reference Entity Debt, including any bond posted to insure the payment thereof; and

(e) all Proceeds, including all Cash Proceeds and Noncash Proceeds (each as defined in the UCC), and products of any and all of the foregoing;

in each case, howsoever the Borrower's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise). Without limiting the generality of the foregoing, the TRGP Priority Collateral consists of all rights of the Borrower in and to the Claim and all judgments, settlements and recoveries therein or other resolutions thereof. The foregoing grant includes all rights, powers and options (but none of the obligations, if any) of the Borrower under any instrument included in the TRGP Priority Collateral, including the immediate and continuing right to claim for, collect, receive and give receipt for payments in respect of the TRGP Priority Collateral and all other monies payable under the TRGP Priority Collateral, to give and receive notices and other communications, to exercise all rights and options, to bring proceedings in the name of the Borrower or otherwise and generally to do and receive anything that the Borrower is or may be entitled to do or receive under or with respect to the TRGP Priority Collateral.

As used above the following terms have the following meanings:

" Affiliate " means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the board of directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. For the avoidance of doubt, TRGP shall not be considered an "Affiliate" of Borrower.

" Claim " means the Commercial Tort Claim, all settlement efforts arising from or related to the Commercial Tort Claim or the Patents, and any other proceeding within the scope of the Litigation Counsel Fee Agreement; provided , however , that Claim shall not include the IPR Proceedings, any third party claim against Borrower and any claim Defendant or any third party may assert

against Borrower unrelated to the Patents, such as, without limitation, a claim that Borrower infringes Defendant's patent(s) or other intellectual property.

" Commercial Tort Claim " means the investigation pending in the ITC Inv. No. 337-TA-1023 alleging that Defendant's products infringe the Original Patents and the lawsuit Borrower filed against Defendant in the U.S. District Court for Central District of California Case No. 8-16-cv-1605, alleging that Defendant's products infringe the Patents. "Commercial Tort Claim" does not include any appeal taken from a decision or adjudication reached or issued in either of Inv. No. 337-TA-1023 or Case No. 8-16-cv-1605, or any other litigation or adversarial proceeding.

" Defendant " means SK hynix Inc. and its Affiliates.

" Equity Interests " means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

" IPR Proceeding " and " IPR Proceedings " means, collectively, the following twelve *inter partes* review proceedings pending in the U.S. Patent and Trademark Office Proceeding Nos. 2017-00548, 2017-00549, 2017-00560, 2017-00561, 2017-00562, 2017-00577, 2017-00587, 2017-00649, 2017-00667, 2017-00668, 2017-00692, and 2017-00730. For the avoidance of doubt, "IPR Proceeding" and "IPR Proceedings" does not include any appeal taken from a decision or adjudication reached or issued in any of the aforementioned twelve *inter partes* review proceedings.

" ITC " means International Trade Commission.

" Litigation Counsel Fee Agreement " means the engagement letter, dated December 8, 2016, entered into between Borrower and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin"), as amended by the letter agreement, dated, April 4, 2017, between Borrower and Mintz Levin, as the same may be further amended, modified or supplemented from time to time.

" Original Patent " means U.S. Patent Nos. 8,756,364, 8,516,185, 8,001,434, 8,359,501, 8,689,064, and 8,489,837.

" Patent " means the Original Patents and U.S. Patent Nos. 9,535,623, and 9,606,907.

" Person " means an individual, partnership, limited liability company, trust, estate, corporation, custodian, nominee or any other individual or entity acting on its own or in any representative capacity.

" Recoveries " means any and all consideration and value received by Borrower (prior to any netting, offset, reduction or deduction of any fees, costs, expenses, payment of taxes or payment

of any other amounts) in partial or complete resolution of the Claim or the Commercial Tort Claim, including: (a) any and all gross, pre-tax monetary awards, damages, recoveries, judgments or other property or value awarded to, recovered by or on behalf of (or reduced to a debt owed to) Borrower or TRGP on account or as a result or by virtue (directly or indirectly) of the Claim, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or pursuant to a corporate transaction of any nature, or otherwise, and includes all of the Borrower's legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise, plus (b) any recovered interest, penalties, attorneys' fees and costs in connection with any of the foregoing (including, without limitation, post-judgment interest, costs and fees), plus (c) any consequential, actual, punitive, exemplary or treble damages awarded or recovered on account thereof, plus (d) any interest awarded or later accruing on any of the foregoing (including, without limitation, post-judgment interest), plus (e) any recoveries against attorneys, accountants, experts or officers in connection with any of the foregoing or the pursuit of the Claim.

" Reference Entity " means, individually and collectively, the Defendants and any other parties listed as defendants or counterclaim defendants in the Commercial Tort Claim, jointly and severally, and including their Affiliates, and any other person or entity added or joined to the Commercial Tort Claim from time to time as a defendant or indemnitor or against whom proceedings are asserted or threatened even if such person or entity is not named or served.

EXHIBIT 10.5

INTERCREDITOR AGREEMENT

This INTERCREDITOR AGREEMENT, dated May 3, 2017, is entered into between TR GLOBAL FUNDING V, LLC, a Delaware limited liability company (" Creditor "), and SILICON VALLEY BANK (" Bank "). Creditor and Bank are sometimes referred to herein as the " Secured Parties ."

RECITALS

A. Netlist, Inc., a Delaware corporation (" Borrower "), and Creditor have entered into the Security Agreement, dated on or about April 20, 2017, a true copy of which is attached hereto as Exhibit A (as amended from time to time, the " Creditor Security Agreement "). The Creditor Security Agreement and the documents executed in connection therewith, including without limitation the Investment Agreement referred to in the Creditor Security Agreement and the other Investment Facility Documents (as defined therein), each as amended from time to time, are referred to in this Agreement as the " Creditor Investment Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the Creditor Investment Documents are referred to in this Agreement collectively as the " Creditor Obligations ."

B. Borrower and Bank have entered into a Loan and Security Agreement, dated as of October 31, 2009 (as amended from time to time, the " Bank Loan Agreement "). The Bank Loan Agreement and the documents executed in connection therewith are referred to in this Agreement as the " Bank Loan Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the Bank Loan Documents are referred to in this Agreement collectively as the " Bank Debt ." Creditor Obligations and Bank Debt are referred to herein collectively as " Secured Party Obligations " and Bank Loan Documents and the Creditor Investment Documents are referred to herein collectively as " Transaction Documents ."

The parties agree as follows:

1. Definitions . As used in this Agreement, the following terms have the following meanings:

" Accounts Collateral " means Borrower's present and future "accounts" (as defined in the UCC), including accounts arising from testing and other services performed, or goods created, by Borrower using patents, copyrights or other intellectual property of Borrower, but not including proceeds of any sale, disposition or other realization (including the licensing, sublicensing, leasing or subleasing) of any Creditor Priority Collateral.

" Bank Priority Collateral " means any and all properties, rights and assets of Borrower described on Exhibit B, but excluding the Creditor Priority Collateral.

" Bankruptcy Code " means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

" Claim " means, (i) in the case of Bank, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of Bank now or hereafter arising or existing under or relating to the Bank Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination, and (ii) in the case of Creditor, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of Creditor now or hereafter arising or existing under or relating to the Creditor Investment Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination.

" Collateral " means, collectively, Creditor Priority Collateral and Bank Priority Collateral.

" Common Collateral " means all Collateral in which both Bank and Creditor have a security interest.

" Creditor Priority Collateral " has the meaning set forth on Exhibit C .

" Enforcement Action " means, with respect to any Secured Party and with respect to any Claim of such Secured Party or any item of Collateral in which such Secured Party has or claims a security interest, lien, or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Claim or Collateral. The filing by any Secured Party of, or the joining in the filing by any Secured Party of, an involuntary bankruptcy or insolvency proceeding against Borrower also is an Enforcement Action.

" Event of Default " means an "Event of Default" under the Bank Loan Documents or an "Investor Termination Event" under the Creditor Investment Documents.

" Proceeds of Collection " means, collectively, the proceeds of Collateral, or any part thereof, and the proceeds of any remedy with respect to such Collateral under the Transaction Documents after the occurrence and during the continuance of an Event of Default.

" UCC " means the Uniform Commercial Code as in effect from time to time in the State of California or any other applicable jurisdiction.

2. Priorities .

(a) Notwithstanding any contrary priority established by the time or order of attachment or perfection of any security interest or the time or order of filing of any financing statements or other documents, or the giving of any notices of purchase money security interests or other notices, or possession or control of any Collateral, or any statutes, rules or law, or court decisions to the contrary, the Secured Parties agree that:

(i) all security interests now or hereafter acquired by Creditor in the Creditor Priority Collateral shall at all times be prior and superior to all security interests and other interests and claims now held or hereafter acquired by Bank in Creditor Priority Collateral;

(ii) all security interests now or hereafter acquired by Bank in the Bank Priority Collateral shall at all times be prior and superior to all security interests and other interests or claims now held or hereafter acquired by Creditor in the Bank Priority Collateral; and

(iii) the proceeds resulting from any sale, transfer or other disposition of the Collateral shall be distributed as provided in Section 5 below.

