

INTEVAC INC

Filed by
SMEAD DR H J

FORM SC 13D (Statement of Beneficial Ownership)

Filed 12/10/99

Address	3560 BASSETT STREET SANTA CLARA, CA, 95054
Telephone	4089869888
CIK	0001001902
Symbol	IVAC
SIC Code	3559 - Special Industry Machinery, Not Elsewhere Classified
Industry	Industrial Machinery & Equipment
Sector	Industrials
Fiscal Year	12/31

INTEVAC INC

FORM SC 13D (Statement of Beneficial Ownership)

Filed 12/10/1999

Address	356O BASSETT ST SANTA CLARA, California 95054
Telephone	408-986-9888
CIK	0001001902
Industry	Computer Storage Devices
Sector	Technology
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

SCHEDULE 13D

UNDER THE SECURITIES EXCHANGE ACT OF 1934

INTEVAC, INC.

(Name of Issuer)

COMMON STOCK

(Title of Class of Securities)

461148-AA6
(CUSIP Number)

John Chapin
Kaiser Aerospace & Electronics Corporation
950 Tower Lane, Suite 800
Foster City, CA 94404
650-349-7400

(Name, Address and Telephone Number of Person Authorized to
Receive Notices and Communications)

DECEMBER 1, 1999
(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Sections 240.13-1(e), 240.13d-(f) or 240.13d-1(g), check the following box [].

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Section 240.13d-7(b) for other parties to whom copies are to be sent.

The information required on the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

(1) Name of Reporting Person
 S.S. or I.R.S. Identification No. of Above Person
 H.J. Smead I.R.S. Identification No: 537-18-5232

(2) Check the Appropriate Box if a Member of a Group* (a) []
 (b) [X]

(3) SEC Use Only

(4) SOURCE OF FUNDS*
 OO

(5) CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS
 IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
 N/A

(6) Citizenship or Place of Organization
 UNITED STATES OF AMERICA

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power 2,517,218
	(8)	Shared Voting Power N/A
	(9)	Sole Dispositive Power 2,517,218
	(10)	Shared Dispositive Power N/A

(11) Aggregate Amount Beneficially Owned by Each Reporting Person
 2,517,218

(12) Check Box if Aggregate Amount in Row (11) Excludes Certain
 Shares* []

(13) Percent of Class Represented by Amount in Row (11)
 21.5%

(14) Type of Reporting Person*
 IN

*SEE INSTRUCTIONS BEFORE FILLING OUT!

(1) Name of Reporting Person
 S.S. or I.R.S. Identification No. of Above Person
 Edward Durbin I.R.S. Identification No. 081-24-6531

(2) Check the Appropriate Box if a Member of a Group* (a) []
 (b) [X]

(3) SEC Use Only

(4) SOURCE OF FUNDS*
 OO

(5) CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS
 IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) []
 N/A

(6) Citizenship or Place of Organization
 UNITED STATES OF AMERICA

Number of Shares Beneficially Owned by Each Reporting Person With	(7)	Sole Voting Power 363,310
	(8)	Shared Voting Power N/A
	(9)	Sole Dispositive Power 363,310
	(10)	Shared Dispositive Power N/A

(11) Aggregate Amount Beneficially Owned by Each Reporting Person
 363,310

(12) Check Box if Aggregate Amount in Row (11) Excludes Certain
 Shares* []

(13) Percent of Class Represented by Amount in Row (11)
 3.1%

(14) Type of Reporting Person*
 IN

ITEM 1. SECURITY AND ISSUER.

This statement on Schedule 13D (this "Statement") relates to the Common Stock of Intevac, Inc., a California corporation ("Intevac" or "Issuer"). The principal executive offices of Intevac are located at 3550 Bassett Street, Santa Clara, California 95954.

ITEM 2 IDENTITY AND BACKGROUND.