(b) Each Secured Party hereby:

(i) acknowledges and consents to (A) Borrower granting to the other Secured Party a security interest in the Creditor Priority Collateral, (B) the other Secured Party filing any and all financing statements and other documents as deemed necessary by the other Secured Party in order to perfect its security interest in the Creditor Priority Collateral, and (C) Borrower's entry into the Transaction Documents to which the other Secured Party is a party; and

(ii) acknowledges and agrees that the other Secured Party's Claims, the Borrower's entry into the applicable Transaction Documents with the other Secured Party, and the security interests in the Creditor Priority Collateral granted by Borrower to the other Secured Party shall be permitted under such Secured Party's Transaction Documents, notwithstanding any provision of such Secured Party's Transaction Documents to the contrary.

(c) If Creditor, for any reason, receives Bank Priority Collateral and receives a written notice from Bank that an Event of Default has occurred under the Bank Loan Documents and a demand for possession of the Bank Priority Collateral, Creditor shall promptly deliver any such Bank Priority Collateral in Creditor's possession to Bank. If Bank, for any reason, receives Creditor Priority Collateral and receives a written notice from Creditor that an Event of Default has occurred under the Creditor Investment Documents and a demand for

possession of the Creditor Priority Collateral, Bank shall promptly deliver any such Creditor Priority Collateral in Bank's possession to Creditor.

(d) As a point of clarification, as of the date hereof, Creditor represents and warrants that it will only seek and obtain a security interest in Creditor Priority Collateral and will not obtain a security interest in the Bank Priority Collateral without the Bank's prior written consent.

3. [Reserved] .

4. Secured Parties' Rights .

(a) Except as otherwise provided for in this Agreement, Creditor agrees that Bank may at any time, and from time to time, without the consent of Creditor and without notice to Creditor, renew or extend any of the Bank Debt, accept partial payments of the Bank Debt, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Bank Debt, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any Bank Priority Collateral, or change, alter or vary any other terms or provisions of the Bank Debt, and take any other action or omit to take any other action with respect to its Bank Debt as it deems necessary or advisable in its sole discretion. No amendment of the Bank Loan Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of Bank's security interest or lien in the Creditor Priority Collateral.

(b) Except as otherwise provided for in this Agreement, Bank agrees that Creditor may at any time, and from time to time, without the consent of Bank and without notice to Bank, renew or extend any of the Creditor Obligations, accept partial payments of the Creditor Obligations, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Creditor Obligations, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any Creditor Priority Collateral, or change, alter or vary any other terms or provisions of the Creditor Obligations, and take any other action or omit to take any other action with respect to its Creditor Obligations as it deems necessary or advisable in its sole discretion. No amendment of the Creditor Investment Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of Creditor's security interest or lien (if any) in the Bank Priority Collateral.

(c) Creditor and Bank each waive any right to require the other to marshal any Collateral or other assets in favor of it or against or in payment of any or all of its Secured Party Obligations.

(d) Except as otherwise provided for herein, as among the Secured Parties only, prior to such time as (i) the Bank Debt has been fully paid in cash, (ii) Bank has no commitment or obligation to lend any further funds to Borrower under the Bank Loan Documents, and (iii) all of the Bank Loan Documents are terminated (such time, " Bank Payment in Full "), Bank shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Bank Priority Collateral of Borrower except in accordance with the terms of the Bank Debt. Upon written notice from Bank to Creditor of

Bank's agreement to release its lien on all or any portion of the Bank Priority Collateral in connection with the sale, transfer or other disposition thereof by Bank (or by Borrower with consent of Bank), Creditor shall be deemed to have also, automatically and simultaneously, released its lien (if any) on the Bank Priority Collateral, and Creditor shall upon written request by Bank, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied as provided in Section 5 below. If Creditor fails to release its lien as required hereunder, Creditor hereby appoints Bank as attorney in fact for Creditor with full power of substitution to release Creditor's liens in the Bank Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable

(e) Except as otherwise provided for herein, as among the Secured Parties only, prior to the payment in full in cash of the Creditor Obligations, after all of Creditor's commitments or obligation to advance any further funds to Borrower under the Creditor Investment Documents have elapsed or terminated, and the termination of all of the Creditor Investment Documents (such time, " Creditor Payment in Full "), Creditor shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Creditor Priority Collateral except in accordance with the terms of the Creditor Obligations. Upon written notice from Creditor to Bank of Creditor's agreement to release its lien on all or any portion of the Creditor Priority Collateral in connection with the sale, transfer or other disposition thereof by Creditor (or by Borrower with consent of Creditor), Bank shall be deemed to have also, automatically and simultaneously, released its lien (if any) on the Creditor Priority Collateral, and Bank shall upon written request by Creditor, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied as provided in Section 5 below. If Bank fails to release its lien as required hereunder, Bank hereby appoints Creditor as attorney in fact for Bank with full power of substitution to release Bank's liens in the Creditor Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

5. Actions/Remedies .

(a) Creditor shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the Creditor Priority Collateral. In conducting any public or private sale under the UCC of the Creditor Priority Collateral, Creditor shall give Bank such notice of such sale as may be required by the UCC. Bank shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the Bank Priority Collateral. In conducting any public or private sale under the UCC of the Bank Priority Collateral, Bank shall give Creditor such notice of such sale as may be required by the UCC.

(b) Whether or not an Event of Default has occurred, (i) Creditor shall not collect, take possession of, foreclose upon, or exercise any other rights or remedies with respect to the Bank Priority Collateral, judicially or nonjudicially (including without limitation the exercise of any remedies with respect to Bank Priority Collateral in any bankruptcy or insolvency proceeding relating to Borrower), without the prior written consent of Bank, until Bank Payment in Full and (ii) Bank shall not collect, take possession of, foreclose upon, or

exercise any other rights or remedies with respect to the Creditor Priority Collateral, judicially or nonjudicially (including without limitation the exercise of any remedies with respect to Creditor Priority Collateral in any bankruptcy or insolvency proceeding relating to Borrower), without the prior written consent of Creditor, until Creditor Payment in Full.

(c) Notwithstanding anything to the contrary in the Transaction Documents, as among the Secured Parties, the Proceeds of Collection of all of the Bank Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First , to the payment of then outstanding reasonable out-of-pocket costs and expenses of Bank expended to preserve the value of the Bank Priority Collateral, of foreclosure or suit with respect to Bank Priority Collateral, if any, and of such sale with respect to the Bank Priority Collateral;

(ii) Second , to Bank in an amount up to Bank's Claims until Bank Payment in Full; and

(iii) Third , to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

(d) Notwithstanding anything to the contrary in the Transaction Documents, as among the Secured Parties, the Proceeds of Collection of all of the Creditor Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First, to the payment of then outstanding reasonable out-of-pocket costs and expenses of Creditor expended to preserve the value of the Creditor Priority Collateral, of foreclosure or suit with respect to Creditor Priority Collateral, if any, and of such sale with respect to the Creditor Priority Collateral;

(ii) Second, to Creditor in an amount up to Creditor's Claims until Creditor Payment in Full;

(iii) Third, to Bank in an amount up to Bank's Claims until Bank Payment in Full;

(iv) Fourth, to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

(e) Notwithstanding anything contained herein, Creditor retains and may freely exercise and assert in any Insolvency Proceeding any rights, objections or claims that could be asserted by an unsecured creditor (regardless of whether Creditor actually holds any deficiency or other unsecured claim). Creditor retains any rights which it may have in any Insolvency Proceeding to vote for or against, to file any pleading with respect thereto, or to assert any objections to, any proposed plan of reorganization (including any request for termination or extension of exclusivity and any disclosure statement related thereto), not otherwise in violation with the provisions of this Agreement

6. No Commitment by Secured Parties . This Agreement shall in no way be construed as a commitment or agreement by Creditor or Bank to provide financing to, or investments in, the Borrower or continue financing or investment arrangements with Borrower. Creditor and Bank may terminate such arrangements at any time, in accordance with their agreements with Borrower.

7. [Reserved] .

8. Insurance . Subject to the terms of this Agreement, the Secured Party having a senior security interest or lien in applicable Collateral shall, subject to such Secured Party's rights under its agreements with Borrower, have the sole and exclusive right (but not the obligation), as against the other Secured Party, to adjust settlement of any insurance policy in the event of any loss affecting such Collateral. All proceeds of such policy shall be applied by the Secured Party having the senior security interest as set forth in Section 5 of this Agreement.

9. Bankruptcy .

(a) In the event of Borrower's insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, including, without limitation, any voluntary or involuntary bankruptcy, insolvency, receivership or other similar statutory or common law proceeding or arrangement involving Borrower, the readjustment of its liabilities, any assignment for the benefit of its creditors or any marshalling of its assets or liabilities (each, an " Insolvency Proceeding "), (a) this Agreement shall remain in full force and effect in accordance with Section 510(a) of the United States Bankruptcy Code, (b) each Secured Party's Collateral shall include, without limitation, all Collateral arising during or after any such Insolvency Proceeding, and (c) all payments and distributions of any kind or character, whether in cash or property or securities, in respect of the Secured Parties' Claims shall be distributed pursuant to the provisions of Section 5 hereof.

(b) [Reserved].

(c) In addition to and without limiting the foregoing, if an Insolvency Proceeding occurs:

(i) neither Secured Party shall assert or approve, without the prior written consent of the other Secured Party, any claim, motion, objection or argument in respect of the Collateral in connection with any Insolvency Proceeding which could otherwise be asserted or raised in connection with such Insolvency Proceeding, including, without limitation, any claim, motion, objection or argument seeking adequate protection or relief from the automatic stay in respect of the Collateral, which is inconsistent with the terms of this Agreemen t,

(ii) (A) Bank may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining the consent of Creditor as (if applicable) holder of an interest in the Bank Priority Collateral and, if use of cash collateral by Borrower is consented to by Bank, (I) if Creditor had no lien on Bank Priority Collateral at the commencement of the Insolvency Proceeding, Creditor shall not oppose such use of cash collateral on the basis that Creditor's interest in the Bank

Priority Collateral is impaired by such use or inadequately protected by such use, and (II) if Creditor had a lien on Bank Priority Collateral at the commencement of the Insolvency Proceeding, Creditor shall not oppose such use of cash collateral on the basis that Creditor's interest in the Bank Priority Collateral is impaired by such use or inadequately protected by such use, so long as (x) Creditor retains a lien on such Bank Priority Collateral (including proceeds thereof arising after the commencement of such Insolvency Proceeding) with the same priority as existed prior to the commencement of the case under the Bankruptcy Code and (y) Creditor receives a replacement lien on post-petition assets to the same extent granted to Bank, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code,

(B) Creditor shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Bank Priority Collateral, free and clear of security interests, liens and claims of any party, including Creditor, under Section 363 of the United States Bankruptcy Code or otherwise, on the basis that the interest of Creditor (if any) in the Bank Priority Collateral is impaired by such sale or inadequately protected as a result of such sale, or on any other ground , if Bank has consented to, or supports, such sale or disposition of such assets, provided that, if Creditor had a lien on the Bank Priority Collateral at the commencement of the Insolvency Proceeding, to the extent the Proceeds of Collection of such Bank Priority Collateral are not applied to reduce the Bank Debt, Creditor shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement and

(C) Bank shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Creditor Priority Collateral, free and clear of security interests, liens and claims of any party, including Bank, under Section 363 of the United States Bankruptcy Code or otherwise, on the basis that the interest of Bank (if any) in the Creditor Priority Collateral is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if Creditor has consented to, or supports, such sale or disposition of such assets, provided that, if Bank had a lien on the Creditor Priority Collateral at the commencement of the Insolvency Proceeding, to the extent the Proceeds of Collection of such Creditor Priority Collateral are not applied to reduce the Creditor Obligations, Bank shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement, and

(iii) (A) Creditor may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall in good faith determine without seeking or obtaining the consent of Bank as (if applicable) holder of an interest in the Creditor Priority Collateral and, if use of cash collateral by Borrower is consented to by Creditor, Bank shall not oppose such use of cash collateral on the basis that Bank's interest (if any) in the Creditor Priority Collateral is impaired by such use or inadequately protected by such use, so long as (x) Bank retains a lien on such Creditor Priority Collateral (including proceeds thereof arising after the commencement of such Insolvency Proceeding) with the same priority as existed prior to the commencement of the case under the Bankruptcy Code and (y) Bank receives a replacement lien on post-petition assets to the same extent granted to Creditor, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code,

(B) Bank shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Creditor Priority Collateral, free and clear of security interests, liens and claims of any party, including Bank, under Section 363 of the

United States Bankruptcy Code or otherwise, on the basis that the interest of Bank (if any) in the Creditor Priority Collateral is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if Creditor has consented to, or supports, such sale or disposition of such assets, provided that, if Bank had a lien on the Creditor Priority Collateral at the commencement of the Insolvency Proceeding, to the extent the Proceeds of Collection of such Creditor Priority Collateral are not applied to reduce the Creditor Obligations, Bank shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement and

(C) Creditor shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Bank Priority Collateral, free and clear of security interests, liens and claims of any party, including Creditor, under Section 363 of the United States Bankruptcy Code or otherwise, on the basis that the interest of Creditor (if any) in the Bank Priority Collateral is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if Bank has consented to, or supports, such sale or disposition of such assets, provided that, if Creditor had a lien on the Bank Priority Collateral at the commencement of the Insolvency Proceeding, to the extent the Proceeds of Collection of such Bank Priority Collateral are not applied to reduce the Bank Debt, Creditor shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement, and

(iv) each Secured Party agrees that it shall not provide debtor-in-possession financial under Section 364 of the Bankruptcy Code or the use of cash collateral (as defined in Section 363(a) of the Bankruptcy Code) (A) that modifies the priorities of the security interests in and liens on the Collateral as set forth in this Agreement or (B) (I) in the case of Bank, that is secured by a lien on or security interest in the Creditor Priority Collateral that is *pari passu* with or has priority over any lien and security interest of Creditor in and to such Creditor Priority Collateral securing the Creditor Obligations, or (II) (x) in the case of Creditor when Creditor had no lien in the Bank Priority Collateral at the commencement of the Insolvency Proceeding, that is secured by a lien on or security interest in the Bank Priority Collateral and (y) in the case of Creditor when Creditor had a lien in the Bank Priority Collateral at the commencement of the Insolvency Proceeding, that is secured by a lien on or security interest in the Bank Priority Collateral that is *pari passu* with or has priority over any lien and security interest of Bank in and to such Bank Priority Collateral securing the Bank Debt.

(d) Nothing in this Section 9 shall preclude any Secured Party from seeking to be the purchaser, assignee or other transferee of any Collateral in connection with any sale or other disposition of Collateral under the Bankruptcy Code; provided that the parties agree that Bank shall have the right to credit bid under Section 363(k) of the Bankruptcy Code solely with respect to the Bank Priority Collateral.

10. Notice of Events of Default . Each Secured Party shall give the other Secured Party prompt written notice of the occurrence of an Event of Default under its Transaction Documents, and shall, simultaneously with giving any notice of default to Borrower, provide such other Secured Party with a copy of any notice of default given to Borrower. Neither Secured Party will incur liability for negligently or inadvertently failing to provide such notice to the other Secured Party. Creditor acknowledges and agrees that any default or event of default under the Creditor Investment Documents shall be deemed to be a default and an event of default under the Bank Loan Documents.

11. Revivor . If, after payment of any Bank Debt, Borrower thereafter becomes liable to Bank on account of the Bank Debt, or any payment made on the Bank Debt shall for any reason be required to be returned or refunded by Bank, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated Bank Debt, without the necessity of any further act or agreement between Secured Parties. If, after payment of any Creditor Obligations, Borrower thereafter becomes liable to Creditor on account of the Creditor Obligations, or any payment made on the Creditor Obligations shall for any reason be required to be returned or refunded by Creditor, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated Creditor Obligations, without the necessity of any further act or agreement between Secured Parties.

12. Notices . Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except informal documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by facsimile, or by reputable overnight delivery service, to the Secured Parties, at their respective addresses or fax numbers set forth below:

If to Creditor: TRGP Capital Management, LLC
777 3rd Avenue, 31st Floor
New York, New York 10017
Attention: Michael K. Rozen
Work: (212) 527-9605
Cell: (917) 414-1385
Email: mrozen@trgpcap.com

with a copy to (which shall not constitute notice) to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attention: Lawrence V. Gelber
Email: lawrence.gelber@srz.com

If to Bank: Silicon Valley Bank
4370 La Jolla Village Drive, Suite 1050
San Diego, California 92122
Attn: Mr. Andrew Skalitzky
Email: askalitzky@svb.com

with a copy (which shall not constitute notice) to:

Levy, Small & Lallas
815 Moraga Drive
Los Angeles, California 90049
Attention: Angel F. Castillo
Email: acastillo@lsl-la.com

The Secured Parties may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

13. Relationship Of Parties . The relationship between the Secured Parties is, and at all times shall remain solely that of lenders and/or investors, as applicable in relationship to Borrower. Secured Parties shall not under any circumstances be construed to be partners or joint venturers of one another; nor shall the Secured Parties under any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with one another, or to owe any fiduciary duty to one another. Secured Parties do not undertake or assume any responsibility or duty to one another to select, review, inspect, supervise, pass judgment upon or otherwise inform each other of any matter in connection with Borrower's property, any Collateral held by any Secured Party or the operations of Borrower. Each Secured Party shall rely entirely on its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by any Secured Party in connection with such matters is solely for the protection of such Secured Party.

14. Governing Law; Jurisdiction; Jury Trial Waiver . This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflicts of laws principles. Creditor and Bank submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California in any action, suit, or proceeding of any kind, against it which arises out of or by reason of this Agreement. CREDITOR AND BANK WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.