The name of the corporation filing this statement is Foster City LLC, a California limited liability company ("Foster City"). Foster City is a holding company for various investments. The address of Foster City's principal business is 950 Tower Lane, Suite 800, Foster City, CA 94404. The address of Foster City's executive offices is the same as the address of its principal business.

Doctor H. J. Smead and Edward Durbin are each managing members of Foster City. H. J. Smead and Edward Durbin's principal employment is with Kaiser Aerospace & Electronics Corporation ("Kaiser"), a Nevada Corporation. The address of Kaiser's executive offices is 950 Tower Lane, Suite 800, Foster City, California 94404.

Neither Foster City, nor to Foster City's knowledge, Doctor H.J. Smead or Edward Durbin is required to disclose legal proceedings pursuant to Items 2(d) or 2(e). To Foster City's knowledge, Doctor H.J. Smead and Edward Durbin are each citizens of the United States.

ITEM 3. SOURCE AND AMOUNT OF FUNDS OR OTHER CONSIDERATION.

The source and amount of funds used is pursuant to a Promissory Note dated as of December 1, 1999 (the "Note") attached hereto as Exhibit A, by and between Foster City and Kaiser.

References to the Note as set forth herein are qualified in their entirety by reference to the Note, and are incorporated herein in their entirety where such references and descriptions appear.

ITEM 4. PURPOSE OF TRANSACTION.

(a) - (b) The purpose of the transaction is to enable Kaiser to concentrate on its core business and divest its non-core business assets.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

(f) Not applicable.

(g) Not applicable.

(h) Not applicable.

(i) Not applicable.

(j) Other than described above, Foster City currently has no plan or proposals which relate to, or may result in, any of the matters listed in Items 4(a) - (j) of Schedule 13D (although Foster City reserves the right to develop such plans).

ITEM 5. INTEREST IN SECURITIES OF THE ISSUER.

As set forth below opposite each Intevac Shareholder's name is the number of Intevac Common Shares beneficially owned by such Intevac Shareholder as of December 1, 1999.

Individual -----	Number of Shares of Common Stock Beneficially Owned -----
H. J. Smead	2,517,218
Edward Durbin	363,310

(a) H. J. Smead may be deemed to be the beneficial owner of at least 2,517,218 shares of Intevac Common Stock. Such Intevac Common Stock constitutes approximately 21.5% of the issued and outstanding shares of Intevac Common Stock based on the number of shares of Intevac Common Stock outstanding as of September 25, 1999.

Edward Durbin may be deemed to be the beneficial owner of at least 363,310 shares of Intevac Common Stock. Such Intevac Common Stock constitutes approximately 3.1% of the issued and outstanding shares of Intevac Common Stock based on the number of shares of Intevac Common Stock outstanding as of September 25, 1999.

(b) H. J. Smead will have the sole power to vote, and the sole power to dispose of, that number of shares equal to 21.5% of the then outstanding shares of Intevac Common Stock, which, based upon the 11,708,525 shares of Intevac Common Stock

outstanding as of September 25, 1999, currently equals 2,517,218 shares of Intevac Common Stock.

Edward Durbin will have the sole power to vote, and the sole power to dispose of, that number of shares equal to 3.1% of the then outstanding shares of Intevac Common Stock, which, based upon the 11,708,525 shares of Intevac Common Stock outstanding as of September 25, 1999, currently equals 363,310 shares of Intevac Common Stock

(c) To the knowledge of Foster City, no transactions in the class of securities reported have been effected during the past sixty days by any person named pursuant to Item 2.

(d) To the knowledge of Foster City, only the Directors of Intevac have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the securities of Intevac reported on herein. Such directors include Norman H. Pond, Robert D. Hempstead, Edward Durbin, David N. Lambeth and H. J. Smead.

(e) N/A.

ITEM 6. CONTRACTS, ARRANGEMENTS, UNDERSTANDING OR RELATIONSHIPS WITH RESPECT TO SECURITIES OF THE ISSUER.