15. Judicial Reference . WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce

all discovery rules and order applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

16. General. Each Secured Party shall execute all such documents and instruments and take all such actions as the other shall reasonably request in order to carry out the purposes of this Agreement, including without limitation (if requested by a Secured Party) appropriate amendments to financing statements in favor of the other Secured Party in order to refer to this Agreement (but this Agreement shall remain fully effective notwithstanding any failure to execute any additional documents, instruments, or amendments). Each Secured Party represents and warrants to the other that it has not heretofore transferred or assigned any financing statement naming Borrower as debtor and it as secured party, and that it will not do so without first delivering a copy of this Agreement to the proposed transferee or assignee, and any transfer or assignment shall be subject to all of the terms of this Agreement. This Agreement is solely for the benefit of Secured Parties and their successors and assigns, and neither the Borrower nor any other person (including any successor-in-interest) shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement. This Agreement sets forth in full the terms of agreement between the Secured Parties with respect to the subject matter hereof, and may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by the Secured Parties. In the event of any litigation between the parties based upon or arising out of this Agreement, the prevailing party shall be entitled to recover all of its reasonable costs and expenses (including without limitation reasonable attorneys' fees) from the non-prevailing party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

17. Limited Agency for Perfection.

(a) Bank acknowledges that applicable provisions of the UCC may require, in order to properly perfect Creditor's security interest in the Creditor Priority Collateral securing the Creditor Claims, that Creditor possess or control certain of such Creditor Priority Collateral. In order to help ensure that Creditor's security interest in such Creditor Priority Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), Bank agrees to hold both for itself and, solely for the purposes of perfection and without incurring any duties or obligations to Creditor as a result thereof or with respect thereto, for the benefit of Creditor, any such Creditor Priority Collateral, and agrees that Creditor's lien in such Creditor Priority Collateral shall be deemed perfected in accordance with applicable law.

(b) Creditor acknowledges that applicable provisions of the UCC may require, in order to properly perfect Bank's security interest in the Creditor Priority Collateral securing the Bank Claims, that Bank possess or control certain of such Creditor Priority Collateral. In order to help ensure that Bank's security interest in such Creditor Priority Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), Creditor

agrees to hold both for itself and, solely for the purposes of perfection and without incurring any additional duties or obligations to Bank as a result thereof or with respect thereto, for the benefit of Bank, any such Creditor Priority Collateral, and agrees that Bank's lien in such Creditor Priority Collateral shall be deemed perfected in accordance with applicable law.

(c) No party shall have, or be deemed to have, by this Agreement or otherwise a fiduciary relationship in respect of the other party.

18. Other Intercreditor Agreements . Secured Parties acknowledge that (i) Bank is party to that certain Intercreditor Agreement, dated November 18, 2015, with SVIC NO. 28 New Technology Business Investment L.L.P. (" SVIC "), and (ii) Creditor is party to that certain Intercreditor Agreement, dated the date hereof, with SVIC (such agreements, as they may be modified with the consent of the parties thereto, collectively, the " SVIC Intercreditor Agreements "). Secured Parties acknowledge that the provisions of this Agreement apply only as between Secured Parties, and that neither Secured Party shall be in breach of this agreement by virtue of its compliance with the SVIC Intercreditor Agreement to which it is a party.

[Signature Page Follows]

SILICON VALLEY BANK	TR GLOBAL FUNDING V, LLC
By /s/ Andrew Skalitzky	By /s/ Michael K. Rozen
Title VP	Title CEO

BORROWER'S CONSENT AND AGREEMENT

Borrower consents to the terms of this Intercreditor Agreement and agrees not to take any actions inconsistent therewith. Borrower agrees to execute all such documents and instruments and take all such actions as any Secured Party shall reasonably request in order to carry out the purposes of this Agreement. Borrower further agrees that, at any time and from time to time, the foregoing Agreement may be altered, modified or amended by the Creditor and Bank without notice to or the consent of Borrower.

NETLIST, INC.

By /s/ Gail Sasaki
Title CFO, VP, Secretary

Exhibit A
Creditor Security Agreement

Exhibit B
Bank Priority Collateral

Bank Priority Collateral consists of all of Borrower's right, title and interest in and to the following personal property exclusive of Creditor Priority Collateral:

All right, title and interest of Borrower in and to the following, whether now owned or hereafter arising or acquired and wherever located: all Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for any of the above, and all substitutions and replacements for, additions, accessions, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of, all of the above, and all Borrower's books relating to any of the above.

As used above the following terms have the following meanings:

"Accounts" means all present and future "accounts" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all accounts receivable and other sums owing to Borrower.

"Deposit Accounts" means all present and future "deposit accounts" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all general and special bank accounts, demand accounts, checking accounts, savings accounts and certificates of deposit.

"Equipment" means all present and future "equipment" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"General Intangibles" means all present and future "general intangibles" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all Intellectual Property, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Intellectual Property" means all present and future (a) copyrights, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished, (b) trade secret rights, including all rights to unpatented inventions and know-how, and confidential information; (c) mask work or

similar rights available for the protection of semiconductor chips; (d) patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same; (e) trademarks, servicemarks, trade styles, and trade names, whether or not any of the foregoing are registered, and all applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by any such trademarks; (f) computer software and computer software products; (g) designs and design rights; (h) technology; (i) all claims for damages by way of past, present and future infringement of any of the rights included above; (j) all licenses or other rights to use any property or rights of a type described above.

"Inventory" means all present and future "inventory" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment Property" means all present and future investment property, securities, stocks, bonds, debentures, debt securities, partnership interests, limited liability company interests, options, security entitlements, securities accounts, commodity contracts, commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, and all other securities of every kind, whether certificated or uncertificated.

"Other Property" means the following as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and all rights relating thereto: all present and future "commercial tort claims", "documents", "instruments", "promissory notes", "chattel paper", "letters of credit", "letter-of-credit rights", "fixtures", "farm products" and "money"; and all other goods and personal property of every kind, tangible and intangible, whether or not governed by the California Uniform Commercial Code.

Exhibit C
Creditor Priority Collateral

Creditor Priority Collateral consists of all of the Borrower's right, title and interest in, to and under the following, wherever located and whether now or hereafter existing and whether now owned or hereafter acquired:

(a) the Commercial Tort Claim referred to below;

(b) the Recoveries (as defined below);

(c) the obligation of the Reference Entity (as defined below) to pay the Recoveries and any other amounts determined to be owing by the Reference Entity in respect of the Claim (as defined below) or the Commercial Tort Claim (collectively, the " Reference Entity Debt ");

(d) all Supporting Obligations (as defined in the UCC) relating to the Reference Entity Debt, including any bond posted to insure the payment thereof;

(e) the Patents referred to below;

(f) the Patent Licenses referred to below; and

(g) all Proceeds, including all Cash Proceeds and Noncash Proceeds (each as defined in the UCC), and products of any and all of the foregoing (but, whether Proceeds or products, excluding any Accounts Collateral);

in each case, howsoever the Borrower's interest therein may arise or appear (whether by ownership, security interest, claim or otherwise). Without limiting the generality of the foregoing, the Creditor Priority Collateral consists of all rights of the Borrower in and to the Claim and all judgments, settlements and recoveries therein or other resolutions thereof. The foregoing grant includes all rights, powers and options (but none of the obligations, if any) of the Borrower under any instrument included in the Creditor Priority Collateral, including the immediate and continuing right to claim for, collect, receive and give receipt for payments in respect of the Creditor Priority Collateral and all other monies payable under the Creditor Priority Collateral, to give and receive notices and other communications, to exercise all rights and options, to bring proceedings in the name of the Borrower or otherwise and generally to do and receive anything that the Borrower is or may be entitled to do or receive under or with respect to the Creditor Priority Collateral.

As used above the following terms have the following meanings:

" Affiliate " means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the Equity Interests having ordinary voting power for the election of members of the board of directors of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. For the avoidance of doubt, Creditor shall not be considered an "Affiliate" of Borrower.

" Claim " means the Commercial Tort Claim, all settlement efforts arising from or related to the Commercial Tort Claim or the Patents, and any other proceeding within the scope of the Litigation Counsel Fee Agreement; provided , however , that Claim shall not include the Funded IPR Proceedings, any third party claim against Borrower and any claim Defendant or any third party may assert against Borrower unrelated to the Patents, such as, without limitation, a claim that Borrower infringes Defendant's patent(s) or other intellectual property.

" Commercial Tort Claim " means the investigation pending in the ITC Inv. No. 337-TA-1023 alleging that Defendant's products infringe the Original Patents and the lawsuit Borrower filed against Defendant in the U.S. District Court for Central District of California Case No. 8-16-cv-1605, alleging that Defendant's products infringe the Patents. "Commercial Tort Claim" does not include any appeal taken from a decision or adjudication reached or issued in either of Inv. No. 337-TA-1023 or Case No. 8-16-cv-1605, or any other litigation or adversarial proceeding. For purposes of this definition, "ITC" means International Trade Commission; "Original Patent" means U.S. Patent Nos. 8,756,364, 8,516,185, 8,001,434, 8,359,501, 8,689,064, and 8,489,837; "Patent" means the Original Patents and U.S. Patent Nos. 9,535,623, and 9,606,907.

"Defendant" means SK hynix Inc. and its Affiliates.

" Equity Interests " means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Funded IPR Proceeding " and " Funded IPR Proceedings " means, collectively, the following twelve *inter partes* review proceedings pending in the U.S. Patent and Trademark Office Proceeding Nos. 2017-00548, 2017-00549, 2017-00560, 2017-00561, 2017-00562, 2017-00577, 2017-00587, 2017-00649, 2017-00667, 2017-00668, 2017-00692, and 2017-00730. For the avoidance of doubt, "Funded IPR Proceeding" and "Funded IPR Proceedings" does not include any appeal taken from a decision or adjudication reached or issued in any of the aforementioned twelve *inter partes* review proceedings.

" Litigation Counsel Fee Agreement " means the engagement letter, dated December 8, 2016, entered into between Borrower and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz Levin"), as amended by the letter agreement, dated, April 4, 2017, between Borrower and Mintz Levin, as the same may be further amended, modified or supplemented from time to time.

" Patents " means the following:

Title	Patent/Application No.	Issue/Filing Date
A MULTIRANK DDR MEMORY MODUAL WITH LOAD REDUCTION	8756364	6/17/2014
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8001434	8/16/2011
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8359501	1/22/2012
MEMORY BOARD WITH SELF-TESTING CAPABILITY	8689064	4/1/2014
SYSTEM AND METHOD UTILIZING DISTRIBUTED BYTE-WISE BUFFERS ON A MEMORY MODULE	8516185	8/20/2013
SYSTEMS AND METHODS FOR HANDSHAKING WITH A MEMORY MODULE	8489837	7/16/2013
MEMORY MODULE CAPABLE OF HANDSHAKING WITH A MEMORY CONTROLLER OF A HOST SYSTEM	9,535,623	1/3/2017
MEMORY MODULE WITH DISTRIBUTED DATA BUFFERS AND METHOD OF OPERATION	9,606,907	3/28/2017

" Patent Licenses " means all licenses, contracts or other agreements, whether written or oral, (i) naming Borrower as licensor and providing for the grant of any right to manufacture, use, practice, offer for sale, sell, make, have made or import products or any invention, as the case may be, covered by any Patent or (ii) naming Borrower as licensee and providing for the grant of any right to manufacture, use, practice, offer for sale, sell, make, have made or import products or any invention, as the case may be, covered by any patent (other than the Patents), and granted in connection with the resolution of the Claim. " Person " means an individual, partnership, limited liability company, trust, estate, corporation, custodian, nominee or any other individual or entity acting on its own or in any representative capacity.

" Recoveries " means any and all consideration and value received by Borrower (prior to any netting, offset, reduction or deduction of any fees, costs, expenses, payment of taxes or payment of any other amounts) in partial or complete resolution of the Claim or the Commercial Tort Claim, including: (a) any and all gross, pre-tax monetary awards, damages, recoveries, judgments or other property or value awarded to, recovered by or on behalf of (or reduced to a debt owed to) Borrower or Creditor on account or as a result or by virtue (directly or indirectly) of the Claim, whether by negotiation, arbitration, mediation, diplomatic efforts, lawsuit, settlement, or pursuant to a corporate transaction of any nature, or otherwise, and includes all of the Borrower's legal and/or equitable rights, title and interest in and/or to any of the foregoing, whether in the nature of ownership, lien, security interest or otherwise, plus (b) any recovered interest, penalties, attorneys' fees and costs in connection with any of the foregoing (including,

without limitation, post-judgment interest, costs and fees), plus (c) any consequential, actual, punitive, exemplary or treble damages awarded or recovered on account thereof, plus (d) any interest awarded or later accruing on any of the foregoing (including, without limitation, post-judgment interest), plus (e) any recoveries against attorneys, accountants, experts or officers in connection with any of the foregoing or the pursuit of the Claim.

" Reference Entity " means, individually and collectively, the Defendants and any other parties listed as defendants or counterclaim defendants in the Commercial Tort Claim, jointly and severally, and including their Affiliates, and any other person or entity added or joined to the Commercial Tort Claim from time to time as a defendant or indemnitor or against whom proceedings are asserted or threatened even if such person or entity is not named or served.

Exhibit 10.6

AMENDED AND RESTATED INTERCREDITOR AGREEMENT

This AMENDED AND RESTATED INTERCREDITOR AGREEMENT, dated April 20, 2017, is entered into between **SVIC NO. 28 NEW TECHNOLOGY BUSINESS INVESTMENT L.L.P.** (" Creditor "), and **SILICON VALLEY BANK** (" Bank "). Creditor and Bank are sometimes referred to herein as the " Secured Parties ."

RECITALS

A. Netlist, Inc., a Delaware corporation (" Borrower "), and Creditor have entered into the Security Agreement, dated as of November 18, 2015, a true copy of which is attached hereto as Exhibit A (as amended from time to time, the " Creditor Security Agreement "). The Creditor Security Agreement and the documents executed in connection therewith, including without limitation the Purchase Agreement and the Note (each as defined in the Creditor Security Agreement) and the Creditor Control Agreements, each as amended from time to time, are referred to in this Agreement as the " Creditor Loan Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the Creditor Loan Documents are referred to in this Agreement collectively as the " Creditor Debt ."

B. Borrower and Bank have entered into a Loan and Security Agreement, dated as of October 31, 2009 (as amended from time to time, the " Bank Loan Agreement "). The Bank Loan Agreement and the documents executed in connection therewith are referred to in this Agreement as the " Bank Loan Documents ." All of Borrower's present and future indebtedness, liabilities and obligations under or in connection with the Bank Loan Documents are referred to in this Agreement collectively as the " Bank Debt ." Creditor Debt and Bank Debt are referred to herein collectively as " Secured Party Debt " and Bank Loan Documents and the Creditor Loan Documents are referred to herein collectively as " Loan Documents ."

C. The Secured Parties entered into the Intercreditor Agreement, dated as of November 18, 2015, with respect to the Secured Party Debt and the Loan Documents and wish to amend and restate the Intercreditor Agreement.

The parties agree as follows:

1. Definitions . As used in this Agreement, the following terms have the following meanings:

(a) " Accounts Collateral " means Borrower's present and future "accounts" (as defined in the UCC), including accounts arising from testing and other services performed, or goods created, by Borrower using patents, copyrights or other intellectual property of Borrower, but not including proceeds of any sale of any Creditor Priority Collateral.

(b) " Bank Priority Collateral " means any and all properties, rights and assets of Borrower described on Exhibit B, but excluding the Creditor Priority Collateral.

(c) " Bankruptcy Code " means the federal bankruptcy law of the United States as from time to time in effect, currently as Title 11 of the United States Code. Section references to current sections of the Bankruptcy Code shall refer to comparable sections of any revised version thereof if section numbering is changed.

(d) " Claim " means, (i) in the case of Bank, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of Bank now or hereafter arising or existing under or relating to the Bank Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination, and (ii) in the case of Creditor, any and all present and future "claims" (used in its broadest sense, as contemplated by and defined in Section 101(5) of the Bankruptcy Code, but without regard to whether such claim would be disallowed under the Bankruptcy Code) of Creditor now or hereafter arising or existing under or relating to the Creditor Loan Documents, whether joint, several, or joint and several, whether fixed or indeterminate, due or not yet due, contingent or non-contingent, matured or unmatured, liquidated or unliquidated, or disputed or undisputed, whether under a guaranty or a letter of credit, and whether arising under contract, in tort, by law, or otherwise, any interest or fees thereon (including interest or fees that accrue after the filing of a petition by or against Borrower under the Bankruptcy Code, irrespective of whether allowable under the Bankruptcy Code), any costs of Enforcement Actions, including reasonable attorneys' fees and costs, and any prepayment or termination.

(e) " Collateral " means, collectively, Creditor Priority Collateral and Bank Priority Collateral.

(f) " Common Collateral " means all Collateral in which both Bank and Creditor have a security interest.

(g) " Creditor Priority Collateral " means (i) all letters patent of Borrower, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country, including, without limitation, improvements, divisions, continuations and continuations in part of the same, (ii) all written or oral agreements granting any right to the Borrower with respect to any invention on which a patent is in existence or a patent application is pending, in which agreement the Borrower now holds or hereafter acquires any interest, and all license fees and royalties arising therefrom, (iii) the proceeds of any sale of the foregoing , but excluding any Accounts Collateral, (iv) to the extent not included in the preceding clauses, the TRGP Priority Collateral, as defined in the Intercreditor Agreement, dated as of the date hereof, by and between Bank and TRGP Capital Partners, L.P., as in effect on the date hereof.

(h) " Creditor Control Agreements " means (i) that certain Deposit Account Control Agreement, dated as of November 12, 2015, among Creditor, Borrower and Silicon Valley Bank, as account bank (" Account Bank ") and (ii) that certain Securities Account Control Agreement, dated as of November 12, 2015, among Creditor, Borrower, U.S. Bank, N.A., as securities intermediary, and SVB Asset Management, as investment advisor.

(i) " Enforcement Action " means, with respect to any Secured Party and with respect to any Claim of such Secured Party or any item of Collateral in which such Secured Party has or claims a security interest, lien, or right of offset, any action, whether judicial or nonjudicial, to repossess, collect, offset, recoup, give notification to third parties with respect to, sell, dispose of, foreclose upon, give notice of sale, disposition, or foreclosure with respect to, or obtain equitable or injunctive relief with respect to, such Claim or Collateral. The filing by any Secured Party of, or the joining in the filing by any Secured Party of, an involuntary bankruptcy or insolvency proceeding against Borrower also is an Enforcement Action.