Other than the Stock Purchase Agreement and the exhibits thereto, attached hereto as Exhibit B, to the knowledge of Foster City, there are no contracts, arrangements, understandings or relationships among the persons named in Item 2 and between such persons and any person with respect to any securities of Foster City, including but not limited to transfer or voting of any of the securities, finder's fees, joint ventures, loan or option arrangement, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

ITEM 7. MATERIALS TO BE FILED AS EXHIBITS.

The following documents are filed as exhibits:

- A. Promissory Note, dated December 1, 1999 between Kaiser and Foster City.
- B. Stock Purchase Agreement dated December 1, 1999 between Kaiser and Foster City.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: December 1, 1999

H. J. SMEAD

EDWARD DURBIN

By: /s/ H. J. Smead

By: /s/ Edward Durbin

H. J. Smead,
Managing Partner

Edward Durbin,
Managing Partner

EXHIBIT INDEX

EXHIBIT NO. -----	DESCRIPTION -----
A	Promissory Note, dated December 1, 1999 between Kaiser and Foster City.
B	Stock Purchase Agreement dated December 1, 1999 between Kaiser and Foster City.

EXHIBIT A

PROMISSORY NOTE

\$13,048,000 December 1, 1999

FOR VALUE RECEIVED, Foster City LLC, a California limited liability company ("Maker"), promises to pay to Kaiser Aerospace & Electronics Corporation, a Nevada corporation ("Payee"), in lawful money of the United States of America, the principal sum of Thirteen Million Forty-Eight Thousand Dollars (\$13,048,000) together with interest in arrears on the unpaid principal balance at the rate of 8.5% per annum. Interest shall be calculated on the basis of a year of 365 or 366 days, as applicable, and charged for the actual number of days elapsed.

THE OBLIGATIONS DUE UNDER THIS NOTE ARE SECURED BY A PLEDGE OF CERTAIN PROPERTY PURSUANT TO A PLEDGE AGREEMENT (THE "PLEDGE AGREEMENT") DATED AS OF THE DATE HEREOF AND EXECUTED BY MAKER IN FAVOR OF PAYEE. ADDITIONAL RIGHTS OF PAYEE ARE SET FORTH IN THE PLEDGE AGREEMENT.

This Note has been executed and delivered pursuant to and in accordance with the terms and conditions of a Stock Purchase Agreement dated as of the date hereof by and among Payee and Maker (the "Agreement") and is subject to the terms and conditions of the Agreement, which are, by this reference, incorporated herein and made a part hereof. Capitalized terms used in this Note without definition shall have the respective meanings set forth in the Agreement.

1. PAYMENTS

1.1 Principal and Interest. The principal amount of this Note shall be due on the fifth anniversary hereof. Accrued, unpaid interest on the principal balance of this Note shall be due and payable semi-annually on the six-month and twelve-month anniversaries each year of the date hereof.

1.2 Manner of Payment. All payments of principal and interest on this Note shall be made by wire transfer to such accounts as specified by Payee, promptly upon written request of Payee, or by check at Payee's address as set forth in Section 8.03(a) of the Agreement. If any payment of principal or interest on this Note is due on a day which is not a Business Day, such payment shall be due on the next succeeding Business Day, and such extension of time shall be taken into account in calculating the amount of interest payable under this Note. "Business Day" means any day other than a Saturday, Sunday or legal holiday in the State of California.

1.3 Optional Prepayment. Maker may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment.

2. DEFAULTS.

2.1 Events of Default. The occurrence of any one or more of the following events with respect to Maker shall constitute an event of default hereunder ("Event of Default"):

(a) If Maker shall fail to pay when due any payment of principal or interest on this Note and such failure continues for five (5) Business Days after Payee notifies Maker thereof writing; provided, however, that the exercise by Maker in good faith of a right of set-off available to Maker, whether or not ultimately determined to be justified, shall not constitute an Event of Default.