(j) " Event of Default " means an "Event of Default" under the Bank Loan Documents or the Creditor Loan Documents.

(k) " Proceeds of Collection " means, collectively, the proceeds of all Collateral, or any part thereof, and the proceeds of any remedy with respect to such Collateral under the Loan Documents after the occurrence and during the continuance of an Event of Default.

(l) " UCC " means the Uniform Commercial Code as in effect from time to time in the State of California or any other applicable jurisdiction.

2. Priorities .

(a) Notwithstanding any contrary priority established by the time or order of attachment or perfection of any security interest or the time or order of filing of any financing statements or other documents, or the giving of any notices of purchase money security interests or other notices, or possession or control of any Collateral, or any statutes, rules or law, or court decisions to the contrary, the Secured Parties agree that:

(i) all security interests now or hereafter acquired by Creditor in the Creditor Priority Collateral shall at all times be prior and superior to all security interests and other interests and claims now held or hereafter acquired by Bank in Creditor Priority Collateral;

(ii) all security interests now or hereafter acquired by Bank in the Bank Priority Collateral shall at all times be prior and superior to all security interests and other interests or claims now held or hereafter acquired by Creditor in the Bank Priority Collateral; and

(iii) the proceeds resulting from any sale, transfer or other disposition of the Collateral shall be distributed as provided in Section 5 below.

(b) Each Secured Party hereby:

(i) acknowledges and consents to (A) Borrower granting to the other Secured Party a security interest in the Common Collateral of such other Secured Party, (B) the other Secured Party filing any and all financing statements and other documents as deemed necessary by the other Secured Party in order to perfect its security interest in its Common Collateral, and (C) Borrower's entry into the Loan Documents to which the other Secured Party is a party; and

(ii) acknowledges and agrees that the other Secured Party's Claims, the Borrower's entry into the applicable Loan Documents with the other Secured Party, and the security interests in the Common Collateral granted by Borrower to the other Secured Party shall be permitted under such Secured Party's Loan Documents, notwithstanding any provision of such Secured Party's Loan Documents to the contrary.

(c) If Creditor, for any reason, receives Bank Priority Collateral and receives a written notice from Bank that an Event of Default has occurred under the Bank Loan Documents and a demand for possession of the Bank Priority Collateral, Creditor shall promptly deliver any such Bank Priority Collateral in Creditor's possession to Bank. If Bank, for any reason, receives Creditor Priority Collateral and receives a written notice from Creditor that an Event of Default has occurred under the Creditor Loan Documents and a demand for possession of the Creditor Priority Collateral, Bank shall promptly deliver any such Creditor Priority Collateral in Bank's possession to Creditor.

3. Permitted Payments of Creditor Debt .

(a) Except as otherwise provided for in this Agreement, Creditor will not demand or receive from Borrower (and Borrower will not pay to Creditor) any cash payment of all or any part of the Creditor Debt, by way of payment, prepayment, setoff or otherwise, until such time as (i) the Bank Debt has been fully paid in cash, (ii) Bank has no commitment or obligation to lend any further funds to Borrower under the Bank Loan Documents, and (iii) all of the Bank Loan Documents are terminated (such time, " Bank Payment in Full ").

(b) Notwithstanding the foregoing prohibition on Creditor receiving (and Borrower paying) any cash payment of any of the Creditor Debt, Creditor shall be entitled to receive the proceeds of any sale of the Collateral as provided herein. Further, nothing in this Agreement shall prohibit Creditor from converting all or any part of the Creditor Debt into equity securities of Borrower or exercising any warrants issued to Creditor, provided that, if such securities have any call, put or other conversion features that would obligate Borrower to pay any cash dividends or distributions to Creditor, Creditor hereby acknowledges the Bank Loan Agreement evidencing the Bank Debt may prohibit Borrower from paying or making such dividends or distributions to Creditor and, to the extent Creditor has knowledge that Borrower is so prohibited by the Bank Loan Agreement, Creditor will not accept such cash dividends or distribution.

(c) Creditor shall promptly deliver to Bank in the form received (except for endorsement or assignment by Creditor where required by Bank) for application to the Bank Debt any cash payment, distribution or proceeds received by Creditor with respect to the Creditor Debt other than in accordance with this Agreement.

4. Secured Parties' Rights .

(a) Except as otherwise provided for in this Agreement, Creditor agrees that Bank may at any time, and from time to time, without the consent of Creditor and without notice to Creditor, renew or extend any of the Bank Debt, accept partial payments of the Bank Debt, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Bank Debt, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any Bank Priority Collateral, or change, alter or vary any other terms or provisions of the Bank Debt (other than any increase in the maximum principal amount of the Bank Debt), and take any other action or omit to take any other action with respect to its Bank Debt as it deems necessary or advisable in its sole discretion. No amendment of the Bank Loan Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of the security interest or lien that Bank may have in the Creditor Priority Collateral.

(b) Except as otherwise provided for in this Agreement, Bank agrees that Creditor may at any time, and from time to time, without the consent of Bank and without notice to Bank, renew or extend any of the Creditor Debt, accept partial payments of the Creditor Debt, settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate any of the Creditor Debt, release, exchange, fail to perfect, delay the perfection of, fail to resort to, or realize upon any Creditor Priority Collateral, or change, alter or vary any other terms or provisions of the Creditor Debt (other than any increase in the interest rate applicable to, or the maximum principal amount of the Creditor Debt, or any change in the dates on which payments are to be made with respect to the Creditor Debt (other than extensions of time)) and take any other action or omit to take any other action with respect to its Creditor Debt as it deems necessary or advisable in its sole discretion. No amendment of the Creditor Loan Documents shall directly or indirectly modify the provisions of this Agreement in any manner that might terminate or impair the subordination of the security interest or lien that Creditor may have in the Bank Priority Collateral.

(c) Creditor and Bank each waive any right to require the other to marshal any Collateral or other assets in favor of it or against or in payment of any or all of its Secured Party Debt.

(d) Except as otherwise provided for herein, prior to Bank Payment in Full, Bank shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Bank Priority Collateral of Borrower except in accordance with the terms of the Bank Debt. Bank agrees to provide Creditor with at least ten (10) days' prior written notice of any such sale, transfer or disposition of the Bank Priority Collateral approved by Bank. Upon written notice from Bank to Creditor of Bank's agreement to release its lien on all or any portion of the Bank Priority Collateral in connection with the sale, transfer or other disposition thereof by Bank (or by Borrower with consent of Bank), Creditor shall be deemed to have also, automatically and simultaneously, released its lien on the Bank Priority Collateral, and Creditor shall upon written request by Bank, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any

such sale, transfer or other disposition shall be applied as provided in Section 5 below. If Creditor fails to release its lien as required hereunder, Creditor hereby appoints Bank as attorney in fact for Creditor with full power of substitution to release Creditor's liens in the Bank Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

(e) Except as otherwise provided for herein, until such time as (a) the Creditor Debt has been fully paid, (b) Creditor has no commitment or obligation to lend any further funds to Borrower under the Creditor Loan Documents, and (c) all of the Creditor Loan Documents are terminated (such time, " Creditor Payment in Full "), Creditor shall have the sole and exclusive right to restrict or permit, or approve or disapprove, the sale, transfer or other disposition of Creditor Priority Collateral of Borrower except in accordance with the terms of the Creditor Debt. Creditor agrees to provide Bank with at least ten (10) days' prior written notice of any such sale, transfer or disposition of the Creditor Priority Collateral approved by Creditor. Upon written notice from Creditor to Bank of Creditor's agreement to release its lien on all or any portion of the Creditor Priority Collateral in connection with the sale, transfer or other disposition thereof by Creditor (or by Borrower with consent of Creditor), Bank shall be deemed to have also, automatically and simultaneously, released its lien on the Creditor Priority Collateral, and Bank shall upon written request by Creditor, promptly take such action as shall be necessary or appropriate to evidence and confirm such release. All proceeds resulting from any such sale, transfer or other disposition shall be applied as provided in Section 5 below. If Bank fails to release its lien as required hereunder, Bank hereby appoints Creditor as attorney in fact for Bank with full power of substitution to release Bank's liens in the Creditor Priority Collateral as provided hereunder. Such power of attorney being coupled with an interest shall be irrevocable.

5. Actions/Remedies .

(a) Creditor shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the Creditor Priority Collateral. In conducting any public or private sale under the UCC of the Creditor Priority Collateral, Creditor shall give Bank such notice of such sale as may be required by the UCC. Bank shall be free at all times to exercise or to refrain from exercising any and all rights and remedies it may have with respect to the Bank Priority Collateral. In conducting any public or private sale under the UCC of the Bank Priority Collateral, Bank shall give Creditor such notice of such sale as may be required by the UCC.

(b) Whether or not an Event of Default has occurred, (i) Creditor shall not collect, take possession of, foreclose upon, or exercise any other rights or remedies with respect to the Bank Priority Collateral, judicially or nonjudicially (including without limitation the exercise of any remedies with respect to Bank Priority Collateral in any bankruptcy or insolvency proceeding relating to Borrower), without the prior written consent of Bank, until Bank Payment in Full and (ii) Bank shall not collect, take possession of, foreclose upon, or exercise any other rights or remedies with respect to the Creditor Priority Collateral, judicially or nonjudicially (including without limitation the exercise of any remedies with respect to Creditor Priority Collateral in any bankruptcy or insolvency proceeding relating to Borrower), without the prior written consent of Creditor, until Creditor Payment in Full.

(c) Notwithstanding anything to the contrary in the Loan Documents, as among the Secured Parties, the Proceeds of Collection of all of the Bank Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First , to the payment of then outstanding reasonable out-of-pocket costs and expenses of Bank expended to preserve the value of the Bank Priority Collateral, of foreclosure or suit with respect to Bank Priority Collateral, if any, and of such sale with respect to the Bank Priority Collateral;

(ii) Second , to Bank in an amount up to Bank's Claims until Bank Payment in Full;

(iii) Third , to Creditor in an amount up to Creditor's Claims until Creditor Payment in Full; and

(iv) Fourth , to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

(d) Notwithstanding anything to the contrary in the Loan Documents, as among the Secured Parties, the Proceeds of Collection of all of the Creditor Priority Collateral shall, upon receipt by either Secured Party, be paid to and applied as follows:

(i) First , to the payment of then outstanding reasonable out-of-pocket costs and expenses of Creditor expended to preserve the value of the Creditor Priority Collateral, of foreclosure or suit with respect to Creditor Priority Collateral, if any, and of such sale with respect to the Creditor Priority Collateral;

(ii) Second , to Creditor in an amount up to Creditor's Claims until Creditor Payment in Full;

(iii) Third , to Bank in an amount up to Bank's Claims until Bank Payment in Full; and

(iv) Fourth , to Borrower, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

6. No Commitment by Secured Parties . This Agreement shall in no way be construed as a commitment or agreement by Creditor or Bank to provide financing to the Borrower or continue financing arrangements with Borrower. Creditor and Bank may terminate such arrangements at any time, in accordance with their agreements with Borrower.

7. Option to Purchase . Bank hereby grants Creditor an option to purchase all Bank Debt and all security and collateral therefor and all guarantees thereof for a purchase price (" Purchase Price ") equal to the total unpaid principal balance of the Bank Debt, plus all accrued and unpaid interest thereon, and all out-of-pocket fees, costs and expenses incurred by Bank in connection therewith. This option may be exercised by Creditor at any time by giving written notice thereof to Bank. Within five business days after written notice of the exercise of this option is given, Creditor shall pay Bank the Purchase Price in immediately available funds, and

Bank shall execute assignments of the Bank Debt and all documents and instruments relating thereto, in such form as Creditor shall reasonably request, but without recourse, warranty or representation of any kind on the part of Bank, except a warranty as to (i) the unpaid balance of the Bank Debt, (ii) that Bank has good title to the Bank Debt, free and clear of liens, claims and encumbrances created or authorized by Bank and (iii) that Bank has the right to assign the Bank Debt, and that such assignment is duly authorized. To the extent any Bank Services (as defined in the Bank Loan Agreement), including, without limitation, letters of credit and cash management services, are not assigned to Creditor, such Bank Services shall be cash collateralized by Borrower in form and substance satisfactory to Bank in its discretion.

8. Insurance . Subject to the terms of this Agreement, the Secured Party having a senior security interest or lien in the applicable Collateral shall, subject to such Secured Party's rights under its agreements with Borrower, have the sole and exclusive right (but not the obligation), as against the other Secured Party, to adjust settlement of any insurance policy in the event of any loss affecting such Collateral. All proceeds of such policy shall be applied by the Secured Party having the senior security interest as set forth in Section 5 of this Agreement.

9. Bankruptcy .

(a) In the event of Borrower's insolvency, reorganization or any case or proceeding under any bankruptcy or insolvency law or laws relating to the relief of debtors, including, without limitation, any voluntary or involuntary bankruptcy, insolvency, receivership or other similar statutory or common law proceeding or arrangement involving Borrower, the readjustment of its liabilities, any assignment for the benefit of its creditors or any marshalling of its assets or liabilities (each, an " Insolvency Proceeding "), (a) this Agreement shall remain in full force and effect in accordance with Section 510(a) of the Bankruptcy Code, (b) the Collateral shall include, without limitation, all Collateral arising during or after any such Insolvency Proceeding, and (c) all payments and distributions of any kind or character, whether in cash or property or securities, in respect of the Secured Parties' Claims shall be distributed pursuant to the provisions of Section 5 hereof.

(b) Until Bank Payment in Full, Creditor irrevocably appoints Bank as Creditor's attorney-in-fact, and grants to Bank a power of attorney with full power of substitution, in the name of Creditor or in the name of Bank, for the use and benefit of Bank, with prior notice to Creditor, to file the appropriate claim or claims in respect of the Creditor Debt on behalf of Creditor in any Insolvency Proceeding involving Borrower, if Creditor does not do so prior to 20 days before the expiration of the time to file claims in such Insolvency Proceeding and if Bank elects, in its sole discretion, to file such claim or claims.

(c) In addition to and without limiting the foregoing, if an Insolvency Proceeding occurs: (i) neither Secured Party shall assert or approve, without the prior written consent of the other Secured Party, any claim, motion, objection or argument in respect of the Collateral in connection with any Insolvency Proceeding which could otherwise be asserted or raised in connection with such Insolvency Proceeding, including, without limitation, any claim, motion, objection or argument seeking adequate protection or relief from the automatic stay in respect of the Collateral, which is inconsistent with the terms of this Agreement, (ii) Bank may consent to the use of cash collateral on such terms and conditions and in such amounts as it shall

in good faith determine without seeking or obtaining the consent of Creditor as (if applicable) holder of an interest in the Collateral and, if use of cash collateral by Borrower is consented to by Bank, Creditor shall not oppose such use of cash collateral on the basis that Creditor's interest in the Collateral (if any) is impaired by such use or inadequately protected by such use, so long as (x) Creditor retains a lien on such Collateral (including proceeds thereof arising after the commencement of such Insolvency Proceeding) with the same priority as existed prior to the commencement of the case under the Bankruptcy Code and (y) Creditor receives a replacement lien on post-petition assets to the same extent granted to Bank, with the same priority as existed prior to the commencement of the case under the Bankruptcy Code, (iii) Creditor shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Bank Priority Collateral, free and clear of security interests, liens and claims of any party, including Creditor, under Section 363 of the Bankruptcy Code or otherwise, on the basis that the interest of Creditor in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if Bank has consented to, or supports, such sale or disposition of such assets, provided that to the extent the Proceeds of Collection of such Collateral are not applied to reduce the Bank Debt, Creditor shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement and (iv) Bank shall not object to, or oppose, any sale or other disposition of any assets comprising all or part of the Creditor Priority Collateral, free and clear of security interests, liens and claims of any party, including Bank, under Section 363 of the Bankruptcy Code or otherwise, on the basis that the interest of Bank in the Collateral (if any) is impaired by such sale or inadequately protected as a result of such sale, or on any other ground, if Creditor has consented to, or supports, such sale or disposition of such assets, provided that to the extent the Proceeds of Collection of such Collateral are not applied to reduce the Creditor Debt, Bank shall retain a lien on such Proceeds of Collection in accordance with the terms of this Agreement.

(d) Nothing in this Section 9 shall preclude either Secured Party from seeking to be the purchaser, assignee or other transferee of any Collateral in connection with any sale or other disposition of Collateral under the Bankruptcy Code. Bank agrees that Creditor shall have the right to credit bid under Section 363(k) of the Bankruptcy Code with respect to the Creditor Priority Collateral, and Creditor agrees that Bank shall have the right to credit bid under Section 363(k) of the Bankruptcy Code with respect to the Bank Priority Collateral.

10. Notice of Events of Default . Each Secured Party shall give the other Secured Party prompt written notice of the occurrence of an Event of Default under its Loan Documents, and shall, simultaneously with giving any notice of default to Borrower, provide such other Secured Party with a copy of any notice of default given to Borrower. Neither Secured Party will incur liability for negligently or inadvertently failing to provide such notice to the other Secured Party. Creditor acknowledges and agrees that any default or event of default under the Creditor Loan Documents shall be deemed to be a default and an event of default under the Bank Loan Documents.

11. Revivor . If, after payment of any Bank Debt, Borrower thereafter becomes liable to Bank on account of the Bank Debt, or any payment made on the Bank Debt shall for any reason be required to be returned or refunded by Bank, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated Bank Debt, without the necessity of any further act or agreement between Secured Parties. If, after payment of any

Creditor Debt, Borrower thereafter becomes liable to Creditor on account of the Creditor Debt, or any payment made on the Creditor Debt shall for any reason be required to be returned or refunded by Creditor, this Agreement shall thereupon in all respects become effective with respect to such subsequent or reinstated Creditor Debt, without the necessity of any further act or agreement between Secured Parties.