(b) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors (a "Bankruptcy Law"), Maker shall (i) commence a voluntary case or proceeding; (ii) consent to the entry of an order for relief against it in an involuntary case; (iii) consent to the appointment of a trustee, receiver, assignee, liquidator or similar official; or (iv) make an assignment for the benefit of its creditors, and in each case the actions so taken is not withdrawn, rescinded or dismissed within 30 days.

(c) If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Maker in an involuntary case; (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Maker or substantially all of Maker's properties; or (iii) orders the liquidation of Maker, and in each case the order or decree is not dismissed within 120 days.

2.2 Remedies. Upon the occurrence of an Event of Default hereunder (unless all Events of Default have been cured or have been waived by Payee), Payee may, at its option, (i) by written notice to Maker, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon, immediately due and payable regardless of any prior forbearance, and (ii) exercise any and all rights and remedies available to it under applicable law, including, without limitation, the right to collect from Maker all sums due under this Note. Maker shall pay all reasonable attorneys' fees incurred by or on behalf of Payee in connection with Payee's exercise of any or all of its rights and remedies under this Note.

3. MISCELLANEOUS.

3.1 Waiver. The rights and remedies of Payee under this Note shall be cumulative and not alternative. No waiver by Payee of any right or remedy under this Note shall be effective unless in a writing signed by Payee. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege and no single or partial exercise of any such right, power or privilege by Payee will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right of Payee arising out of this Note can be discharged by Maker, in whole or in part, by a waiver or renunciation of the claim or right unless in a writing signed by Payee; (b) no waiver that may be given by Payee will be

applicable except in the specific instance for which it is given; and (c) no notice to or demand on Maker will be deemed to be a waiver of any obligation of Maker or of the right of Payee to take further action without notice or demand as provided in this Note.

3.2 Notices. Any notice required or permitted to be given hereunder shall be given in accordance with Section 8.03 of the Agreement.

3.3 Severability. Any provision of this Note which is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Note invalid, illegal or unenforceable in any other jurisdiction.

3.4 Governing Law. This Note shall be construed and enforced in accordance with and governed by the laws of the State of California.

3.5 Parties In Interest. This Note shall bind Maker and its successors and assigns. This Note shall not be assigned or transferred by Maker without the express prior written consent of Payee, which consent shall not be unreasonably withheld. This Note shall not be assigned or transferred by Payee without the express prior written consent of Maker, which consent shall not be unreasonably withheld.

3.6 Section Headings, Construction. The headings of each Section, subsection or other subdivision of this Note are for reference only and shall not limit or control the meaning thereof. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Note unless otherwise specified. All words used in this Note will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "hereof" and "hereunder" and similar references refer to this Note in its entirety and not to any specific section or subsection hereof.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Seller has executed this Agreement in his or her individual capacity and the general partner of the Purchaser has caused this Agreement to be executed by its officer thereunto duly authorized as of the date first written above.

FOSTER CITY LLC

By /s/ H.J. SMEAD

Name: H.J. Smead

Title:

EXHIBIT B

STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT, dated as of December 1, 1999, between Kaiser Aerospace & Electronics Corporation, a Nevada corporation (the "Seller"), and Foster City LLC, a California limited liability company (the "Purchaser").

WITNESSETH:

WHEREAS, the Seller owns 5,600,000 shares of common stock, \$.01 par value per share (the "Common Stock"), of Intevac, Inc., a California corporation (the "Company"); and

WHEREAS, the Seller wishes to sell to the Purchaser, and the Purchaser wishes to purchase from the Seller, such shares of the Common Stock (such shares to be sold pursuant to this Agreement being individually, a "Share" and, collectively, the "Shares"), upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, the Purchaser and the Seller hereby agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Action" means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority.

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

"Business" has the meaning specified in Section 5.01.

"Closing" has the meaning specified in Section 2.03(a).

"Closing Date" has the meaning specified in Section 2.03(a).

"Common Stock" has the meaning specified in the recitals to this Agreement.

"Control" (including the terms "controlled by" and "under common control with"), with respect to the relationship between or among two or more Persons, means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including, without limitation, the ownership, directly or indirectly, of

securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

"Encumbrance" means any security interest, pledge, mortgage, lien, charge, encumbrance, adverse claim, preferential arrangement or restriction of any kind, including, without limitation, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, other than such restrictions and encumbrances as are contained in the Company Articles of Incorporation and restrictions imposed by the federal securities laws and applicable state securities laws.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Law" means any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order requirement or rule of common law.

"Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization or other entity, as well as any syndicate or group that would be deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended.

"Purchase Price" has the meaning specified in Section 2.02.

ARTICLE II

PURCHASE AND SALE

SECTION 2.01. Purchase and Sale of the Shares. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, the Seller shall sell to the Purchaser, and the Purchaser shall purchase from the Seller, 5,600,000 Shares.

SECTION 2.02. Purchase Price. The purchase price shall be an amount per Share equal to (x) the average (rounded to the nearest whole cent per Share) of the high and low sales prices of a Share as quoted on the National Association of Securities Dealers National Market System for the fifteen (15) trading days preceding December 1, 1999, minus (y) a discount equal to thirty percent (30%) of the average price of a share as determined under (x) (the "Purchase Price"), payable as provided in Section 2.03(b).

SECTION 2.03. Closing.

(a) Subject to the terms and conditions of this Agreement, the closing of the sale and purchase of the Shares contemplated by this Agreement shall take place at a closing (the "Closing") to be held at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California as promptly as practicable after the date hereof on such date and at such time as the Seller and the Purchaser may mutually agree upon in writing.

(b) At the Closing, (i) the Seller shall deliver or cause to be delivered to the Purchaser (A) stock certificates evidencing the Shares duly executed in blank in form satisfactory to the Purchaser and (B) a signed counterpart of the Pledge Agreement attached hereto as Exhibit B (the "Pledge Agreement") and (ii) the Purchaser shall deliver to the Seller (A) a promissory note in the principal amount of the aggregate Purchase Price as determined under Section 2.02 hereof and in the form attached hereto as Exhibit A and (B) a signed counterpart of the Pledge Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLER

As an inducement to the Purchaser to enter into this Agreement, the Seller hereby represents and warrants to the Purchaser as follows:

SECTION 3.01. Authority to Execute and Perform the Agreement. The Seller has all requisite right, power and authority and full legal capacity to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Seller and (assuming due authorization, execution and delivery by the Purchaser) constitutes a valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms.

SECTION 3.02. Ownership of Shares. The Seller has good and marketable title to, and is the record and beneficial owner of, the Shares, free and clear of all Encumbrances. Upon delivery of the Shares by the Seller to the Purchaser at the Closing and payment of the Purchase Price for the Shares, as herein provided, the Purchaser will receive good and marketable title to the Shares, free and clear of all Encumbrances.

SECTION 3.03. No Conflict. Except as may result from any facts or circumstances relating solely to the Purchaser, the execution, delivery and performance of this Agreement by the Seller do not and will not (a) conflict with or violate any Law or Governmental Order applicable to the Seller, (b) conflict with or violate any declaration of trust or other instrument or agreement establishing or otherwise governing the Seller or (c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, or result in the creation of any Encumbrance on the Shares pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Seller is a party or by which the Shares are bound or affected or which would have a material adverse effect on the ability of the Seller to consummate the transactions contemplated by this Agreement.