12. Notices . Unless otherwise provided in this Agreement, all notices or demands by any party relating to this Agreement or any other agreement entered into in connection herewith shall be in writing and (except informal documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail, postage prepaid, return receipt requested, or by facsimile, or by reputable overnight delivery service, to the Secured Parties, at their respective addresses or fax numbers set forth below:

If to Creditor: SVIC No. 28 New Technology Business Investment L.L.P.
29F, Samsung Electronics Building
1320-10, Seocho 2-dong, Seocho-gu
Seoul 137-857, Korea
Attention: Dr. Dong-su Kim, Vice President
Email: dongkim@samsung.com

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)
2000 University Avenue
Palo Alto, California 94303
Attention: Louis Lehot
Email: louis.lehot@dlapiper.com

If to Bank: Silicon Valley Bank
4370 La Jolla Village Drive, Suite 1050
San Diego, California 92122
Attn: Mr. Andrew Skalitzky
Email: askalitzky@svb.com

with a copy (which shall not constitute notice) to:

Levy, Small & Lallas
815 Moraga Drive
Los Angeles, California 90049
Attention: Angel F. Castillo
Email: acastillo@lsl-la.com

The Secured Parties may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

13. Relationship Of Parties . The relationship between the Secured Parties is, and at all times shall remain solely that of lenders. Secured Parties shall not under any circumstances be construed to be partners or joint venturers of one another; nor shall the Secured Parties under

any circumstances be deemed to be in a relationship of confidence or trust or a fiduciary relationship with one another, or to owe any fiduciary duty to one another. Secured Parties do not undertake or assume any responsibility or duty to one another to select, review, inspect, supervise, pass judgment upon or otherwise inform each other of any matter in connection with Borrower's property, any Collateral held by any Secured Party or the operations of Borrower. Each Secured Party shall rely entirely on its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information undertaken or assumed by any Secured Party in connection with such matters is solely for the protection of such Secured Party.

14. Governing Law; Jurisdiction; Jury Trial Waiver. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflicts of laws principles. Creditor and Bank submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California in any action, suit, or proceeding of any kind, against it which arises out of or by reason of this Agreement. **CREDITOR AND BANK WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN** .

15. Judicial Reference . WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and order applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to the California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall

also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

16. General . Each Secured Party shall execute all such documents and instruments and take all such actions as the other shall reasonably request in order to carry out the purposes of this Agreement, including without limitation (if requested by a Secured Party) appropriate amendments to financing statements in favor of the other Secured Party in order to refer to this Agreement (but this Agreement shall remain fully effective notwithstanding any failure to execute any additional documents, instruments, or amendments). Each Secured Party represents and warrants to the other that it has not heretofore transferred or assigned any financing statement naming Borrower as debtor and it as secured party, and that it will not do so without first delivering a copy of this Agreement to the proposed transferee or assignee, and any transfer or assignment shall be subject to all of the terms of this Agreement. This Agreement is solely for the benefit of Secured Parties and their successors and assigns, and neither the Borrower nor any other person (including any successor-in-interest) shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement. This Agreement sets forth in full the terms of agreement between the Secured Parties with respect to the subject matter hereof, and may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by the Secured Parties. In the event of any litigation between the parties based upon or arising out of this Agreement, the prevailing party shall be entitled to recover all of its reasonable costs and expenses (including without limitation reasonable attorneys' fees) from the non-prevailing party. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

17. Limited Agency for Perfection .

(a) Bank acknowledges that applicable provisions of the UCC may require, in order to properly perfect Creditor's security interest in the Common Collateral securing the Creditor Claims, that Creditor possess or control certain of such Common Collateral. In order to help ensure that Creditor's security interest in such Common Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), Bank agrees to hold both for itself and, solely for the purposes of perfection and without incurring any duties or obligations to Creditor as a result thereof or with respect thereto, for the benefit of Creditor, any such Common Collateral, and agrees that Creditor's lien in such Common Collateral shall be deemed perfected in accordance with applicable law.

(b) Creditor acknowledges that applicable provisions of the UCC may require, in order to properly perfect Bank's security interest in the Common Collateral securing the Bank Claims, that Bank possess or control certain of such Common Collateral. In order to help ensure that Bank's security interest in such Common Collateral is properly perfected (but subject to and without waiving the other provisions of this Agreement), Creditor agrees to hold both for itself and, solely for the purposes of perfection and without incurring any additional duties or obligations to Bank as a result thereof or with respect thereto, for the benefit of Bank, any such Common Collateral, and agrees that Bank's lien in such Common Collateral shall be deemed perfected in accordance with applicable law.

(c) Neither party shall have, or be deemed to have, by this Agreement or otherwise a fiduciary relationship in respect of the other party.

18. Other Intercreditor Agreements . Secured Parties acknowledge that (i) Bank is party to the Intercreditor Agreement, dated as of the date hereof, with TRGP, and (ii) Creditor is party to the Intercreditor Agreement, dated as of the date hereof, with TRGP.

[Signature Page Follows]

SILICON VALLEY BANK

By _____
Title _____

SVIC NO. 28 NEW TECHNOLOGY BUSINESS INVESTMENT L.L.P.

By _____
Title _____

BORROWER'S CONSENT AND AGREEMENT

Borrower consents to the terms of this Amended and Restated Intercreditor Agreement and agrees not to take any actions inconsistent therewith. Borrower agrees to execute all such documents and instruments and take all such actions as any Secured Party shall reasonably request in order to carry out the purposes of this Agreement. Borrower further agrees that, at any time and from time to time, the foregoing Agreement may be altered, modified or amended by the Creditor and Bank without notice to or the consent of Borrower.

NETLIST, INC.

By _____

Title _____

Exhibit A

Creditor Security Agreement

Exhibit B

Bank Priority Collateral

Bank Priority Collateral consists of all of Borrower's right, title and interest in and to the following personal property exclusive of Creditor Priority Collateral:

All right, title and interest of Borrower in and to the following, whether now owned or hereafter arising or acquired and wherever located: all Accounts; all Inventory; all Equipment; all Deposit Accounts; all General Intangibles (including without limitation all Intellectual Property); all Investment Property; all Other Property; and any and all claims, rights and interests in any of the above, and all guaranties and security for any of the above, and all substitutions and replacements for, additions, accessions, attachments, accessories, and improvements to, and proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties) of, all of the above, and all Borrower's books relating to any of the above.

As used above the following terms have the following meanings:

"Accounts" means all present and future "accounts" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all accounts receivable and other sums owing to Borrower.

"Deposit Accounts" means all present and future "deposit accounts" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all general and special bank accounts, demand accounts, checking accounts, savings accounts and certificates of deposit.

"Equipment" means all present and future "equipment" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"General Intangibles" means all present and future "general intangibles" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all Intellectual Property, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Intellectual Property" means all present and future (a) copyrights, copyright rights, copyright applications, copyright registrations and like protections in each work of authorship

and derivative work thereof, whether published or unpublished, (b) trade secret rights, including all rights to unpatented inventions and know-how, and confidential information; (c) mask work or similar rights available for the protection of semiconductor chips; (d) patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same; (e) trademarks, servicemarks, trade styles, and trade names, whether or not any of the foregoing are registered, and all applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by any such trademarks; (f) computer software and computer software products; (g) designs and design rights; (h) technology; (i) all claims for damages by way of past, present and future infringement of any of the rights included above; (j) all licenses or other rights to use any property or rights of a type described above.

"Inventory" means all present and future "inventory" as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment Property" means all present and future investment property, securities, stocks, bonds, debentures, debt securities, partnership interests, limited liability company interests, options, security entitlements, securities accounts, commodity contracts, commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, and all other securities of every kind, whether certificated or uncertificated.

"Other Property" means the following as defined in the California Uniform Commercial Code in effect on the date hereof with such additions to such term as may hereafter be made, and all rights relating thereto: all present and future "commercial tort claims", "documents", "instruments", "promissory notes", "chattel paper", "letters of credit", "letter-of-credit rights", "fixtures", "farm products" and "money"; and all other goods and personal property of every kind, tangible and intangible, whether or not governed by the California Uniform Commercial Code.

EXHIBIT 31.1

CERTIFICATION PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Chun K. Hong, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc., a Delaware corporation (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and we have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles:

c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

August 15, 2017

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

EXHIBIT 31.2

CERTIFICATION PURSUANT TO RULE 13A-14(A) AND RULE 15D-14(A) OF THE SECURITIES EXCHANGE ACT AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Gail M. Sasaki, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Netlist, Inc., a Delaware corporation (the "Registrant");

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the Registrant and we have:

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles:

c) Evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

August 15, 2017

/s/ Gail M. Sasaki
Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)

Exhibit 32

CERTIFICATIONS PURSUANT TO 18 U.S.C. SECTION 1350
AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report on Form 10-Q of Netlist, Inc., a Delaware corporation ("Netlist") for the quarter ended July 1, 2017 (the "Report"), Chun K. Hong, president, chief executive officer and chairman of the board of Netlist, and Gail M. Sasaki, vice president and chief financial officer of Netlist, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to his or her knowledge:

(1) the Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Netlist, Inc.

August 15, 2017

/s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer and Chairman of the Board
(Principal Executive Officer)

August 15, 2017

/s/ Gail M. Sasaki
Gail M. Sasaki
Vice President and Chief Financial Officer
(Principal Financial Officer)