SECTION 3.04. Absence of Litigation. There are no Actions by or against the Seller pending before any Governmental Authority (or, to the best knowledge of the Seller after due inquiry, threatened to be brought by or before any Governmental Authority) relating to or affecting

the Shares or which could affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby. The Seller is not subject to any Governmental Order (nor, to the best knowledge of the Seller, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) relating to or affecting the Shares or which would affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

SECTION 3.05. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

As an inducement to the Seller to enter into this Agreement, the Purchaser hereby represents and warrants to the Seller as follows:

SECTION 4.01. Organization and Authority of the Purchaser. The Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California and has all necessary power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Purchaser, the performance by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and (assuming valid execution and delivery by the Seller) constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms.

SECTION 4.02. No Conflict. Except as may result from any facts or circumstances relating solely to the Seller, the execution, delivery and performance of this Agreement by the Purchaser do not and will not (a) violate, conflict with or result in the breach of any provision of the Operating Agreement of the Purchaser, (b) conflict with or violate any Law or Governmental Order applicable to the Purchaser or (c) conflict with, or result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation, or cancellation of, or result in the creation of any Encumbrance on any of the assets or properties of the Purchaser pursuant to, any note, bond, mortgage or indenture, contract, agreement, lease, sublease, license, permit, franchise or other instrument or arrangement to which the Purchaser is a party or by which any of such assets or properties are bound or affected which would have a material adverse effect on the ability of the Purchaser to consummate the transactions contemplated by this Agreement.

SECTION 4.03. Absence of Litigation. There are no Actions by or against the Purchaser pending before any Governmental Authority (or, to the best knowledge of the Purchaser, threatened to be brought by or before any Governmental Authority) which would affect the legality, validity or

enforceability of this Agreement or the consummation of the transactions contemplated hereby. The Purchaser is not subject to any Governmental Order (nor, to the best knowledge of the Purchaser after due inquiry, are there any such Governmental Orders threatened to be imposed by any Governmental Authority) which would affect the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

SECTION 4.04. Investment Purpose. The Purchaser is acquiring the Shares solely for the purpose of investment and not with a view to, or for offer or sale in connection with, any distribution thereof.

SECTION 4.05. Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

ARTICLE V

ADDITIONAL AGREEMENTS

SECTION 5.01. Investigation. The Purchaser acknowledges and agrees that it (i) has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning, the Company, the business of the Company as it is currently being conducted (the "Business") and the Shares, including, without limitation, the value thereof, (ii) has been furnished with or given adequate access to such information as it has requested about the Company, the Business and the Shares and (iii) except as provided in this Agreement, will not assert any claim against the Seller, the Company or any of their respective directors, officers, employees, agents, stockholders, Affiliates, consultants, investment bankers or representatives, or hold the Seller, the Company or any such Persons liable, for any inaccuracies, misstatements or omissions with respect to information furnished by the Seller, the Company or such Persons concerning the Company, the Business or the Shares.

SECTION 5.02. Further Action. Each of the parties hereto shall use all reasonable efforts to take or cause to be taken all appropriate action, do or cause to be done all things necessary, proper or advisable, and execute and deliver such documents and other papers, as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated by this Agreement.

ARTICLE VI

CONDITIONS TO CLOSING

SECTION 6.01. Condition to Obligations of the Seller. The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following conditions: (a) the representations and warranties of the Purchaser contained in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date, with the same force and effect as if made as of the Closing Date; (b) the covenants and agreements contained in this Agreement to be

complied with by the Purchaser at or prior to the Closing shall have been complied with in all material respects; and (c) Seller shall have received a certificate from the Purchaser as to the accuracy of (a) and (b).

SECTION 6.02. Conditions to Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following conditions: (a) the representations and warranties of the Seller contained in this Agreement shall have been true and correct when made and shall be true and correct in all material respects as of the Closing Date with the same force and effect as if made as of the Closing Date; (b) the covenants and agreements contained in this Agreement to be complied with by the Seller at or prior to the Closing shall have been complied with in all material respects; and (c) the Purchaser shall have received a certificate signed by the Seller to such effect.

ARTICLE VII

TERMINATION AND WAIVER

SECTION 7.01. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Purchaser and the Seller;

(b) by either the Purchaser or the Seller if the Closing shall not have occurred by December 31, 1999; provided, however, that the right to terminate this Agreement under this Section 7.01(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(c) by either the Purchaser or the Seller in the event that any Governmental Authority shall have issued an order, decree or ruling or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable; or

(d) by the Purchaser if, between the date hereof and the time scheduled for the Closing, the Seller makes a general assignment for the benefit of creditors, or any proceeding shall be instituted by or against the Seller seeking to adjudicate it bankrupt or insolvent, or seeking arrangement, adjustment, protection, relief or composition of its debts under any Law relating to bankruptcy, insolvency or reorganization.

SECTION 7.02. Effect of Termination. In the event of termination of this Agreement as provided in Section 7.01, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except that nothing herein shall relieve any party from liability for any breach of this Agreement.

SECTION 7.03. Waiver. Any party to this Agreement may (a) extend the time for the performance of any of the obligations or other acts of any other party, (b) waive any inaccuracies in the representations and warranties of any other party contained herein or in any document delivered by the other party pursuant hereto or (c) waive compliance with any of the agreements or conditions of any other party contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition, of this Agreement. The failure of any party to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.01. Survival of Representations and Warranties. The representations and warranties of the parties hereto contained in Articles III and IV shall survive the Closing until the second anniversary thereof.

SECTION 8.02. Expenses. Except as otherwise specified in this Agreement, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

SECTION 8.03. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given or made as of the date delivered, mailed or sent if delivered personally or by courier, mailed by registered or certified mail (postage prepaid, return receipt requested) or sent by telecopy to the respective parties at the following addresses or telecopier numbers (or at such other address or telecopier number for a party as shall be specified in a notice given in accordance with this Section 8.03):

(a) if to the Seller:

Kaiser Aerospace & Electronics Corporation 950 Tower Lane - Suite 800 Foster City, CA 94404 Attention: Chairman Telephone: (650) 349-7400 Telecopier: (650) 349-8234

(b) if to the Purchaser:

Foster City LLC
244 Wall Street, No. 2 Vail, CO 81657
Attention: Dr. H.J. Smead Telephone: (970) 479-9433

SECTION 8.04. Public Announcements. No party to this Agreement shall make, or cause to be made, any press release or public announcement or otherwise communicate with any news media in respect of this Agreement or the transactions contemplated hereby without the prior written consent of the other parties.

SECTION 8.05. Headings. The descriptive headings contained in this Agreement are for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 8.06. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

SECTION 8.07. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral, between the Seller and the Purchaser with respect to the subject matter hereof.

SECTION 8.08. Assignment. This Agreement may not be assigned by operation of Law or otherwise without the express written consent of the Seller and the Purchaser (which consent may be granted or withheld in the sole discretion of the Seller or the Purchaser); provided, however, that the Purchaser may assign this Agreement to an Affiliate of the Purchaser without the consent of the Seller.

SECTION 8.09. No Third Party Beneficiaries. Except for Article V, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their permitted assigns and nothing herein, except for Article V, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 8.10. Amendment. This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, the Seller and the Purchaser or (b) by a waiver in accordance with Section 7.03.

SECTION 8.11. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, applicable to contracts executed in and to be performed entirely within that state.

SECTION 8.12. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SECTION 8.13. Specific Performance. The parties hereto agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

IN WITNESS WHEREOF, the Seller has executed this Agreement in his or her individual capacity and the general partner of the Purchaser has caused this Agreement to be executed by its officer thereunto duly authorized as of the date first written above.

KAISER AEROSPACE & ELECTRONICS CORPORATION

By /s/ JOHN CHAPIN

Name: John Chapin

Title: -----

FOSTER CITY LLC

By /s/ H.J. SMEAD

Name: H.J. Smead

Title: -----

End of Filing

Powered By **EDGAR**
Online

© 2005 | EDGAR Online, Inc.